

On 26 July 2019, the Kingdom of Saudi Arabia ("**KSA**") issued its E-Commerce Law, promulgated by Royal Decree No. M/126 (Cabinet Decision No. 628/1440 ("**E-Commerce Law**")). The E-Commerce Law aims to increase confidence in e-commerce transactions, provide consumers with necessary protection against fraud and misinformation and shall boost and develop e-commerce activities in KSA. This legal briefing shall provide an overview of the regulatory framework e-commerce businesses and online marketplaces selling goods or services to consumers in KSA should be aware of, such as laws regulating commercial activities, the processing of personal data, consumer protection and intellectual property.

## I. General

Previously, KSA did not have a stand-alone law regulating e-commerce. Different elements of online transactions were governed by provisions that were placed in several laws like the Electronic Transactions Law (KSA Cabinet Decision No. 80/1428) regulating e-signatures and records and regulations which governed the activity of e-publications including e-advertising.

The E-Commerce Law came into effect on 24 October 2019. The KSA Ministry of Commerce and Investment ("**MoCI**") further issued Executive Regulations to the E-Commerce law on 31 January 2020 (Ministerial Decision No 200/1441 ("**Executive Regulations**")) which came into effect immediately upon publication.

MoCI is responsible for setting up and carrying out commercial policies as well as issuing regulations and creating and supervising commercial systems.

## II. Applicability of the Laws

The E-Commerce Law and its Implementing Regulations have extra-territorial reach and aim to regulate commercial transactions between e-commerce businesses and consumers.

It applies to businesses that are established in KSA and operate e-commerce businesses or online marketplaces selling goods or services to consumers in KSA ("**Trader**"), as well as businesses that are established outside of KSA and provide goods or services to consumers within KSA using an e-commerce platform ("**Practitioner**").

The E-Commerce Law equally applies to "Business to Customer" (B2C) and "Business to Business" (B2B) relationships.

It also applies to intermediaries, i.e., platforms that act as intermediaries between Trader or Practitioner and customers. This includes any website or application that facilitates e-commerce

transactions between e-commerce Traders/Practitioners and their customers.

The requirements that intermediaries must meet are diverse. Their application to intermediaries simply acting as a platform for others to buy and sell goods (e.g., marketplaces such as eBay, Amazon, Uber, Google Play, App Store, etc.) are straightforward. However, the wording appears broad enough to capture other types of services that help to support the e-commerce ecosystem, such as payment gateways, click-through advertisements etc., and the application of the intermediary requirements is less clear for those service providers.

### III. Key Aspects

E-Commerce businesses need to be aware of the following key aspects:

#### 1. Commercial Activities and Special Registration

In order to conduct e-commerce business activities in KSA, businesses that are established in KSA (i.e., Trader) are required to review their commercial licensing documents with the MoCI to include "e-commerce" activity before selling goods or services to consumers in KSA. If the Trader is wholly or partially owned by a foreign shareholder, the activity must first be registered with the Ministry of Investment of Saudi Arabia ("MISA").

According to Art. 15 of the E-Commerce Law, Traders are also required to register the e-commerce platform itself in the commercial register of MoCI within 30 days from the date of establishment. The application shall be initiated via the MoCI website, and the Implementing Regulations clarify further that the application shall include all necessary contact information and a description of

the e-commerce platform and its activities. MoCI will then initiate authentication of the e-commerce shop carried out by a licensed authentication body established by MoCI. The authentication statement shall then be published on the e-commerce platform.

This special registration procedure does not apply to businesses that are established outside of KSA and provide goods or services to consumers within KSA via an e-commerce platform (i.e., Practitioner).

#### 2. Key Website Terms & Conditions

The E-Commerce Law imposes a minimum of details that should be displayed on the e-commerce platform. Practically e-commerce platforms should include

- identification of the business that provides goods or services on the e-commerce platform (e.g., name, registration number, licensing authority, address, tax registration no., product or service details etc.),
- terms of use that regulate the use of the e-commerce platform,
- terms of sale that regulate the contractual relationship between the e-commerce business and the consumer (e.g., delivery, returns, exchange, refund, payment, termination etc.)
- privacy & cookie policies with information on how the e-commerce business processes the personal data of the consumer and the use of cookies.

The E-Commerce Law does not specify a mandatory requirement to provide Arabic language support for customers. However, since Arabic is the official language in KSA, e-commerce platforms

that target consumers in KSA offer dual language options in Arabic and English at a minimum.

### 3. Digital Advertisement

The E-Commerce law further regulates digital advertisement, explicitly prohibiting misleading or false marketing statements or unlawful usage of intellectual property, such as trademarks.

Noncompliant advertisement is subject to penalties as described in the E-Commerce Law.

