

A Digital Economy: E-Commerce in Bahrain

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COVID-19 has compelled the world to adopt cloud infrastructure and digital workspace technology in an attempt to endure precautionary limitations set in place by health authorities. The Kingdom of Bahrain has realised the importance of nurturing a state-of-the-art telecommunications network that enables electronic means in the conduct of daily transactions in a secure, fast, and low-cost manner. Modern and secure, Bahrain's telecommunications infrastructure formed an inlet into global markets and entrepreneurs around the world.

The Kingdom of Bahrain simultaneously engaged in laying down the administrative requirements of engaging in electronic, hands-free, and cloud-based environments. Legislative decrees on data protection, electronic transactions, the protection of intellectual property, Over-The-Top applications and the electronic-tracking of medical supplies are now overseen and enforced by bespoke government bodies such as the Anti-Corruption and Economic and Electronic Security Directorate, the E-Commerce and IT Directorate and the Consumer Protection Authority.

Below, you will find the key points of consideration for companies working in e-commerce, detailing protections and repercussions in place for both suppliers and consumers in the Kingdom. It follows that the subsequent information is vital for both existing, and possible business owners in the Kingdom.

E-contracts in Bahrain

Bahrain has implemented Decree Law No. 54 of 2018 on the issuance of Electronic Communications and Transactions Law (“**ECTL**”). The law, which expressly applies to all transactions and documents of all types, recognises electronic signatures as generally valid, subject to certain conditions. As of 2021, the Telecommunications Regulatory Authority has been appointed as the competent authority responsible for the implementation of the ECTL.

An aspect of importance covered by the ECTL is the use of a Trust Service Provider (“**TSP**”) to authenticate transactions made online. In short, TSP are licensed entities that provide electronic services related to electronic signatures, electronic time stamps, electronic registered delivery, and website authentication. The ECTL envisages the creation of a TSP Register (“**TSPR**”) thereby requiring e-commerce websites to engage with any of the registered TSP’s in Bahrain for the fulfilment of their e-commerce activities. While the TSPR is pending establishment, e-commerce websites are required to abide by international authentication and security precautions in the course of their business.

Although this legislative decree was implemented long before the spread of COVID-19, such flexible advancements along with the accelerated change of how businesses work sparked a series of adaptive regulations in the Kingdom. Indeed, the digital transformation resulting from the pandemic led many to adjust to remote working, for better or worse. Resolution No. 63 of 2021 is one example of how forward-thinking policy makers ensure technology is harnessed for greater efficiency across all industries. Following the aforementioned changes with establishing E-contracts, the Resolution allows for electronic voting at Annual General Meetings (AGM’s), and for AGM’s to be held virtually.

Data Protection Considerations

Law No. 30 of 2018 promulgating the Personal Data Protection Law (“**PDPL**”) is the primary legislation governing data protection in the Kingdom. Bahrain is the second country in the GCC to adopt a standalone data protection legislation, seeking to promote transparency as well as secure and effective processing in an ever more data-driven economy. The Ministry of Justice Islamic Affairs and Awqaf has assumed the role of the Data Protection Authority (“**Authority**”) under a care-taker capacity, pending the establishment of the Authority.

The PDPL oversees how personal data is collected, processed, and stored by businesses for commercial use. It further imposes certain obligations on businesses; including ensuring that personal data is processed fairly and kept secure, notifying data subjects when their personal data is collected and processed, and informing data subjects of their rights as prescribed to them under the law.

The law applies to:

- Individuals normally residing or having a workplace in Bahrain. This includes every individual residing normally in Bahrain or having a workplace in Bahrain.
- Businesses with a place of business in Bahrain. This includes every legal person (corporate) having a place of business in the Kingdom of Bahrain; and
- Those who process data using means available in Bahrain. This includes every individual not normally residing in Bahrain or having a workplace in Bahrain, and every legal person (corporate) not having a place of business in Bahrain, where such persons are processing data using means available in Bahrain, except where such processing means are solely for the purpose of passing data through Bahrain.

Accordingly – depending on the structure of an e-commerce business structure – it may be the case that such businesses will have to adhere to the provisions of the PDPL. Mishandling consumers' data in breach of the PDPL's provisions may entitle consumers to receive compensation for damages. There are also criminal penalties set out in Article 58 for certain violations of the PDPL; these include processing sensitive information prohibited without the consent of the data subject, transferring personal data outside the Kingdom, and disclosing data in contravention with the provisions of the PDPL.

Beyond upholding the highest standards of transparency and corporate governance, protecting the confidentiality and rights of consumers instils a greater trust in the market. This is particularly significant within the Kingdom, where above 90% of the population are internet users, ranking highest amongst GCC nations. This in turn will strengthen the local e-commerce industry, allowing for enhanced data flow across jurisdictions, which individuals and organisations alike may capitalise on for profitability in their respective trades.

