

School of Business and Law

**THE NEED TO ENHANCE ONLINE CONSUMER PROTECTION
UNDER EXISTING SAUDI ARABAIN E-COMMERCE LAWS**

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Declaration

To the best of my knowledge and belief, this thesis contains no material previously published by any other person except where due acknowledgment has been made.

This thesis contains no material that has been accepted for the award of any other degree or diploma in any university.

Signature: *Abdusrahman Alsoufi*

Date: 30/11/2023

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Abdulrahman Aloufi	1
Declaration	2
Acknowledgment	3
List of Abbreviations	7
Figure	8
Abstract	9
I INTRODUCTION	10
A Research Overview	12
B The Electronic Commerce Landscape in the KSA	17
1 High Internet Penetration	18
2 Internet Use Patterns in the KSA	19
3 Government Efforts to Enhance the Online Sector	20
4 Emergence of New Online Stores in the Middle East	20
C Research Objectives and Questions	21
D Research Contribution and Significance	22
E Thesis Scope	24
F Methodology	25
G Model Consumer Protection Framework	27
1 Historical Overview of the UN and OECD Guidelines	27
2 The Evaluative Framework for E-Commerce Transactions	30
	31
	31
(a) Online Disclosure	32
(i) Seller Information	33
(ii) Commodity Information	33
(iii) Transaction Information	33
(iv) Terms and Conditions Information	34
(v) Dispute Resolution Process Information	34
(vi) General Guidelines for the Information	34
(b) Fair Contract Provisions	35
(i) Adequate Protection Against Misleading Conduct/Statements	35
(ii) Adequate Protection Against Unfair Practices	36
(iii) Regulate Commodity Quality	36
(iv) Regulate Consumer Redress	36
(c) Effective Dispute Resolution	37
(d) Go Beyond State Borders	38
H Thesis Outline	38
II EXISTING CONSUMER REGULATIONS AND REMEDIES IN THE KSA	40
A Consumer Protection in KSA National Legal Frameworks	42
1 Online Disclosure of Information in State-Made Laws	43
(a)	45
(b) Seller Information	45
(c) Commodity Information	47

(d) Transaction Information _____	48
(e) Terms and Conditions Information _____	49
(f) Dispute Resolution Process Information _____	50
(g) General Guidelines for the Information _____	51
2 <i>Fair Contract Provisions</i> _____	52
(a) Adequate Protection Against Misleading Conduct/Statements _____	52
(b) Adequate Protection Against Unfair Practices _____	55
(c) Regulate Commodity Quality _____	57
(d) Regulate Consumer Redress _____	59
3 <i>Effective Dispute Resolution</i> _____	64
4 <i>Go Beyond State Borders</i> _____	70
B Conclusion _____	73
III NEW DRAFT CONSUMER PROTECTION LAW IN THE KSA _____	75
A New Legal Development in the KSA Consumer Protection Law _____	75
1 <i>Online Disclosure of Information in New Draft Consumer Protection Law</i> _____	79
(a) <i>Definition of an Advertisement in the Consumer Protection Law</i> _____	79
(b) <i>Definition of an Economic Operators in the Consumer Protection Law</i> _____	79
(c) <i>Seller's Information</i> _____	80
(d) <i>Commodity Information</i> _____	82
(e) <i>Transaction Information</i> _____	84
(f) <i>Terms and Conditions Information</i> _____	84
(g) <i>Information on Dispute-Resolution Processes</i> _____	85
(h) <i>General Guidelines for the Information</i> _____	85
3 <i>Fair Contract Provisions</i> _____	89
(a) <i>Adequate Protection Against Misleading Conduct/Statements</i> _____	89
(b) <i>Adequate Protection Against Unfair Practices</i> _____	91
(c) <i>Regulate Commodity Quality</i> _____	94
(d) <i>Regulate Consumer Redress</i> _____	95
4 <i>Adequate Dispute-Resolution Mechanisms</i> _____	98
5 <i>Go Beyond State Border</i> _____	101
B Conclusion _____	102
IV CONSUMER PROTECTION LAWS IN GCC COUNTRIES _____	104
A Consumer Protection in GCC Legal Frameworks _____	105
1 <i>Online Disclosure of Consumer Protection Laws in GCC Countries</i> _____	105
(a) <i>Definitions of Advertisements in GCC</i> _____	106
(b) <i>Seller's Information</i> _____	108
(c) <i>Commodity Information</i> _____	109
(d) <i>Transaction Information</i> _____	111
(e) <i>Terms and Conditions Information</i> _____	111
(f) <i>Dispute-Resolution Process Information</i> _____	112
(g) <i>General Guidelines for the Information</i> _____	114
2 <i>Fair Contract Provisions</i> _____	117
(a) <i>Adequate Protection Against Misleading Conduct/Statements</i> _____	117
(b) <i>Adequate Protection Against Unfair Practices</i> _____	118
(c) <i>Regulate Commodity Quality</i> _____	120
(d) <i>Regulate Consumer Redress</i> _____	121
3 <i>Effective Dispute Resolution</i> _____	126
4 <i>Go Beyond State Borders</i> _____	133

B Conclusion	134
V SOLUTIONS	136
A Consumer Protection Legal Frameworks	136
1 <i>Online Disclosure of Information</i>	136
(a) Seller Information	136
(b) Commodity Information	137
(c) Transaction Information	138
(d) Terms and Conditions Information	139
(e) Dispute-Resolution Process Information	140
(f) General Guidelines for the Information	140
2 <i>Fair Contract Provisions</i>	141
(a) Adequate Protection Against Misleading Conduct/Statements	141
(b) Adequate Protection Against Unfair Practices	142
(c) Regulate Commodity Quality	143
(d) Regulate Consumer Redress	143
3 <i>Effective Dispute Resolution</i>	144
4 <i>Go Beyond State Borders</i>	146
(a) Cooperation with International Consumer Agencies	146
(b) Proposed Solution in the Context of Cross-Border E-Commerce Transactions	146
(i) <i>Multilateral Solutions</i>	146
(ii) <i>Technical Solutions</i>	147
(iii) <i>Summary Of The Solution</i>	149
B Conclusion	150
VI CONCLUSION	151
A Thesis Summary	151
B Thesis Limitations	154
C Future Work	155
BIBLIOGRAPHY	156

List of Abbreviations

ADR	Alternative Dispute Resolution
B2C	Business to Consumer
EUD	European Union Directive
GCC	Gulf Co-operation Council
KSA	Kingdom of Saudi Arabia
OECD	Organisation for Economic Co-operation and Development
ODR	Online Dispute Resolution
UAE	United Arab Emirates
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development

Figure

Figure 1: Model evaluative framework.....31

Abstract

Online trading is a new form of trading that is spreading among consumers, and it leads to the emergence of new challenges to protect the consumer. This is because the nature of e-commerce transactions is borderless. Therefore, new challenges to consumer protection have appeared, such as enforcing local laws against international sellers. This necessitates policymakers to provide adequate protection with particular attention to e-commerce transactions. There is a need to offer adequate regulation that requires the inclusion of specific information online that remediates the lack of inspection or examination of the product. There is also a need to provide fair contractual provisions to enhance consumer confidence and provide a protective environment as well as a need for effective dispute resolution that allows consumers to access redress. Finally, there is a need for cooperation with international consumer protection agencies to investigate and enforce local laws against international sellers. The first objective of the thesis is to identify the shortcomings of the Kingdom of Saudi Arabia's existing consumer protection laws in terms of e-commerce transactions, including the KSA's new draft consumer protection law. To meet that aim, an adequate consumer protection model was identified to assess the adequacy of the KSA's existing or proposed consumer protection laws. The second objective is to compare KSA national legal frameworks to that of some Gulf Co-operation Council countries, namely the United Arab Emirates, Qatar and Kuwait, in order to find a solution to the identified gaps that KSA policymakers can adopt or adapt. Therefore, a possible solution to or best practice for the shortcomings may provide more protection to the consumer, with special attention to cross-border e-commerce transactions. In this thesis, I examine the aspects of tangible and intangible goods in cross-border e-commerce transactions. I utilize a combination of doctrinal and non-doctrinal law-reform-oriented and comparative methodologies to conduct my research.

I INTRODUCTION

This thesis analyses the effectiveness of the Kingdom of Saudi Arabia's (KSA) consumer protection laws in the context of cross-border electronic commerce transactions. It argues that deficiencies exist within KSA national legal frameworks that hinder the provision of adequate consumer protection for KSA consumers. These deficiencies include: the failure to provide clear legal information that governs all aspects of electronic commerce transactions (e-commerce transactions); the failure to provide national legal frameworks to minimise disputes between sellers and buyers; and the failure to offer adequate dispute resolution mechanisms for e-commerce transactions that buyers can easily access to obtain remedies in the event of a dispute.

To undertake these arguments, this thesis will compare the existing national legal frameworks in the KSA to the Gulf Cooperation Council (GCC) national legal frameworks of the United Arab Emirates (UAE), Qatar and Kuwait. This research will focus on GCC countries since Islamic law is the 'golden thread' in GCC jurisdictions; in other words, the sources of law in these countries are similar to those in the KSA, which are derived from Islamic law.¹ Furthermore, GCC countries are considered homogeneous since there are similarities in their traditions, culture, religion, language and political regimes; that is, the adoption of a legal framework from a GCC country is appropriate for Saudis as this framework is acceptable in other countries with very similar religions and cultures.² It is also true that several GCC countries, such as the UAE and Qatar, have a mature e-commerce market, which indicates that the systems in those countries are functioning. The UNCTAD B2C E-commerce Index (the United Nations Conference on Trade and Development's Business to Consumer E-commerce Index) aims to benchmark the preparation and readiness of states to engage in e-commerce, and the 2017 publication indicated that the UAE was positioned 23rd out of 144 economies,

1 William Ballantyne, 'The States of the GCC: Sources of Law, the Shari'a and the Extent to Which It Applies' (1985) 1(1) *Arab Law Quarterly* 3,1

<https://www.jstor.org/stable/pdf/3381669.pdf?refreqid=excelsior%3A6ad3575546dfffa316b648bb052216d02&ab_segments=&origin=&acceptTC=1>

2 Mohammed At-Twajjri and Ibrahim Al-Muhaiza, 'Hofstede's Cultural Dimensions in the GCC Countries: An Empirical Investigation' (1996) 9(2) *International Journal of Value-Based Management* 121, 122 <<https://link.springer.com/article/10.1007/BF00440149>>

with a score of 87.³ In 2019, the UAE was ranked 28th with a score of 83.8.⁴ In 2017, Qatar was ranked 58th with a score of 62.⁵ Interestingly, in 2019, Qatar jumped from 58th to 47th position with a score of 74.2.⁶

The thesis will also compare the national legal frameworks in KSA against relevant international legal frameworks and guidelines, including the United Nations (UN) guidelines for consumer protection, the guidelines of the Organisation for Economic Co-operation and Development (OECD), particularly the implementation toolkit on legislative actions for consumer protection enforcement cooperation and the OECD recommendations related to consumer protection in e-commerce, and the European Union Directives (EUD).⁷ The aim of undertaking this comparative analysis is to try to find legal solutions that can be adopted or adapted by the KSA to help resolve the issues identified in this thesis.

This chapter provides the necessary contextual background of the research, including an articulation of the research issue. It also contains a contextual discussion of e-commerce in the KSA. It presents the research objectives and the questions that the thesis will analyse, then details the research contribution and significance as well as explaining the scope of the research. It explains the research methodology, the model evaluative framework and, finally, provides the research outline.

3 UNCTAD, Division on Technology and Logistics Science Technology and ICT Branch ICT Policy Section, UNCTAD B2C E-commerce Index 2017, UN Doc TD TN/UNCTAD/ICT4D/09 (October 2017), 10

4 UNCTAD, Division on Technology and Logistics Science Technology and ICT Branch ICT Policy Section, UNCTAD B2C E-commerce Index 2019, UN Doc TD TN/UNCTAD/ICT4D/14 (December 2019), 5.

5 UNCTAD B2C E-commerce Index 2017 (n 3) 18.

6 UNCTAD B2C E-commerce Index 2019 (n 4) 5.

7 UN consumer protection guidelines have a set of doctrines for effective consumer protection legislation against which the new draft consumer protection law can be evaluated; see UNCTAD, Division of Competition and Consumer Protection, UN Guidelines for Consumer Protection, UN DOC A UNCTAD/DITC/CPLP/MISC/2016/1 (December 2015) ('UN Guidelines for Consumer Protection 2015'). The implementation toolkit has practical resources for enforcement cooperation between consumer protection agencies in various countries, which will assist to evaluate the cooperation of consumer protection agency or enforcement mechanisms in KSA lawful frameworks. See OECD, *Implementation Toolkit on Legislative Actions for Consumer Protection Enforcement Co-operation*, DSTI/CP (2020)5/FINAL, OECD Digital Economy Papers no.310, 17 June 2021 ('OECD Toolkit 2021'). OECD recommendations relating to consumer protection in EC and the EUD will assist to show whether there are deficiencies in the new draft consumer protection law. Therefore, based on the evaluation, the thesis will propose a legal framework to fill the gaps in the existing national legal frameworks in the KSA. See *Recommendation of the Council on Consumer Protection in E-commerce*, OECD/LEGAL/0422 (entered into force 24 March 2016) 1 ('Recommendation for Consumers in E-Commerce 2016').

A Research Overview

E-commerce transactions pose many challenges to KSA buyers for reasons that will be detailed in this thesis. It will be argued that the existing KSA consumer protection national legal frameworks are unable to effectively protect consumers.⁸

There is an absence of law that adequately regulates e-commerce, given its particular requirements. The law that governs an e-commerce transaction is largely state-made law. However, if information is lacking, the doctrines and principles of Islamic law are the governing law. The freedom of conducting and forming contracts is thus subject to Islamic jurisprudence or principles.⁹

This raises many challenges related to consumer protection as consumer rights are not in a convenient and central location. They are scattered amongst the various sources of Islamic law and its general doctrines and state-made laws (legislation), including the E-Commerce Law. There is no definition of important consumer protection terms (misleading, advertisements, etc). There is also a lack of provisions related to returns, exchange of products and warranties. Islamic law and state-made laws provide the consumer with remedies that are determined through the KSA court system, which is inappropriate for cross-border e-commerce transactions. Enforcing laws or court judgments upon international sellers is difficult, especially if there is no physical presence or assets in the local jurisdiction. This will be discussed in more detail in Chapter Two.¹⁰ Moreover, there is uncertainty related to consumer protection because Islamic schools of thought may have approaches to resolving a particular issue that are different from traditional legal remedies. For instance, there are multiple opinions related to what should constitute adequate compensation. This issue will be discussed in

8 The term 'KSA legal frameworks' refers to Islamic and state-made laws.

9 Eayid Al-Baqami, المملكة العربية السعودية، الإطار النظامي للتجارة الإلكترونية في المملكة العربية السعودية [Electronic Commerce Legal Frameworks in Saudi Arabia] (2012) *Judicial Journal-Ministry of Justice* 174, 182.

10 The enforcement of consumer protection rights is disputed before the court. Two courts deal with consumer disputes, the Commercial Court and general court. See *Law of Commercial Courts 2020* (KSA) Art.14 ('LOCC'); *Law of the Judiciary 2007* (KSA) Art.16 ('LOJ'). The justification for having two different courts dealing with the same issues or disputes is that Article 16 of the Commercial Court Law indicates that the value of the contract must be more than 100,000 Riyals for the Commercial Court to accept the claim. In other words, the law does not mention values lower than this. Therefore, the competent court, in this case, is the general court, which deals with disputes over contracts worth less than 100,000 riyals. See Ayed Al-Baqami, ، التجارة الإلكترونية في النظام السعودي [Electronic Commerce in Saudi Legal System] (The House of Excellence, 2nd ed, 2021) 68.

Chapter Two.¹¹ There is also a lack of coherent and well-understood provisions that can act as preventative measures to protect consumers before engaging in e-commerce transactions. For example, there are no national legal frameworks related to the minimum requirements that an advertisement must fulfil for it to be lawful, and there is no legislation that states what terms are unlawful or unfair or what governs deceptive conduct in the context of pre-contractual information.¹² Consumers in the KSA struggle to achieve effective redress because there are uncertainties over basic rights, such as refunds,¹³ returns¹⁴ and exchanges. This will be discussed in more detail in Chapter Two.¹⁵

There is a lack of clarification for consumers regarding what action to take if they encounter issues with e-commerce transactions, such as unfair contractual terms. While KSA's national legal frameworks, including Islamic law, provide options that can serve as a remedy for the consumer if something goes wrong,¹⁶ there are many shortcomings associated with those options. There are uncertainties related to the various remedial options, as there are different views among the Islamic schools of jurisprudence. For instance, different schools of thought have varying views on the time required to submit a claim of deception.¹⁷ This may force claims to be taken to court, which could result in varying court judgments as several opinions can be

11 Ibn Qudamah, *المعنى*[Al-Mughni] in Abdullah Al-Turki and Abdulfatah Al-Hulw(ed), *المعنى*[Al-Mughni] (The World of Books House, 1997) 5, Ch.6, 213.

12 E-commerce law failed to consider misleading conduct since the law limits 'misleading' to two particular types of conduct (false display of statements, allegations or misrepresentations that result in either directly or indirectly misleading the consumer and using counterfeit products, or when the vendor has no right to use its logo or trademark). See *E-commerce Law 2019* (KSA) Art.11 ('ECL').

13 Islamic law and state made laws did not determine the timeframe in which a refund could be given or the circumstances under which the consumer could access this remedy. See Hussam Fallatah, 'Addressing the Need for Consumer Protection in E-commerce in Saudi Arabia' (PhD Thesis, The University of Leeds, 2017) 110 <<https://etheses.whiterose.ac.uk/18133/>>.

