**Saudi Arabian E-Commerce Law—A step towards Consumer Protection**

In a quest for efficiency and effectiveness in a highly competitive world of 21st century, the rapid growth in the E-Commerce echoes that the world is becoming an e-market. The world is in a continuous phase of transformation due to fast growth in technology. The Information and Communication technology (ICT) has drastic impacts on the business models and there is a big shift in the way we used to think about doing business. Business at the speed of thought is approaching reality.

The ease of doing business and the comfort for consumer has increased with the availability of goods and services online. Apparels, books, fashion items, entertainment products etc, are easily accessible in the e-market and it is a matter of few clicks to create a transaction.

Certainly, internet is the main factor behind this paradigm shift. The business-to-consumer index (2015) of E-Commerce issued by United Nations Conference on Trade and Development (UNCTAD) declares internet penetration as one of the indicators to measures readiness of a country to adopt E-Commerce. Saudi Arabian market is keeping up with the pace of the E-Commerce boom. The increasing trend towards internet usage is evident from various studies conducted by the Saudi Communication and Information Technology Commission (CITC). According to CITC studies, in 2009 the internet penetration in Saudi Arabia was 40% which went up to 91% in 2015. Looking at the upward trend one can confidently say that as of today there will be a further increase.

Consumer protection is a widely debated issue in the E-Commerce and this is because the practical issues consumer face in online transactions are different from offline transactions. The remote interaction between a buyer and seller is based on the trust, and a consumer dealing with cross-border seller is always prone to risk of fraud and/or misleading conduct. The delivery of accurate product in accordance with agreed specifications as advertised on E-Commerce platform, the security of financial transactions, and the ease to return defective products are some of the challenges in E-Commerce from consumer perspective. The dynamics of pre-purchase and post-purchase issues in E-Commerce could be challenging for consumers in the absence of a clear and reliable policy and legal framework.

With the changes in mechanics of business transactions also comes a wider challenge to the legal system. E-Commerce requires a *lex-specialis* to cope with the challenges. The law should not only protect the consumer but also increase the level of certainty for sellers in terms of rights, liabilities and obligations.

In order to regulate the E-Commerce, Saudi Arabia has taken a significant step by issuing an E-Commerce law that will regulate the E-Commerce in Saudi Arabia. Prior to this regulation, the Saudi legal system was lacking a comprehensive regime governing E-Commerce. The Saudi E-
Commerce law is focused on business-to-consumer relationship. Consumer includes both natural and artificial person.

The law defines E-Commerce as “Any activity of an economic nature undertaken, wholly or partially, by the Service provider and consumer through electronic means for selling products or providing services, advertising it, or exchanging data relevant thereto”.

The law will be applicable not only to the E-Commerce platforms registered in Saudi Arabia with the E-Shop Registration Authority, but also to E-Commerce platforms that are not registered in Saudi Arabia but are engaged in offering the products and services to Saudi consumers (‘collectively referred as service providers in this article’). Accessibility to the Saudi consumers and possibility to make a transaction will be important factors to establish offering to Saudi consumers.

The Saudi E-Commerce law has a specific provision addressing the place of business. For registered service providers, the place of business will be as specified in commercial register whereas for un-registered service providers, the place of business will be as specified on e-platform or as established otherwise. The law clarifies that a place of equipment and technology supporting the information system for E-Commerce shall not define a place of business. It makes a lot of sense since the place where technology is installed to operate the system may change from time to time, and it is quite possible that neither party (e-seller and consumer) is aware of such change. For the purpose of any legal effect, this provision is important.

The Saudi E-Commerce law should be read together with Saudi Electronic transactions law. The legal effect and validity of e-signature, e-transactions and e-contracts are established under the Electronic transactions law, whether wholly or partially made through electronic form.

On the important provisions in terms of E-Commerce under Electronic transactions law is that the e-contract can be negotiated and concluded between the electronic automated systems designed and programmed for this specific purpose. This makes the legal regime conducive to the emerging technologies like Artificial Intelligence in E-Commerce. However, for recognition of e-contract between a natural person and automated system, the natural shall have knowledge or presumed to have such knowledge of dealing with automated system.

The E-Commerce law has provisions addressing consumer related issues. It is mandatory upon service providers to have the mechanism in place for coordination with consumers. For example, the law clearly states that consumer has right to rectify any mistake in e-communication made during electronic transaction. If technological constraints do not allow rectification of mistake, the consumer can notify the service provider for rectification and such notification shall be considered as a rectification of mistake. Any unreliable or inefficient mechanism on part of service providers can create legal complications.