Online Advertisements

There is no denying mobile commerce has increased exponentially on a global scale in the last half a decade, and its potential for profitability continues to stay high in the Middle East. Bahrain's large youth demographics and extensive internet penetration rate standing at 90% led to higher online shopping rates than in other GCC member states. Looking to the region, the Ministry of Industry, Commerce and Tourism ("**MOICT**") expects online commercial activity in the Middle East and North Africa region to exceed USD 28 billion by 2022.

Yet, a standalone advertisement law in relation to e-commerce platforms in Bahrain does not exist. At a high level, by analogy with various laws in the Kingdom, advertisements must not violate provisions and rules of public order and manners. That said, certain sectors may be affected by marketing regulations depending on the product market. There is for example Regulation No. 16 of 2012 with respect to the prevention of marketing financial services in Bahrain. In such a case, an appropriate license, authorisation or exemption must be obtained from the CBB. There are also specific requirements on product advertisements in the Kingdom as detailed in the following section.

Consumer Protection Regulations

Various decrees in Bahrain's regulatory regime offer some form of protection to consumers online. One of the most vital issues addressed in these laws are product standards. Law No. 9 of 2016 on the Standards and Metrology Law prohibits the manufacturing, importation or trade of products that fail to obtain the approval of technical regulations, products which may be harmful to the health and safety of both the public and environment, products not suitable for the purpose they were manufactured for and products that do not indicate the true country of origin.

Generally speaking, it is the obligation of both manufacturers and distributors to ensure compliance with product standards. Accordingly, business should, insofar as applicable to them, ensure that products sold on their online platforms are compliant with consumer protection laws in the Kingdom.

Another vital issue for businesses in the e-commerce industry to consider is misleading advertisements, Law No. 35 of 2012 on the Consumer Protection Law ("**CPL**") provides consumers the right to obtain accurate data about products purchased, used, or provided. Failure to provide consumers with precise information when requested is punishable by a prison sentence, and/or a fine not exceeding BHD 5,000. Presumably, the supplier would qualify as someone producing, possessing with intent to sell, or having

sold products or packaging used in misrepresenting or copying any commodity. The same penalties under this Article apply to any persons or legal persons promoting a product using false information; this includes advertisements with a focus on the nature of the product, its expiry date, the supply place of the product, its trademark, brand or logo, and any contractual terms.

Intellectual Property (IP) Considerations

A general overview is crucial for existing and potential businesses practicing e-commerce in Bahrain. Serious penalties for infringement are enforced and IP laws are set in place, once again to establish and maintain the Kingdom as a transparent, well-governed digital economy where competition is ethical and sustainable. These include Law No. 1 of 2004 on Patents and Utility Models, Law No. 6 of 2006 on Industrial Designs and Models, and Law No. 6 of 2014 approving the Trademarks Law of the Gulf Cooperation Council States (Gulf Cooperation Council).

A trademark application is submitted to the Trademark Office at the Industrial Property Directorate by the applicant if he is a national or resident in the Kingdom of Bahrain. Foreign applicants who are not residents in the Kingdom must apply through IP Registration Agents or law firms authorised by the Industrial Property Directorate. Only a few MENA countries besides Bahrain make it possible to file for a trademark nationally or internationally through WIPO via the Madrid Protocol. The protection period of a trademark in Bahrain is 10 years from the date of application. If the proprietor wishes to continue with protection for several similar periods, a renewal application can be filed during the last year of each protection period.

In recent years, the Trademark Office of Bahrain developed an internal process aimed at enhancing infringement surveillance efforts across the Kingdom. Holders of a valid trademark registration may file an administrative complaint against an infringer further to which the Trademark Office would conduct a market investigation – through appointed judicial arrest officers – and issue administrative orders requesting wrongdoers to cease from their activities. The said procedure does not limit a trademark owner's ability to seek legal action before the competent civil courts of Bahrain in order to obtain a binding judgement.

Under The Bahraini Copyright Law ("**Copyright Law**"), the court in a copyright civil case shall determine the adequate compensation based on the evidence before it as in any regular civil case. However, the Copyright Law provided an additional remedy allowing the copyright owner to claim compensation of not less than BHD 500, and not exceeding BHD 9,000 if the owner cannot otherwise prove the amount of damages. Criminal protection is imposed with a minimum of three months and a maximum of one year of imprisonment, or a fine not less than BHD 500 and not exceeding BHD 4,000, or both, in respect of any infringement with the intention of a commercial or a material gain.

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