14 Islamic law and state made laws failed to define the party that must provide the remedy in certain cases, such as loss of or damage to the product during shipment. See Shaya Alshahrani, 'Providing Sharia Compliant Consumer Protection in Online Contract: A Case Study of Saudi Arabia' (PhD Thesis, University of Exeter, 2021) 97 <<https://ore.exeter.ac.uk/repository/handle/10871/129638?show=full>>

15 There is uncertainty relating to the legal provisions. For instance, in Islamic jurisprudence, there are many views relating to compensation for defects; therefore, only the court decides the appropriate compensation on a case-by-case basis. In other words, consumer laws have failed to define the situations in which consumers can exercise a certain redress. See Abdulaziz Al-Alwani, 'حماية المستهلك الإلكتروني وفق نظام التجارة الإلكترونية السعودية "دراسة تحليلية" [Electronic Consumer Protection According to the Saudi Electronic Commerce System "An Analytical Study"] (2021) (7) Echo Journal for Legal and Political Studies 1,29 <<https://www.asjp.cerist.dz/en/article/182367>>

16 There are many remedial options for the consumer to exercise, such as the defect option, stipulation option, inspection option, determination or choice option, deception option, option of status, payment option, acceptance option and fraud option. Younes Elahi and Mohd Ismail Abd Aziz, 'Islamic Options (al-Khiyarat); Challenges and Opportunities' (International Conference on Information and Finance, 2011) 102 <<http://www.ipedr.com/vol21/20-ICIF2011-F10019.pdf>>.

17 Daud Rasyid, 'Concept of Khiyār in Transactions in Islamic law' (2020) 4(2) *Samarah* 443, 450.

selected. Another issue is that some of the remedial options available under Islamic law are inappropriate in the e-commerce transaction context. For example, the buyer can be prevented from exercising the defect option if they agree to the vendor's stipulation that the buyer is incapable of doing so.¹⁸ This option can work in traditional commerce contracts in which both the seller and the buyer meet face-to-face to negotiate, inspect or examine the tangible product. It is inappropriate in an e-commerce transactions contract as the buyer is generally unable to meet the seller to negotiate, inspect or examine the object of the contract (tangible or intangible). If the object of the contract is intangible goods, such as e-books, the risk is greater since the nature of these goods means they cannot be examined before purchase. If the contract includes a stipulation clause, the defect option will also deprive the buyer of certain rights, such as the right to a refund or an exchange. Furthermore, in order to exercise the defect option, the defects must impact the value of the product, and this is determined by the traders in the market.¹⁹ The value is difficult to measure as there is no definition of or requirements for significant or insignificant defects in the KSA's national legal frameworks. This would allow sellers to stipulate unfair terms, such as that the consumer has no right to return the product as the seller accepts the product in its current condition. This could result in less trust in conducting e-commerce transactions because the consumer cannot withdraw if there is a defect in the product.

Another example of the shortcomings in the existing national legal frameworks in the KSA is that the timeframe for exercising certain remedy options is unclear.²⁰ The remedy options are designed to protect the buyer since the seller is the dominant party and the buyer is usually in a weak position.²¹ The existing national legal frameworks in the KSA do not provide certainty as they contain ambiguity related to the timeframe for exercising consumer remedies. There is also uncertainty regarding substantial information that must be disclosed in the contract. Therefore, sellers may employ poor business practices that cause buyers to make uninformed decisions. These issues will be discussed further in chapter two.²² The *Hisba* regime is also incapable for govern e-market because the nature of e-commerce transaction is borderless

18 Abdulrazzaq Al-Sanhoury, (٢) *مقارنه بالفقه الغربي الحديث* [The Source of Truth in Islamic Jurisprudence a Comparative Study of Modern Western Jurisprudence (2)], (Institute of Higher Arabic Studies, 1954) 130.131

19 Ibid 130.

20 Abdulkarim Ziden, [*المدخل لدراسة الشريعة الإسلامية* Introduction to Study Islamic Law] (Al-Risala Publisher Foundation, 2005) 366.

21 Rasyid (n17) 456.

22 Alshahrani (n 14) 157.

which will be discussed in chapter Two. Against this background, it is argued that the existing resolutions in the KSA's national legal frameworks are inadequate; they cannot protect the consumer because they are not designed for e-commerce transactions. For example, the deterrent elements of Islamic law are incapable of regulating unfair contractual terms since the provided unfair commercial practices are only capable of regulating traditional commerce. For instance, *Najash* transaction which occur in traditional commerce.²³ Islamic law lacks information regarding modern unfair practices that occur in e-commerce transactions. This is problematic for e-commerce transactions since unfair commercial practices, such as restricting a consumer's ability to access a particular remedy, are absent from the law. Therefore, consumers will be left in an unprotected position. This will be further explored in Chapter Two.

Another resolution accessible to the consumer is complaining before the court, as the court is the competent authority that is able to decide claims on a case-by-case basis. For example, it can determine whether there is an unfair term in the contract.²⁴ This is inappropriate for e-commerce transactions as the value of the product may be low compared to the time, cost and inconvenience required to obtain a remedy. Vendors who reside in another jurisdiction constitute another obstacle in the form of overseas enforcement issues, which are exacerbated if a vendor has no assets and/or physical presence in the market of the consumers. This may mean that consumers have no effective remedies in case something goes wrong. This will be analysed in part two of Chapter Two.

In summary, consumer rights are not adequately catered to by the existing KSA national legal frameworks, and they are not certain as they are scattered in the primary and secondary sources of Islamic law. Therefore, consumers are often left with no option but to mount a claim before the court, either to obtain a decision when there are different opinions by Islamic Scholars (Schools) on what should apply or because consumer rights may be absent from the national existing legal frameworks.

People are engaging in e-commerce transactions on a global level because we live in the age of technology in which consumers can easily and quickly buy goods from a seller located in

²³ *Najash* is the practice of outbidding for goods or services to raise the price for the seller rather than for the purpose of buying the goods or services.

²⁴ *Anti-Commercial Fraud Law 2008* (KSA) Art. 12 ('ACFL'); ('ECL') (n 12) Art. 22.

another country.²⁵ Therefore, consumers need more protection because they are unable to ascertain that the product matches the vendor's description because they cannot inspect or examine it before purchase.²⁶ Riyadh Chamber revealed statistics related to e-commerce in KSA, including the issues and challenges of the e-commerce sector. According to the report, 81.2% of participants specified that the first challenge in the list is the lack of clear policies governing the return and exchange of products, leading to a lack of trust placing second on the list.²⁷ The majority (70.6%) of participants indicated that protecting the consumer in e-commerce is another challenge in the KSA, placing it third on the list.²⁸

This thesis will focus on cross-border e-commerce business-to-consumer (B2C) transactions.²⁹ This choice was made because cross-border transactions amplify the existing problems in KSA national legal frameworks due to difficulties with enforcement.³⁰ This results in problems with a greater scope and may result in less trust between the vendor and purchaser as the former may be located outside the KSA.³¹ Furthermore, the e-commerce environment is unique

25 Takashi Kubota, 'Consumer Protection in Cross-Border E-Commerce Market' in Shino Uenuma (ed), *Cyber Law for Global E-Business: Finance, Payments, and Dispute Resolution* (Information Science Reference) 210, 211

26 Nahla Khalil, 'Factors Affecting the Consumer's Attitudes on Online Shopping in Saudi Arabia' (2014) 4(11) *International Journal of Scientific and Research Publication* 1, 2 <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.653.3454&rep=rep1&type=pdf>>

27 Riyadh Chamber, ، أرقام ومؤشرات وأرقام ، [E-Commerce Indicators and Figures] (Report, August 2021) 39 <<https://marsad.chamber.sa/ResearchAndStudies/EconomicIndicators/Documents/التجارة%20الإلكترونية%20في%20السعودية.pdf>>.

28 Ibid.

29 The aforementioned issues can be experienced at the local and international levels, yet the risk is greater at the international level since the provided resolution mechanisms would not be effective due to their associated obstacles. However, at the local level, consumers can claim before the court and, therefore, judgments will be enforced. By contrast, in cross-border e-commerce transactions, there is a possibility that the consumer has no effective resolution.

30 Kubota (n 25) 212.

31 There is compelling evidence demonstrating that consumers faces issues when purchasing via e-commerce. According to a Consumers International Organisation report, 52% of e-consumers in MENA countries face issues such as delays in delivery, products not matching descriptions and delivery failure. See 'Regional Briefing: E-commerce and Consumer Protection in the Middle East and North Africa', *Consumers International* (Web Page) 4 <<https://www.consumersinternational.org/media/314596/e-commerce-mena-briefing-dec2019.pdf>>. According to a study, more than half of the respondents indicated that the quality of products was the major issue faced by the consumer; 25.6% were concerned about the risk of fake websites and 20.48% stated that delays in shipping and uncertainty were risks associated with e-commerce. See Mohammad Alam and Sheriff Elaasi, 'A Study on Consumer Perception Towards E-Shopping in KSA' (2016) 11(7) *International Journal of Business and Management* 202, 207

<<https://www.ccsenet.org/journal/index.php/ijbm/article/view/59370>>. The Ministry of Commerce ('MC') warned e-consumers about dealing with cross-border e-stores owned by already blocked Chinese e-stores targeting the KSA e-market by advertising low-quality products and deceiving e-consumers by displaying deceptive pictures that do not match the real product. See 'التجارة" تحذر من مواقع تعود ' ["MC" Warns the Consumer about Chinese Store Targeting Saudi Market with Poor Quality Products and Misleading Advertisements]', *Ministry of Commerce* (Web Page, 29 March 2021) [2] <<https://mc.gov.sa/ar/mediacenter/News/Pages/28-03-21-03.aspx>>. Recently, a report indicated that 80% of KSA's population prefers to

because the contract is often concluded without negotiations, inspection or an examination of the product. The issuing of the new draft consumer protection law supports the argument advanced in the thesis that there are gaps in the existing national legal frameworks.³² The new draft consumer protection law aims to achieve fair and balanced rights and obligations between the seller and the buyer; protect the consumer from products or services that may be harmful, defective or not safe; raise consumer awareness of their rights and obligations; improve resolution mechanisms; and enhance buyer and seller participation in decision making in processes that concern them.³³ The following section provides empirical data in support of the arguments presented, highlighting the e-commerce landscape.

B The Electronic Commerce Landscape in the KSA

Like most jurisdictions in the world, e-commerce in the KSA has been rapidly developing in recent years. The coronavirus (COVID-19) pandemic accelerated the shift from t-commerce to e-commerce to minimise the spread of the virus.³⁴ Online trading, particularly B2C, is becoming increasingly popular in the KSA. This is supported by the latest statistics: According to a report by the Communication and Information Technology Commission entitled *E-Commerce in Saudi Arabia 2017*, more than 29.7 billion Saudi riyals worth of transactions were made in 2016 in the e-commerce sector,³⁵ and in 2019, online spending reached 39 billion Saudi riyals.³⁶

pay on delivery. See Jeddah Chamber, ، احصائيات التجارة الإلكترونية في المملكة العربية السعودية [Statistics Electronic Commerce in the Kingdom of Saudi Arabia] (Report, September 2020) 6 < 14 احصائيات التجارة الإلكترونية - Sep (jcci.org.sa)>. These statistics indicate that consumers face issues with electronic commerce transaction, which reduces their trust in this form of commerce.

32 KSA policymakers are aware that there is an issue, and the existing national legal frameworks are incapable of providing adequate protection or enhancing consumer trust in e-commerce transactions. Hence, the new draft consumer protection law needs to supplement the existing national legal frameworks by resolving the shortcomings within the existing national legal framework; otherwise, it will not provide sufficient protection.

33 Ministry of Commerce, 'Consumer Protection Law', Public Consultation Platform (Web Page, 31 March 2022) Art.2 <<https://istitlaa.ncc.gov.sa/ar/Trade/mci/Consumer/Pages/default.aspx>> ('Consumer Protection Law').

34 Jeddah Chamber, [توجه المستهلك نحو الشراء عبر الانترنت في ظل جائحة كورونا] [Consumer Shifting to Buy via Internet During Covid-19 Pandemic] (Report, October 2020) 3 < توجه المستهلك نحو الشراء عبر الانترنت في ظل جائحة كورونا > (jcci.org.sa)>.

35 Communication & Information Technology Commission ('CITC'), *E-Commerce in Saudi Arabia* (Annual Report, 14 Oct, 2017) 13, <https://www.citc.gov.sa/en/reportsandstudies/Reports/Documents/cict_ecommerce_2017_english.pdf >

36 Jeddah Chamber (n 34) 3

1 High Internet Penetration

This enormous growth is driven in part by the increasing number of young Saudis with smartphones and broadband access.³⁷ In 2017, internet penetration in KSA stood at 76%.³⁸ In 2021, internet penetration reached 98.1%.³⁹

According to the UNCTAD B2C E-commerce Index, which aims to benchmark the preparation and readiness of states to engage in e-commerce,⁴⁰ the assessment of countries is based on several categories, including the rate of internet use, the number of safe online portals, the extent of banking penetration and the level of posting trustworthiness.⁴¹

In the global context of the overall ranking across all economies in 2017, KSA was positioned 45th out of 144 economies with a score of 69, just behind Italy and Russia and ahead of states with larger economies, including India and China.⁴² However, in 2020, KSA's ranking fell to the 49th position, scoring 72.3, lagging behind countries with smaller or similar economies, such as Iran.⁴³ The report illustrates that the rate of individual internet usage rose between 2016 and 2018, as the score increased from 74 in 2016⁴⁴ to 93 in 2018.⁴⁵ In 2020, the internet usage rate rose to 96.⁴⁶ Nonetheless, the overall index rank of KSA decreased from 45th in 2017 to 49th in 2020, while the overall score increased from 2017 to 2020. The justification for this is that the score of other member states' economies increased more than the score of KSA. This indicates that the growth of KSA is slower compared to other countries; for instance, in 2017, Iran scored 69 positioned at 46,⁴⁷ and in 2020, Iran scored 75.0 positioned at 45.⁴⁸ Therefore,

37 ('CITC') (n35)13

38 Ibid 25.

39 Communication & Information Technology Commission ('CITC'), *Saudi Internet 2021* (Annual Report,2021) 5 <internt-saudi-2021.pdf (citc.gov.sa)>

40 UNCTAD, Division on Technology and Logistics Science Technology and ICT Branch ICT Policy Section, UNCTAD B2C E-commerce Index 2016, UN Doc TD TN/UNCTAD/ICT4D/09 (April2016), 1.

41 Ibid.

42 Ibid 10.

43 UNCTAD, Technology notes on ICT for Development No.17and Logistics Science Technology and ICT Branch ICT Policy Section, UNCTAD B2C E-commerce Index 2020: Spotlight on Latin America and the Caribbean, UN Doc TD TN/UNCTAD/ICT4D/17 (February 2021), 6.

44 UNCTAD B2C E-commerce Index 2017 (n 3) 10.

45 UNCTAD B2C E-commerce Index 2019 (n 4) 5.

46 Alex Chung and Ying Yu, *Consumer Trust in the Digital Economy: The Case of Online Dispute Resolution* 'UN Doc TD/CONF' (8 November 2022) Para 2-9<Research Paper: Consumer trust in the digital economy: The case for online dispute resolution (unctad.org)>

47 UNCTAD B2C E-commerce Index 2017 (n 3) 10.

48 UNCTAD B2C E-commerce Index 2020 (n 43) 6.

the development of Iran is better than KSA even though the ranking position between 2017 and 2020 is insignificant.

2 Internet Use Patterns in the KSA

Saudis use the internet for various purposes. The pattern of internet usage has shifted dramatically in recent years due to the spread of COVID-19; for example, people increased their use of the internet for education and business.⁴⁹

The online activities of users are divided between purchasing commodities or services (70.1%), downloading apps or programs (62.9%), downloading videos, games or movies (55.5%), scanning blogs or news websites (55.1%), seeking data on commodities or services (52.7%) and seeking information from government departments (33.9%).⁵⁰ The most popular websites in the KSA are Google, YouTube, Twitter, Facebook, Microsoft, Instagram, WhatsApp, *Haraj*, Amazon and *Nafadh*.⁵¹ Approximately 95% of Saudis use online government services (OGS),⁵² whereas 73.6% of Saudis use e-banking.⁵³

The majority (69%) of Saudi citizens shop online; 89.9% shop from local stores and 51.4% from international sites.⁵⁴ Another report revealed that during the COVID-19 pandemic in 2020, nearly 92% of KSA consumers purchased online compared to 8.2% who did not.⁵⁵ Moreover, 28.8% of consumers prefer to shop online at local stores, 12.5% prefer to shop online on international websites and 58.7% like to shop on both types of websites.⁵⁶ Almost one-quarter (22.6%) of online customers shop online to access the product at a lower price, 22.1% do so to comply with COVID-19 protocols, 18.8% shop online because the product they want to purchase is unavailable on the traditional market, 15.4% do so to access a variety of goods, 10.6% buy online to save travel time and 9.1% shop online to save transportation costs.⁵⁷

49 Communication & Information Technology Commission ('CITC'), *ICT and Sustainability in Saudi Arabia* (Annual Report, 2022) 36 < SUSTAINABILITY REPORT 2022 (citc.gov.sa)>

50 Ibid 10.

51 Ibid 11.

52 Ibid 13.

53 Ibid 14.

54 Ibid 15,16.

55 Jeddah Chamber (n 34) 9.

56 Ibid 13.

57 Ibid 14.

3 Government Efforts to Enhance the Online Sector

The KSA government's focus on the e-commerce sector is another factor that helps it to flourish. The government launched its 2030 Vision to enhance various sectors, and one of the 2030 Vision programs is the National Transformation Scheme, which aims to enhance infrastructure in the KSA, including digital transformation.⁵⁸ Various initiatives were established to meet the objective of this vision, such as implementing the E-commerce Transaction Law to provide an adequate national legal framework for the online environment.⁵⁹

Another instance of the government's effort to develop the online sector was the establishment of the E-commerce Council to contribute to the growth and strengthening of the e-commerce business system.⁶⁰ The Maroof platform was also launched,⁶¹ and the KSA approved the Unified Strategic Framework of E-commerce among the GCC countries, which aims to exchange information, promote transparency, smooth cross-border e-commerce and unify e-commerce consumer protection doctrines.⁶²

4 Emergence of New Online Stores in the Middle East

There continues to be an increase in the number of online stores that are established by both local and international vendors in the KSA because traditional companies are considering e-commerce as a 'complementary channel' and a way to expand their businesses.⁶³ In 2017, Amazon, the giant e-commerce platform, entered the e-market in the Middle East by taking over Souq.com (an e-commerce marketplace in the Middle East).⁶⁴ The deal was worth almost

58 'National Transformation Program', *National Transformation Program* (Web Page) [1]<National Transformation Program - Vision 2030> 59 Jeddah Chamber (n 34) 4.

