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ECONOMIC COUNCIL

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SME Emergency Legal Advice

ABOUT THIS PUBLICATION

The COVID-19 crisis has already had a major impact on economic activity around the globe and is still unfolding. Unlike the 2007-9 financial crisis, which originated in excessive bank lending, countries are dealing with a global health pandemic that is likely to spread effects in all industries and sectors of economy. Small and Medium Enterprises (SMEs) are particularly vulnerable to the COVID-19 crisis on both the supply and demand sides. Specifically, the SMEs have experienced a dramatic and sudden loss of demand and revenue, which has severely affected their ability to function or caused liquidity shortages (as against larger firms which have generally better access to credit).

The European Bank for Reconstruction and Development (EBRD) launched an initiative to enable SMEs in Moldova mitigate the deepening impact of the coronavirus pandemic.

This publication was developed in partnership with the Economic Council to the Moldovan Prime-Minister, Gladei & Partners Law Firm, and the EBRD SME Finance and Development Team and Legal Transition Team and includes emergency legal advice and practical guidance to help SMEs identify the best course of action amid the financial distress and business uncertainty caused by the pandemic, thereby building their resilience.

The guidance information and answers contained herein explain and provide generalised advice based on local law and practice. It focuses on topics pertaining to contractual issues and online trading, labour and tax relations, litigations and insolvency, which were addressed in a series of webinars held by Gladei & Partners Law Firm.

All webinars are available to watch at:

Webinar 1: Contractual Issues and Online Trading	https://youtu.be/sdotORafUp4

Webinar 2: Labour and Tax Relations	https://youtu.be/g701wDyqskw

Webinar 3: Litigation and Insolvency	https://youtu.be/wW32C_RpVYo

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ABBREVIATIONS

The following abbreviations are commonly used for the concepts discussed in this publication.

ADR	Alternative Dispute Resolution
CAEM	Classification of Economic Activities, rev.2, approved by the Order of National Bureau of Statistics 28/2019
Chamber of Commerce	Chamber of Commerce and Industry of the Republic of Moldova
CNAS	National Social Insurance House of the Republic of Moldova
CNPF	National Commission of Financial Markets
Competition Authority	Competition Council
Data Protection Center	National Center for Personal Data Protection of the Republic of Moldova
ILA	Individual Labour Agreement
MDL	Moldovan Leu
NBM	National Bank of Moldova
ODIMM	Organization for Small and Medium Enterprise Sector Development
OCNs	Non-bank lending organizations
SFS	State Tax Service
SMEs	Small and Medium Enterprises

I. CONTRACTUAL ISSUES AND ONLINE TRADING

SUBTOPIC 1.1: CONTRACTUAL ISSUES AND E-SIGNATURE

Q1: IS THE PANDEMIC A FORCE MAJEURE CIRCUMSTANCE?

Generally, a pandemic can be considered a "force majeure" circumstance. Force majeure is one of the most commonly known legal grounds used to excuse one or both parties from executing their obligations under a contract. However, it shall be noted that the force majeure clause (former Article 606 of the Civil Code) has been replaced with the "justification due to an impediment" concept (Article 904 of the Modernized Civil Code, in force as of 1 March 2019), so a debtor resorting to a force majeure circumstance shall have recourse to the justification due to an impediment instead.

A justification due to an impediment can be invoked by the debtor if two mandatory conditions are met:

(i) the debtor cannot perform its obligation due to an impediment beyond the debtor's control (e.g. prohibition of business activity during the pandemic, electricity disconnection by the electricity supplier, flood), and

(ii) the debtor could not be reasonably expected to have avoided or overcome the impediment or its consequences, (e.g. electricity disconnection cannot be invoked if the debtor was informed in advance by the energy supplier; torrential rains during the summer cannot be invoked as impediment due to their frequency).

In order to be freed from a contractual obligation due to an impediment, a party to the contract shall notify the other party by means of a written notification. Generally, unless the agreement between the parties provides otherwise, the notification shall be sent by post or handed in person. So, for example, the notification can be sent via e-mail only if the previously concluded agreement provides that this is a viable form of communication.

In order to enforce the effects of the notification, the parties do not need to amend the contractual provisions or to file an application or claim in court. Also, unless provided otherwise by the agreement, the parties are not required to obtain any certificate to ascertain the impediment.

! Nota Bene:

> On 2 October 2020 the Regulation on the issuance of the notice certifying the impediment justifying the non-execution of the obligation, approved by the Decision of the Chamber of Commerce and Industry of the Republic of Moldova No.35/1 dated 25 September 2020 entered into force. The Regulation provides that the Chamber of Commerce can certify an impediment justifying the non-execution of the obligation
>
> The certificate issued by the Chamber of Commerce is mandatory and must be presented with the notification only if the agreement provides the obligation of the parties to obtain it.

The notification must describe the impediment and its effects on the ability of the debtor to execute the contract/obligation. In addition, if possible, it is recommended that the notification is followed by evidence proving the impediment (e.g. the resolution of the local council to prohibit

business activity). The party (debtor) must send the notification so that the creditor receives it within a reasonable time after the debtor learned or should have learned about the impediment (i.e. the debtor shall invoke the impediment as soon as possible after the event occurred).

Once the party (debtor) has duly notified the other party (creditor) about its inability to perform due to an impediment the debtor may:

(i) suspend the execution of his obligations during the existence of the impediment if the impediment is of a temporary nature (e.g. the inability to transport the goods during the floods);
or
(ii) refuse to execute the agreement if the impediment is of a permanent nature (e.g. the building which was to be leased, collapsed following an earthquake). A debtor invoking a permanent impediment will be required to return everything it received under the agreement if the creditor has (fully or permanently) performed the agreement before the impediment (e.g. the debtor shall return the rent paid in advance by the creditor if the building cannot be used anymore).

! Nota Bene:

An uncontrolled event (e.g. a pandemic) is not always also an impediment justifying the non-performance.
For example, in case of a rent contract a pandemic will not be considered an impediment justifying the non-payment of the rent as long as the authorities will not prohibit the business activity of the company. This is because the company will still have the right and possibility to use the rented premises for business purposes.

Indeed, in case of events such as a pandemic, a company's profits may decrease drastically, but the lack of financial means (e.g. because of the pandemic) cannot be considered an impediment justifying the non-performance of a payment obligation.

Q2: WHAT ABOUT "HARDSHIP"?

Generally, an obligation shall be executed even if the performance due has become more onerous (e.g. due to currency fluctuations).

