



REPUBLIC OF SAN MARINO

We the Captains Regent of the Most Serene Republic of San Marino

Having regard to Article 4 of Constitutional Law n. 185/2005 and to Article 6 of Qualified Law n. 186/2005;

Hereby promulgate and order the publication of the following Ordinary Law, approved by the Great and General Council during its sitting of 23 May 2013:

LAW NO. 58 of 29 May 2013

LAW ON THE USE OF ELECTRONIC COMMUNICATIONS AND E-COMMERCE

Chapter I

Electronic Communications

Part I

General Provisions

Article 1

Scope of application

1. This law applies to the use of electronic communications exchanged for commercial purposes.
2. The provisions of this law apply also to contracts concluded by consumers, but do not affect consumer rights set forth in other laws.
3. The parties may exclude the application or vary the effect of articles 11, 12, 13, 14 and 15 of this law.

Article 2.

Exclusions

1. This law does not apply to electronic communications relating to any of the following:
 - a) Transactions on a regulated exchange;
 - b) foreign exchange transactions;
 - c) inter-bank payment systems, inter-bank payment agreements or clearance and settlement systems relating to securities or other financial assets or instruments;
 - d) the transfer of security rights in sale, loan or holding of or agreement to repurchase securities or other financial assets or instruments held with an intermediary.
2. This law does not apply to bills of exchange, promissory notes, consignment notes, bills of lading, warehouse receipts or any transferable document or instrument that entitles the bearer or beneficiary to claim the delivery of goods or the payment of a sum of money.
3. This law does not apply to communications relating to contracts affecting real estate and to communications relating to family law.
4. An ad-hoc delegated decree shall identify specific product categories for which the selling through electronic means is prohibited.

Article 3.

Definitions

For the purposes of this law, the following definitions apply:

- (a) “Electronic communication” means any communication entailing legal consequences that the parties are required to make or choose to make by exchanging data messages in connection with the formation or performance of a contract;
- (b) “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;
- (c) “Electronic data interchange (EDI)” means the electronic transfer from computer to computer of information using an agreed standard to structure the information;
- (d) “Originator” of an electronic communication means a party by whom, or on whose behalf, the electronic communication has been sent or generated prior to storage, if any, but it does not include a party acting as an intermediary with respect to that electronic communication;
- (e) “Addressee” of an electronic communication means a party who is intended by the originator to receive the electronic communication, but does not include a party acting as an intermediary with respect to that electronic communication;
- (f) “Information system” means a system for generating, sending, receiving, storing or otherwise processing data messages;
- (g) “Automated message system” means a computer program or an electronic or other automated means used to initiate an action or respond to data messages or performances in whole or in part, without review or intervention by a natural person each time an action is initiated or a response is generated by the system;
- (h) “Electronic signature” means data in electronic form in, affixed to or logically associated with, a data message, which may be used to identify the signatory in relation to the data message and to indicate the signatory’s intention in respect of the information contained in the data message;
- (i) “Certificate” means a data message confirming the link between a signatory and signature creation data;
- (j) “Signatory” means a person that holds signature creation data and acts either on its own behalf or on behalf of the person it represents.
- (k) “Certification service provider” or certifier means a person that issues certificates and may provide other services related to electronic signatures;
- (l) “Relying party” means a person that may act on the basis of a certificate or an electronic signature.

Article 4

Location of place of business

1. A location is not a place of business, residence or domicile merely because that is:
 - (a) where equipment and technology supporting an information system used by a party in connection with the formation of a contract are located; or
 - (b) where the information system may be accessed by other parties.
2. The sole fact that a party makes use of a domain name or electronic mail address connected to a specific country does not create a presumption that its place of business residence or domicile are located in that country.

Article 5

Information requirements

Nothing in this Convention affects the application of any rule of law that may require the parties to disclose their identities, places of business or other information, or that may contain a formal requirement for the communication of contractual clauses, or relieves a party from the legal consequences of making inaccurate, incomplete or false statements in that regard.

Part II

Electronic communications

Article 6

Legal recognition

1. A communication or a contract shall not be denied validity or enforceability on the sole ground that it is in the form of an electronic communication.
2. Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is not contained in the electronic communication purporting to give rise to such legal effect, but is merely referred to in a data message.
3. Nothing in this law requires a party to use or accept electronic communications, but a party's agreement to do so may be inferred from the party's conduct.

Article 7

Written form

Where the law requires that a communication or a contract should be in writing, or provides consequences for the absence of a writing, that requirement is met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

Article 8

Original

- (1) Where the law requires a declaration or a contract to be presented or retained in their original form, or provides consequences for the absence of the original, that requirement is met by an electronic communication if:
 - (a) there exists a reliable assurance as to the integrity of the information from the time when it was first generated in its final form, as a data message or otherwise; and
 - (b) where it is required that information be presented, that information is capable of being displayed to the person to whom it is to be presented.
- (2) For the purposes of subparagraph (a) of paragraph (1):
 - (a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and
 - (b) the standard of reliability required shall be assessed in the light of the purpose for which the information was generated and in the light of all the relevant circumstances.