60 Jeddah Chamber, المملكة العربية السعودية، دراسة توجّه قطاع الأعمال نحو التجارة الإلكترونية في المملكة العربية السعودية [A study of the business sector's orientation towards e-commerce in the Kingdom of Saudi Arabia] (Report, August 2019) 4 <للنشر> (jeg.org.sa) <تقرير التجارة الإلكترونية في المملكة العربية السعودية - للنشر>.

61 This platform is a service established by the Ministry of Commerce for searching and reviewing online stores in Saudi Arabia to support e-commerce and increase reliability for both traders and customers.

See 'Maroof', Maroof (web Page) [1] <maroof.sa> ('M'). There are approximately more than 70,000 online stores registered on this platform; See Jeddah Chamber (n 34) 6.

62 Ministry of Commerce ('MC'), 'The Efforts of Saudi Arabia in the Implementation of the United Nations Guidelines for Consumer Protection'(Conference Paper, United Nations Review Conference on Competition and Consumer Protection, 23 October 2020) [1] <United Nations Review Conference: The Efforts of Saudi Arabia in the Implementation of the United Nations Guidelines for Consumer Protection (unctad.org)>

63 ('CITC') (n35) 13.

64 Noicolas Parasie, 'Amazon to Buy Middle East E-Commerce Site Souq.com: Acquisition will be one of the Biggest in Recent Years for the Global Giant', *The Wall Street Journal* (Web Page, 28 March 2017)[1] <Amazon to Buy Middle East E-Commerce Site Souq.com - WSJ>

\$700 million.⁶⁵ In addition, *Noon*, another e-commerce marketplace in the Middle East, was formed as a joint venture project between the Saudi Public Investment Fund and the Emaar Properties chairman Mohamed Alabbar.⁶⁶ Both platforms offer online products and services in the KSA, and it is predicted that these investments will boost the KSA's e-market.⁶⁷ *Namshi* is another platform that offers a variety of products in the KSA and the UAE, and it was founded in 2011.⁶⁸ In 2022, the Noon platform published a proposal to take over the *Namshi* platform for a total of \$335.2 million.⁶⁹ These facts indicate that the e-commerce market is dramatically growing in the Middle East, and therefore, the law needs to keep up with this development by overcoming any shortcomings in the national legal frameworks designed to protect consumers who engage in this form of commerce. The next section highlights the research objectives and questions.

C Research Objectives and Questions

The objective of this thesis is to identify deficiencies in the KSA's existing national legal frameworks relative to e-commerce transactions, including the new draft consumer protection law, to compare KSA national legal frameworks to those of the GCC countries, particularly the UAE, Qatar and Kuwait. The comparison aims to find a solution that can be adapted/adopted by the KSA to address the identified gaps and issues that are present in the KSA's existing consumer laws and the new draft consumer protection law.

The central argument of this thesis is that the KSA needs to reform its national legal frameworks to better protect the rights of consumers, particularly in a cross-border context. The answers to the following three questions inform this central argument:

1. What gaps exist in consumer protection law in the existing national legal frameworks of the KSA, and if the proposed consumer protection law were enacted in its current form, to what extent would it fill these gaps?

65 Ibid [2].

66 Australian Government (Austrade), *Accessing the E-commerce Market in KSA, Turkey and UAE: A Guide for Australian Business* (Report) 8 <<https://www.austrade.gov.au/ArticleDocuments/1353/Accessing-the-Ecommerce-market-in-KSA-Turkey-UAE.pdf.aspx>>.

67 ('CITC') (n35) 27.

68 Australian Government (Austrade), *Accessing the E-commerce Market in KSA, Turkey and UAE: A Guide for Australian Business* (Report) 13 <<https://www.scribd.com/document/570459704/Accessing-the-Ecommerce-market-in-KSA-Turkey-UAE>>.

69 'Namshi Acquired by Noon', *Crunchbase* (Web Page, 20 August 2022) <Noon acquires Namshi - 2022-08-20 - Crunchbase Acquisition Profile>

2. Is there a legal resolution in the legal frameworks of GCC countries that may be adopted and/or adapted by the KSA to better protect consumers?
3. What legal frameworks/solutions are recommended based on the critique of KSA and GCC legal frameworks?

D Research Contribution and Significance

Several studies have examined the deficiencies in the KSA national legal frameworks that negatively affect consumer trust in e-commerce transactions.⁷⁰ The focus of those studies has mainly been to examine the shortcomings of the KSA national legal frameworks in local transactions; in other words, they do not specifically discuss cross-border e-commerce transactions.⁷¹ In summary, the arguments in those studies had three particular points in common. They shed light on the legal shortcomings related to: 1) the mandatory information that must be disclosed in either the contract or advertisement; 2) the right to redress; and 3) the right to withdraw.⁷² *Abdulaziz* discusses consumer protection from two angles: protecting the consumer before entering into an online contractual relationship, including protection from misleading advertisements; and online consumer protection during the implementation of the contract and after the contract's conclusion (online consumer protection from unfair terms and hidden defects, and the rights to be informed, to withdraw from the contract and to have personal information protected).⁷³ *Fallatah* and *Alshahrani's* studies proposed a framework to overcome the deficiencies of KSA national legal frameworks.⁷⁴ However, to date, a gap still exists in the literature regarding issues with cross-border e-commerce transactions in the KSA. *Al-Baqami* discussed e-commerce law and the shortcomings of KSA national legal frameworks.⁷⁵ He acknowledged that the nature of e-commerce transactions is borderless and that this can present challenges relating to the governing law or to jurisdiction in disputes between buyers and sellers.⁷⁶ *Almalki* likewise discussed the KSA's national legal frameworks

⁷⁰ Fallatah (n 13) 14; Alshahrani (n 14) 20-21.

⁷¹ Fallatah (n 13) 18; Alshahrani (n 14) 34.

⁷² Fallatah (n 13) 21; Alshahrani (n 14) 34-35; Al-Alwani (n 15) 2.

⁷³ Al-Alwani (n 15) 3.

⁷⁴ Fallatah (n 13) 25; Alshahrani (n 14) 37.

⁷⁵ Al-Baqami (n 10).

⁷⁶ *Ibid* 193.

with regard to e-commerce transactions as well as the extent of consumer protection relating to fraud,⁷⁷ the submission of claims⁷⁸ and consumer privacy protection.⁷⁹

The argument of this thesis differs from the arguments found in the existing literature as it focuses on the fact that in cross-border e-commerce transactions, the deficiencies in the existing KSA frameworks are amplified. In other words, the nature of the existing frameworks is particularly unsuitable for the proper governance of cross-border e-commerce transactions — for instance, the legal resolution mechanisms are one of the main obstacles that hinder a buyer's ability to access remedies when there is a dispute.

The other distinction between this research and existing studies is that this study discusses the proposed consumer protection law — a law that is still in the draft phase. The new draft consumer protection law aims to achieve fair and balanced rights and obligations between the seller and the buyer; protect the consumer from products or services that may be harmful, defective or unsafe; raise consumer awareness of their rights and obligations; improve resolution mechanisms; and enhance buyer and seller participation in decision making in processes that concern them. The new draft law was open for public comments from 31 March 2022 until 9 June 2022.⁸⁰ The new law will be implemented in approximately December of 2023.⁸¹ The existing literature considers the existing KSA national legal frameworks but is not concerned with the newly proposed consumer protection law. This thesis will build on the existing literature in this area by evaluating the new law. Based on this evaluation, the researcher will identify whether there are any deficiencies or a lack of protection in cross-border e-commerce transactions. The previous work of Alshahrani foreshadows this study and calls for research into the cross-border enforcement issue in e-commerce transactions.⁸² Therefore, this study is timely and will propose a framework and solutions to overcome or minimise identified issues, as these are missing from the existing national legal frameworks.

77 Adnan Almalki, 'Legal Protection for the Consumer in E-Commerce According to Saudi Law (A Descriptive, Analytical, and Comparative Study with the Laws of the United States of America)' (2021) 12(4) *Beijing Law Review* 1131, 1134.

78 Ibid 1135.

79 Ibid 1137.

80 Consumer Protection Law (n 33) 2.

81 The Minister of Commerce Dr. Majid Al Qasabi Announced in February that the New draft Consumer Protection Law will be Implemented in Eight Months' Time. See @alekhbariyatv, (Twitter, 17 February 2023, 10:34pm) <

<https://twitter.com/alekhbariyatv/status/1626590800464474113?t=3HmFkgmgZemPOI5BATqI8g&s=09>> ('Dr. Majid Al Qasabi Announced Implementation Time').

82 Alshahrani (n 14) 328.

The solutions will take the form of preventative measures that work as a shield to provide more protection to the consumer rather than as a sword that can only be used when a dispute arises.

This research is significant because it not only identifies gaps in the KSA's national legal frameworks related to cross-border e-commerce transactions but also, and more importantly, provides possible solutions to overcome these challenges. The proposed frameworks and solutions will help to ensure that consumers in the KSA have the highest standards of protection when they trade online. This is required because they are usually in a weak position compared to the seller in e-commerce transactions, and they are exposed to several risks due to their lack of experience with and knowledge of legal regulations. Moreover, if the KSA adopts laws and other measures in line with the recommendation in this thesis, the consumer's ability to make informed decisions will be enhanced. In turn, this will contribute to the growth and development of e-commerce in KSA. The information about the risks associated with e-commerce transactions will be available to them, and the process of claiming redress will be clarified, thereby making consumers aware of the possible remedies if they face issues with e-commerce transactions.

This research will be beneficial to the KSA as it will help consumers overcome existing shortcomings in online consumer protection and enhance this protection, especially in cross-border contexts. In addition, other developing countries can benefit from this model and utilise it to protect their consumers in the online world.

E Thesis Scope

This thesis will consider cross-border e-commerce transactions for goods (both tangible and intangible). The rationale for this choice of topic is that cross-border e-commerce transactions amplify the existing problems in KSA law (e.g., the lack of effective redress when things go wrong) because these transactions present enforcement difficulties and a greater scope for things to go wrong. After all, consumers cannot inspect goods before purchasing, and there is less trust between the vendor and purchaser when the former is located outside the KSA. This research discusses the existing laws that seek to prevent consumer protection issues from arising (e.g., laws on misleading advertisements) as well as those that provide redress when things do go wrong (e.g., remedies). The thesis also focuses on issues of enforcement, particularly in a cross-border context. The next section details the research methodology.

F Methodology

This research involves doctrinal research methods. Dobinson and Johns defined doctrinal research as research that asks what the law is in a particular area. The researcher seeks to collect and then analyse primary sources, including applicable case law, together with any relevant legislation. This may also include secondary sources, such as scholarly journal articles, books and other scholarly works, including written reports on the relevant case law and legislation. The aim of examining these materials is to describe a body of law and explain how it is applied in practice. In doing so, the researcher will also provide an analysis of the law to demonstrate how it has developed in terms of judicial reasoning and legislative enactment. In this regard, the research can be seen as normative or purely theoretical.⁸³ This research methodology is appropriate for this thesis as one of the research objectives is to identify the deficiencies in the KSA's existing national legal frameworks relative to e-commerce transactions. To achieve this research objective, the thesis adopts a doctrinal approach to analyse and evaluate both primary and secondary legal sources, such as legislation and the Quran, Sunna and jurisprudence (fiqh) books.

The thesis will use doctrinal research to nominate and weigh resources, taking into account the hierarchy and authority of KSA law, including Sharia and state-made laws relating to consumer protection in the online context. It will also interpret elements of the social background that affect the implementation of the law, such as consumer awareness of their legal rights. According to Dobinson and Johns, 'doctrinal research ... is a process of selecting and weighing materials taking into account hierarchy and authority as well as understating social context and interpretation'.⁸⁴ In Chapters Two and Three, a doctrinal methodology was selected and used to answer the first research question. Primary sources, such as legislation, were used to analyse and identify the gaps in the existing national legal frameworks within the KSA.⁸⁵

A comparative functional methodology was also utilised to compare the KSA national legal frameworks with the GCC national legal frameworks of the UAE, Qatar and Kuwait.⁸⁶

83 Lan Dobinson and Francis Johns, 'Legal Research as Qualitative Research' in Mike McConville and Wing Hong Chui (ed), *Research Methods of Law* (Edinburgh University Press, 2017) 18,21.

84 Ibid 42.

85 Ibid 21.

86 Mark Hoecke, 'Methodology of Comparative Legal Research' (2015) *Law and Method* 1,9

<<https://www.bjutijdschriften.nl/tijdschrift/lawandmethod/2015/12/RENM-D-14-00001>>

A comparative functional methodology is defined as ‘a study of how the same thing may be brought about, the same problem may be met by one legal institution or doctrine or precept in one body of law and by another and quite different institution or doctrine or precept in another’.⁸⁷

This methodology allows the researcher to look at issues within KSA consumer protection laws and find out the approaches of the compared jurisdictions to overcome or solve the issues.⁸⁸ This methodology is appropriate for this thesis because the compared jurisdictions are culturally similar.⁸⁹ It also provides a rational tool to overcome the identified issues due to the similarity of the legal principles and the legal systems.⁹⁰ Simply stated, this methodology provides the likelihood that the solutions to the gaps identified within the KSA consumer laws can be found in the approaches used by the compared countries.⁹¹ The aim is to find a solution from the GCC countries to solve the identified issues in KSA national legal frameworks,⁹² and to find a role model that can be adopted by KSA to propose lawful frameworks for the deficiencies in KSA national legal frameworks.⁹³

Finally, a non-doctrinal law-reform-orientated research methodology will be used in this thesis. The researcher will argue that the existing KSA national legal frameworks provide inadequate protection for KSA consumers in the cross-border context. Therefore, there is a need to propose several solutions to the indicated issues and to this end, several legal principles will be examined in several GCC countries, the EUD, the UN guidelines and the OECD toolkit. This research methodology is appropriate for this study as one of the objectives is to recommend legal frameworks/solutions to resolve the identified gaps and issues. This addresses Research Question Three (see Chapter Five) by collecting data from several legal principles to propose a law reform that closes the gaps identified in the existing national legal frameworks. The following section presents the thesis outline.

87 Ibid.

88 Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Hart Publishing, 2014) 67.

89 Hsua Jaakko, ‘Functional Method in Comparative Law – Much Ado about Nothing’ (2013) 2(1) *European Property Law Journal* 2,16 <<https://www.proquest.com/docview/1704262648?pq-origsite=primo>>.

90 Ibid.

91 Hoecke (n 86) 9.

92 Ibid.

93 Edward Eberle, ‘The Methodology of Comparative Law Articles and Responses’ (2011) 16(1) *Roger Williams University Law Review* 51,51

G Model Consumer Protection Framework

This section establishes the central tenets of a Model Consumer Protection Framework based on the literature that addresses existing KSA consumer protection laws in the context of cross-border e-commerce transactions. It outlines the characteristics of an ideal consumer protection framework. The chapter draws from established sources in this area, including the UN and OECD guidelines for consumer protection in e-commerce. This section is divided into two parts. The first part deals with the historical context of the development of the UN and OECD guidelines to provide an overview of the development of those guidelines. The second part discusses the characteristics of the consumer protection framework that serve as an appropriate benchmark to evaluate the KSA consumer protection law.

1 Historical Overview of the UN and OECD Guidelines

Consumer protection guidelines in the UN and OECD are soft laws that are not designed to be binding on or enforced against the member states.⁹⁴ However, they can be a model for other countries in designing and enhancing consumer protection policies.⁹⁵ The guidelines have shifted and been upgraded over the years.⁹⁶ This was driven by emerging issues and the adoption of digital transactions, particularly across the border.⁹⁷ The UN and OECD guidelines are adequate guidelines for jurisdictions to use to implement sufficient consumer protection because of their nature as soft laws and their resilience to adoption. Next, the guidelines have developed over the years and reflect emerging issues, which comes to the status of maturity because they provide solutions to various issues. Finally, some of the guidelines are designed for the nature of cross-border transactions, which is the scope of this thesis. The first time international consumer law doctrines were recognised by the General Assembly was in resolution 39/248 in 1985 when the UN adopted guidelines for consumer protection.⁹⁸ The guidelines were expanded by the Economic and Social Council in 1999 by resolution 1999/7. However, the guidelines were reviewed and adopted in 2015 by the General Assembly in

⁹⁴Mateja Durovic, 'International Consumer Law: What It All About?' (2020) 43 *Journal of Consumer Policy* 125,129 <<https://link.springer.com/content/pdf/10.1007/s10603-019-09438-9.pdf>>.

⁹⁵ Ibid 130.

⁹⁶ Iris Benohr, 'the United Nations Guidelines for Consumer Protection: Legal Implication and New Frontiers' (2020) 43 *Journal of Consumer Policy* 105,121 <<https://link.springer.com/article/10.1007/s10603-019-09443-y>>.

⁹⁷ Ibid 106.