However, if the assumed performance becomes, due to an exceptional change of circumstances, so onerous that it would be manifestly unfair to impose it on the debtor (Hardship clause, Article 1083 of the Modernized Civil Code), the Court may order, at the request of the debtor, to:

(i) adjust the benefits of the parties in order to distribute equitably between the parties the losses and benefits resulting from the change of circumstances (e.g. by inserting an additional provision in the agreement to reduce currency losses or by amending the contractual provision regulating the exchange rate applicable between the parties in a way that suits both of them), or
(ii) terminate the agreement under the conditions established by the Court.

As may be seen from above, to resort to the "hardship" clause, a party must file a court application and request adjustments from the Court. However, before the party can do so, it is mandatory that the parties attempt a (re)negotiation, in good faith and in a reasonable manner, of the existing agreement. Parties may negotiate directly or use a mediator or any other facilitator. The advantage of using mediation is that parties will be able to easily confirm (in court

or by notary) the resulting settlement and then directly enforce it (see more information on mediation: https://mediere.gov.md).

If parties fail to renegotiate they can resort to the Courts to adjust the obligations or terminate the agreement.

Q3: CAN I REMOTELY SIGN AN AGREEMENT?

Yes. The parties to an agreement can choose between 2 options:

Option 1 – E-signature

An e-signature constitutes data in electronic form, attached to or logically associated with other electronic data, used as a method of authentication. There are several types of e-signatures (Article 4 of the Law on E-signature and E-document 91/2014):

- **simple**, where the identity of the signatory cannot be verified (e.g. the name and surname in the footer of an e-mail);
- **advanced nonqualified**, which is created exclusively by the signatory, whose identity can be verified (e.g. an e-signature created for each employee via a private key certificate issued by the employer);
- **advanced qualified**, which is based on a public key certificate issued by an accredited service provider, and is created through a secure device and has the same legal value as the handwritten signature. A practical example of applying the qualified advanced signature is the use of the mobile signatures from mobile operators (**mobile e-signature**). In order to generate and use a mobile e-signature, you need a mobile phone, a viable SIM-card and an internet connection. Before using the mobile e-signature, you need to make sure that your SIM-card can be used to generate the mobile e-signature by checking this with the mobile operator.
  Note that there are also other forms of advanced qualified e-signatures issued by the providers of certification services, such as:
  1) the Certification Center of S.E. "Fiscservinform"– https://pki.ctif.md/, or
  2) P.I. "Information Technology and Cyber Security Service" – https://semnatura.md/

The rule of thumb is that remote conclusion or amendment of an agreement requires both parties to hold advanced qualified e-signatures.

However, by prior agreement, the parties can agree that the simple or the advanced nonqualified e-signature, both shall produce legal effects similar to a handwritten signature, specifying their form, effects and method of use. This should be explicitly stated in the agreement between the parties, and the agreement has to be previously signed by the parties by hand or via an advanced qualified e-signature.

Option 2 – The handwritten signature

Another option is to sign the agreement by hand, and then to exchange its executed original copies by post, preferably by a registered letter.

! Nota Bene:

Exchange of documents via e-mail or use of other alternative e-signatures (e.g. DocuSign) may not be deemed a valid way of signing or concluding an agreement if the parties did not previously sign (by hand or via an advanced qualified e-signature) an agreement stating the right of both parties to use the aforementioned methods.

More details on the legal implications of each type of e-signature are given in Annex 1 (the letter of Gladei & Partners to the Information and Security Service of the Republic of Moldova) and Annex 2 (the response of the Information and Security Service of 29 September 2020) hereof.

SUBTOPIC 1.2: CREDIT AGREEMENTS IN EMERGENCY

Q4: CAN I RENEGOTIATE THE LOAN AGREEMENTS BECAUSE OF THE PANDEMIC?

Generally, a failure to pay a loan due to an impediment or hardship (see Q1 and Q2) is difficult to justify and prove. A lack of financial means to pay the debt cannot be seen as grounds for non-execution or suspension of payment obligation (regardless of the reasons which cause the lack of the financial means). If the debtor, nevertheless, attempts to invoke the justification due to an impediment or the hardship clauses, he shall first consider the following solutions:

Solution 1. Loan Interest Subsidy Program

This aid instrument has been implemented through the Law on the establishment of certain measures during the state of emergency in public health and the amendment of some normative acts 60/2020 for a determined period of time (valid until December 2020). Under this program, the state undertook the obligation to reimburse borrowers the loan interest they paid to the creditors. The loan interest has to be paid by the borrower and, afterwards, by submitting a request towards the State Tax Service (**SFS**), it shall be returned to him.

Main eligibility requirements to note:

- the loan agreement must have been concluded within the period between 1 May 2020 – 31 December 2020 (this rule is not applicable towards the agricultural producers affected by natural disasters[1], who have the right to benefit from the program regardless of the date of their loan agreements);
- the maximum value of the loan(s) for which the borrower has a right to subsidy, equals to the cumulative amount of the salary payments declared by the borrower to the SFS for the September 2019 – February 2020 period;
- the maximum annual nominal interest rate eligible for the subsidy is limited to 8.76% in national currency and 4.40% in foreign currency.

In order to benefit from the program, the borrower shall submit an application to the General Directorate of the Fiscal Administration in his/her service area (see: https://www.sfs.md/Adresetelefoanedecontactsiemail.aspx) or to the General Directorate of Administration (in case of large taxpayers) until 31 January 2021. The application can also be sent by e-mail, with the application of the advanced qualified e-signature.

! Nota Bene:

> The subsidy can be granted for the interest paid by the borrower between 1 May - December 2020 and is made only in relation to the interest related to the loans granted by the Moldovan licensed banks or authorized non-bank lending organizations (**OCNs**).

Solution 2. Direct Negotiation

[1] Agricultural producers affected by natural disasters are considered to be economic agents that have suffered losses of agricultural production of more than 50% on an area of at least 30% of the total land held in use and / or possession, as a result of natural disasters produced in 2020.

The National Commission for Financial Market (**CNPF**) issued a decision encouraging OCNs (as a recommendation, but not as a normative rule) the reduction of the effective annual interest calculated on loans with at least 5% for the loan period between 17 March 2020 – 31 May 2020, and also not to apply penalties or interest on arrears. On this basis the borrower may request direct renegotiation with the OCNs.

Solution 3. Loan guarantee by the Organization for Small and Medium Enterprise Sector Development (ODIMM) within the Credit Guarantee Fund for Small and Medium Enterprises (SMEs)

Loan guarantee by ODIMM within the Credit Guarantee Fund for SMEs is a mechanism for issuing financial guarantees, specifically oriented towards SMEs.

When an SME intends to contract a loan and does not have enough resources to provide security to guarantee repayment requested by the bank, ODIMM steps in as a guarantor in order to cover up to 80% of the requested amount of the loan. For example, if an SME needs to borrow MDL 10 million but does not have enough assets to provide security, ODIMM may provide a financial guarantee of up to MDL 8 million in the benefit of the borrower (the SME).