Article 9

Evidential weight

- (1) Electronic communications shall be given due evidential weight. In assessing such evidential weight, regard shall be had to the reliability of the manner in which the electronic communication was generated, stored or transmitted, to the reliability of the manner in which the integrity of the information was maintained, to the manner in which its originator was identified, and to any other relevant factor.
- (2) Nothing in the application of the rules of evidence shall apply so as to deny the admissibility of an electronic communication in evidence:
 - (a) on the sole ground that it is an electronic communication; or,
 - (b) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that the communication is not in its original form.

Article 10

Retention

(1) Where the law requires that certain documents, records or information be retained, that requirement is met by retaining electronic communications, provided that the following conditions are satisfied:

(a) the information contained therein is accessible so as to be usable for subsequent reference; and

(b) the electronic communication is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and

(c) such information, if any, is retained as enables the identification of the origin and destination of the electronic communication and the date and time when it was sent or received.

(2) An obligation to retain documents, records or information in accordance with paragraph (1) does not extend to any information the sole purpose of which is to enable the message to be sent or received.

(3) A person may satisfy the requirement referred to in paragraph (1) by using the services of any other person, provided that the conditions set forth in subparagraphs (a), (b) and (c) of paragraph (1) are met.

Article 11

Attribution

(1) An electronic communication is that of the originator if it was sent by the originator itself.

(2) As between the originator and the addressee, an electronic communication is deemed to be that of the originator if it was sent:

(a) by a person who had the authority to act on behalf of the originator in respect of that electronic communication; or

(b) by an information system programmed by, or on behalf of, the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard an electronic communication as being that of the originator, and to act on that assumption, if

(a) in order to ascertain whether the electronic communication was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or

(b) the electronic communication as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify electronic communications as its own.

(4) Paragraph (3) does not apply:

(a) as of the time when the addressee has both received notice from the originator that the electronic communication is not that of the originator, and had reasonable time to act accordingly; or

(b) in a case within paragraph (3) (b), at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic communication was not that of the originator.

(5) Where an electronic communication is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the electronic communication as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when it knew or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic communication as received.

(6) The addressee is entitled to regard each electronic communication received as a separate electronic communication and to act on that assumption, except to the extent that it duplicates another electronic communication and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic communication was a duplicate.

Article 12

Time and place of dispatch and receipt

1. The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

2. The time of receipt of an electronic communication is the time when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee. The time of receipt of an electronic communication at another electronic address of the addressee is the time when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address. In both cases, an electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.

3. An electronic communication is deemed to be dispatched at the place where the originator has its place of business, residence or domicile and is deemed to be received at the place where the addressee has its place of business, residence or domicile as determined in accordance with article 4 of this law and any other relevant legal provision.

4. Paragraph 2 of this article applies notwithstanding that the place where the information system supporting an electronic address is located may be different from the place where the electronic communication is deemed to be received under paragraph 3 of this article.

Article 13.

Acknowledgement of receipt

(1) Paragraphs (2) to (4) of this article apply where, on or before sending an electronic communication the originator has requested or has agreed with the addressee that receipt be acknowledged.

(2) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by

(a) any communication by the addressee, automated or otherwise, or

(b) any conduct of the addressee sufficient to indicate to the originator that the electronic communication has been received.

(3) Where the originator has stated that the electronic communication is conditional on receipt of the acknowledgement, the electronic communication is treated as though it has never been sent, until the acknowledgement is received.

(4) Where the originator has not stated that the electronic communication is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within a reasonable time, the originator:

(a) may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and

(b) if the acknowledgement is not received within the time specified in subparagraph (a) , may, upon notice to the addressee, treat the electronic communication as though it had never been sent, or exercise any other rights it may have.

(5) Where the originator receives the addressee's acknowledgement of receipt, it is presumed that the related electronic communication was received by the addressee. That presumption does not imply that the electronic communication corresponds to the message received.

(6) Where the received acknowledgement states that the related electronic communication met technical requirements, either agreed upon or set forth in applicable standards, it is presumed that those requirements have been met.

(7) Except in so far as it relates to the sending or receipt of the electronic communication, this article is not intended to deal with the legal consequences that may flow either from that electronic communication or from the acknowledgement of the receipt.