The DP Law further provides that, as a default position, consent is required in order to target consumers with marketing communications. E-commerce business must provide the option to opt out of marketing communication or withdraw their consent in an easy way.

### 4. Data Protection

E-Commerce businesses further need to adhere to applicable personal data protection laws. The E-Commerce Law and its Implementing Regulations provide certain provisions related specifically to e-commerce businesses that handle personal data of consumers.

In addition, on 24 September 2021, KSA has announced its first standalone personal data protection law ("**DP Law**"), promulgated by Royal Decree No. M19/1443 (Cabinet Decision No. 98/1443). The DP Law will come into force on 23 March 2022. Implementing Regulations are due to be issued within 180 days of the date of issuance of the DP Law (i.e., by 23 March 2022). The DP Law provides a grace period of 1 year from the effective date (i.e., 22 March 2023) for businesses to achieve compliance.

DP Law is designed to have extra-territorial reach. It shall apply to any organisation that is established in KSA and processes personal data of data subjects inside KSA, as well as any organisation that is established outside KSA and processes personal data of data subjects inside KSA. Further information to the DP Law can be found [here](#).

### 5. Intellectual Property

Intellectual Property ("**IP**") rights can legally preserve brands, help businesses to express their individual values and increase their recognition amongst consumers. IP related rights range from trademarks, patents, copyright, designs, domain names to know-how.

While using the internet and technology infrastructure to sell products and services via an e-commerce platform, IP plays an important role for e-commerce businesses.

There are a number of areas where IP rights need to be considered further, in order to ensure that services do not give rise to infringements or other potential issues for the business. This relates to both, avoidance of violation of third-party IP rights and protection of the own IP rights. Some considerations are

- content published on the e-commerce platform should either be owned by the business, or the business requires usage rights from the respective IP owner;
- When using third parties to create content, make sure a contract is in place, confirming that the created content belongs to your business upon its creation;
- The name of an e-commerce platform is also an IP. Conducting searches to clear the use of the

proposed e-commerce platform name will help to prevent infringement of existing rights;

- If a business is selling third party products or services, ensure that you can use their IP to promote such products on the e-commerce platform;
- Ensure you are not selling counterfeit products on your e-commerce platform.

E-Commerce businesses should look into the different IP rights and determine their protection level.

## 6. Consumer Rights

The E-Commerce Law further includes provisions intended to protect consumer rights.

Consumers may return goods, or terminate a contract of service, obtained through an e-commerce platform, within seven days of receipt, if they have not used or benefitted from the goods or services - except for certain goods that are set out in the E-Commerce Law (e.g., perishable goods, products that cannot be resold due to health reasons, combined products that cannot be returned to original condition, products manufactured at the request of the consumer). Consumer must bear the costs resulting from the termination unless the parties agree otherwise.

The e-commerce platform owner shall inform the consumer of any delay that has effect on the delivery. Consumers have the right to cancel their order if the delivery is delayed for more than fifteen days unless another period for delivery was agreed between the parties. They may recover the payment made under the contract unless the delay was inevitable (e.g., force majeure).

The E-Commerce Law does not affect the consumer's existing rights in case that the product has a malfunction.

## 7. Payment Gateway Service Provider

In January 2020, the Saudi Arabian Monetary Authority ("SAMA") introduced Payment Service Provider Regulations ("PSP Regulations") which regulate payment service providers within KSA.

Only payment service providers with a license issued from SAMA can provide payment services. The PSP Regulations were updated by SAMA in October 2020 adding new requirements for licensing.

## 8. Penalties

The E-Commerce Law provides strict penalties for infringement of its provisions:

- warning;
- fine not exceeding 1 Million SAR;
- temporary or permanent suspension of the e-commerce activity;
- blocking the e-commerce platform in KSA.

## IV. Summary and Recommendations

Due to its continuing growth, e-commerce trade is currently being heavily regulated in KSA. The E-Commerce Law and its Implementing Regulations intend to enhance confidence in the validity and integrity of e-commerce transactions, protect consumers from fraud, deception and disinformation, and support the development of e-commerce business.

Other authorities are getting involved in order to ensure that e-commerce services run safely. One example is the

KSA telecoms regulator “**CITC**”, which is also responsible for aspects of the postal service in KSA. The CITC is now licensing e-commerce logistics providers, seeking to ensure that those delivering e-commerce purchases are doing so safely.

As the e-commerce market in KSA develops, we expect that the application of the E-Commerce Law and its Implementing Regulations, and interplay between the different responsibilities of

the various authorities, will continue to be further developed and regulated.

These developments should be closely monitored.

### How we can help

**SCHLÜTER GRAF** will continue to monitor the developments related to e-commerce laws in KSA. Our dedicated Data & Digital team has in depth experience working with clients to assess and develop data protection compliance frameworks. Please contact us to discuss how we can assist you.

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