To benefit from this program, the company has to submit a loan application to an ODIMM partner Bank (for more details see https://www.odimm.md/ro/banci-partenere-fgc/produse-fgc). The application shall be examined by ODIMM and the bank within 5 working days.

! Nota Bene:

> In accordance with the provisions of the Regulation on the organization, operation and use of the Credit Guarantee Fund for SMEs, approved by Government Resolution 828/2018, the financial guarantees shall be issued within the limits of the Credit Guarantee Fund for SMEs. Because of that, ODIMM may provide financial guarantees on a first-come-first-serve basis, and if the fund limit will be reached, the SMEs will not be able to benefit from the program.
> The Credit Guarantee Fund is supplemented annually with additional funds, so an SME declined by ODIMM may apply again after the Fund is supplemented.

SUBTOPIC 1.3: ONLINE TRADING ASPECTS

Q5: HOW CAN I TRANSFER MY BUSINESS ONLINE?

If you have ever sold products by phone or on your website, have used payment terminals or internet banking, or have delivered products or services through social networks (Facebook, Instagram, etc.), then most likely you did e-commerce (unless you did it for your personal use). Covid-19 has shown the importance and timeliness for businesses to have an online presence.

E-Commerce basically means using networks (Internet) to carry out all the activities involved in business management and operation: buying and selling of products and services, technology and partner search, dealing with counterparts, choosing the most convenient transportation and insurances, performing bank transactions, paying and billing, communicating with company salesmen, picking up orders, and any other activities necessary for trading.

In order to engage in e-commerce, several legal conditions shall be fulfilled:

1. The business shall be **registered** with the Public Service Agency, as a common requirement in order to deliver any commercial activity;
2. If the business intends to carry out its commercial activity exclusively over the internet (similar to e-commerce companies like Amazon, eBay or Alibaba), it has to **notify** the city hall;

3. The business has to **seek an authorization** from the National Centre for Personal Data Protection of the Republic of Moldova (**Data Protection Centre**) if it will handle personal data (e.g. if the company's website will collect, store (process) its customers' name, surname, bank data, or any other personal information);
4. If the business decides to **create a webpage,** it shall be in accordance with the competition, data protection and consumer protection legislative requirements (see Q6 – 8 below).

Q6: WHAT ARE PERSONAL DATA AND WHAT DO I HAVE TO DO TO KEEP MY COMPANY IN LINE WITH DATA PROTECTION REGULATIONS?

Any identified or identifiable information of an individual (supplier, customer, employee) can be treated as personal data. A person is identified directly by name and is identifiable through an identification number (IDNP) or a combination of specific characteristics (age, citizenship, function, etc.). Examples of personal data can be the name, date of birth, home address, telephone number, email address, etc.

In the current activity, e-commerce companies access and process much of the aforementioned data, which are subject to a special legal regime, under the Law on personal data protection No. 133/2011 (**PDP Law**).

! Nota Bene:

> Personal data processing means any operations concerning the collection, recording, organization, storage, preservation, restoration, adaptation or alteration, extraction, consultation, use, disclosure by transmission, dissemination or otherwise, alignment or combination, blocking, deletion or destruction of personal data, whether they are performed by automated or non-automated means.

Generally, an e-commerce company collects, stores and uses personal data of customers, suppliers and employees. Consequently, e-commerce companies are controllers of personal data and are required to:

- notify the Data Protection Centre before processing personal data for a specific purpose. The notice can be sent online via the following website:

  http://registru.datepersonale.md:8080/rodcap/login/auth.

  For data processing for two or several purposes (e.g. processing the customers' data for commercial purposes or processing of employees' data for organizational (e.g. remuneration payment reasons), controllers shall fill in several notices. At first notice, each company receives a registration number to be specified on all documents through which personal data are collected, stored or transferred (applications, standard forms, contracts, etc.). Registration of controllers and change of information entered into the register of controllers of personal data are free of charge;

- request the Centre's authorization for some specific operations of data processing (e.g. for cross-border transfer of personal data).

Q7: I AM NOT CARRYING OUT MY COMMERCIAL ACTIVITY EXCLUSIVELY OVER THE INTERNET. SHALL I SUBMIT A NOTIFICATION TO THE CITY HALL?

Yes, it is a different notification, for carrying out a trade activity[2] (e.g. selling office supplies via an office located in a business centre). This requirement falls under the Internal Trade Law 231/2010, pursuant to which, the trader has the right to carry out trade activity from the moment

[2] Trade activity - entrepreneurial activity initiated based on the relationships established in the field of trade in goods produced, processed or procured, as well as in the field of execution of various works and services related to the sale of goods, aiming to satisfy private economic interests and ensure a source of income (Article 3 of the Internal Trade Law 231/2010).

when he submits the notification with the city hall (with some exceptions provided by the law, e.g. *hairdressing and other beauty activities* (CAEM 96.02), retail sale of milk products, eggs, fish, meat and other food products).

! Nota Bene:

If your company has already notified the city hall about a trade activity which is not related to e-commerce (e.g. *retail sale of fresh fruit and vegetables in specialized stores* (CAEM 47.21)) and you partially transferred your business activity online (e.g. you created a website through which the fruits and vegetables sold in stores can be acquired online by the consumers), you are not required to submit a new notification or to amend the initial one in order to notify the city hall about the activity of *retail sale via mail order houses or via the Internet* (CAEM 47.91), since the principal business activity remains the same (*retail sale of fresh fruit and vegetables in specialized stores* (CAEM 47.21)).

Q8: WHAT OTHER E-COMMERCE RELATED RULES SHALL I FOLLOW?

Once decided to switch to (or start) online trade activity, you should be aware of various legal requirements regulated, in particular, by the following laws:

- ☑ E-commerce Law No.284/2004, regulating the rights and obligations of the parties participating to e-commerce (i.e. the company (professional) and the consumer);
- ☑ Law on Consumer Protection No.105/2003;
- ☑ Competition Law No.183/2012, regulating aspects of (un)fair competition.

For example, one's e-commerce activity may be deemed contrary to fair competition if it misleads consumers to believe that its products or services are those of another person, creating **confusion**. A fitting example of such conduct would be creating a similar looking webpage name to the one of a competitor's (for more information about the confusion created due to similar looking webpages, you can consult the Competition Authority's Resolution CN-57/2015:
https://competition.md/public/files/uploads/decizii/Decizie%20neconf..pdf).

II. LABOUR RELATIONS, TAX RELIEFS AND SUBSIDIES

SUBTOPIC 2.1: LABOUR RELATIONS

Q9: AN EMPLOYEE CONTRACTED COVID-19 OR HAD CONTACT WITH A COVID-19 CONFIRMED CASE. HOW DO WE PROCEED IN EACH CASE?