⁹⁸ General Assembly, United Nations Guidelines for Consumer Protection, GA Dec 39/348, UN GAOR, 2nd Comm, 104th plen mtg, (18 December 1984) ('United Nations Guidelines for Consumer Protection 1984').

resolution 70/186.⁹⁹ The first guidelines that made a substantial impact on international consumer law were the UN Guidelines of 1985.¹⁰⁰ These emphasised that consumers are challenged by imbalanced positions in terms of economic, education and bargaining power; therefore, promoting just, equitable and sustainable economic and social development is crucial for a better future.¹⁰¹ The 1985 guidelines cover various aspects of consumer protection, including buyer education and information, health and safety and redress.¹⁰² The guidelines enacted in 1999 enacted a series of novel provisions aimed at fostering sustainable consumption practices.¹⁰³ They also included environmental education and consumer redress.¹⁰⁴ In 2015, the guidelines introduced a new section on good practices, national consumer protection policies, electronic commerce, financial services, consumer redress and international corporations, which broadened them to cover enforcement and dispute resolution hurdles.¹⁰⁵ It is worth noting that the scope of the guidelines has expanded from initially being general to paying particular attention to vulnerable and disadvantaged consumers; it also highlights the importance of accessing essential commodities.¹⁰⁶ The other supranational organisation that provides a set of consumer protection guidelines is the OECD. In 1999, the first general guidelines for governing cross-border e-commerce transactions were approved.¹⁰⁷ The key principle of these guidelines is that the protection offered to e-consumers should not be less than the protection offered in traditional commerce.¹⁰⁸ The purpose is to inspire just commerce and advertising by disclosing adequate information regarding the identity of the seller, commodity, and terms and conditions of the transaction.¹⁰⁹ This requirement emanates from the doctrine that the consumer should obtain adequate information to allow them to make an

99 General Assembly, United Nations Guidelines for Consumer Protection, GA Dec 70/186, UN GAOR, 2nd Comm, 17th sess, Agenda Item 18, UNCTAD/DITC/CPLP/MISC/2016/1, (22 December 2016)[3] ('United Nations Guidelines for Consumer Protection 2016').

100 Benohr (n96) 108.

101 ('United Nations Guidelines for Consumer Protection 1984') (n 98) Annex [1].

102 Ibid.

103 Benohr (n96) 108.

104 Claudia Marques, *Consumer Law and Socioeconomic Development National and International Dimensions* (Springer International Publishing, 2017) 29

105 ('United Nations Guidelines for Consumer Protection 2016') (n 99).

106 Benohr (n 96) 109

107 OECD, *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*, 09 December 1999 3 ('OECD Guidelines in the Context of E-Commerce 1999').

108 Ibid.

109 Ibid.

informed decision.¹¹⁰ It also aims to provide guidelines to access a transparent transaction confirmation method; safe payment resolution; just, timely and cheap dispute resolution and redress mechanisms; and consumer and business education.¹¹¹ The recommendation was expanded in 2003 to cover consumer protection with special attention to cross-border fraudulent and misleading deceptive conduct.¹¹² It aims to offer a framework to overcome the issues of cross-border deceptive and misleading practices and increase cooperation between consumer protection agencies regarding misleading practices.¹¹³ Therefore, this recommendation is exclusive to deceptive and misleading practices. Afterwards, the OECD worked to improve a harmonised framework for adequate redress and dispute resolution in response to legal and practical impairments for resolving consumer disputes, particularly in cross-border e-commerce transactions.¹¹⁴ The 1999 OECD Recommendation Concerning Guidelines for Consumer Protection in E-commerce was updated and adopted by the OECD Council in 2016.¹¹⁵

The UN and OECD guidelines were enhanced based on issues that have emerged as a result of the challenges posed by the nature of e-commerce cross-border transactions. This is evident from the discussion of the development of the guidelines of the UN and OECD organisations. Furthermore, the enhancement of consumer protection frameworks occurs because there are different problems faced by the consumer, different cultures, and different economic and political contexts in various jurisdictions.¹¹⁶ The guidelines did not highlight some issues regarding the law applicable to cross-border e-commerce transactions.¹¹⁷

110 Karen Alboukrek, 'Adapting to a New World of E-Commerce: The Need for Uniform Consumer Protection in the International Marketplace' (2003)35(2) *George Washington International Law Review* 425,435.

111 ('OECD Guidelines in the Context of E-Commerce 1999') (n 107) 3.

112 OECD, *OECD Recommendation of the Council Concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders*, 11 June 2003 3 ('OECD Guidelines for Protection from Fraud and Deceptive 2003').

113 *Ibid.*

114 OECD, *OECD Recommendation on Consumer Disputes and Redress*, 17 July 2007 5 ('OECD Recommendation on Dispute and Redress 2007').

115 ('Recommendation for Consumers in E-Commerce 2016') 3.

116 Monique Goyens, 'Effective Consumer Protection Frameworks in a Global and Digital World' (2020) 43 *Journal of Consumer Policy* 195,196 <<https://link.springer.com/article/10.1007/s10603-019-09423-2>>

117 Arnau Vila, 'International Consumer Protection at the United Nations: Towards Global Governance?' (2020) 43 *Journal of Consumer Policy* 91,95 <<https://link.springer.com/article/10.1007/s10603-019-09424-1#citeas>>.

2 The Evaluative Framework for E-Commerce Transactions

It is imperative to enhance consumer protection policies.¹¹⁸ Therefore, the enhancement needs a framework to evaluate the status of consumer protection laws. The purpose of establishing the model is that it will be used in the thesis as an evaluative framework for consumer protection laws. The Saudi Central Bank established a general framework for protecting the consumer while dealing with KSA financial institutions.¹¹⁹ It sets a rules or principles that must be followed by financial institutions to protect consumers.¹²⁰ The aim of this framework is to keep up with the international instruction for protecting financial consumers, provide fair and honest environment through dealing with consumer in a transparent approach and access financial product and services at a reasonable cost.¹²¹ Some of the principles can be adopted in this thesis such as treating consumer in fair, honest approach and disclosing clear and accurate information.¹²² Other principles cannot be adopted because they are not under the scope of the thesis such as protection the consumer privacy and fees polices.¹²³ Therefore, the thesis may adopt some of the principles in the framework which related to the thesis scope otherwise, the thesis may not adopt principles that outside of the thesis scope. In this section, a model evaluative framework for e-commerce consumer protection across borders is discussed. The purpose of selecting this model is that consumers should not be protected less in e-commerce transactions than in traditional commerce.¹²⁴ Consumer laws should enhance the confidence of the consumer to conduct e-commerce transactions by developing transparent and effective consumer policies and a protective environment. There is thus a need to provide fair contractual provisions that regulate misleading conduct and eliminate unfair practices.¹²⁵ Countries should make consumer laws that enhance consumer protection in e-commerce since e-consumers need several additional elements to be protected in e-commerce transactions. Policymakers should give particular attention to e-commerce transactions because they are unique in terms of the

118 ('United Nations Guidelines for Consumer Protection 2016') (n 99) Annex III [7].

119 This framework can be accessed through the link <https://www.sama.gov.sa/en-US/LawsRegulations/ConsumerProtectionRules/Consumer_Protection_EN.pdf>

120 The guideline consists for 5 sections (introduction including definitions and purposes, consumer protection principles, general code rules, specific code rules and conclusion).

121 Saudi Central Bank, *Financial Consumer Protection Principles and Rules*, 2022 3. ('Saudi Financial Consumer Protection Principles')

122 Ibid 6

123 Ibid 7, 9.

124 ('United Nations Guidelines for Consumer Protection 2016') Annex I [20]; ('OECD Guidelines in the Context of E- Commerce 1999') (n 107) 13.

125 ('United Nations Guidelines for Consumer Protection 2016') (n 99) Annex I [20].

lack of examination or inspection of the commodity.¹²⁶ This creates an imbalance between the positions of seller and consumer in terms of product status or characteristics. This should be remediated by providing information prior to the conclusion of the transactions.¹²⁷ Furthermore, e-commerce is a trading environment that is not restricted by geographical borders. This may lead to the inability to resolve disputes in the consumer's jurisdiction due to the difficulty of enforcing local laws upon international sellers.¹²⁸ Hence, there is a need to provide a combination of dispute resolution mechanisms and to cooperate with international consumer protection agencies to provide adequate protection. The evaluative framework is shown in Figure 1.

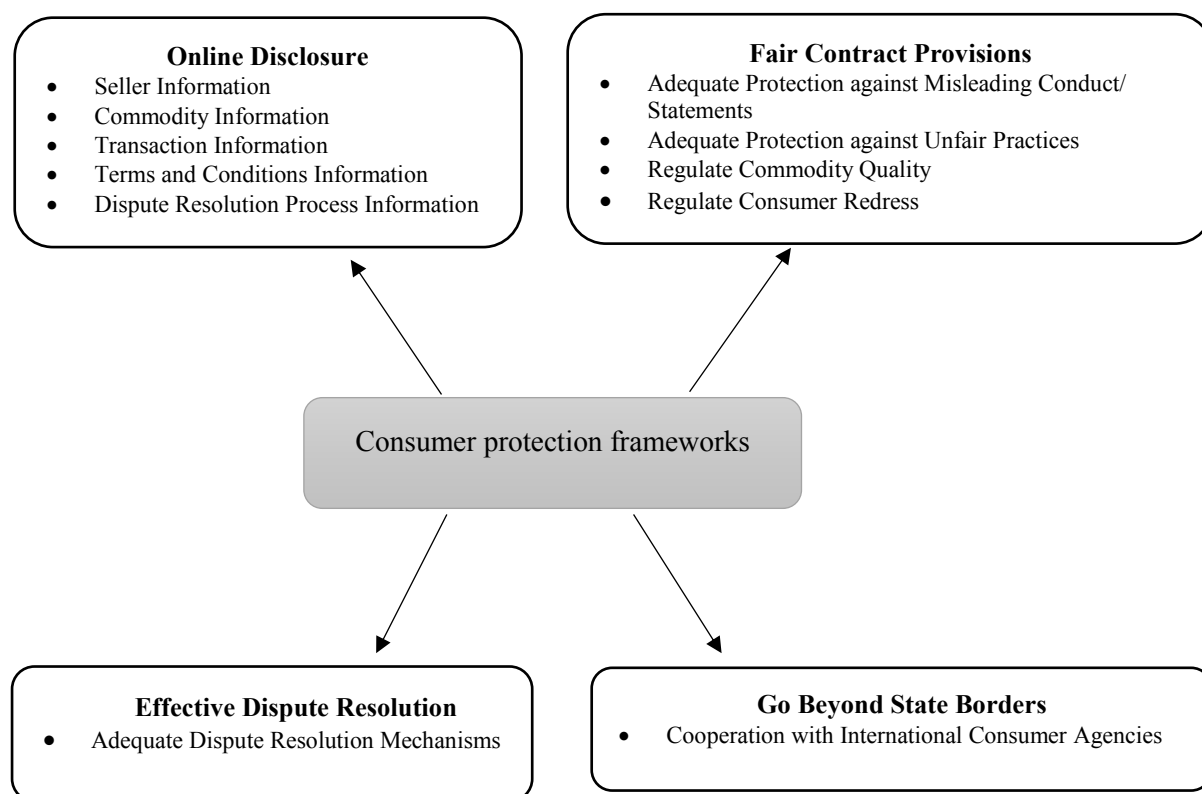


Figure 1: Model evaluative framework.

126 Benohr (n 96) 111.

127 Enas Alqodsi, 'The Right to Pre-Contractual Information in E-Commerce Contracts: UAE Law and Comparative Perspectives' (2021)

24(2) *Journal of Legal, Ethical and Regulatory Issues* 1,4

<<https://www.proquest.com/docview/2519441309?accountid=10382&forcedol=true&pp->

[origsite=primo&parentSessionId=hUS6u1KLC2%2FTJPTx%2FYdcnv9tIJ7M0mTHyrMAJPuy1FE%3D](https://www.proquest.com/docview/2519441309?accountid=10382&forcedol=true&pp-origsite=primo&parentSessionId=hUS6u1KLC2%2FTJPTx%2FYdcnv9tIJ7M0mTHyrMAJPuy1FE%3D) >

128 Benohr (n 96) 111.

(a) Online Disclosure

E-commerce poses a challenge regarding information asymmetry failure that should be addressed by providing information to consumers.¹²⁹ Therefore, countries should develop consumer laws that focus on areas such as online information disclosure, misleading actions and unfair commercial practices because e-consumers need information about the commodity, sellers, terms and conditions, etc.¹³⁰ The information can be accessed via different means, including marketing activities such as advertisements. The importance of the information in e-commerce is that the consumer decides to purchase based on the provided information.¹³¹ According to the Manual on Consumer Protection issued by UNCTAD, advertising activities should be regulated.¹³² The information also works as an alternative to inspecting or examining the product in traditional transactions.¹³³ The information needs to be adequate to allow consumers to make an informed decision.¹³⁴ The information should be clear, precise and easy to understand, and it should be provided at an adequate time in a manner that allows the consumer to keep a record of the information.¹³⁵

Since the seller is in a position to be aware of or have extensive knowledge of the commodity's status,¹³⁶ the consumer pays before inspecting or receiving the commodity.¹³⁷ Therefore, it is imperative to remediate the superior position of the seller by regulating information disclosure within the pre-contractual stage, including the advertisement. The information allows the consumer to compare commodities,¹³⁸ thereby boosting transparency and accountability, decreasing search costs, providing assistance in hindering disputes and protecting buyers from

129 Leigh Anderson and Samantha Kiel, 'Consumer Protection Models and Theories' (Technical Report No 387, Evan School of Public Policy & Governance, University of Washington, April 2019) 2.

130 ('United Nations Guidelines for Consumer Protection 2016') (n 99) annex C [13]; Anderson and Kiel (n 124) 2.

131 OECD, *OECD Consumer Policy Toolkit*, 09 July 2010 34 ('OECD Toolkit 2010').

132 UNCTAD, Manual on Consumer Protection UN Doc GE.18-12911 (E) (12 July 2018) 14[c] ('Manual on Consumer Protection 2018').

133 Dan Svantesson and Roger Clarke, 'A Best Practice Model for E-Consumer Protection' (2010) 26(1) *Computer Law & Security Review* 1, 4 < <https://www.sciencedirect.com/science/article/abs/pii/S0267364909001915?via%3Dihub>>.

134 General Assembly, United Nations Guidelines for Consumer Protection, GA Gec 70/186, UN GAOR, 2nd Comm, 17th sess, Agenda Item 18, UN Doc A/RES/70/186 Add/1, (4 February 2016, adopted 22 December 2015) annex III [7] ('UN Guidelines for Consumers 2015').

135 ('Recommendation of Consumers in E-Commerce 2016') (n 7) 8; ('UN Guidelines for Consumers 2015') (n 129) Annex IV [9]; 'Best Practice Guidelines on Consumer Protection in a Digital World' (Discussion Paper GSR No 14, Global Symposium for Regulators, 3-5 June 2014) 3 ('Best Practice Guidelines in the Digital World 2014'); Alboukrek (n110) 435. ('Saudi Financial Consumer Protection Principles') (n121) 6.

136 ('OECD Toolkit 2010') (n126) 35.

137 Goyens (n116) 203.

138 ('Saudi Financial Consumer Protection Principles') (n121) 7.

deceptive selling conduct.¹³⁹ The information should be obligatorily disclosed at a certain time,¹⁴⁰ namely in the early stages, such as in the advertisement.¹⁴¹ Five modalities are mandatory for information disclosure.

(i) Seller Information

First, the consumer should be aware of the seller's information. The seller information should be 'clear and timely', and it should allow consumers to keep in touch with businesses and governmental agencies to identify and locate them.¹⁴² This information includes a seller's lawful and trade names, its location, including the headquarters branch of the business, its contact information and its registration information granted by the government or the website.¹⁴³

(ii) Commodity Information

Second, information about the commodity should be provided. The commodity information should describe the commodity in a way that allows the consumer to be informed about the transaction.¹⁴⁴ The information should precisely describe the features and characteristics of the commodity;¹⁴⁵ any limitations; detailed prices, including taxes and additional charges such as delivery costs; the currency; any warranties; after-services information, including periodical maintenance services and the provider of the services; and safety or warning information.¹⁴⁶ According to the United Nations Guidelines for Consumer Protection, sellers should provide timely and clear information about the commodity.¹⁴⁷

(iii) Transaction Information

The other model is transaction information. Sellers should provide information regarding the approaches to conclude the transaction, method and expected time of delivery, tracking number

139 ('OECD Toolkit 2010') (n126) 82.

140 Ibid 85.

141 Ibid 88.

142 ('UN Guidelines for Consumers 2015') (n 129) Annex A [14]; ('Recommendation of Consumers in E-Commerce 2016') (n 7) 9[28].

143('Recommendation for Consumer in E-Commerce 2016') (n7) 9[29]; Fadi Adra et al, Safeguarding GCC Consumers How GCC countries Can Modernize their Consumer Protection Frameworks (Report, 2017) 4<
<https://www.strategyand.pwc.com/m1/en/reports/2017/safeguarding-gcc-consumers.html#Download>>; ('UN Guidelines for Consumers 2015') (n 129) Annex A [10].

144 ('Recommendation for Consumer in E-Commerce 2016') (n7) 9[31]; Svantesson and Clarke (n 128) 9.

145 ('Saudi Financial Consumer Protection Principles') (n121) 6

146 ('Recommendation for Consumer in E-Commerce 2016') (n7) 9[31-32-35]; Svantesson and Clarke (n 128) 5.

147 ('UN Guidelines for Consumers 2015') (n 129) Annex A [11].

and payment process as well as the consumer's right to a transparent process for cancellation or withdrawal from the contract, including eligibility for refund, exchange and return.¹⁴⁸ The e-commerce advertisements should also be identifiable. Therefore, the advertiser should identify the communication as being for commercial purposes.¹⁴⁹

(iv) Terms and Conditions Information

Another model is the terms and conditions information. The terms and conditions of the transaction should be provided to enable the consumer to be informed and should be accessible at any point in the transaction.¹⁵⁰ Businesses should provide clear, simple, understandable contractual terms and conditions that are fair.¹⁵¹ Those terms and conditions should be printed or downloadable and accessible in consumer-friendly language.¹⁵²

(v) Dispute Resolution Process Information

The last model is information about the dispute resolution process. Prior to entering into a contractual transaction, the consumer needs to be able to access information about dispute resolution in case something goes wrong. This allows the consumer to make informed decisions since they can assess the risk of engaging in the transaction.¹⁵³ The information includes a limitation on lawful rights, for instance, the lawful limitation of seller liability; the exclusion of a consumer approach to claiming redress; the contract's governing law; available resolution mechanisms, such as the alternative dispute resolution mechanisms of arbitration or mediation; and applicable internal or external complaints systems.¹⁵⁴

(vi) General Guidelines for the Information

The required information shall be made available to the consumer in the pre-contractual stage so that the consumer can make an informed decision and the governmental consumer protection agencies can assess the fairness of the information and whether it satisfies the lawful requirements, such as information about the seller's identity, the product, the transactions, the terms and conditions and the resolution process.¹⁵⁵ Information that targets children and other

148 Ibid.

149 ('Recommendation for Consumer in E-Commerce 2016') (n7) 7[13].

