

Client Alert

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Saudi Arabia regulates e-Commerce

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Saudi Arabia regulates e-Commerce

What has changed?

The Ministry of Commerce and Investment in Saudi Arabia ("**MoCI**") adopted the Implementing Regulations of the E-commerce Law, with immediate effect on 31 January 2020, to accompany the recent shift towards electronic transactions that commerce is experiencing globally which helps achieve the strategic objectives of Vision 2030.

Objectives

The new regulations aim to (1) increase confidence in e-commerce transactions; (2) provide consumers necessary protections against fraud, deception and misinformation; and (3) boost and develop e-commerce activities in the Kingdom.

Who will the new regulations apply to?

The new regulations have a broad scope with an extraterritorial reach. They aim to regulate commercial transactions between service providers and consumers. Notably, the new regulations govern both service providers located within the Kingdom and service providers located outside the Kingdom but who provide e-commerce services to consumers within the Kingdom.

The new regulations protect consumers - a consumer is defined as any person transacting through e-commerce with an intent to receive products or services provided by e-commerce providers. E-commerce is broadly defined as an activity of commercial nature conducted by the service provider and consumer - entirely or partially - through electronic means; for the purpose of selling products or providing services or advertising same or exchange data relating thereto.

Key things you need to know

The new regulations have introduced a number of requirements and obligations that apply to service providers and provide consumers with additional protection including the following:

1. Disclosure obligations

The service provider is required to disclose identifying information and contact details relating to its online store and characteristics of goods sold or services provided electronically.

The service provider must display the following data on its e-store:

- contact details;
- name, and address, if it is not registered with an e-store certification authority (i.e. Maroof);
- name on commercial registration certificate (if applicable);



Zahi Younes
zahi.younes
@legal-advisors.com



Tamim AlKhudhayri
tamim.alkhudhayri
@legal-advisors.com



Bushra Ismail
bushra.ismail
@legal-advisors.com

Legal Advisors
in association with
Baker & McKenzie Ltd.

Riyadh Office
Olayan Complex,
Tower II, 3rd Floor
Al Ahsa Street, Malaz
P.O. Box 69103
Riyadh 11547
Saudi Arabia
Tel: +966 11 265 8900
Fax: +966 11 265 8999

Jeddah Office
Bin Sulaiman Center, 6th Floor,
Office no. 606
Al Khalidiyah District,
P.O. Box 40187
Prince Sultan Street and
Rawdah Street intersection
Jeddah 21499
Kingdom of Saudi Arabia
Tel: +966 12 606 6200
Fax: +966 12 692 8001

- privacy policy; and
- VAT number (if applicable).

Displaying such data on the e-store increases the reliability of the products and services provided.

2. Protection of personal data

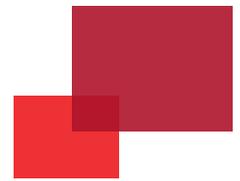
- The service provider must protect the consumer's personal data from any access to it, disclosure, alteration or illegitimate processing.
- The service provider must not retain the consumer's personal and electronic communication data beyond the period required for the e-commerce transaction, unless the consumer and service provider agree otherwise.
- The service provider may not retain the consumer's personal data except for the purpose of fulfilling the agreement, and may not use the personal data for marketing purposes without obtaining the prior consent of the consumer.
- Where the provision of services is through a portal that requires consumer registration, the service provider must keep the consumer's data until the consumer closes his account.
- If an e-commerce service provider is hacked and consumer information is obtained, the service provider must report the breach to the MoCI within three (3) days.

3. Electronic commercial advertisements.

- Electronic advertisements are considered to be of a contractual nature, and are binding on all parties under the E-commerce Law.
- An electronic advertisement must contain details on the product or service being promoted, as well as the contact details of the service provider, and a clear statement that it is advertising material.
- The electronic advertisement must not contain any offer, statement, or allegation that is false or is presented in a manner that may mislead or deceive consumers; or any trademark that the service provider has no right to use.
- The service provider must provide the consumer with the means to request the suspension of electronic advertisements sent to them.

4. Consumer right to terminate the e-commerce agreement and return products

- A consumer may terminate the online agreement and obtain a full refund within seven (7) days following the date of receipt of products or the conclusion of the service agreement, if the consumer has not yet benefitted from the products or services of the service provider, or obtained any advantage therefrom. In such case, the consumer shall bear



the costs arising from the termination of the agreement, unless otherwise agreed between the parties.

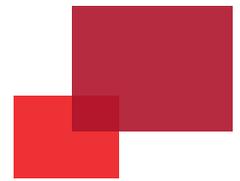
- A consumer may not terminate the agreement and will not be eligible for a refund in the following cases:
 - (a) If the product is custom made based on the consumer's request and specifications, unless the product is defective or off-specification;
 - (b) If the products are videotapes, CDs, DVDs, or digital programs;
 - (c) If the products are newspapers, magazines, publications, or books;
 - (d) If products became defective due to consumer's misuse;
 - (e) If the services are accommodation, transportation, or catering services;
 - (f) If the agreement relates to the purchase of products involving program downloading from the Internet, save for defective programs, which may not be downloaded, or non-conforming programs;
 - (g) If the product is subject to damage during the termination period;
 - (h) If the product cannot be resold for health reasons;
 - (i) If the product contains several elements that were combined together, and cannot be returned to their original condition;
 - (j) If the contract was entered into in a public auction; or
 - (k) If the subject of the contract is a product or service whose price may change during the period in which the contract may be terminated; where the price fluctuation is not controlled by the service provider, such as gold and silver.
- The introduction of the seven (7) day right under the new regulations to return products purchased online and obtain a refund applies where the consumer has changed their mind. The new regulations do not affect consumers existing rights where the goods are faulty.

5. Delay in delivery of goods or services

Unless the service provider and the consumer agree on another period for the delivery of the product or execution of the service, or the delay is caused by force majeure, the consumer has the right to terminate the agreement if the delivery is delayed for more than fifteen (15) days from the date of commencement of the agreement. The consumer has the right to recover the payment he made in exchange for the products or services, in addition to the costs incurred by the delay.

6. Sanctions imposed on non-compliant platforms.

Platforms that are not compliant with the E-commerce Law and Implementing Regulations may be banned totally or partially, temporarily or permanently, and/or be subject to one or more of the following penalties:



- (a) a warning
- (b) a fine not exceeding one million Saudi Arabian Riyals (SAR 1,000,000).
- (c) the suspension of e-commerce activities, on a temporary or permanent basis.

Summary and Practical Tips

Increasing consumer confidence is a key driver for a strong economy and tackling unfair practices allows businesses to compete and new players to enter the market - driving innovation and competition. The adoption by the MoCI of these new regulations brings the Kingdom into line with other international markets - aligning the e-commerce environment with similar legislation seen across the EU and in other markets with active consumer regulators (e.g. Australia).

Companies selling to consumers in the Kingdom online should begin to review their terms of sale and customer policies to ensure they are compliant with these provisions of the new consumer rules. Consumer protection has become increasingly sophisticated and regulators are now more experienced and vigilant enforcers of consumer rights and consumer protection rules; alongside this, consumers are now more educated in their rights and more confident in asserting them and challenging non-compliant retailers. Consequently, retailers can expect to be required in practice to bring their systems and consumer interactions into line with the new rules.

Further information

Our global consumer protection practice is well-versed in advising on multijurisdictional compliance programs. If you have any questions on any of the above or need advice on preparing for the new regulations and how they may affect your business, please contact our dedicated consumer team: Zahi Younes, Tamim Al Khudhayri or Bushra Ismail.