The **suspension** of employee's Individual Labour Agreement (**ILA**) is the most optimal and legally accurate option in both cases[3]. ILA suspension based on sick leave (Article 76(b) of the Labour Code) shall apply to the employee if he has contracted Covid-19, while ILA suspension based on quarantine leave is applicable when the employee has interacted with another person who contracted Covid-19 (Article 76 (d) of the Labour Code).

In case of the **sick leave**, the suspension of the ILA happens by law (without any additional paper work), and the employer has to pay the allowance for the first 5 working days (in amount of 75% of the average salary of the employee), then the allowance for the remaining days is to be paid by the National Social Insurance House of the Republic of Moldova (**CNAS**).

In case of the **quarantine leave** the employer has to issue an internal disposition (Article 74(4) of the Labour Code), both at the moment of the ILA suspension, and then at the moment of employee's resumption, hence more paperwork is involved. The allowance payment is to be paid by CNAS directly from the first day.

Q10: HOW CAN THE EMPLOYER KEEP ESSENTIAL EMPLOYEES DURING A PANDEMIC?

There are several available approaches on facing the difficulties brought up by a pandemic in the workplace, the most common and easily implemented from the legal perspective being:

- full or partial transfer to home office regime (Article 290 of the Labour Code) or remote work regime (newly implemented in the Labour Code, Article 292[1]), if and where possible;
- reduction of the work hours, such as a potential switch from full time to part time work schedule, if the workload decreases significantly through the amendment of the ILA (to amend the working regime from 8 hours/day to 4 hours/day);
- the "hybrid" regime as a combination of remote and in-office work based on a rotative principle (e.g.: 2 weeks rotation period). This shall be done by amending the ILA (so both the employer and the employee shall negotiate the ILA's new terms).

All three approaches could be used simultaneously if feasible for your business.

Q11: HOW TO PROCEED WITH EMPLOYEES WHO ARE TEMPORARILY NOT ESSENTIAL FOR THE COMPANY?

In order to adjust the labour relations according to the new needs and possibilities of the company the following possible options are available:

1. **Technical unemployment** (Article 80 of the Labour Code)

Technical unemployment represents the temporary impossibility of continuing the production activity by the employer or an internal subdivision of the employer (subsidiary, directorate/section/department, store, warehouse/hall, etc.) due to objective economic reasons

[3] Both mechanisms are regulated by the same normative documents: Labour Code (Article 76 letter b) and d)) and Regulation on the Conditions for Establishing, Calculating and Paying Benefits for Temporary Incapacity for Work endorsed by Government Resolution 108/2005, hence the difference is rather minimal.

(e.g. the dough machine at a bakery was damaged and the bakery cannot further produce bread).

Technical unemployment is a procedure that can be applied without the consent of the employee, for a period of maximum 4 months (per 1 year), and can be stopped at any moment by the employer. The employer shall pay to the employee a monthly technical unemployment allowance of at least 50% of the employee's basic salary.

Technical unemployment can be instituted through an internally issued disposition which shall be made known to the concerned employees (the employer has to make sure that the affected employees confirm, under signature, that they have received the internal disposition). This internal disposition shall be signed personally by the employer.

Technical unemployment can be applied towards the whole company, or to one or more departments, but not to one or several specific employees (e.g.: the employer can place the whole accounting department into technical unemployment, but cannot apply the technical unemployment regime only towards 2 (out of 3) accountants).

! Nota Bene:

The technical unemployment is applicable in all areas (including e-commerce), not only for employers engaged in goods' production activity, despite the appearance of a limited application of the concept of "production activity".

2. **ILA suspension based on technical unemployment** (Article 77 letter c) of the Labour Code)

The suspension of ILA based on technical unemployment is quite similar to technical unemployment procedure (see above). It can also be applied for a period of maximum of 4 months (per year), however only with the employee's consent.

Similarly, this procedure, can be instituted through an internally issued disposition which has to be signed by the concerned employee. In this case, the employer is not required to pay any allowance.

3. **The temporary stay of work** (*staționare*) (Article 80[1] of the Labour Code)

The temporary stay of work represents the temporary impossibility to continue the activity by the employer, by one or more internal subdivisions of it, by an employee or a group of its employees and can be triggered by any reasons (e.g. quarantine regime is imposed and the employees do not have the right to leave the house for work purposes)''.

The temporary stay of work regime is the procedure that can be applied towards just one or more employees and can be useful if, for example, technical employment cannot be applied. This procedure can be applied without the employee's consent, for an undetermined period of time.

During the temporary stay of work, the employer shall pay the employees an allowance of at least 2/3 of the basic salary established to the employee, but not less than the amount of a minimum salary per unit of time, established by the legislation in force, for each hour of temporary stay of work (currently set at the rate of MDL 16.42 per hour[4]).

The method of registration of the temporary stay of work and the actual amount of the remuneration shall be established in the collective employment agreement, the ILA or the employer's internal rules. So, if a particular ILA or the employer's internal rules do not provide

[4] Government Decision No.165/2010 on setting the minimum wage in the real sector

special provisions regarding the procedure to be followed in case of application of the temporary stay of work regime (which is very common), the employer shall first amend its internal rules or the ILAs concluded with the concerned employees.

In our opinion, the above options represent the basic solutions that could help restructure the labour relations in a way consensually beneficial for both employer and employee, but other solutions may exist (e.g. use of annual leave).

Q12: HOW TO PROCEED WITH EMPLOYEES WHOSE SERVICES ARE NO LONGER USED BY THE COMPANY?

Given that Covid-19 changed drastically the business dynamics all around the world, some employers may find themselves in the difficult position of needing to let go certain employees. As these procedures are never easy, below are the most common approaches:

1. **Redundancy** (Article 86 letter c) of the Labour Code)

In order to apply redundancy, firstly, the employer shall inform all the employees (directly or/and through their representatives, e.g. trade unions) by means of an officially issued informative letter about the commencement of the redundancy procedure one month before the procedure begins. The communication should be transparent, clear and can be exercised through means such as website announcement, e-mail enouncement, printed notice attached in a visible place.

Secondly, the employer shall issue a disposition on the reduction of staff. It has to be appropriately motivated through well-stated economic, legal related reasons (e.g. the company's change of politics to cease the delivery of products through couriers it hired).

Thirdly, the employer shall inform the concerned employees, two months prior the actual redundancy, through a pre-notice disposition. During this time, the employee has the right to have one free day per month (paid by the employer), in order to be able to look for a new workplace. After the expiry of the period of two months and observance of all other obligations related to the procedure of redundancy (e.g. notification of the National Employment Agency), the employer may issue the dismissal disposition.

