

Saudi Arabia: The Ministry of Commerce Invites Comments on the Draft Consumer Protection Law

In brief

On 31 March 2022, the Ministry of Commerce published for consultation a draft Consumer Protection Law ("**Draft Law**") on the Public Consultation Platform, which will close for comments on 15 May 2022.

The Draft Law is intended to be administered by a yet to be defined competent governmental authority, presumably a department within the Ministry of Commerce ("**Competent Authority**"). This scope of the Draft Law is limited to business to consumer (B2C) transactions, as it would govern relationships between natural persons who seek to obtain a product or a service for the purpose of satisfying their personal needs and that of their families ("**Consumers**") and entities or persons who carry out a commercial, industrial or professional activity and provide products or services by any means possible including electronic means ("**Economic Operators**") in Saudi Arabia. Economic Operators would have one year from the date the Draft Law comes into force to comply with its provisions. The Draft Law would repeal both the Anti-Commercial Fraud Law and the E-Commerce Law as it incorporates some provisions and concepts from each of these laws.

The Draft Law's overarching aims are to strike a fair balance between the rights and obligations of both Consumers and Economic Operators and protect Consumers from unfair business practices and harmful products and services.

The Draft Law touches on a variety of Consumer-related topics, including:

- basic consumer rights
- contracting
- advertising
- competitions / contests
- discounts
- product guarantees, warranties and spare parts
- sale of used products

We summarize some of these topics below.

Basic rights of Consumers

The Draft Law grants Consumers certain basic rights, which notably include the right to (1) access to essential products and services, (2) protection from threats to health and safety, (3) clear, accurate and sufficient information necessary for them to make an informed decision regarding the product or service they choose (for example, all information must be presented in at least the Arabic language and prices must be expressed in Saudi Riyals inclusive of taxes, fees and costs), (4) awareness and education of the economic, social and environmental impacts of their choices, (5) preservation of their privacy and personal data (which is comprehensively addressed by a separate new legislation, the Personal Data Protection Law), (6) access to dispute settlement means if their rights have been breached, (7) fair compensation for damages resulting from the product or service, and (8) form consumer associations.

Consumer-friendly contractual provisions

The Draft Law provides that contracts between Consumers and Economic Operators must include certain conditions relating to the nature, description and price of the products or services, payment and delivery terms, and returns, among other conditions. On the subject of dispute resolution, Economic Operators are required to stipulate in Consumer contracts that the Consumer is entitled to refer disputes to alternative dispute resolution providers (see relevant section below).

On the other hand, the Draft Law prohibits unfair conditions, which would be considered void (with no impact on the validity of the rest of the contract). These unfair conditions include terms (1) granting the Economic Operator the power to unilaterally cancel, amend or interpret the contract in its favor, (2) excluding the Economic Operator from liability or limiting its liability for error or negligence, (3) limiting the Consumer's rights to judicial recourse, (4) obligating the Consumer to file a lawsuit before a court that is not located in their place of residence, and (5) requiring that another country's law be applied to a dispute arising out of a contract that has been executed in Saudi Arabia.

Advertising

The Draft Law introduces new requirements, and incorporates others from E-Commerce Law, relating to the advertising of products and services to Consumers. Generally, Economic Operators may only send electronic advertisements to Consumers after obtaining their prior express consent. When advertising by comparing its products with those of others, Economic Operators must ensure that the compared products meet the same needs of the Consumer comparison, is not misleading or defamatory and the claims can be validated. It is prohibited to include any message addressed to children that would seriously harm their safety, or to advertise products that do not correspond to their age groups. In addition, Economic Operators may not advertise products directly to children that do not correspond to their age groups.

Guarantees and warranties

With some exceptions carved out for digital products or services and used products, Economic Operators must provide a two-year statutory warranty that the product or service is defect-free, which warranty must include certain provisions such as a description of the purposes for which products or services of the same type are used, the specifications of the product and installation and use instructions, and must cover any statements or claims used in advertising materials. If a statutory warranty for a product is breached, the Economic Operator is obliged to repair, replace or accept a return of the product and refund it at no cost to the Consumer. If a statutory warranty for a service is breached, the Economic Operator is obliged to refund the full or partial service cost, or to perform it again properly. Consumers are also entitled to seek damages for a breach of the statutory warranty.

Competitions

Similar to the current Anti-Commercial Fraud Law, Economic Operators that desire to run competitions in which Consumers may win prizes (including money) must first apply to the Competent Authority for approval. If approved the competition may only be held and announced by the Competent Authority. Economic Operators may not place competition vouchers "within" a product (though placement in the product's packaging is not expressly prohibited), require the purchase of a product or service to participate in the competition, or increase the prices of products or services associated with the competition during the competition. It is unclear how this requirement will effectively regulate competitions that are run online or as part of an online game.

Alternative dispute resolution

The Draft Law contemplates the introduction of a unified network of alternative dispute resolution providers ("**ADR Providers**"), which employ mediators, experts and specialists, to resolve disputes between Consumers and Economic Operators. ADR Providers, including those employed by them, would be regulated and supervised by the Competent Authority in cooperation with the Ministry of Justice.

Penalties

The Draft Law sets out the following penalties that may be imposed for violations of its provisions:

1. *Corrective measures*. This includes but is not limited to provisions obligating the Economic Operator to rectify any violation within a specific period or suspend the availability of the product or service subject to the violation until the violation is corrected or obligating the Economic Operator that is in violation of the Draft Law to display an explicit warning on its website of such violation, restricting access to the website or removing its contents.
2. *Administrative penalties*. This includes but is not limited to provisions such as seizure of the product in violation of the Draft Law, a fine not exceeding SAR 100,000 or suspending the activity or business - in whole or in part - for a period not exceeding 90 days including closing shops and blocking websites.

3. *Criminal penalties.* These include fines of up to SAR 3,000,000 for:

- failing to comply with certain provisions of the Draft Law;
- violation of judicial rulings and orders issued by the competent court to stop or prevent any violative actions; and
- not complying with corrective measures required pursuant to the Draft Law.

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