Part III

Electronic contract formation

Article 14

Invitations to make offers

A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

Article 15

Use of automated message systems for contract formation

A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

Article 16

Error in electronic communications

1. Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if:

(a) The person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication; and

(b) The person, or the party on whose behalf that person was acting, has not used or received any material benefit or value from the goods or services, if any, received from the other party.

2. Nothing in this article affects the application of any rule of law that may govern the consequences of any error other than as provided for in paragraph 1 of this article.

Title II: Electronic Signatures

Part I

General Principles

Article 17

Equal treatment of signature technologies

1. Nothing in this law shall exclude, restrict or deprive of legal effect any method of creating an electronic signature that satisfies the requirements referred to in article 18, paragraph 1, or otherwise meets the requirements of applicable law
2. This Law shall not limit the possibilities for the parties to choose how to create an electronic signature to be used in their relations. Moreover, this Law shall not limit the power of the public administration to choose how to create an electronic signature to be used in the relations among public offices and with the users of public services.

Article 18

Electronic signature requirements

1. Where the law requires that a communication or a contract should be signed by a party, or provides consequences for the absence of a signature, that requirement is met in relation to an electronic communication if:
 - (a) A method is used to identify the party and to indicate that party's intention in respect of the information contained in the electronic communication; and
 - (b) The method used is either:
 - (i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
 - (ii) Evidence was presented, by the method itself or together with further evidence, that the method has in fact fulfilled the functions described in subparagraph (b)(i).
2. An electronic signature is considered to be reliable for the purpose of satisfying the requirement referred to in paragraph 1 if:
 - (a) The signature creation data are, within the context in which they are used, linked to the signatory and to no other person;
 - (b) The signature creation data were, at the time of signing, under the control of the signatory and of no other person;
 - (c) Any alteration to the electronic signature, made after the time of signing, is detectable; and
 - (d) Where a purpose of the legal requirement for a signature is to provide assurance as to the integrity of the information to which it relates, any alteration made to that information after the time of signing is detectable.
3. Paragraph 2 does not limit the ability of any person:
 - (a) To establish in any other way, for the purpose of satisfying the requirement referred to in paragraph 1, the reliability of an electronic signature; or

(b) To adduce evidence of the non-reliability of an electronic signature.

Article 19

Determination of electronic signatures presumed to be reliable

1. The Authority for ICT established by Law 23 May 1995, no. 70, and subsequent amendments, may determine which electronic signatures satisfy the provisions of article 18, 2 paragraph of this Law. Further amendments to Law no. 70/1995 are to be made with a dedicated Decree.
2. Any determination made under paragraph 1 shall be consistent with recognized international standards.
3. Nothing in this article affects the operation of the rules of private international law.

Article 20

Conduct of the signatory

1. Each signatory shall:
 - (a) Exercise reasonable care to avoid unauthorized use of its signature creation data;
 - (b) Without undue delay, utilize means made available by the certification service provider pursuant to article 24 of this law, or otherwise use reasonable efforts, to notify any person that may reasonably be expected by the signatory to rely on or to provide services in support of the electronic signature if:
 - (i) The signatory knows that the signature creation data have been compromised; or

(ii) The circumstances known to the signatory give rise to a substantial risk that the signature creation data may have been compromised;

(c) Where a certificate is used to support the electronic signature, exercise reasonable care to ensure the accuracy and completeness of all material representations made by the signatory that are relevant to the certificate throughout its life cycle or that are to be included in the certificate.

Article 21

Conduct of the relying party

A party relying on an electronic signature or certificate shall:

- (a) take reasonable steps to verify the reliability of an electronic signature; or
- (b) Where an electronic signature is supported by a certificate, take reasonable steps:
 - (i) To verify the validity, suspension or revocation of the certificate; and
 - (ii) To observe any limitation with respect to the certificate.

Chapter III: Electronic commerce

Art. 26

Procedures, modalities and requirements for the issuance of electronic commerce licenses

1. For the purposes of this Chapter, "electronic commerce" means any trading in goods and services, of whatever nature, carried out by means of electronic communications. The mere electronic presentation of goods or services, which is not followed by the conclusion of transactions through the use of electronic communications, shall not fall under the definition of electronic commerce.
2. Exclusive electronic commerce activities may be carried out only through the issuance of a specific commercial license according to the procedures and in the forms, in so far as they are compatible, envisaged by Laws n. 130/2010 and n. 129/2010 and subsequent amendments. The operator shall be requested, ex officio, to provide the elements specified in Article 27 of this Law.
3. The holder of an exclusive electronic commerce license, either an individual or a legal person, shall not hold other commercial licenses.
4. Any operator carrying out non-exclusive electronic commerce activities shall be required to inform in writing the Office for Industry, Handicraft and Trade of the electronic commerce activities carried out. In that communication, he shall specify the elements requested under Article 27 of this Law for the purposes of the mandatory registration envisaged in the same Article.