This procedure is particularly costly for the employer because, usually, the employer is required to pay the former employee post-leave allowances in an approx. amount of the medium monthly salary equivalent for a period of 3 months after dismissal (if during this time the employee did not manage to find another employment).

2. **Parties agreement to terminate the ILA** (Article 82^1 of the Labour Code)

This procedure is a win-win situation for both the employer and the employee as both parties are able to negotiate the appropriate conditions on ILA termination. Salary rights shall be paid fully up to the day of dismissal.

Q13: CAN THE EMPLOYER SUSPEND THE ILA DUE TO FORCE MAJEURE?

The termination of the ILA by the employer based on a force majeure is not recommended, since according to the provisions of Article 76(f) of the Labour Code, the force majeure shall be "confirmed accordingly". However, it is not clear how the force majeure can be "accordingly" confirmed (the legislation does not provide the way to "confirm" the force majeure) and since the burden proof lies with the employer, there is a high risk that a suspension of the ILA due to force majeure will be considered illegal by the competent Courts.

Q14: IS THE E-SIGNATURE ALLOWED IN LABOUR RELATIONS?

Yes. However, only the advanced qualified e-signature can be used in labour relations (since it has equal legal value to the handwritten signature, see Q3 above).

Q15: WHAT ARE THE MANDATORY SAFETY AND HEALTH MEASURES WHICH ARE TO BE FOLLOWED BY THE EMPLOYERS DURING THE COVID-19 PANDEMIC?

In order to ensure a safe working environment, the employer shall:

1. promote regular and thorough **hand-washing** by employees by providing soap dispensers and had-sanitizers, as well as display posters promoting hand-washing;
2. promote **good respiratory hygiene** in the workplace ensuring physical distancing of at least 1 metre between employees, providing protective screen for workers who interact with costumers, encouraging remote working, displaying informative posters;
3. provide a **sanitary work environment** by ensuring frequent (every 2-4 hours) cleaning and sterilization of surfaces (equipment, door knobs, computers, lavatories, lifts etc.);

All the above mentioned measured shall be provided for in the internally issued disposition and hence communicated accordingly (under signature) to the employees.

! Nota Bene:

For more for more detailed and up-to-date information about the Covid-19 related mandatory safety and health measures at the workplace, visit the official website of the Ministry of Health, Labour and Social Protection: https://msmps.gov.md/minister/comunicare/covid-19/

SUBTOPIC 2.2: TAX RELIEFS

Q16: HOW CAN THE SMES APPLY FOR THE VAT REFUND PROGRAM?

In order to benefit from the VAT refund program, implemented through the Law on the establishment of certain measures during the state of emergency in public health and the amendment of some normative acts No. 60/2020, the SME had to have been registered as VAT payer starting from (at least) December 2019.

In order to benefit from the VAT refund program, an application with the necessary attachments and VAT calculations has to be submitted to either the Directorate General Administration of Large Taxpayers or to the territorial SFS. Subsequent, the company shall undergo a thematic tax control, under which the SFS shall examine whether the company has all the due formalities set accordingly.

Within 20 business days from the submission of application, a notification of acceptance or rejection of the application from the SFS will follow. In case of acceptance of the application, the SFS will transfer the amount for the accrued refunded VAT to the corresponding bank account within 5 business days from the date of acceptance. In case of rejection, the application can be amended and re-submitted. Alternatively, the decision of rejection can be appealed within 30 days.

The period for which VAT refund can be requested is May – December 2020. There are no deadlines regarding request submission, however it shall be submitted after all the tax related obligations are accordingly paid.

III. LITIGATION AND INSOLVENCY

SUBTOPIC 3.1: DISPUTE RESOLUTION AND PREVENTION

Q17: I HAVE A CASE UNDER REVIEW IN COURT, SHOULD I SUBMIT A REQUEST FOR POSTPONING THE EXAMINATION TO A COURT WHERE A SPECIAL ACTIVITY REGIME HAS BEEN ESTABLISHED?

Yes. Even though a special activity implies, *ex officio,* the postponement of hearings, a request for postponing the court hearing is recommended, in order to assure the court about the **intention to postpone the hearing** rather than allow it to proceed in the absence of the parties. Without filing such a request, the court might carry on with the case examination and potentially issue a judgment in the absence of the parties. This means that certain circumstances (which could be clarified by the parties' explanations) might remain unclear for the judge and therefore negatively influence the outcome of the case.

Q18: I HAVE A CLAIM AND THE PARTY IS REFUSING TO PAY/DELIVER. WHAT ARE MY BEST OPTIONS IN COURT?

A **court order** procedure (*procedura în ordonanță*) is a simplified court proceeding (Article 344 of the Civil Procedure Code) which is suitable for claims on debt payment or delivery of goods. Under this procedure the judge issues an order without inviting the debtor, without a court hearing and solely based on the materials presented by the creditor, regarding the collection of debt or delivery of goods. The Civil Procedure Code the application process for this simplified proceeding, namely the grounds for application, the state fee and the content of the request.

Applying for such a procedure is specifically recommended during the Covid-19 crisis as it considerably beneficial from the following perspectives:

- it is time-saving eliminating need to appear in person at court hearings;
- it is examined and thus resolved within **5 days**;
- the issued court order represents an enforcement writ.

After the court order is issued, the debtor, however, can object to it which could lead the court eventually cancelling the order, if a conflicting matter under substantive law is invoked (e.g. the debtor invokes that there is a court judgment on the annulment of the agreement provided by the creditor, or that the creditor is not entitled to seek a debt collection due to a violation of the legal limitation period for such claims).

Q19: MY CLAIM CONCERNS A SMALL VALUE[5], CAN I USE ANOTHER SIMPLIFIED COURT PROCEDURE?

The **low value claims** procedure (*procedura în cazul cererilor cu valoare redusă*) is another simplified court proceeding (Article 276^2 – 276^4 of the Civil Procedure Code).

In order to be eligible to resort to it, the claim shall not exceed the equivalent of 10 average salaries (constituting MDL 79530 per month (for year 2020)[6], in accordance with the Government Resolution No. 678/2019 approving the amount of the average salary, which is set each year.

Then, once the request is submitted by the creditor, the procedure can take up to 6 months to be examined, unlike the general procedure which can take several years. The examination of the application takes place without court hearings and is based on the submitted materials.

[5] Up to 79530 MDL (ca. EUR 4000) in 2020

[6] Idem

SUBTOPIC 3.2: ARBITRATION AND MEDIATON

Q20: WHAT ARE THE WAYS TO RESOLVE MY DISPUTE OR CLAIM OUTSIDE OF COURT?

Anyone can seek to resolve a dispute (including for payment of a claim) using an Alternative Dispute Resolution (**"ADR**") and avoid going to court. The most common and widely used ADR procedures are considered to be arbitration and mediation.

