

Client Alert

[Technology Transactions Practice](#)

1 May 2020 | Number 2712

COVID-19 and Online Transactions in Saudi Arabia

New e-commerce players operating within and outside of the Kingdom of Saudi Arabia should immediately plan for compliance.

Due to the global outbreak of COVID-19, many businesses are looking to: (i) migrate their services online; and/or (ii) strengthen their current platform, in order to capitalise on the surge in online shopping. This is a timely reminder for such businesses to refresh themselves on Saudi Arabia's recent E-Commerce Law (the Law) and subsequent implementing regulations.

Pursuant to Royal Decree (M/126) dated 7/11/1441H (corresponding to 10 July 2019), a new law regulating electronic transactions was issued in the Kingdom of Saudi Arabia (KSA). The Law entered into effect on 24 October 2019 and affects the activities of service providers based within the KSA and providers outside of the KSA who offer products and services through an electronic platform to consumers in the KSA.

The Law sets out obligations and limitations but delegates a significant amount of detail on its application to implementation regulations.

This *Client Alert*: (i) sets out five key features of the Law covering: the meaning of e-commerce; the entities that fall within the scope of the Law; the key obligations and restrictions imposed on service providers; and the potential penalties for a breach of those obligations; (ii) comments on the implementing regulations; and (iii) provides a non-exhaustive checklist of terms that service providers are mandated to include in their terms and conditions.

5 Key Features

1. What does e-commerce mean?

Article 1 defines "e-commerce" as an activity of an economic nature practised by electronic means by the service provider in order to sell products, provide services, advertise products or services, or exchange data regarding the aforementioned products or services. This covers entities and individuals buying and selling goods and/or services over the internet.

2. Who does the Law apply to?

Pursuant to Article 2 of the Law, it applies to: (i) any person providing goods or services (via electronic means) within the KSA; (ii) any person outside of the KSA who offers products or services which are accessible to consumers within the KSA; and (iii) e-commerce consumers.

3. Data privacy

Pursuant to Article 5 of the Law:

- Unless the service provider and consumer agree to another retention period, a provider may not keep consumers' personal data except for a period required by the nature of the transaction. Data is defined as "any piece of data, regardless of its source or form, used directly or indirectly when dealing with e-commerce."
- Service providers must take measures to protect consumers' personal data and maintain the confidentiality of such data during the retention period. The providers will be responsible for protecting the personal data that is not only in their possession but data which is held by their agents
- Service providers are prohibited from using and/or disclosing such data without the consumer's consent

4. Terms & conditions and advertisements

Article 7 of the implementing regulations states that the service provider must include a statement in its terms and conditions, which, among other things, refers to the consumer's right to terminate the contract within seven days following the date of receipt of the product or service. This termination right is subject to various exceptions, *e.g.*, a consumer will not have such a termination right if the consumer has damaged the product or where the contract deals with the provision of accommodation, transportation, and food services.

Article 11 of the Law regulates electronic advertising, *e.g.*, it prohibits false statements, allegations, and misrepresentations that may (directly or indirectly) deceive or mislead a consumer.

5. Penalties

Pursuant to Article 18, a contravention of the Law may result in one or more of the following:

- A warning
- A monetary fine of up to SAR1 million (approximately US\$266,000)
- The suspension of e-commerce activity (temporarily or permanently)
- Partial or complete blocking of the website (temporarily or permanently)

Pursuant to Article 19, a committee will be established to consider violations of the Law, impose penalties and generally monitor compliance. In deciding which penalties to impose, the committee shall take into account the seriousness of the violation (and its frequency), the size of the service provider and the damage caused to consumers.

Implementing Regulations

The implementing regulations — which entered into effect on 31 January 2020 — provide some clarity on the application of the Law; however a number of questions still arise regarding the meaning of particular terms. For example, Article 5(2)(c) of the implementing regulations states that “if the Personal Consumer Data is breached, the Service Provider must notify the Ministry – according to the mechanism determined by the Ministry – and the Consumer, within (3) days from the date of the service provider’s knowledge of the breach” Firstly, it is not clear what is meant by “breach”; does this envisage a similar meaning to that of a personal data breach under the General Data Protection Regulation (EU) 2016/679? Additionally, what standard of knowledge is placed on the service provider — a service provider’s actual knowledge of the violation or does the standard cover situations where the service provider ought to have known of the violation?

Article 5(3) of the implementing regulations specifies that the “service provider shall allow for the closure of the account in a clear and easy fashion”. The implementing regulations do not prescribe what would constitute a clear and easy process for a consumer to close its account. As such, this grants considerable discretion to service providers when implementing technical solutions to give effect to this provision.

Checklist: Terms & Conditions

Article 7 of the Law and Article 7 of the implementing regulations state that service providers must provide consumers with a statement clarifying their terms and conditions. One possible interpretation of the foregoing is that service providers must include a minimum amount of information in their terms and conditions. We have set out a non-exhaustive checklist below of such information.

No.	A. Information Required by the Law	Yes?
1	Procedures that must be followed to conclude the contract	<input type="checkbox"/>
2	Information related to the service provider	<input type="checkbox"/>
3	Basic characteristics of the products or services under contract	<input type="checkbox"/>
4	The total price including all fees, taxes or additional amounts related to delivery (if any)	<input type="checkbox"/>
5	Payment, delivery and implementation arrangements	<input type="checkbox"/>
6	Warranty information (if any)	<input type="checkbox"/>
B. Information Required by the Implementing Regulations		
7	The consumer’s right to terminate the contract, the costs incurred in exercising this right, and how the consumer is supposed to communicate such termination to the service provider If no such termination right is available, the service provider must specify that such right is not available due to the applicability of one or more of the conditions in Article 13(2) of the Law or Article 11 of the implementing regulations	<input type="checkbox"/>

8	Details of the price, such as the original price, delivery costs, and taxes, if any If there are costs for the termination of the contract or other costs that may be calculated in the future, indicate how they are calculated and the terms of their maturity	<input type="checkbox"/>
9	After-sales services, if any, and the terms of delivery of those services	<input type="checkbox"/>
10	The duration, date, and expiry of the contract	<input type="checkbox"/>
11	Payment terms, recurring payments, if any, and shipping and delivery provisions	<input type="checkbox"/>

Conclusion

The Law and implementing regulations are a welcome development in the e-commerce space and the Law's objective of: (i) protecting the integrity of online transactions; and (ii) facilitating the ease of doing business, accords with Saudi Vision 2030. However, a number of key questions remain, e.g.:

- How will the committee enforce penalties against service providers based outside of the KSA?
- What constitutes a "breach" of personal data?
- What enforcement action (if any) will the National Cybersecurity and Consumer Authority take in the event that it finds a breach of personal data? Furthermore, would such enforcement action be in addition to action that may be taken by the committee for a violation of the Law?

Service providers should consider (or re-consider as the case may be) their obligations under the Law and implementing regulations, update their technical systems and interfaces to reflect the foregoing, and review their current terms and conditions with consumers.

The Law Office of Salman M. Al-Sudairi and Latham & Watkins will continue to monitor developments in this sector and will publish an update to this *Client Alert* once additional guidance is available.

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