5. If the economic operator holding an exclusive electronic commerce license is a legal person, the units or shares of the capital stock may be held by non-resident individuals.
6. The holder of an exclusive electronic commerce license shall have a physical establishment on the territory of San Marino. If the activity is carried out through the deposit of goods, such establishment shall also be used specifically for the kind of activity carried out.
7. If the electronic commerce activity is carried out exclusively and directly, the residential use is sufficient only for the activities with an individual license up to a maximum turnover of 250,000 euro. Offices and Police Forces shall in any case exercise control and access powers according to the rules envisaged for the establishments of economic operators.
8. Electronic commerce may be carried out through electronic means and involve wholesale, retail and service activities.
9. Any disputes concerning the use of electronic communications and electronic commerce practices shall fall within the jurisdiction of the Single Court, Civil Section of San Marino, which shall apply in the first instance the expedited procedure envisaged by Art. 8 of Law n. 63/1985.

Art. 27

Register of e-commerce activities

Any on-line selling activity shall be registered, under penalty of a sanction as per Article 29 hereunder, in the *Register of e-commerce activities* containing the following elements:

- a) tax registration number;
- b) domain;
- c) e-mail addresses, by specifying whether they are certified;
- d) server location;
- e) provider location; moreover, in case there are more than one person and place, the following shall be indicated separately: location of customer assistance centre, logistics centre and central management.

Upon indication of the elements specified in the preceding paragraph, the registration number of e-commerce activities is provided, which shall be shown in the website. Moreover, the authorisation is granted to use a specific identification mark with the qualification of San Marino e-commerce operator, which will be established through a specific delegated decree indicating the relevant name, graphics and IT content.

Art. 28

Display obligations and specifications

1. By using the network, the economic operator shall provide the following information concerning its activity in a simple, direct and permanent manner:

- a) the name of the firm or company;
 - b) the tax registration number;
 - c) the number of registration in the e-commerce register;
 - d) the mark referred to in paragraph 2 of Article 27;
 - e) the establishment;
 - f) numbers/addresses through which a customer can contact the seller to obtain information or to submit claims. Such information includes, inter alia, e-mail addresses, telephone numbers and any other means enabling customers to rapidly contact economic operators and to communicate with them directly and effectively;
 - g) if the activity involves wholesale electronic commerce, it shall be specified that selling is reserved to operators having VAT or similar codes;
 - h) selling prices shall be clearly indicated by specifying whether these include or not indirect tax on purchase; transport costs shall be indicated separately;
 - i) the place from which the good will be shipped;
 - j) if the seller is subject to authorisation, the relevant supervising authority;
 - k) if the economic operator offers services falling within a regulated profession, the relevant professional associations, in which the economic operator is enrolled. In this case, the economic operator shall provide the references of the laws applicable in the State of establishment.
2. If an economic operator sends commercial communications, the procedures to request or stop such transmissions by the customers shall be clearly visible in the various parts of the information system used for e-commerce.
 3. Electronic communications aimed at promoting goods and services of the economic operator shall be clearly recognisable as commercial communications and shall identify the categories of users for whom the advertising communication has been created for each single promotional offer.

Art. 29 Sanctions

The Office for Industry, Handicraft and Trade shall apply the sanctions envisaged by Laws n. 129/2010 and 130/2010 and subsequent amendments and integrations for exclusive electronic commerce activities if the requirements established by such Laws are not met. If operators carrying out non-exclusive electronic commerce activities fail to register in the specific register of e-commerce activities, an administrative sanction equal to 500 euro shall be applied. The application of said sanction shall be followed by the instructions relative to registration procedures. Once 30 days have elapsed following the notification of the above-mentioned instructions, another administrative sanction equal to 1,000 euro shall be applied. After another 30 days, electronic commerce selling shall be prohibited. Selling activities carried out through computer means during said prohibition period entail the application of the sanctions envisaged for the carrying out of activities without a license.

Art. 30 Repeal

1. The expression “and from private individuals” of Article 2, first paragraph of Law n. 115 of 20 July 2005 shall be eliminated.
2. Any provision in contrast with this Law shall be repealed.

Article 31
Transitional and coordination provisions

1. Any wholesale, retail or service economic activities which also involve on-line selling shall be registered at the Office for Industry, Handicraft and Trade in the register of e-commerce activities within 60 days following the entry into force of this Law, under penalty of application of the sanctions envisaged in the preceding Article 29.
2. A specific delegated decree shall establish and govern the Agency for Digital Development, which shall fulfil the tasks now entrusted to the IT Authority under this Law.

Art. 33
Entry into force

This Law shall enter into force on the fifth day following that of its legal publication.

THE MINISTER
Marco Arzilli