

Legal Alert

3/2016**New obligations for sellers providing on-line services effective from 1 February 2016**

Act no. 391/2015 Coll., on Alternative Dispute Resolution for Consumer Disputes and Amendments and Supplements to other acts (the "Act") became effective on 1 February 2016. The Act introduces new obligations regarding online selling.

Who has new obligations?

In terms of the Act, the new obligations relate to suppliers who provide distance selling of goods or services outside their business premises (e.g. by means of the internet, telephone or in another similar way).

What new obligations do suppliers have?

The major obligation which results from the Act is the supplier's obligation to notify the customer, prior to concluding a contract, about the possibility and conditions for solving disputes by means of an alternative dispute resolution system (the "ADR" or the "ADR procedure").

Further, the supplier is also obliged to add a link to the ADR platform to its website. This link enables the customer to file a motion to start the ADR procedure (the "ADR motion").

What is ADR?

ADR gives a consumer who is not satisfied with the result of his/her complaint or who believes that his/her rights were breached by the supplier, the possibility to appeal to the supplier and request a remedy. The customer has a right to file an ADR motion with a legal entity authorised to provide the ADR (the "ADR entity") if his/her request for remedy was refused or when the supplier does not respond thereto at least within 30 days from the date of shipment. The ADR procedure does not apply to disputes with a value lower than EUR 20.

What are the relevant ADR entities?

- The Regulatory Office for Network Industries is competent to decide disputes arising from contracts concluded in connection with the distribution line or network, contracts on the combined supply of electricity, contracts on the combined supply of gas, heat supply and consumption contracts, contracts for the supply of drinking water and contracts on draining waste water concluded with an entity carrying out a regulated activity pursuant to a special act;
- The Regulatory Authority for Electronic Communications and Postal Services for all disputes arising from contracts concluded for providing public services regarding the quality and price for such services and for contracts concluded on providing postal services regarding postal services and the postal system of payment; and
- The Slovak Trade Inspection for remaining disputes.

The legal entity registered in the list of the ADR entities maintained by the Ministry of Economy of the Slovak Republic (the "Ministry") is also, besides the above mentioned institutions, competent to solve ADR disputes (e.g. the consumer rights protection association).

How can a consumer file an ADR motion?

A customer can submit an ADR motion with the respective ADR entity in paper form, in electronic form (via e-mail) or verbally. The customer is also entitled to submit the ADR motion by means of an electronic application accessible on the website of the Slovak Trade Inspection (www.soi.sk) or by means of the ADR platform accessible on the EU website (http://ec.europa.eu/consumers/odr/index_en.htm).

Are there any fees for the ADR procedure?

The ADR procedure is free of charge except when conducted by a legal entity registered in the list of ADR entities maintained by the Ministry. This entity may charge a consumer a fee for starting the proceeding up to EUR 5 (incl. VAT). The ADR entity must resolve the ADR procedure within 90 days from the date of its initiation.

What penalties may be imposed on the supplier for breaking the Act?

A penalty in the amount of up to EUR 10,000 may be imposed on the supplier for breach of the above mentioned ADR notification obligations.

Conclusion

With respect to the new legislation we highly recommend all suppliers who supply goods or provide services at a distance and do not currently comply with the ADR notification obligation to modify their general terms and conditions and/or to add a link to the respective ADR entity on their website (e.g. in case the supplier's general terms and conditions are not accessible on its website).

Balcar, Polanský & Spol. s.r.o. would be pleased to assist you in this matter. In case of any questions, please do not hesitate to contact your contact person in our office, or approach Mgr. Ján Macej, PhD. (jan.macej@bapol.sk).

Contacts:

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