However, to be able to resort to arbitration or mediation the other party has to consent to it. It is preferred if such consent is included in advance in the agreement with the other party, for example in the dispute resolution clause. If the agreement does not set out such an understanding, the parties may agree separately to use ADR at any time.

1. Arbitration

Arbitration is the procedure in which a dispute is submitted, to one or more arbitrators, chosen consensually by the parties (or assigned by the arbitration court chosen by the parties), who issue a decision on the dispute. The decision of the arbitration court is final and enforceable.

Arbitration has many advantages to litigation, which include:

1. **faste**r proceedings, usually less than 6 months, with **limited avenues for appeal**;
2. possibility to choose **trusted arbitrators**;
3. **flexible and simple** procedure;
4. **cost-effective** proceedings;
5. an arbitral decision has the effects of a **final** court decision, hence the (potential) **enforcement** is easier and faster to put into practice;
6. **confidentiality** of the dispute, given the non-public character of arbitral award.

For more information on arbitration please visit the platforms of some of the Moldovan arbitration courts: https://cacic.amcham.md/, https://arbitraj.chamber.md/, http://www.insolv.md/, http://arbitraj.md/.

2. Mediation

Mediation is the procedure in which the parties are willing to solve their dispute through negotiation, with the assistance of a third person (mediator) by reaching a settlement. There is judicial mediation (by a judge) and extrajudicial mediation (by a professional mediator).

Advantages of mediation include:

- the opportunity to come to a business solution with the other party and preserve the business relationship;
- simple, confidential and informal process;
- reduced costs compared to litigation;
- if the case was first submitted to the court and the parties decided to resort to mediation (judicial or extra-judicial) and reached a settlement agreement the parties will be reimbursed the state fee.;
- the settlement agreement may be easily confirmed (by a notary or court) to become an executory document (equivalent to final court decision), directly enforceable.

To find a mediator and for more information on mediation please visit: https://mediere.gov.md or http://www.justice.gov.md/category.php?l=ro&idc=599&.

Q21: HOW CAN I ACCESS ARBITRATION?

The parties can proceed to the arbitration procedure by including in their agreement an express clause in this regard. For example, the **arbitration clause** is a contractual clause that allows the

parties to refer litigation to an arbitration institution. Another option would be concluding a separate agreement, expressing the consensus of both parties to use arbitration.

Q22: HOW CAN I ACCESS MEDIATION?

The mediation procedure is a rather simple one to apply. The parties need to agree on a mediator and the cost sharing for the mediation. Once the parties consensually have decided on settling the dispute through mediation, and if mediation is successful, parties conclude a settlement agreement.

! Nota Bene:

In case the debtor doesn't execute his obligations accordingly with the conditions set out in the settlement agreement, the prejudiced party can go directly to court to confirm the settlement agreement or to the notary to apply an executory signature, for the agreement to become an enforcement writ.

SUBTOPIC 3.3: INSOLVENCY

Q23: WHAT TO DO IF MY BUSINESS IS UNABLE TO PAY THE DEBTS?

A company facing financial difficulties can opt for the application of the **restructuring procedure**, the aim of which is to avoid the debtors from going bankrupt when there is a chance of survival. The conditions of the application of the restructuring procedure and the effects thereof are provided in the Insolvency Law No. 149/2012.

Simply put, in practice, the restructuring procedure requires the debtor to come up with an effective **restructuring plan** that shall demonstrate to his creditors the advantageous outcomes of the restructuring process, rather than filing for bankruptcy. Hence, if the debtor convinces his creditors to approve his restructuring plan, such procedure might give the struggling business enough "break time" in order to handle its financial obstacles.

The debtor has to request the court to initiate restructuring proceedings and the court has a role to support the debtor (e.g. by suspending individual debt enforcements or the accrual of the interest).

A debtor can opt for the application of an **accelerated restructuring proceeding,** the quickest type of restructuring proceedings. It is regulated by the Insolvency Law 149/2012, which was extensively amended by Law 141/2020 (in force as of 14.09.2020).

This model, based on the international concept of a "pre-negotiated plan", consists of the following:

(i) the company in financial difficulty can prevent its insolvency, by negotiating an extra-judicial restructuring plan with all or a part of creditors, before submitting an insolvency application to the court;

(ii) only the creditors whose debts will undergo changes (extension, reduction, etc.) are invited to negotiate the restructuring plan (the remaining creditors shall be continued to be paid on regular basis);

(iii) the debtor may notify the court on the initiation of the above-mentioned negotiations, asking the court **to suspend the individual enforcements (for maximum 2 months)**. At this stage, the company is also entitled to ask the court to appoint an interim administrator in order to help in negotiations with the creditors;

! Nota Bene:

The interim administrator is a person appointed by the insolvency Court whose main obligation is to manage and/or supervise the debtor's activity during the insolvency (restructuring) proceedings. Before appointment, the debtor has the right to propose the name of his/her candidate, chosen among the list of authorized administrators:

http://www.uaam.md/about-uaam-2/auth-admins-2

During the appointment of the interim administrator, the company's regular administrator (executive director) continues to manage the company, being supervised by the interim administrator (unless he/she is not removed from the management).

(iv) if, following the negotiations, the debtor and the concerned creditors agree on the restructuring plan, the debtor shall submit to the insolvency court an insolvency application to initiate the accelerated restructuring procedure. Further, the court shall initiate accelerated restructuring proceeding where the creditors must vote and approve the restructuring plan;

(v) once the restructuring procedure is initiated, the insolvency court shall appoint an interim administrator (unless he/she was previously appointed by the debtor as per point (iii) above), who has to prepare an independent report stating his/her opinion on the actual possibility of the debtor to implement the proposed restructuring plan. The interim administrator (a person authorized in accordance with the Law on Authorized Administrators No.161/2014) has the right to manage the debtor's activity until the restructuring plan is confirmed by the insolvency Courts. Afterwards, the interim administrator or a new administrator if confirmed has the right to supervise the execution of the restructuring plan. The regular administrator of the Company (executive director) may continue carrying out his/her activity within the limits of his/her usual business, under the conditions of the plan.

! Nota Bene:

In case the debtor fails to execute the approved restructuring plan within the approved timeframe, any creditor is entitled to ask the insolvency Court to start the bankruptcy proceeding and to liquidate the debtor (see Q26 below).

Q24: WHAT SHALL MY RESTRUCTURING PLAN INCLUDE?

Generally, a restructuring plan shall include:

- the information on the **assets and liabilities** of the company;
- the **causes and sources** of the financial difficulties;
- a debt settlement **program**, containing the schedule on the debts to be paid (table of claims);
- the quantum of the amounts the debtor undertakes to settle and/or pay to the creditors, by reference to the table of claims and to the cash flow corresponding to the plan;
- the manner (way) according to which the debtor is to settle and/or pay the concerned amounts (to explain how the debts are to be paid).