150 Ibid 9[33]; Svantesson and Clarke (n 128) 5-6.

151 ('UN Guidelines for Consumers 2015') (n 129) Annex A [11]; Svantesson and Clarke (n 128) 6.

152 Svantesson and Clarke (n 128) 5.

153 Ibid 7.

154 Ibid; ('Saudi Financial Consumer Protection Principles') (n121) 7.

155 Ibid 8.

vulnerable consumers should be presented in an approach that allows them to fully understand it.¹⁵⁶ The information should also be printed or downloaded by the consumer to ensure that the seller has not altered the information before or after the conclusion of the transaction.¹⁵⁷ Moreover, businesses should provide a summary review of the information regarding the commodity as well as the prices, including delivery or additional charges, before confirming the transaction.¹⁵⁸ The consumer should be able to correct mistakes while reviewing the summary of the transaction.¹⁵⁹ Confirmation should be displayed to the consumer in a clear, simple approach, then the payment is required and the contract is legally binding.¹⁶⁰ The consumer should be able to express consent to the confirmation.¹⁶¹

(b) Fair Contract Provisions

The second element of the consumer protection framework is to provide a fair contractual environment for the consumer. This can be achieved by providing requirements for the seller to eliminate unfair practices and misleading actions.¹⁶² This would build consumer confidence in conducting e-commerce transactions. This section discusses the adequacy of the consumer protection framework regarding misleading conduct, unfair practices, commodities quality, liability issues, and return, exchange and refund issues as well as taking possession of the commodity.

(i) Adequate Protection Against Misleading Conduct/Statements

Adequate law regarding misleading conduct or statements should eliminate all types of misleading conduct or statements.¹⁶³ This includes false representations or omissions of information, whether they are general representations or factual, such as commodity features, images, words and disclaimers.¹⁶⁴ Furthermore, a list of misleading commercial practices or statements should be provided.¹⁶⁵

156 ('Recommendation for Consumer in E-Commerce 2016') (n7) 12[18]; 7[2]

157 Svantesson and Clarke (n 128) 8; ('Recommendation for Consumer in E-Commerce 2016') (n7) 10[39]; ('Saudi Financial Consumer Protection Principles') (n121) 9.

158 ('Recommendation for Consumer in E-Commerce 2016') (n7) 10[37].

159 Ibid.

160 Ibid 10 [36].

161 Ibid 10 [38].

162 ('OECD Guidelines in the Context of E-Commerce 1999') (n107) 9.

163 Adra et al (n137) 6.

164 ('Recommendation for Consumer in E-Commerce 2016') (n7) 7[4]; ('OECD Guidelines in the Context of E-Commerce 1999') (n107) 17.

165 Adra et al (n137) 7.

(ii) Adequate Protection Against Unfair Practices

Second, adequate regulation of unfair commercial practices in e-commerce contracts is fundamental since businesses can easily place the burden on or pressure consumers or take advantage of their mistakes.¹⁶⁶ It is imperative to develop consumer laws that prohibit unfair practices since sellers should not engage in unfair contractual terms.¹⁶⁷ Effective consumer protection law should prevent unfair commercial practices that take advantage in any way of consumers, such as by limiting the consumer's ability to exercise a particular remedy, holding the consumer responsible for paying commodities not authorised by the consumer or including clauses that exempt sellers from consumer laws or allow the seller to individually alter contractual terms.¹⁶⁸ The law also needs to strike a balance between vendors and consumers when it comes to a sellers' liability exclusion. In this way, both parties can be protected and have their risks fairly considered.¹⁶⁹

(iii) Regulate Commodity Quality

Third, commodity quality and suitability needs to be regulated. Adequate law ensures that the commodity meets the quality and other standards of the consumer's country.¹⁷⁰ Good laws also ensure that the commodity meets the consumer's expectations and that the vendor delivers a commodity that matches the pre-contractual statements.¹⁷¹

(iv) Regulate Consumer Redress

Another component of helpful consumer law is regulating the consumer's basic rights or redress. The law should provide a mechanism to refund, return and exchange the commodity; provide a cooling-off period during which consumers can withdraw from the contract with no burden or charges.¹⁷² The redress should be 'fair, easy to use, timely' with no excessive cost.¹⁷³ A final key factor that needs to be regulated by the law is delivering the commodity. Therefore,

166 Svantesson and Clarke (n 128) 9.

167 ('Recommendation for Consumer in E-Commerce 2016') (n7) 7[6]; ('OECD Guidelines in the Context of E-Commerce 1999') (n107) 14; ('Best Practice Guidelines in the Digital World 2014') (n130) 2.

168 Svantesson and Clarke (n 128) 9; Alboukrek (n 110) 436.

169 Svantesson and Clarke (n 128) 10.

170('UN Guidelines for Consumers 2015') (n 129) Annex D [14].

171 Svantesson and Clarke (n 128) 9.

172 Adra et al (n137) 7; Svantesson and Clarke (n 128) 10; ('Recommendation for Consumer in E-Commerce 2016') (n7) 12[19]; Parul Sinha, 'Electronic Contracts and Consumer Protection: Does Legislation Provide Adequate Consumer Protection' (2017) 23(1) Bharati Law Review 12,15 < <http://docs.manupatra.in/newslines/articles/Upload/880CF833-0147-488C-8282-4F157FB4F4C5.parul1.pdf> >

173 ('OECD Recommendation on Disputes and Redress 2007') (n114) 9; ('OECD Guidelines in the Context of E-Commerce 1999') (n107) 18[B].

the law should regulate the point at which commodities are legally considered as delivered and the party that bears the risk in case the commodity is not delivered or damaged.¹⁷⁴

(c) Effective Dispute Resolution

The lack of accessible dispute resolution mechanisms puts the consumer in a disadvantaged position with regard to solving disputes with the seller.¹⁷⁵ Therefore, it is imperative to offer a dispute resolution system. Effective dispute resolution should offer a combination of mechanisms to handle consumer disputes,¹⁷⁶ for instance, low-value dispute processes and alternative dispute resolution (ADR) mechanisms. Court litigation is an ineffective dispute-resolution mechanism since it is associated with difficulty in enforcing laws across borders.¹⁷⁷ Therefore, a reasonable approach is to provide the consumer with an effective dispute resolution that is appropriate for the nature of cross-border e-commerce transactions.¹⁷⁸ The appropriate approach for the consumer is to initiate a claim within the consumer's jurisdiction, which may put pressure on the seller to solve the consumer dispute¹⁷⁹ given that the consumer's jurisdiction cooperates with the seller's jurisdiction to solve consumer disputes. Therefore, the consumer should easily be able to complain about cross-border e-commerce transaction incidents.¹⁸⁰ The complaint should be provided individually or collectively or be initiated by consumer protection agencies.¹⁸¹ The consumer should be able to access clear, accurate and comprehensive information on how to initiate claims.¹⁸² This should give special attention to cross-border e-commerce transactions to encourage the consumer to first try to solve the issue with the seller.¹⁸³ The consumer should be able to access fair, formal and informal mechanisms to complain.¹⁸⁴ There should be a combination of several resolution mechanisms, both out-of-court mechanisms, such as internal handling of claims, and an ADR resolution mechanism, including an online dispute resolution (ODR) system, that should not prevent consumers from

174 Svantesson and Clarke (n 128) 10.

175 Goyens (n 116) 203.

176 Adra et al (n137) 8.

177 Alboukrek (n110) 434.

178 ('UN Guidelines for Consumers 2015') (n 129) Annex F [16].

179 Svantesson and Clarke (n 128) 11.

180 Adra et al (n137) 8.

181 ('OECD Recommendation on Disputes and Redress 2007') (n114) 9-10.

182 Ibid 9; ('UN Guidelines for Consumers 2015') (n 129) Annex F [16]; ('Saudi Financial Consumer Protection Principles') (n121) 11.

183 ('Best Practice Guidelines in the Digital World 2014') (n130) 2; ('Recommendation for Consumer in E-Commerce 2016') (n7) 16[44].

184 ('UN Guidelines for Consumers 2015') (n 129) Annex F [16]; ('OECD Recommendation on Disputes and Redress 2007') (n114) 9.

seeking other forms of dispute mechanisms.¹⁸⁵ The internal handling of complaints related to consumer disputes should not impose charges on the consumer.¹⁸⁶ The ADR mechanisms should give special attention to low-value commodities and cross-border e-commerce transactions.¹⁸⁷

(d) Go Beyond State Borders

The current enforcement system for consumer protection law does not extend to sellers beyond the national state border since the court or consumer protection agencies only have jurisdiction within the local national border.¹⁸⁸ Cooperation with foreign government protection authorities is fundamental for cross-border e-commerce transactions to provide adequate protection to the consumer.¹⁸⁹ Thus, it is important to develop multilateral or bilateral arrangements to enhance international enforcement of local laws related to consumer disputes.¹⁹⁰ Consumer protection authorities should also cooperate to share information, investigations and joint actions regarding consumer disputes.¹⁹¹

H Thesis Outline

This chapter provides the necessary background to the thesis, including the research issue, the context and insights into the e-commerce sector in the KSA. It highlights the research objectives and questions. It also presents the contributions and significance of the thesis, the scope of the research and the research methodology. It discusses an evaluative framework that will be drawn from the UN and OECD guidelines. The aim is to use the framework to evaluate the existing consumer protection laws in the KSA to identify the deficiencies within them. Finally, the research outline is presented.

Chapters Two and Three focus on the first research question: What gaps exist in consumer protection in the existing national legal frameworks of the KSA, and if the draft consumer protection law were enacted in its current form, to what extent would it fill these gaps?

185 ('OECD Recommendation on Disputes and Redress 2007') (n114) 9; ('Recommendation for Consumer in E-Commerce 2016') (n7) 16[43].

186 ('Recommendation for Consumer in E-Commerce 2016') (n7) 16[44].

187 Ibid 17[45].

188 Goyens (n 116) 198.

189 ('UN Guidelines for Consumers 2015') (n 129) Annex VI [26].

190 ('OECD Recommendation on Disputes and Redress 2007') (n114) 12[6]; ('Recommendation for Consumer in E-Commerce 2016') (n7) 12[54]; ('OECD Guidelines in the Context of E-Commerce 1999') (n107) 21.

191 ('Recommendation for Consumer in E-Commerce 2016') (n7) 2016 12[54]; ('Best Practice Guidelines in the Digital World 2014') (n130) 10.

These chapters discuss the research objective of identifying the deficiencies in the KSA's existing national legal frameworks relating to e-commerce transactions. Chapter Two argues that the existing national legal frameworks do not adequately protect consumers who are conducting e-commerce transactions. It evaluates the deficiencies in the existing national legal frameworks. Chapter Three critically analyses the existing national legal framework, including the new draft consumer protection law in light of the research issue and scope.

Chapter Four addresses the second research question: Is there a legal resolution in the national legal frameworks of GCC countries that may be adopted and/or adapted by the KSA to better protect consumers? This chapter addresses the research objective of comparing KSA national legal frameworks to those of GCC countries, particularly the UAE, Qatar and Kuwait. The aim is to find legal solutions or resolutions that can be adopted and/or adapted by the KSA to address the identified deficiencies within consumer protection frameworks. It addresses consumer protection and enforcement frameworks across GCC countries.

Chapter Five covers the third research question: What legal frameworks/solutions are recommended based on the critique of KSA and GCC legal frameworks? It addresses the research objective 'to recommend legal frameworks/ solutions to resolve the identified gaps and issues'; it therefore discusses the proposed framework. It also recommends a solution based on the proposed framework that will help to overcome the issues in the existing national legal frameworks.

Chapter Six is the concluding chapter, which presents the research summary and recommends areas for future research.

II EXISTING CONSUMER REGULATIONS AND REMEDIES IN THE KSA

This chapter analyses the existing KSA consumer protection laws and identifies deficiencies or gaps that exist as the framework currently stands. It discusses consumer protection specialised laws and related laws that may be relevant to consumers, such as Civil Transactions Law. However, there is a proposed new draft law for consumer protection called the Consumer Protection Law. This law will be discussed in Chapter three. This chapter discusses the extant legal frameworks relevant to consumers. The new draft consumer protection law is likely to have a substantial effect on the existing national legal frameworks. However, the time of introduction of the proposed law is expected to be in late 2023, and its alignment with the current draft is going to change. Therefore, it is necessary to analyse the existing frameworks first.

This chapter is comprised of four sections. The first section examines KSA's national legal frameworks on consumer protection matters regarding online disclosure. It covers the inclusion of information about the seller, commodity, transaction, terms and conditions, and dispute resolution process. This section examines the information that should be included online before entering into a contractual relationship. The second section discusses providing fair and lawful contractual provisions related to misleading conduct/statements, unfair practices, commodity quality and consumer redress. The third part explores the KSA's dispute resolution mechanisms. The fourth part discusses taking on consumer issues and cooperating with international consumer enforcement agencies to enforce local laws. The last section provides conclusions to this chapter.

The scope of the discussion in this chapter mainly revolves around consumer protection regulations that have been implemented by KSA policymakers according to the hierarchy of consumer regulations.¹⁹² The hierarchy among different sources of KSA law (e.g., state-made law and Islamic law) is, first, that codified principles in private consumer protection laws are applied to solve disputes.¹⁹³ If not resolved, then the provisions in the Civil Transactions Law

¹⁹² The meaning of 'consumer regulations' is the private consumer protection laws and relevant laws that can be referred to if there is an issue that is not covered by private consumer protection laws, such as the Civil Transactions Law.

¹⁹³ Consumer protection laws in the KSA are the Anti-Commercial Fraud Law, Commercial Data Law, Commercial Agency Law, E-commerce Law and Precious Metals and Stones Law. See 'Guide to Consumer Rights and Responsibilities', *Ministry of Commerce* (web Page, 2023) <<https://mc.gov.sa/en/guides/Pages/default.aspx>> ('Guide to Consumer Rights and Responsibilities').

are applied.¹⁹⁴ If this law is silent on the case, then the applicable principles are the 41 fundamental doctrines in the final provisions of Civil Transactions Law.¹⁹⁵ If the case is still not resolved, the most appropriate principles of Islamic law can be applied to close the dispute.¹⁹⁶ Therefore, this chapter will discuss private consumer protection laws. Should there be deficiencies within consumer protection laws, the Civil Transactions Law will be discussed to remediate the shortcomings within the consumer regulations. If this law fails to remediate, the principles provided in Civil Transactions Law will be examined. Next, Islamic law will be consulted if legal provisions are absent within the previous hierarchy of state-made laws. The justification is that judges extrapolate verdicts from Islamic law if there is an absence of information in state-made law, which includes consumer protection regulations and the Civil Transactions Law. This is because the sources of Islamic law (primary or secondary) are the primary sources of state-made laws in the KSA.¹⁹⁷

Several laws regulate consumer protection in the KSA. Some of these laws are relevant to this thesis, such as the Anti-Commercial Fraud Law (Law on Combating Commercial Adulteration),¹⁹⁸ E-commerce Law and Civil Transactions Law.¹⁹⁹ Some are not relevant, such

194 *The Civil Transactions Law 2023* (KSA) Art.1 [1] ('CTL'). Civil Transactions Law aims to set clear principles for natural or legal persons by regulating civil relationships between individuals and their property. It provides 721 articles covering civil rights and obligations, contracts, torts, unfair enrichment and property rights. An Arabic version of this law can be accessed through the link <<https://laws.moj.gov.sa/legislation/x5mmyRvSC8dun5XxLYxEeQ==>>. It should be noted throughout the thesis that the Arabic sources have been translated by the author of the thesis.

195 Civil Transactions Law provides in the first section of its final provision 41 the legal principles that can be used to assess a particular case or issue.('CTL') (n187) Art.1 [1].

196 *Ibid.*

197 The KSA legal system derives its law from Islamic Law and from Royal Decrees. See see *Basic Law of Governance 1992* (KSA) Art 1-67 ('BLG'). Article 1 of the Law of Civil Procedure clearly indicated that the courts apply Islamic principles to the litigations according to the primary sources of Islamic Law and the state-made laws that do not contradict Islamic principles. See *Law of Civil Procedure 2013* (KSA) Art.1 ('LCP').

198 A translated version of Anti Commercial Fraud Law can be accessed through the link <<https://mc.gov.sa/en/Regulations/Pages/details.aspx?lawId=2a4c454b-f116-4f16-ab4b-a81e00be5030>>.

199 A translated version of E-commerce Law can be accessed through the link <<https://mc.gov.sa/en/Regulations/Pages/details.aspx?lawId=aaa4d4cf-ca57-41ff-a3f9-aa8500a3512c>>.

as Commercial Data Law,²⁰⁰ Commercial Agency Law,²⁰¹ Precious Metals and Stones Law,²⁰² and E-Transactions Law.²⁰³ The Civil Transactions Law applies to every matter within its scope if there is a lack of private or coded law regarding a particular matter.²⁰⁴ Should there be a conflict with other laws, Civil Transactions Law nullifies lawful provisions that contradict its provisions.²⁰⁵ Therefore, the application of its provisions do not contradict private legal provisions. Civil Transactions Law has a retroactive effect on previous contracts concluded before its enforcement.²⁰⁶ Therefore, contracts signed before the date of enforcement of this law will be subject to this law. In other words, this law governs the disputes arising from contracts that were conducted before the enforcement of this law. This does not apply in cases in which the party held on to the application of statutory provisions or court rulings that conflict with the provisions of Civil Transactions Law.²⁰⁷ It also does not apply when the provision relating to the period of validity comes into force before the law comes into force.²⁰⁸ Therefore, a party that wanted to avoid the application of this law with respect to contracts that existed before its enforcement needs to prove that statutory provisions or court rulings apply to the agreement before the enforcement of the law and are in conflict with its provisions.²⁰⁹

A Consumer Protection in KSA National Legal Frameworks

Due to the nature of e-commerce transactions, pre-contractual information is essential. As these transactions are borderless, the consumer is unable to inspect (examine) the commodity before

200 Commercial Data Law governs data that is considered commercial. The provisions of this law are not relevant to consumer protection except that it requires the information to be in Arabic and truthful. A translated version of this law can be accessed through the link <<https://mc.gov.sa/en/Regulations/Pages/details.aspx?lawId=274cc6cf-3b9f-433a-9b32-a81f009745a7>>

201 This law governs the activity of commercial agencies in the KSA. A translated version of this law can be accessed through the link <<https://mc.gov.sa/en/Regulations/Pages/details.aspx?lawId=4d8399da-0653-4727-bec9-a82200b3f908>>.

