

The Riyal Deal: Regulation of e-Commerce in Saudi Arabia

Nick O'Connell - Partner, Head of Digital & Data - Saudi Arabia - Digital & Data
n.oconnell@tamimi.com - Riyadh

Badria Modir - Associate - Corporate / Mergers and Acquisitions
- Riyadh

With a population in excess of 30 million people, many of whom are young, rich and tech-savvy consumers, it is no surprise that experts hold high hopes for the development of the e-commerce market in Saudi Arabia. Saudi Arabian consumers are ranked highly in terms of purchasing power. The population is highly urbanized. Internet penetration is high, at about 75%, with mobile devices being most popular for online purchases. There is high social media use. Sectors such as electronics and fashion are popular.

The market is not without its challenges, despite looking like it is ripe for an explosion in e-commerce offerings. Lack of clarity around issues such as the security of personal data, the application of local discount regulations to online sales, and the lack of any cohesive consumer protection rules, also create some degree of unease for would-be on-line shoppers and e-commerce platform operators alike. Logistics and distribution hassle are compounded by inaccurate postal addresses and a preference to pay by cash on delivery. With these types of issues in mind, the Ministry of Commerce & Investment (previously the Ministry of Commerce & Industry) has issued draft regulations on electronic commerce ("Draft Regulations") in order to promote confidence in e-commerce transactions and provide protection to consumers. The Draft Regulations are pending, and have not yet come into effect.

The Draft Regulations are intended 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 in Saudi Arabia. They are intended to apply to all those who engage in e-commerce in Saudi Arabia, or who offer goods or services, or make them available, in the Kingdom. Other laws, such as the Electronic Transactions Law and the Anti-Cyber Crimes Law, will continue to have relevance in the context of e-commerce.

E-commerce operators are, at a minimum, required to provide consumers with certain details, including the e-commerce operator's name and registration details. In determining the place of business of an e-commerce operator, the Draft Regulations make clear that the place of business shall not be determined solely due to the location of supporting technology (e.g. servers), or due to the use of a domain name with a particular country code extension.

There is an obligation for the e-commerce operator to provide the consumer with terms and conditions of contract. As well as information about the e-commerce operator, such information should include the steps required to conclude the contract, a description of the goods or services, details of the price and any fees or additional amounts, arrangements for payment, delivery and implementation, and any warranty information. The e-commerce operator's invoice must set out the cost of each item or service, as well as the total cost including all fees and the delivery date. Now that VAT applies in Saudi Arabia, this will also need to be reflected.

When a consumer makes a mistake in an electronic contracting situation, and there is no mechanism for correcting the error, the Draft Regulations provide the right to withdraw, subject to notifying the e-commerce operator promptly upon becoming aware of the mistake, and provided the consumer has not used or obtained any benefit from the goods or services. The parties may agree additional terms in respect of the effects of errors. Consumers have right to terminate a contract concluded electronically within fifteen days following the date of receipt of the goods or the date of contracting for services, subject to

certain limitations set out in the Draft Regulations.

The Draft Regulations consider that advertisements constitute contractual representations, complementary to the other contractual terms and conditions agreed between the parties. There is a specific prohibition on advertisements that contain false representations, or that are expressed in terms that would deceive or mislead the consumer, as well as advertisements infringing third party trade marks. Failure to withdraw an offending advertisement within one day of receiving notice is an offence. Where an advertisement is not withdrawn upon being notified the Ministry is able to liaise with the Communications and Information Technology Commission (the communications authority in Saudi Arabia) to have the e-commerce platform blocked in the Kingdom.

There are provisions addressing responsibility for personal data, requiring it to be retained only for as long as it necessary for the transaction, and using it only for permitted purposes, or otherwise with the consent of the consumer. There is an obligation on e-commerce operators to take responsibility for the security of personal information in their custody or control.

It is important to note that the Draft Regulations are not yet in force, and whether they will be officially gazetted in their current form is unclear. While the Ministry has identified, and sought to address, some of the inhibitors to e-commerce uptake at the consumer level, the Draft Regulations themselves might benefit from further refinement.

Al Tamimi & Company's Technology, Media & Telecommunications team regularly advises on issues relating to e-commerce in Saudi Arabia, and elsewhere in the Middle East. For further information please contact Nick O'Connell (n.oconnell@tamimi.com).