The restructuring plan can be drafted by the debtor on its own, or the debtor may ask for the assistance of an insolvency administrator of debtor's choice or of a lawyer within the drafting process.

Q25: AS AN ADMINISTRATOR (EXECUTIVE DIRECTOR) OF THE BUSINESS, AM I REQUIRED TO FILE FOR INSOLVENCY IF MY COMPANY IS FACING FINANCIAL DIFFICULTIES?

Yes. The debtor is required to submit an insolvency application immediately, but not later than one month after the business is unable to pay its due debts for more than 60 days.

If the insolvency application is not submitted within the above term, the following consequences may occur:

(i) the administrator (executive director) of the company may be held personally liable for the company's debts (i.e. the court may dispose a part of the company's debts to be paid personally by these individuals), and
(ii) the company may face penalties.

Q26: WHAT HAPPENS IF MY BUSINESS IS UNABLE TO PAY THE DEBTS AND MY CREDITORS DECIDE TO PURSUE BANKRUPTCY PROCEEDING?

The creditor(s) may decide to file an application to court to declare your business insolvent. In case the court establishes that the debtor is insolvent and the creditors decide (within 100 days from the date it was established that the debtor is insolvent) that bankruptcy proceedings shall apply, the designated insolvency administrator shall start the procedure of sale of the debtor's assets and distribution of the obtained proceeds.

The sale process can take up to 2 years. After all the debtor's assets are sold and the proceeds are distributed to the creditors, the court issues the decision to liquidate the company.

Q27: WHAT TO DO IF THERE IS A COMPANY WHICH DOES NOT EXECUTE ITS DEBTS TO MY BUSINESS AND ME (AS THE ADMINISTRATOR OF MY BUSINESS) DECIDE TO FILE FOR INSOLVENCY OF THIS COMPANY?

A creditor may file for insolvency of its debtor if it wants to recover its claims and can prove them.

Based on such application the court will make a decision if the debtor is insolvent and call a meeting of all creditors of the debtor (within 100 days from the date the debtor was found insolvent). All creditors will decide at such meeting if the debtor shall be subject to bankruptcy or restructuring proceedings.

During the insolvency proceedings, the creditor (through the creditors meeting or, as the case may be, creditors committee) will be entitled to decide on the manner and conditions of sale of the debtor's assets and on the insolvency administrator to be removed and another one to be appointed for the case. The creditor has the right, any time, to ask the insolvency administrator for information on the progress of the insolvency process and debtor's assets. If holding more than 10% of all the debtor's debts, the creditor has also the right to ask the insolvency administrator to convene a meeting with the creditors in order to vote on certain issues.

ANNEX 1

Către: **Serviciul de Informații și Securitate**
MD-2004, Republica Moldova, mun. Chișinău
bd. Ștefan cel Mare și Sfînt, 166
email: stisc@stisc.gov.md
De la: **B.A.A. "Gladei și Partenerii"**
MD-2012, mun. Chișinău
str. Vlaicu Pârcălab, 63, of. 10D
email: office@gladei.md;

SOLICITARE
de informații cu referire la semnătura electronică

În procesul de acordare a asistenței juridice către clienții biroului nostru, ne-am ciocnit cu o serie de întrebări, atât de ordin juridic cât și de ordin tehnic, pentru soluționarea cărora solicităm respectuos explicațiile Dvs., precum urmează:

1. Cu privire la semnătura electronică simplă:

a) Ce presupune în mod practic o semnătură electronică simplă, în contextul definiției date de art. 4 alin. (2) din Legea privind semnătura electronică și documentul electronic nr. 91 din 29.05.2014 ("**Legea 91/2014**")?
b) Cum poate fi utilizată semnătura electronică simplă (i.e. cum poate fi semnat în mod practic un act juridic)?
c) Ce semnături electronice simple sunt folosite pe piața din Republica Moldova?
d) În contextul art. 318 alin. (3) din Codul Civil și a art. 5 alin. (2) din Legea 91/2014, ce valabilitate are semnătura electronică simplă?
e) Cum poate fi probată semnătura electronică simplă?

2. Cu privire la semnăturile electronice avansate necalificate:

- Ce semnături electronice avansate necalificate sunt folosite pe piața din Republica Moldova?
- Cum poate fi probată semnătura electronică avansată necalificată?

3. Cu privire la semnăturile electronice eliberate de un prestator de servicii de certificare din străinatate:

- Ce valoare juridică are semnătura electronică eliberată de un prestator de servicii de certificare din străinătate, dacă aceasta nu îndeplinește condițiile din art. 6 alin. (1) din Legea 91/2014? Ar putea fi aceasta echivalată, din punct de vedere juridic, cu semnătura electronică simplă sau, după caz, cu cea avansată calificată (dacă se respectă condițiile din art. 4 alin. 3 din Legea 91/2014, aceasta fiind și practica altor state, inclusiv România, cu referire la semnăturile electronice eliberate de un prestator de servicii de certificare dintr-un stat străin)?

4. Cu privire la aspecte tehnice:

- Cum poate fi creată cheia publică și cheia privată?
- Cum are loc transmiterea datelor de la cheia privată la cea publică și invers?

Potrivit art. 10 alin. (1) din Legea privind accesul la informație nr. 982 din 11.05.2000 ("**Legea 982/2000**"), *"Persoana are dreptul de a solicita furnizorilor de informaţii, personal sau prin reprezentanţii săi, orice informaţii aflate în posesia acestora, cu excepţiile stabilite de legislaţie"*.

Potrivit art. 53 alin. (1) lit. d) din Legea cu privire la avocatură nr. 1260 din 19.07.2002, *”Avocatul are dreptul: d) să solicite informații, referințe și copii ale actelor necesare pentru acordarea asistenței juridice instanțelor judecătorești, organelor de drept, autorităților publice, altor organizații, care sînt obligate să elibereze actele solicitate în conformitate cu legislația în vigoare”*.

Prin urmare, în temeiul circumstanțelor de fapt și de drept menționate, vă rugăm să ne eliberați informații/explicații cu referire la întrebările enunțate, la adresa de email indicată.