202 This law governs the activity of selling Precious Metals and Stones, including gold, silver and diamonds. A translated version of this law can be accessed through the link <<https://mc.gov.sa/en/Regulations/Pages/details.aspx?lawId=360e077a-c3bf-43cd-a039-a81d0109e0af>>.

203 This law regulates the validity of e-contracts and signatures. A translated version of this law can be accessed through the link <<https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/6f509360-2c39-4358-ae2a-a9a700f2ed16/2>>.

204 ('CTL') (n187) Art.1 [1].

205 ('CTL') (n187) Art.721

206 Royal Decree no.820 dated 13/06/2023 KSA, *Umm Al-Qura*, 820, 19 June 2023, Art.5. An Arabic version of this royal decree can be accessed through the link <<https://uqn.gov.sa/details?p=23123>>.

207 Ibid Art.5 [1].

208 Ibid Art.5 [2].

209 Hage Chahine Law Firm, 'A Brief Overview of the New Saudi Civil Transactions Law', *Lexis Middle East* (Web Page, 25 July 2023) 2 <https://www.lexismiddleeast.com/eJournal/2023-08-01_27> ('Chahine Law Firm').

committing to its purchase.²¹⁰ Moreover, the online disclosure of information in the pre-contractual period is substantial as vendors have the upper hand in cross-border e-commerce transactions due to their knowledge of the commodity's status.²¹¹ The decision of the consumer to buy is invariably based on the information provided.²¹² Therefore, it is necessary to determine the key information that is disclosed in the pre-contractual stage, particularly for e-commerce law to remediate the imbalance between the seller and the consumer.²¹³ Arguably, the KSA national legal frameworks are unable to provide adequate protection in the context of cross-border e-commerce transactions as they do not state the key information that needs to be disclosed in the precontractual stage, and they do not give guidelines on providing the relevant information. Second, there is an absence of information regarding consumer rights/remedies in the KSA's national legal frameworks, such as refunds, returns, exchanges and withdrawals. Dispute-resolution mechanisms are also ineffective as accessing consumer remedies through courts is inadequate due to the difficulty of enforcing local laws upon international sellers. Finally, the handling of consumer issues by the Consumer Protection Agency in the KSA is lacking, and there is a lack of cooperation between countries to mutually recognise laws or judgments, as the law does not currently allow for this.

1 *Online Disclosure of Information in State-Made Laws*

A number of different laws regulate the advertising of products and services. Some of these laws only apply to certain forms of advertising. Such as billboard advertising,²¹⁴ advertising in a printed form²¹⁵ or advertising in an online form.²¹⁶ Other laws apply to different mediums,²¹⁷ or they disregard the type of medium altogether.²¹⁸ Among other things, these laws and

210 Tino Fenech and Aron O' Cass, 'Internet Users' Adoption of Web Retailing: User and Product Dimensions' (2001) 10(6) *Journal of Product and Brand Management* 361, 364 <<https://www.emerald.com/insight/content/doi/10.1108/EUM000000006207/full/pdf?title=internet-users-adoption-of-web-retailing-user-and-product-dimensions>>

211 Alqodsi (n122) 4.

212 Dwiyana Hartanto, 'A Comparative Study on the Principles of Online Buying and Selling from the Perspectives of Islamic Law and Indonesian Positive Law' (Conference Paper, Academic International Conference on Literacy and Novelty, 8 July 2021) 23 <<https://www.mendeley.com/catalogue/e1e2ba29-6fee-39c1-acca-df6b59194fda/>>.

213 Alqodsi (n122) 1.

214 *The Law of Regulatory Rules of Advertisement and Publicity Boards* 1992 (KSA) ('LRRAPB').

215 *The Law of Printed Materials and Publications* 2000 (KSA) ('LPMP').

216 *The Executive Regulation for Electronic Announcement* 2022 (KSA) ('EREA'); *Practice Regulations of Media Activities* 2020 (KSA) ('PRMA'); ('ECL') (n12).

217 The law includes provisions that apply to the advertisement and publicity activities in general, such as advertisement content. *The Executive Regulation of the Law of Printed Materials and Publications* 2017 (KSA) Art.73, 74 ('ERLPMP').

218 *The Law on Combating Commercial Adulteration* 1991 (KSA) Art.2 ('LCCA').

regulations seek to protect consumers against misinformation. Some advertisements are prohibited, for example, those prejudicing societal morals,²¹⁹ while others require permits, such as advertisements for medical products²²⁰ or products for which the vendor is offering discounts.²²¹ Other law requires the truthfulness of the information and that it be in Arabic.²²² Some of those regulations require that advertisements contain particular information, such as the identity of the seller,²²³ a logo that identifies the seller(s) and the contact details,²²⁴ and that the advertisement material be for advertising purposes only.²²⁵ It is submitted that KSA policymakers have failed to provide details about the key information beyond identification of the information that must be disclosed in the precontractual stage, including guidelines for providing the relevant information, such as product or services information or descriptions, terms and conditions, and dispute resolution processes in the advertisement or at the precontractual stage.²²⁶ KSA laws did not recognise the importance of disclosing key information in the contract until the formatting of the E-commerce Law in 2019, whereby questions were raised about whether the KSA regulations provided adequate e-consumer protection. The KSA did not provide provisions that dealt with such requirements.²²⁷ This argument will be divided into five parts, which will evaluate the existing consumer protection laws in the KSA regarding online disclosure of information about the seller, commodity, transaction, terms and conditions, and dispute resolution processes against the model provided in chapter one. Before doing so, it is imperative to define the term ‘advertisement’.

219 ('ERLPMP') (n210) Art.73. This provision details the information that shall not be published, such as hate speech.

220 Ibid Art.74; ('PRMA') (n209) 4.

221 ('PRMA') (n209) 4.

222 *Commercial Data Law 2002* (KSA) Art.2 ('CDL').

223 ('ECL') (n12) Art.10.

224 Ibid.

225 *The Executive Regulation of E-commerce Law 2020* (KSA) Art. 10 ('ERECL').

226 This issue has been indicated by many researchers. Al-Alwani (n15) 19; Alshahrani (n14) 102-103.

227 This is evident in several publications that criticise the lack of detail about the key information that should be provided to the consumer, such as Alshahrani (n14) 133; Fallatah (n13) 154-156; Al-Alwani (n15) 3. Fallatah and Alshahrani discuss the provisions of KSA legislation prior to the E-commerce Law. They pointed out that the existing KSA national legal frameworks (Anti-Commercial Fraud Law, the Law of Saudi Standards, Metrology and Quality Organisation and the Electronic Transaction Law) had failed to stipulate the key information that needed to be disclosed before entering into a contractual relationship. Therefore, it is not necessary to discuss those regulations in this thesis as other works have already critiqued them. See Fallatah (n13) 70-157; Alshahrani (n14) 81.

(a) Advertisement Definitions

The existing definitions of advertisement are broad enough to apply to online advertisements. However, they are not specifically designed to define the nature of products and services in e-commerce transactions. The definitions lack the essential characteristics to define product or service advertisements in the online world because they do not include the purpose of the advertisement, and they fail to limit the scope of advertising to products or services, both of which are essential for the protection of the consumer in the online context. Therefore, The policymakers in the KSA need to provide a comprehensive definition that covers all contracting parties and forms of electronic advertising, including the purpose of advertising activities.

The definition given in the Executive Regulation for E-announcements covers all electronic means, including the internet, websites and social media that are used to advertise products or services or any other kind of advertising activity.²²⁸ This ignores the parties to the transactions and the purpose of the advertisement. Therefore, it does not cover the essential characteristics of the nature of products or services in e-commerce transactions.

The definition provided within the E-commerce Law covers all forms of e-advertising, including advertising on the internet, websites and social media. It also explicitly or implicitly covers advertising products and services. Furthermore, it applies to sellers and consumers who engage in e-commerce transactions.²²⁹ Therefore, KSA laws have failed to cover all purposes of the advertisement. The definitions of advertisements are a shortcoming within the existing consumer protection laws that need to be solved. It is important to provide an adequate definition that fits the nature of product or service e-commerce transactions and applies to the tools, forms and purposes of the advertisement. The next section discusses the online disclosure of seller information.

(b) Seller Information

It was stated in chapter one that adequate consumer protection law should provide seller information, including legal and trade name; address, including the address of the business'

228 ('EREA') (n209) Art.1.

229 ('ECL') (n12) Art.1.

main branch; contact information; and registration number either by the government or a website.²³⁰

The KSA imposes requirements on vendors of products or services to include certain information in their advertisements. This information is the seller identification, including name and logo unless registered with an authentication entity, and contact information.²³¹ Moreover, the law requires that the seller's e-shop information be provided regarding the seller's name, logo and address except if the seller is listed with an authentication entity; contact information; name and number of the sellers' commercial registration or other public registration numbers and tax number if available.²³² The information in the e-shop should be made available to the consumer via a link.²³³ However, there is uncertainty regarding the timeframe for providing the link. It is unclear whether the link should be provided in the advertisement or in any communication with the consumer.

The law requires the identified sellers' information in the event of advertising or in the seller's e-shop. Nonetheless, the lawful requirement of sellers' information in KSA law did not meet the requirement of adequate consumer protection law. For instance, the law failed to require the inclusion of the seller's legal and trade names. Therefore, it is up to the seller to claim a name and disclose it. The law needs to eliminate uncertainty by clearly requiring the disclosure of particular names, such as lawful and trade names. Articles 6 and 10 of the e-commerce law did not require the inclusion of the main branch of the business. However, Article 3 of the e-commerce law identifies the address of a merchant (registered within the KSA commercial register) as the address mentioned in the system of commercial registration in the KSA,²³⁴ whereas the address of the seller (not registered in the commercial register system in KSA) is the permanent address given that the business is conducted from the permanent address.²³⁵ Therefore, the law did not require providing the main branch of the business. The law exempted the seller from the requirement of providing its name and address if the seller is registered with

230 See above Ch.1 (G)(2)(a)(i).

231 ('ECL') (n12) Art.10.

232 ('ECL') (n12) Art.6.

233 ('ERECL') (n218) Art. 6.

234 ('ECL') (n12) (KSA) Art.3 [1].

235 ('ECL') (n12) (KSA) Art.3 [1]

an authentication body in the KSA, such as the e-commerce authentication services.²³⁶ This poses issues for the consumer to be aware of the seller even though the law requires providing the registration number. Therefore, the consumer needs to search for the seller to be able to identify them. There is a need to require disclosure of the name and address within pre-contractual communication. This would facilitate the identification of the seller, especially in cross-border e-commerce transactions since the seller cannot be verified in the KSA.²³⁷

(c) Commodity Information

As mentioned in chapter one, the consumer should be provided with an accurate description of the features and characteristics of the commodity; any limitations; detailed prices, including taxes and additional charges such as delivery costs; the currency; warranty information; after-services information, including periodic maintenance services and the provider of the service; and safety or warning information.²³⁸ KSA consumer protection laws failed to meet the framework for the commodity information. KSA consumer protection laws have arguably failed to identify the essential information that needs to be disclosed online, particularly in the advertisement, such as product specifications, standards, limitations, warranties and after-service information, including the necessary periodic maintenance. Moreover, KSA policymakers have failed to provide general guidelines for advertising content, such as advertising limitations.²³⁹ The law in KSA requires disclosing the names of products or

236 The KSA business centre established a system to authenticate vendors. Sellers in and outside of the KSA can register in this new e-commerce authentication service if they fulfil the requirement of having an active commercial registration or freelancer practitioner certificate and a business bank account. 'E-commerce Authentication', *Saudi Business Centre* (Web Page, 2023) <<https://business.sa/en/ServicesAndPrograms/ServicesDetails.html?ServiceID=13>>; however, the international seller is unable to register in the commercial register systems in the KSA since the requirement does not apply to international or foreign merchants because they need to have a physical store or branch within the KSA jurisdiction. *The Law of Commercial Register 1995* (KSA) Art.3-6 ('LCR'). Furthermore, registering in the commercial register system requires a local bank account. Khulood Al-Mani, 'The Impact of E-commerce on the Development of Entrepreneurship in Saudi Arabia' (2020) 28(4) *Journal of International Technology and Information Management* 28, 46 <The Impact of E-commerce on the Development of Entrepreneurship in Saudi Arabia (csusb.edu)>. Therefore, international sellers are unable to obtain commercial registration numbers in the KSA. The seller can get a freelancer practitioner certificate instead of the commercial registration number but to obtain this certificate, the seller needs to be Saudi. 'Issuance of Documents for Freelancer Work', Human Resources and Social Development (Web Page, 2023) <<https://www.hrsd.gov.sa/en/ministry-services/services/1065686>>. Therefore, international sellers are unable to get the freelancer practitioner certificate. The issue with the current system is that it is not effective in the context of cross-border e-commerce transactions since international sellers are unable to fulfil the requirements for qualifying to be listed in the e-commerce authentication system.

237 Ibid.

238 See above Ch.1 (G)(2)(a)(iii).

239 *The Code on Advertising, Marketing and Branding 2014* (QA) Art.56 ('CAMB').

services.²⁴⁰ However, KSA consumer protection laws are arguably inadequate because they fail to mandate the inclusion of other information that is arguably essential in order to provide the buyer with an accurate picture of what they are buying or what their rights are with respect to their purchase. For example, KSA consumer laws do not require vendors to include or provide certainty about product specifications. The consumer is also entitled to a statement illustrating total prices, including all charges and taxes, delivery costs, warranty information and after-service information along with the requirements for using it.²⁴¹ The issue with this is that the law did not require the inclusion of this information in the pre-contractual stage.²⁴² Moreover, the law failed to require disclosure of information regarding the needed periodic maintenance services and the provider of the services, the currency of the product or services and the information regarding consumer safety and warnings for the products or services. KSA policymakers need to adequately regulate advertisements by requiring the inclusion of certain product information; any limitations; the currency used; and other important information at the right time in order to allow the consumer to make an informed decision. Clear guidelines for providing such information also need to be established.

(d) Transaction Information

As stated in chapter one, the consumer should access information regarding the approaches to conclude the transaction, the method and expected time of delivery, a tracking number, the payment process and the consumer's right to a transparent process for cancelling or withdrawing from the contract, including the eligibility for a refund, exchange or return. It should also be stated that the purpose of the communication or advertisements is commercial advertising.²⁴³

The KSA national legal frameworks have arguably failed to identify the essential information that needs to be mentioned before entering into a transaction, such as rights of withdrawal, refund, exchange and return. The law in the KSA requires identifying the purpose of the communication as being a commercial advertisement that advertises products or services.²⁴⁴ The laws require providing a statement demonstrating the approaches to finalising the contract

240 ('ERECL') (n218) Art. 10.

241 Ibid Art. 7.

242 E-commerce law only requires the mention of the information after the conclusion of the contract. ('ECL') (n12) Art.8; ('ERECL') (n218) Art. 8.

243 Ch.1 (G)(2)(a)(iii).

244 ('ERECL') (n218) Art.10.

and payment and delivery methods or arrangements.²⁴⁵ It requires stating the procedure to be used for exercising withdrawal rights or stating that the consumer has no right to withdraw.²⁴⁶ E-commerce law requires an invoice to be provided that discloses information after the conclusion of the contract, such as the delivery date, name of the logistic company, a tracking number if available, replacement or refund information if available, the payment method and the confirmation of the payment.²⁴⁷ There is nonetheless a timing issue, as providing the consumer with information about exchanges or refunds after the conclusion of the contract would impact their ability to make an informed decision about buying the goods. Hence, this information should be provided in the precontractual stage to allow the consumer to make informed choices.²⁴⁸ According to *Al-Alwani*, the KSA policymakers succeeded in obliging the seller to provide the consumer with information about their identity, prices, the delivery process, payment and warranties, but they failed to enforce the disclosure of key information about the exchange and return policies for the goods.²⁴⁹ The law also did not provide guidelines for disclosure of the information. This may lead to a failure to mention information that consumers may need to make an informed decision about the transaction.

(e) Terms and Conditions Information

As pointed out in chapter one, consumers should have access to information regarding fair terms and conditions of the transaction at any point in the transaction that is provided in a clear, simple, understandable and printable or downloadable way in consumer language.²⁵⁰ KSA law requires the inclusion of a statement with no indication of the time or stage related to the terms and conditions.²⁵¹ The existing consumer protection laws fail to meet the requirements in the thesis framework. This is due to the failure to provide clear provisions regarding the terms and conditions of the contract, which mandate an approach to providing the terms and conditions within an adequate time. There is also uncertainty regarding the provision of downloadable or printed terms and conditions of the contract at any time in the transaction. However, the consumer is entitled to a downloadable receipt after conducting the transaction.²⁵² Moreover, the law did not require providing the information in consumer-friendly language. These factors

245 ('ECL') (n12) Art.7.

246 ('ERECL') (n218) Art. 6.

247 ('ERECL') (n218) Art.7.

248 Alshahrani (n14) 96-97.

249 Al-Alwani (n15) 18-19.

250 Ch.1 (G)(2)(a)(vi).

251 ('ECL') (n12) Art.7.

252 Ibid Art.8.

will lead to confusion and uncertainty and will affect the consumer's ability to make an informed decision.