Although this provision is favorable to consumers, it carries some inherent complications. Consumer has a right to rectify mistake committed during negotiation stage and implementation
stage of an e-contract. The rectification can be made to ‘e-communication’ which is defined in the law, and this expands its scope. The law further provides that rectification should be notified within time frame prescribed by the regulations. The use of a defined term ‘e-communication’ means that regulations should specify time period for correction of mistake during negotiation stage as well as for implementation stage. This will require regulations to clearly specify negotiations and implementation stages. Negotiations in e-contracts are different from other traditional forms of contracts whereas in the later the parties can negotiate freely, it is not always the case in e-contracts. In E-commerce, a consumer is interacting with an e-platform and there are less chances of contractual negotiations in a true sense. In E-commerce context, perhaps the negotiations stage will end upon issuance of invoice as per Article 8 of the law and this will make a stage later to it, an implementation stage. The right to make rectification at implementation stage effectively means that a consumer has right to amend the effective e-contract. Unless the service provider has provided a mechanism for consumers in which case the time frame prescribed by regulations will not apply, the implementing regulations should provide a short time period for consumer to rectify a mistake during implementation stage to make it reasonable for service providers. In order to avoid complications, service providers should provide technical means for correction of mistakes by consumers, practically at any stage. Any form of convenient electronic means should be sufficient to satisfy the requirement of law.

The consumer right to rectify a mistake is subject to a condition. A proviso in the rectification clause states that a mistake can be rectified unless consumer did not use the product or service. This clause may have no added value (except for digital products with immediate delivery) if the time period for rectification notice are carefully prescribed, and service providers include delivery time in the e-contracts later to the rectification notice period, where possible.

Consumers have right to terminate any e-contract within 07 days of delivery of products or from a date the contract for provision of services is made, provided that the services or products are not used. This right cannot be exercised if the product was a special custom-made created specially for the consumer or the product was delivered in accordance with agreed specifications. Furthermore, videos tapes, records, CDs, softwares, newspapers, magazines, publications, books, transport service, catering, and accommodations are not covered under consumer right to return. The list is not exhaustive, regulations can add more. As a result of termination of contract, the cost shall be incurred by the consumer. Probably this will cover all the cost incurred on delivery of product to consumer however it is open to interpretation. It is important to note that the right to return delivery is a separate right irrespective of exercising right to make rectification. The implementing regulations will further specify the products and services which cannot be returned after delivery. This provision makes sense considering the different nature of products e.g. perishable products like plants, food etc. Although book is excluded from consumer right to return in the law, some service providers for example Amazon currently allow return of digital products like books purchase from kindle store within 07 days of purchase and the effect of return is that the accessibility to a book is blocked. Such types of products are immediately accessed which should suffice the requirement of use and the consumer can lose the right to return.
Consumer has right to terminate the contact and recover amount paid under the contract, if the service provider delays delivery exceeding fifteen days from the date contract is concluded or any other date which is agreed. This is important flexible provision for service providers and special care shall be taken while drafting relevant provisions to make sure that the expected time frame of delivery is carefully analyzed keeping in view all factors.

If delay is expected in delivery of products or difficulty in fulfilling e-contract terms, there is a notice obligation upon service provider, however such provision of notice to consumer does not exempt the liability. Force majeure is the only exception to escape liability on part of service provider in case of delay in delivery.

The law also provides a data privacy regime in E-Commerce. The service provider is not entitled to keep personal information of consumers except what is required for the purpose of transaction. Explicit consent of a consumer is required for any other period exceeding this. The service providers shall use the technical means to protect personal data and to maintain its privacy. Such data cannot be used for any other purpose except with express permission of consumers, the data subject.

Any profession which is subject to license or permit in Saudi Arabia cannot be practiced through E-Commerce unless proper license or permit is issued by relevant authority in Saudi Arabia.

The Electronic Commerce service providers also needs to be careful while advertising their products electronically. Any advertisement is declared as a complementary part of an e-contract. In view of the increasing aggressive advertising campaigns through E-commerce with possibility of misleading and exaggerated contents to attract consumers, this provision protects the consumers. The implications of this clause are clear from service provider perspective, therefore the advertisement shall be designed very carefully. The law also regulates the content of electronic advertisements and provides minimum content requirements of any advertisement.

In terms of intellectual property protection, the E-Commerce law addresses trademark infringement over E-commerce platforms. A negative provision included in the law prohibits use of any trademark owned by others or an unauthorized imitated trademark. It is interesting that other forms of intellectual property rights are not discussed in the law. Certainly, a reference to all forms of intellectual property rights instead of (only) trademarks would have been a better option. The absence of other intellectual property rights does not mean that such rights cannot be exercised under respective laws against infringement over E-commerce platforms, however it certainly effects the jurisdiction of Committee constituted under E-commerce law (discussed in next paragraph). The law does not oblige the service providers to create an intellectual property dispute mechanism for instance like AliProtect or Amazon Report Infringement.

The law also constitutes a three-member (minimum required number of members) Committee, with one member from law background, to review violations of the E-Commerce law. The Minister of Commerce and Investment (MoCI), or any official as delegated with such powers by the Minister, can refer any case to Committee after taking interim action. Such interim action can
be whole or partial blockage of E-Commerce provider platform. The decision of Committee is appealable before Administrative Court of First Instance in appellate jurisdiction. In accordance with the general procedural law, further appeals up to the High Court should be available.

The law also provides fines not more than Saudi Riyals 1,000,000 (USD 266,667), possibility of claiming damages, and permanent or temporary ban on E-Commerce activities, if violation is established.

The Saudi legal landscape addressing sale of pharmaceutical products over E-Commerce is not discussed in this article which will be discussed in next article.

This law is in force w.e.f July 26, 2019. The implementing regulations will further clarify the implementation of law.

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