SERVICIUL DE INFORMAŢII ŞI SECURITATE
AL REPUBLICII MOLDOVA

MD-2004, Chişinău, bd. Ştefan cel Mare şi Sfînt, 166 tel. 022-239-625, fax 022-234-068, e-mail: sis@sis.md

„29" septembrie 2020 Nr20-Ş-373/20

Domnului Roger GLADEI,
Director al B. A. A. „Gladei şi Partenerii"
MD-2012, mun. Chişinău,
str. Vlaicu Pârcălab, 63, of. 10D
email: office@gladei.md;

Stimate domnule Gladei,

Serviciul de Informaţii şi Securitate al Republicii Moldova, fiind organ competent responsabil de elaborarea şi promovarea politicii de stat şi de exercitarea controlului în domeniul aplicării tuturor tipurilor de semnături electronice, în conformitate cu Legea nr. 91/2014 privind semnătura electronică şi documentul electronic, a examinat cererea Dumneavoastră privind expunerea asupra unor aspecte ce ţin de semnătura electronică şi în limita competenţelor funcţionale Vă comunică următoarele.

Cu referire la prima întrebare.

Potrivit art. 2 al Legii nr. 91/2014, semnătura electronică reprezintă date în formă electronică, care sunt ataşate la, sau logic asociate cu alte date în formă electronică şi care sunt utilizate ca metoda de autentificare. În aceeaşi ordine de idei, conform art. 4 alin. (2) şi (3) din Legea nr. 91/2014, semnătura electronică simplă este semnătura electronică utilizată ca metoda de autentificare, fără a face trimitere exclusiv la semnatar. În acest sens, semnătura electronică simplă nu permite identificarea cu certitudine a semnatarului şi nu poate asigura un nivel suficient de încredere între semnatar şi partea care recepţionează documentul electronic, fără existenţa unor măsuri suplimentare care ar garanta recunoaşterea semnăturii electronice. Astfel, pentru acordarea semnăturii electronice simple a puterii juridice echivalente semnăturii olografe, părţile urmează să încheie în prealabil un acord în acest sens. Totodată, menţionăm că, cadrul normativ nu stabileşte categorii şi norme tehnice pentru

semnăturile electronice simple, persoana având posibilitatea de a utiliza orice tehnologie dorită, cu respectarea prevederilor de ordin general stabilite de Legea 91/2014 privind semnătura electronică și documentul electronic.

În altă ordine de idei, conform art. 318 alin. (3) al Codului Civil, actul juridic în formă electronică este echivalent cu actul juridic în formă scrisă în cazul în care poartă semnătura electronică de orice tip prevăzută de lege a persoanei care încheie actul, dacă prin acordul părţilor nu se prevede cerinţa de utilizare a unui tip concret de semnătură electronică, precum şi în alte cazuri prevăzute de lege. Totodată, potrivit alin. (2) al aceluiaşi articol, tipurile de semnături electronice care pot fi aplicate unui document electronic, gradul de protecţie al fiecărui tip şi valoarea lui juridică sunt determinate de lege. Asfel, art. 8 alin. (2) al Legii 91/2014 stabileşte că, la crearea semnăturii electronice simple, părţile se bazează pe prevederile acordului încheiat. Totodată, potrivit art.13 alin. (2) din Legea nr. 91/2014, documentul electronic semnat cu semnătură electronică simplă sau cu semnătură electronică avansată necalificată este asimilat, după efectele sale, cu documentul analog pe suport de hârtie, semnat cu semnătură olografă, doar în cazurile stabilite expres de actele normative sau de acordul părţilor privind aplicarea semnăturilor electronice, cu respectarea condiţiilor stipulate la art.16 alin.(1) din Lege. Prin urmare, având în vedere faptul că, semnătura electronică simplă nu se bazează pe o infrastructură a cheilor publice, nu conține în sine date de identificare a semnatarului, putere juridică, similară semnăturii olografe, aceasta o va obține doar în cazul existenței între părți a unui act juridic bilateral care va reglementa utilizarea semnăturii electronice simple, forma și efectele acesteia, care va constitui și baza probantă în cazul apariției litigiilor între părți privind recunoașterea semnăturii.

Cu referire la a doua întrebare.

Potrivit art. 4 alin. (3) al Legii nr. 91/2014, semnătura electronică avansată necalificată este o semnătură electronică care: face trimitere exclusiv la semnatar, permite identificarea semnatarului, este creată prin mijloace controlate exclusiv de semnatar și este legată de datele la care se raportează, astfel încît orice modificare ulterioară a acestor date poate fi detectată.

Semnătura electronică avansată necalificată poate fi eliberată atât de către un prestator de servicii de certificare, cât și de către orice persoană fizică sau juridică. Astfel, nu există o delimitare pe categorii a semnăturilor electronice avansate necalificate utilizate pe teritoriul Republicii Moldova.

Totodată, probarea semnăturii electronice avansate necalificate are loc în același mod ca și în cazul semnăturii electronice simple, expuse mai sus.

Cu referire la a treia întrebare.

Potrivit art. 6 alin. (2) al Legii nr. 91/2014, semnătura electronică şi documentul electronic semnat cu semnătură electronică nu pot fi considerate lipsite de putere

juridică doar în baza faptului că, certificatul cheii publice a fost eliberat în corespundere cu normele unui stat străin.

Având în vedere prevederile art. 8 alin. (2) și art. 13 alin. (2) din aceiași Lege, documentul electronic semnat cu semnătura electronică străină poate fi asimilat, după efectele sale, cu documentul analog pe suport de hârtie, semnat cu semnătură olografă, doar în cazul în care între părți există un acord privind aplicarea semnăturilor electronice. Totodată, o astfel de semnătură nu va putea fi echivalată din punct de vedere juridic cu semnăturile electronice avansate calificate eliberate de prestatorii de servicii de certificare din Republica Moldova, dacă nu va fi întrunită una din condițiile stabilite de art. 6 alin. (1) a Legii nr. 91/2014.

Cu referire la a patra întrebare.

Perechea de chei (privată și publică) se creează prin intermediul mijloacelor tehnice și/sau de program setate în acest scop, cu introducerea datelor care vor fi incluse în conținutul certificatului cheii publice (Nume, Prenume, IDNP etc.). Perechea de chei este creată concomitent, este interdependentă și nu are loc o transmitere a datelor de la cheia publică la cea privată sau viceversa în procesul de utilizare a acestora.

Prestatorul de servicii de certificare, sau persoana care creează perechea de chei, nu este limitat în tehnologiile pe care poate să le utilizeze pentru generarea perechii de chei utilizate la crearea semnăturii electronice avansate necalificate. Totodată, cheia privată și cheia publică utilizate la crearea semnăturii electronice avansate calificate trebuie să fie generate de către un Prestator de servicii de certificare acreditat, în conformitate cu cadrul normativ în domeniul semnăturii electronice avansate calificate, în special Normele tehnice în domeniul semnăturii electronice avansate calificate, aprobate prin Ordinul directorului Serviciului de Informații și Securitate al Republicii Moldova nr. 69/2016.

Cu respect,

Șef al Aparatului directorului

Author – Gladei & Partners