(f) Dispute Resolution Process Information

Chapter one pointed out that the consumer is entitled to information prior to entering into a contract about any limitation of lawful rights, exclusions to consumer approaches to claim redress, the law that governs the contract, available resolution mechanisms, such as the alternative dispute resolution mechanisms of arbitration or mediation, and applicable internal or external complaint systems.²⁵³

The KSA's existing consumer protection laws require the disclosure of contact information for the body that can handle consumer complaints against the sellers.²⁵⁴ It seems that this refers to the seller's internal or external complaint system. KSA policymakers need to mandate the inclusion of those complaint systems in a clear manner. Moreover, the consumer should be provided with this information during the transaction so that he or she is aware of the dispute resolution process before the conclusion of the transaction. KSA consumer laws thus fail to provide adequate precontractual information that allows consumers to make an informed decision. The law also fails to mandate the inclusion of information regarding the law governing the contract, any limitations to exercising redress and other forms of alternative dispute resolution mechanisms, such as ADR.

The absence of information regarding these elements necessitates an examination of the Civil Transactions Law and the general principles in its final provision. Unfortunately, the law lacks provisions regarding online disclosure in the precontractual stage. Therefore, Islamic principles need to be discussed. Islamic law regulates the content provided to the consumer in the precontractual stage by prohibiting misleading and deceptive practices²⁵⁵ and the advertising of products and services that offend the morality of other Islamic principles, such as non-discrimination.²⁵⁶ Nonetheless, the primary sources of Islamic law apply to e-commerce but do

253 Ch.1 (G)(2)(a)(v).

254 ('ERECL') (n218) Art. 6.

255 Allah says in the Quran '...give just measure and weight; do not defraud people of their property...' See. Quran.com, *Quran Surah Al-A'raf* 7: 85 <<https://quran.com/7>>; Allah also said 'Give full measure, and cause no loss to others'. See Quran.com, *Quran Surah Ash-Shu'ara* 26: 181 <<https://quran.com/26>>.

256 Navid Behravan, Morteza Jamalzadeh and Roozbeh Masoudi, 'A Review Study of Developing an Advertising Strategy for Westerner's Companies among Middle East Countries: The Islamic Perspective' (2012) 4(3) *Information Management and Business Review* 107,110 <<https://ojs.amhinternational.com/index.php/imbr/article/view/970>>.

not adequately regulate e-commerce since there is no provision stipulating what key information should be provided to consumers in order to allow them to make an informed decision.²⁵⁷

(g) General Guidelines for the Information

As discussed in chapter one, the consumer should be provided with the information in the pre contractual stage. Moreover, the seller or advertiser should pay particular attention to the communication needs of targeted vulnerable groups, such as children and special needs consumers. The information should be printable or downloadable. The consumer should also be provided with a summary of the information and allowed to correct mistakes before confirming the transaction. The confirmation should be displayed in such a way that the consumer should be aware that the contract will be legally binding and can consent to the confirmation.²⁵⁸

The KSA's existing consumer protection laws do not require the seller to provide this information at the precontractual stage (the stage before entering into a contractual relationship) except for the seller's name, address and contact information. This poses issues for the consumer in making informed decisions about the transaction. It also poses issues for governmental consumer agencies to assess the fairness of the information. KSA policymakers have failed to provide general guidelines for advertising content, such as advertising limitations,²⁵⁹ or to consider the target group of the communication, such as special needs, professional consumers or small enterprises,²⁶⁰ including terms and conditions.²⁶¹ The existing consumer protection laws in the KSA also do not mandate that consumers be allowed to record the information, such as by printing or downloading, particularly in the precontractual stage. However, the law mandates providing a printable or downloadable receipt after the conclusion of the transaction.²⁶² Failure to mandate the information to be recorded by the consumer before the conclusion of the contract may place the consumer in a disadvantaged position. This is due to the ability of the seller to change the agreement after the conclusion of the contract and to provide the information in the receipt. The existing consumer protection laws in the KSA

257 Alshahrani (n14) 96-97.

258 Ch.1 (G)(2)(a)(vi).

259 ('CAMB')(n232) Art.56.

260 Ibid Art.9.

261 Ibid Art.62

262 ('ECL') (n12) Art.8.

mandate offering a summary after the conclusion of the contract, particularly regarding replacement and refund if permissible.²⁶³ Therefore, the KSA consumer protection laws fail to meet the requirements of adequate consumer protection law since the information is exclusive to particular information. There is also a timing issue in providing the information after the conclusion of the contract. Therefore, adequate consumer protection requires providing the summary just before the final step to conclude the transaction. The summary should be inclusive of all information; otherwise, the consumer cannot review it before the contract is binding and correct mistakes if necessary. The law thus lacks preventive measures, such as reviewing the information and correcting mistakes that may prevent issues after the conclusion of the contract. The law requires that mistakes be corrected within 24 hours after the conclusion of the contract.²⁶⁴ This possibility is better provided before the conclusion of the contract to allow consumers to prevent disputes before the conclusion of the contract as the seller has not initiated the process of delivering the product or services. The law also requires the consumer to consent to the contract as binding by clicking on the box for the conclusion of the payment on the contract. Therefore, the contract is binding on the contracting parties.²⁶⁵ In the next section, the second point of the adequate consumer protection framework is discussed.

2 Fair Contract Provisions

As discussed in chapter one, the existing consumer protection laws should provide a fair and protective contractual environment for the contracting parties.²⁶⁶ This requires regulating certain aspects of e-commerce transactions that may impact consumer confidence in concluding such transactions. The first aspect that should be regulated is misleading actions/statements.

(a) Adequate Protection Against Misleading Conduct/Statements

It was pointed out in chapter one that consumers should be protected from misleading conduct or statements and that this should be applicable to all types of misleading conduct or statements. This includes false statements or omission of information either by general or factual representation of information such as commodity features, images, words and disclaimers.

263 ('ERECL') (n218) Art.8.

264 Ibid Art.4.

265 Ibid Art.7 [2].

266 Ch.1 (G)(2)(b).

Furthermore, the law should provide a list of misleading commercial practices or statements.²⁶⁷ Before discussing KSA's existing consumer protection laws regarding misleading conduct or statements, it is vital to define misleading advertisements. A number of different laws regulate misleading action.²⁶⁸ However, those laws fail to define misleading action. Some legal experts define misleading advertisements;²⁶⁹ others define false advertisements.²⁷⁰ These definitions differentiate between false information and the omission of information by considering false information as a false advertisement and the omission of information as a misleading advertisement. Therefore, they fail to consider false information and omission of information as misleading conduct or advertisements. The EU Directive defines a 'misleading advertisement' as one that discloses false information or omits information by whatever means and thereby deceives or is likely to deceive the consumer and causes or is likely to cause a transactional decision that consumers would otherwise not have taken.²⁷¹ This definition considers both false information and the omission of information as misleading as well as any conduct that has the effect of misleading a consumer into making a transactional decision that they would not otherwise have made.

It is submitted here that this definition is correct because the definition considers both incorrect and correct but incomplete information. Therefore, this is the appropriate definition since it covers every aspect that could exploit and affect the decisions of the consumer. It is vital to introduce a misleading definition that adequately applies to both false information and the omission of information as well as to any conduct or statements that have the effect of misleading a consumer into making a transactional decision that they would not otherwise have

267 Ch.1 (G)(2)(b)(i).

268 Al-Alwani (n15) 6 .

269 *Obaid* defines misleading advertisement as the use of fraudulent approaches by one of the contracting parties to mislead the consumer in their dealings with sellers; see Raouf Obaid, شرح قانون العقوبات التكميلي، [Supplementary Panel Code Explanation] (Al-Wafaa Legal Library, 2015) 560. *Lina* defines misleading advertisement as a promotion that deceives the consumer by including words that give a false impression, leading to deception. See Lina Abdullah, حماية المستهلك من الإعلانات الإلكترونية الكاذبة والمضللة، [Protecting the Consumer from False Misleading Electronic Advertisements] (2014) 2 *Al-Nadwa Journal for Legal Studies* 17,21<<https://search.mandumah.com/Record/604176>>.

270 Kawthar defines false advertisement as promotions that disclose false information or make claims that fail to correspond with the truth. This results in consumers being misled, for example, about a product's date of use or its price. See Kawthar Khaled, حماية المستهلك، [Electronic Consumer Protection] (New University House, 2012) 180.

271 *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market and Amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')* [2005] OJ L 149/22, Art. 2[E], 6[1], 7[1].

made. This would help to categorise misleading conduct or statements, including those disclosed online. Consumers would be protected from misleading conduct by ensuring that such conduct is defined as misleading conduct or statements that induce consumers to make a transactional decision based on incorrect, incomplete or otherwise misleading information. Despite the lack of a definition or provision as to what is misleading,²⁷² the KSA attempts to eliminate misleading advertisements in online environments by controlling advertising activities. For instance, one recent development is that KSA influencers must now obtain a permit to advertise products or services on their social media accounts.²⁷³

Misleading advertisements are one of the major issues in e-commerce due to the ease of carrying out online false and deceptive conduct because it is simple to make it appear legitimate.²⁷⁴ Therefore, it is vital to regulate every aspect of advertisements.

State-made laws provide several regulations and laws that cover misleading advertisements in the KSA. In the context of e-commerce, the publication of false statements or offers, the making of claims that may directly or indirectly mislead the consumer or the use of a fraudulent logo or a trademark that the vendor has no right to use are all considered a form of misleading conduct.²⁷⁵ Other laws require the disclosure of sufficient information to allow consumers to make informed decisions.²⁷⁶ The law prohibits misleading advertisements that may deceive consumers.²⁷⁷ Other laws consider advertising of adulterated products as a form of deception²⁷⁸ and recognise that deceiving or misleading consumers may occur in product descriptions that display false, deceptive or misleading information.²⁷⁹ KSA policymakers have arguably failed to provide the consumer with adequate protection against misleading conduct since they limit misleading conduct to two particular types, while other types of misleading conduct are

272 Abdullah Al-Jarbou and Asma Akli, "دراسة مقارنة" [Protecting the Consumer from Misleading Advertisements in KSA and UAE Legal Systems "Comparative Study"] (2017) 10(1) *Arab Journal of Sciences & Research Publishing* 1,12 <<https://search.mandumah.com/Record/857923>>.

273 Tarek Ahmad, 'All you Need to Know About Saudi Arabia's New Social Media Influencer Permit', Arab News (Web Page, 11 August 2022) [2] <<https://www.arabnews.com/node/2140406/media>>

274 Kanchana Kariyawasam and Shaun Wigley, 'Online Shopping, Misleading Advertising and Consumer Protection' (2017) 26(2) *Information & Communication Technology Law* 37,74 <<https://www.tandfonline.com/doi/epdf/10.1080/13600834.2017.1289835?needAccess=true&role=button>>

275 ('ECL') (n12) Art. 10 [A,B].

276 ('ERECL') (n218) Art. 10[B].

277 ('PRMA')(n209) 4; ('ECLA') (n209) Art.15; ('ERLPPM') (n210) Art.73.

278 ('LCCA') (n211) Art.2.

279 *The Executive Regulation of the Law on Combating Commercial Adulteration* 2008 (KSA) Art.2 [A] ('ERLCCA').

ignored.²⁸⁰ Therefore, the KSA consumer protection laws fail to provide comprehensive provisions that cover all kinds of misleading conduct or statements. The KSA has also failed to differentiate between false content and the omission of information, which confuses consumers and hinders their ability to make informed decisions. Therefore, consumers will be vulnerable to misleading advertisements since the legal provision related to misleading conduct excludes many forms of misleading action. The legal provision also does not provide blacklisted misleading actions or unfair commercial practices that should be eliminated by sellers.²⁸¹ For instance, the misleading provisions do not apply to the phrase ‘terms and conditions apply’ when there are no terms or conditions listed or no way of accessing the terms and conditions, such as a website link.

The absence of information requires an analysis of the Civil Transactions Law and the general principles in its final provision. Unfortunately, these principles lack provisions regarding what is misleading. Nonetheless, it points out that withholding of information while negotiation may nullify consent as it considers as act in bad faith.²⁸² This does not protect consumer from misleading since there is not clear provision that regulate misleading action. Therefore, Islamic principles related to misleading actions need to be discussed.

In terms of Islamic law, although the Islamic principles consider omission of information as a form of injustice,²⁸³ this may be not be categorised as misleading conduct that confuses consumers or prevents them from making informed decisions. This is because there is no stipulation of the type of information that would qualify the conduct or statements as misleading.²⁸⁴ Therefore, KSA policymakers need to provide a comprehensive provision that applies to all possible misleading actions including false information and the omission of information and which provides blacklisted actions that are considered misleading.

(b) Adequate Protection Against Unfair Practices

As discussed in chapter one, the existing KSA consumer protection laws should provide legal provisions that protect the consumer from unfair commercial practices, such as imposing a

280 Alshahrani (n14) 104.

281 The Unfair Commercial Practices Directive specified 31 misleading actions, including aggressive commercial practices that should be avoided while dealing with consumers. See. (‘Unfair Commercial Practices Directive’) (n264) Art.[1].

282 (‘CTL’) (n187) Art.41.

283 Mohammad Islam and Mohammad Alam, ‘Advertising: An Islamic Perspective’ (2013) 1(1) *International Journal of Ethics in Social Sciences* 105,107-108 < <http://www.crimbbd.org/wp-content/uploads/2014/01/08.-Advertising-An-Islamic-Perspective.pdf>>.

284 Alshahrani (n14) 159.

burden on the consumer to access a particular right that may cause an imbalance in the contractual relationship between the parties.²⁸⁵ There is an absence of specific legal provisions regarding unfair practices in the existing consumer protection laws in the KSA, particularly in state-made laws. There are general principles that can be referred to in the Civil Transactions Law. Article 96 states that the court has the right to change or relieve the adhering party of unfair terms,²⁸⁶ and this would apply to all unfair terms. However, this is inadequate to protect e-consumers since the law should provide clear provisions as guidelines for sellers to prevent the stipulation of particularly unfair terms or conditions. The absence of information requires an examination of Islamic law principles. Islamic law prohibits several unfair types of conduct, such as taking advantage of the consumer.²⁸⁷ *Najash* is another form of transaction that is banned in Islamic law; the Prophet Muhammed (PBUH) ‘forbade the outbidding (against another)’.²⁸⁸ This transaction is not approved under the Islamic legal system since the consumer may be harmed by dealing with more than one agent or broker and since it may involve unnecessary increases in charges for goods.²⁸⁹ From those Islamic principles, it is evident that Islamic law protects consumers in the traditional market by promoting businesses to help balance the economic status throughout an Islamic country. This is inadequate to protect the consumer in e-commerce since the forms of unfair practices may differ from those in the traditional market because the nature of the transaction is different. Furthermore, the issues that consumers face in e-commerce transactions were not present in the time of regulating Islamic principles because contracting was conducted face-to-face. In Islamic law, the market is governed by a *Hisba* official called a *muhtasib*, which means governor. The governor must ensure the quality and quantity of terms and conditions and has to meet special requirements, such as possessing a good

285 Ch.1 (G)(2)(b)(ii).

286 ('CTL') (n187)Art.96.

287 This doctrine was drawn from the Hadith that '[t]he townsman should not sell for a man from the desert (with a view to taking advantage of his ignorance of the market conditions of the city)'. Also, it was reported that the Prophet (PBUH) 'forbade the townsman to sell on behalf of the man from the desert'. '*The Book of Transactions; Chapter: the Prohibition of the Town-Dweller Selling on Behalf of a Bedouin; Hadith 3628*', Sunnah.com (Web Page) [6] <<https://sunnah.com/muslim/21/>>.

288 '*The Book of Transactions; Chapter: the prohibition of urging a buyer to cancel a purchase in order to sell him one's own goods; And urging a seller to cancel a sale already agreed upon so that one can buy the goods oneself; And the prohibition of artificially inflating prices; And the prohibition of letting milk accumulate in the udder in order to deceive the purchaser; Hadith 3622*', Sunnah.com (Web Page) [4] <<https://sunnah.com/muslim/21/18>>.

289 Abu Umar Ahmad and Kabir Hassan M, 'Riba and Islamic Banking' (2007) 3 Journal of Islamic Economics Banking and Finance 31 <https://www.researchgate.net/publication/228672983_Riba_and_Islamic_Banking/stats>.

understanding of how to conduct business and a comprehensive knowledge of Islamic law.²⁹⁰ The so-called *Hisba*, or the authority of the market, is defined by Ibn Khaldun, ‘as a religion’s job [to ask] people to do [a] good job and to refrain from doing evil’.²⁹¹ This cannot protect the consumer in the online market because the location of the seller may be in other jurisdiction which means that the governor of the market is unable to inspect the shop of the foreign seller. This poses controversy of outdated principles that cannot govern contemporary issues. Therefore, those issues need to be regulated by new laws. KSA policymakers should provide consumers with regulations that highlight recent unfair practices that may appear in e-commerce transactions, such as unilaterally changing the agreement and placing a burden on consumers to access particular remedies.

(c) Regulate Commodity Quality

It was pointed out in chapter one that the law should ensure that the quality of the commodity is adequate and meets the quality standard and consumer expectations as well as the precontractual statements.²⁹² The KSA's existing consumer protection laws require that a product meet the approved quality standard provided by the KSA Standard, Metrology and Quality Organisation.²⁹³ The law considers selling a product that does not meet the KSA quality standards as a crime.²⁹⁴ Therefore, the consumer is entitled to a refund and the seller must recall the product.²⁹⁵

The KSA law provides a provision related to meeting the KSA quality standards. However, the law should provide the consumer with a guarantee that the KSA quality standards have been met. The law also fails to provide a provision related to meeting consumer expectations and the precontractual stage. This absence of information requires an analysis of the Civil Transactions Law and the general principles in its final provision. Unfortunately, the principles lack provisions regarding commodity quality. Therefore, Islamic principles regarding commodity quality need to be discussed.

²⁹⁰ Ahasanul Haque, Ali Shafiq and Suharni Maulan, ‘An Approach To Islamic Consumerism And Its Implications On Marketing Mix’ (2017) 25(1) Intellectual Discourse 139.

²⁹¹ Ibid.

²⁹² Ch.1 (G)(2)(b)(iii).

²⁹³ *The Law on Combating Commercial Adulteration* 2008 (KSA) Art.1 [B] (‘TLCCA’).

²⁹⁴ Ibid Art.2 [5].

²⁹⁵ (‘Guide to Consumer Rights and Responsibilities’) (n186) 7.

Islamic law does not discuss the quality standards in the KSA because the law existed before the existence of the KSA. In terms of meeting the expectations of the consumer or the pre-contractual stage statements, Islamic law provides general guidelines or obligations of the contracting parties while conducting a transaction. Islamic law imposes obligations on vendors, such as speaking honestly while transacting with a consumer and not selling an unlawful product that harms the consumer, such as alcohol, pig meats, dead meat and defective goods.²⁹⁶ These doctrines seek to provide a high level of protection for both parties. Some of the Islamic tenets can be adopted in e-commerce transactions, such as speaking truthfully while dealing²⁹⁷ and not deceiving the other party,²⁹⁸ but Islamic doctrines are difficult to enforce, especially in e-commerce, because they provide general rules. These general rules may be adopted in e-commerce transactions. However, there is uncertainty regarding the specific provisions that are needed to clearly and transparently regulate e-commerce transactions to provide adequate consumer protection frameworks. Thus, Islamic law does not explicitly provide legal provisions regarding meeting consumer expectations and pre-contractual statements. The Islamic general principle that can be adopted is that of the Prophet (PBUH) Hadith that

296 The Prophet (PBUH) pointed out that “Every intoxicant is unlawful”. *‘The Book of Drinks; Chapter: Prohibition of Every Drink that Intoxicates; Sunan an-Nasa’i, Vol. 6, Book 51, Hadith 5591’*, Sunnah.com (Web Page) [23] <<https://sunnah.com/nasai:5588>>. Therefore, if selling a product is unlawful, the production and distribution of it is also unlawful. This can be proven by another Hadith where the Prophet (PBUH) cursed “the wine-presser, the one who has it pressed, the one who drinks it, the one who conveys it, the one to whom it is conveyed, the one who serves it, the one who sells it, the one who benefits from the price paid for it, the one who buys it, and the one for whom it is bought”. *‘Business Transactions; Chapter: Earning, and Seeking What is Lawful; Mishkat al-Masabiah, Book 11, Hadith 18’*, Sunnah.com (Web Page) [1b] <<https://sunnah.com/mishkat:2776>>. This means that products that are unlawful to consume are also unlawful to sell, produce, etc.

297 The prophet Muhammed (PBUH) pointed out that ‘The buyer and the seller have the option to cancel or to confirm the deal, as long as they have not parted or till they part, and if they spoke the truth and told each other the defects of the things, then blessings would be in their deal, and if they hid something and told lies, the blessing of the deal would be lost’. See *‘Sales and Trade; Chapter: The Loss (of Blessing) if One Tells Lies or Hides the Facts in a Deal; Sahih al-Bukhari, Book 34, Hadith 2082’*, Sunnah.com (Web Page) [22] <<https://sunnah.com/bukhari:2082>>. Prophet Mohammad (PBUH) pointed out that ‘whoever sells defective goods without pointing it out, he will remain subject to the wrath of Allah, and the angels will continue to curse him’. See *‘The Chapters on Business Transactions; Chapter: One Who Sells Defective Goods Should Point Out The Defect; Sunan Ibn Majah, Vol 3, Book 12, Hadith 2247’*, Sunnah.com (Web Page) [45] <<https://sunnah.com/ibnmajah/12/111>>. The Quran stated that ‘O you who have believed, fulfil [all contracts]’. Therefore, the conditions of the contract must be fulfilled by all parties. See *Surah Maidah Ch.5 (1)*. Also, the Prophet Muhammed pointed out that ‘The Muslim is the brother of another Muslim, and it is not permissible for a Muslim to sell his brother goods in which there is a defect, without pointing that out to him’. See *‘The Chapters on Business Transactions; Chapter: One Who Sells Defective Goods Should Point Out The Defect; Sunan Ibn Majah, Vol 3, Book 12 Hadith 2246’*, Sunnah.com (Web Page) [45] <<https://sunnah.com/ibnmajah/12/110>>

298 It was narrated that ‘A man told the Messenger of Allah (ﷺ) that he was being deceived in business transactions. The Messenger of Allah (ﷺ) then said: When you make a bargain, say: There is no attempt to deceive. So when the man made a bargain, he said: There is no attempt to deceive’. See *‘Wages (Kitab Al-Ijarah); Chapter: it a Man Says When Buying and Selling: No Deception, Sunan Abi Dawud, Book 23, Hadith 3493’*, Sunnah.com (Web Page) [1313] <<https://sunnah.com/abudawud:3500>>

‘Muslims are bound to their conditions’.²⁹⁹ Under this principle, the pre-contractual statements are considered as contract conditions that must be fulfilled by the vendor. Nonetheless, this cannot adequately regulate e-commerce transactions since there is a lack of clear provisions that apply to certain circumstances. There is thus a need for a regulated provision that meets the requirement for the ideal consumer protection in e-commerce transactions.

(d) Regulate Consumer Redress

As discussed in chapter one, good consumer law provides basic consumer rights, such as a cooling-off period to exercise withdrawal rights, return and exchange. The law should also provide a provision for delivery, including identifying the risks of delivering the product.³⁰⁰

A number of rules regulate withdrawal rights, and they have their source in both state-made laws and Islamic legal principles. Some of these laws apply to certain withdrawal situations, such as withdrawal within seven days after receiving the service or taking possession of the product.³⁰¹ Others apply to withdrawal during the trial period if there is a trial clause in the contract.³⁰² Both state-made laws and Islamic legal principles give rise to uncertainty as to the timeframe for exercising withdrawal rights, the contracting parties’ obligations after exercising withdrawal rights and the mechanisms for exercising remedies, such as clear information regarding the timeframe for reporting, exercising the withdrawal right and the obligations of sellers and consumers regarding the exercise of this right.³⁰³ These issues will be problematic in cross-border e-commerce transactions as the law should clarify every detail of the contract given that the law needs to work as a preventative measure to eliminate uncertainty regarding consumer rights that should be clear to both the seller and consumer.

Several regulations and laws in the KSA state that consumers have the right to withdraw from a contract if they identify a mistake within 24 hours of placing the order, unless they have already used or benefited from the product.³⁰⁴ Moreover, the law permits withdrawal within

299 *The Chapters on Business Transactions; Chapter: One Who Sells Defective Goods Should Point Out The Defect; Sunan Ibn Majah, Vol 3, Book 12, Hadith 2246*, Sunnah.com (Web Page) [45] <<https://sunnah.com/ibnmajah/12/110>>

300 Ch.1 (G)(2)(b)(iv).

301 ('ECL') (n12) Art.13[1]

302 ('CTL') (n187) Art.310.

303 The Kuwaiti law provides clear information regarding the timeframe for reporting exercising the withdrawal right and the obligations of sellers and consumers regarding the exercising of this right. See *The Consumer Protection Law 2014 (KW) Art.10 ('CPL')*; *The Executive Regulation of Consumer Protection Law 2015 (KW) Art.25 ('ERCPL')*.

304 ('ECL') (n12) Art.4; ('ERECL') (n218) Art.4[1-2]

seven days starting from the date of taking possession of the product or receiving the service, unless consumers use or benefit from the purchase.³⁰⁵ KSA policymakers have exempted certain circumstances from the right to withdraw, such as if the subject matter of the contract is a customised product made by consumer request, video tapes, records, used software, newspapers, magazines, books or any kind of publication, accommodation, transportation, catering services or online software as well as if the defect is a result of consumer misuse.³⁰⁶

The law mandates that the consumer should bear the cost of returning the product unless the contract states otherwise.³⁰⁷ This may be unfair when there is a lack of description or the product is unfit for its purpose.³⁰⁸ Therefore, KSA policymakers need to specify the circumstances in which the seller is to bear the cost of returning the product, namely in those cases that grant the withdrawal right due to the seller's breach of the contract or legal regulations.³⁰⁹ Other laws provide greater certainty regarding the situations in which the consumer cannot exercise a withdrawal right. Those situations are when the consumer relinquishes the withdrawal right, uses the product after the trial period, damages or destroys the product or fails to exercise the right within the provided period.³¹⁰ However, there is no timeframe given for exercising the withdrawal right when the delivery of the product falls over several days, as in multiple product contracts.³¹¹ The e-commerce law requires that consumers receive a refund after they have exercised a withdrawal right,³¹² but information is lacking about how to obtain a refund, such as the timeframe for the refund. Other remedies are also lacking

305 ('ECL') (n12) Art.13[1]

306 The E-commerce Law provides several situations in which the consumer is unable to withdraw from the agreement unless there is a defect or the product does not meet the consumer's expectations (does not match the requested specification), such as if the subject matter of the contract is a customised product made by consumer request, video tapes, records, used software, newspapers, magazines, books or any kind of publication, accommodation, transportation, catering services or online software as well as if the defect is a result of consumer misuse. See ('ECL') (n12) Art.13 [2]. The E-commerce Law provides additional exceptions for exercising withdrawal rights. Consumers are unable to exercise this right (unless the agreement stipulates otherwise) if the subject matter is a product that is supposed to deteriorate within a certain time, unable to be resold for hygienic purposes, consists of many parts that cannot be returned to their original status, travel tickets, management event services, sold at public auctions or a product that has a price that is subject to change, such as gold. ('ERECL') (n218) Art.11

307 ('ECL') (n12) Art.13[1]

308 Almalki (n77) 1143.

309 The Kuwaiti law obligates that if there is any kind of defect in the product, the consumer may return with no burden or extra cost. ('CPL') (n293) Art.10.

310 ('CTL') (n187) Art.311.

311 Alshahrani (n14) 106-107.

312 ('ECL') (n12) Art.13[1].

in KSA regulations and laws, such as an exchange, a requirement to re-perform a service or a requirement to replace intangible goods. In addition, details of the obligations of vendors and consumers are absent from the existing KSA consumer protection laws.³¹³

The consumer is also able to exercise withdrawal if the defect decreases the value and benefits of the product.³¹⁴ However, the consumer has the option either to withdraw or accept the contract and be compensated for the affected value.³¹⁵ If the deal includes several products, the right to withdraw is granted only for the defective products, unless the separation will harm or destroy the product. The consumer may otherwise accept the defective product and be compensated for the reduced value as a result of the defect.³¹⁶ The need for a remedy can be prevented by providing an alternative product,³¹⁷ and withdrawal from the contract is not granted if the party (consumer) damages the product or explicitly or implicitly expresses satisfaction with the defect.³¹⁸ Withdrawal is not granted in the following circumstances: if the party (consumer) is aware of the defect at the time of purchasing or could have discovered it if they had properly inspected the goods, except if the vendor failed to mention the defect or if the product was guaranteed to be free of defects by the vendor; if the people's custom is to tolerate the defect; if the defect occurs after delivery; or if the sale takes place in judicial or administrative auctions.³¹⁹ There is no given timeframe for reporting the defect as the law simply requires a defect to be reported in a reasonable time, except if the defect is hidden and is reported after it has been discovered.³²⁰

The identified issues are present in consumer protection private laws and Civil Transactions Law and the principles in its final provisions. This necessitates analysing Islamic principles. The Islamic principles provide *Khiyar* (options), such as the stipulation and inspection options, that can be used to withdraw from a contract.³²¹ The argument is that these withdrawal options

313 Kuwait law provides clear regulation regarding the accessible remedies after exercising withdrawal rights including the timeframe and the obligation of the contracting parties. ('CPL' (n293) Art.10; ('ERCPL' (n293) Art.25

314 ('CTL' (n187) Art.338 [1].

315 Ibid

316 Ibid Art.342

317 Ibid Art.338 [2].

318 Ibid Art.341 [1]

319 Ibid Art.339.

320 Ibid Art.340.

321 The inspection option is provided to the consumer if unable to inspect, see or examine the goods during the time of concluding the contract. Nayel Alomran,'the Option of Sight Under Islamic *Shari'ah* and its Applicability to Electronic Direct Purchase Administrative

are inappropriate for the regulation of e-commerce transactions because it is not clear that they give consumers the right to either terminate or accept the contract, given that unilateral termination is not applicable.³²² Termination by the consumer is inappropriate in the context of e-commerce because the seller holds the dominant position as the agreement is made upfront; this may prevent such action. The payment is transferred to the seller before the goods are obtained, and different jurisdictions may regulate the transaction. Moreover, terminating the contract is problematic for intangible goods as the consumer may not be able to reject them.³²³

The other issue is that there is room for either the seller or a third party to escape liability since the option applies only to the two contracting parties (seller and consumer). This is a shortcoming, particularly in cross-border e-commerce transactions: If there is an issue caused by a third party, such as carriers or manufacturers, the consumer would not be able to exercise the remedy option as the contract was conducted between the seller and consumer.³²⁴ Sellers can escape liability if there is a stipulation in the contract that exempts sellers from the other options.³²⁵ In addition, there is no record of the policies related to the refund or exchange of products. The stipulation option allows the seller to stipulate unfair terms, such as no right to return or exchange the product, which negatively impacts the trust of the consumer in cross-border e-commerce transactions. There is uncertainty related to the validity of the options or the timeframe for exercising those options due to the differing viewpoints of Islamic jurists.³²⁶ These issues are amplified in cross-border e-commerce transactions since the governing jurisdiction may be supportive of one view that contradicts the view in the KSA jurisdiction or it may not recognise those principles at all.

The other issue with the options, particularly the inspection option, is that scholars have not discussed this option in e-commerce transactions. However, they have disputed whether seeing

Contracts in the UAE' (2020) 23(1) *Journal of Legal, Ethical and Regulatory Issues* 1,2 < <https://www.abacademies.org/articles/the-option-of-sight-under-islamic-shariah-and-its-applicability-to-electronic-direct-purchase-administrative-contracts-in-the-uae-9017.html>>.

322 Fallatah (n13) 102.

323 Alshahrani (n14) 180.

324 Parviz Bagheri and Kamal Hassan, 'The Application of the Khiyar Al-'Aib (Option of Defect) Principles in Online Contracts and Consumer Rights' (2012) 33(3) *European Journal of Law and Economics* 565,569 < <https://link.springer.com/article/10.1007/s10657-012-9332-5>>

325 Alshahrani (n14) 180.

326 Syed Gillani, Syed Gardazi and Atta Mustafa, 'The Concept of Freedom of Contract and The Role of Khiyyar Alshart (Option of Stipulation) in Islamic Commercial Law' (2022) 6(2) *International Journal of Arabic and Islamic Research* 69,80 <<http://www.habibiaislamicus.com/index.php/hirj/article/view/88/298>>.

the product via different means, such as screens, qualifies as inspection.³²⁷ It is submitted that this applies to offline and online settings. However, if this were made explicit, it would promote legal certainty and enhance the efficacy of the laws. This poses questions about the validity of this inspection in e-commerce transactions. There is also no record of whether this option extends to intangible products.³²⁸ Withdrawal options in Islamic principles arguably have several issues that affect the protection of the consumer in cross-border e-commerce transactions since the major issues that have been mentioned make those withdrawal options inappropriate for cross-border e-commerce transactions.

Regarding delivery provisions, the KSA's existing consumer protection laws lack the mechanisms or information by which the provided remedies can be exercised, such as a lack of consumer obligation after expressing the intention to use the legal remedy such as timeframe from informing the vendor of the issue.

Several laws and regulations cover the delivery of goods. Some apply to the status of received goods and whether they match the pre-contractual condition,³²⁹ including the accessories or parts connected to the product according to the contracting agreement or when it is customary to include these with the product.³³⁰ Others apply to approaches to take possession of the goods. Goods are considered to be legally delivered: when the consumer takes possession of them and can use them with no obstacles according to the nature of the products or services;³³¹ if they are in the consumer's possession before the conclusion of the contract;³³² if the contracting parties agree on terms for considering the product as delivered; or if there is a lawful clause that considers products delivered in certain situations.³³³ Some regulations make provision for what happens if damaged products are delivered. The consumer is entitled to withdraw if the damage is caused by reasons that do not involve contracting or non-contracting parties.³³⁴

327 Azura Eabdalqadir, 'البيع على أساس الوصف وتطبيقاته الحديثة "دراسة في الفقه الإسلامي والقانون"' [The application of selling based on the description "Islamic Jurisprudence and law study"] (2013) 1(1) *Law and Society Journal* 223,230 <<https://www.asjp.cerist.dz/en/article/31588>>.

327 Al-Sanhoury (n18) 127-128; Alomran (n311) 8 ; Eala'aldiyyn Alsamaraqandii, تحفة الفقهاء [Tuhfat Allfuqaha](the House of Scientific Books,1984) Ch.2[88]

328 Alshahrani (n14) 183.

329 ('CTL') (n187) Art.321.

330 Ibid Art.322.

331 Ibid Art.324.

332 Ibid Art.325.

333 Ibid Art.326.

334 Ibid Art.329 [1].

However, if the delivered product is entirely or partially destroyed by the seller or a third party, the consumer has the right to withdraw from the contract, accept the contract, demand compensation from the party that caused the damage., or withdraw from the destroyed part.³³⁵ In addition, if the product is destroyed by no intervention of any party including the contracting party or third party, then the consumer is entitled to withdraw from the contract.³³⁶ If the product is partially destroyed, the consumer is eligible to ask for a refund related to its value or to demand withdrawal from the entire contract and a refund for the value of the product.³³⁷ The law absolves sellers of responsibility if the consumer damages the product even before it is delivered in cases in which the goods are under consumer possession and not legally delivered.³³⁸

Some regulations consider a delivery delay, and the withdrawal right is granted if the delivery is delayed 15 days or more after the day that the contract was concluded or after the agreed date for delivery of the product, unless there are force majeure reasons.³³⁹

It can be contended that the KSA national legal frameworks have failed to determine an acceptable timeframe for accessing the provided remedy or for informing the vendor of the issue. In addition, there is no mention of the obligations of the contracting parties after the remedy has been applied, such as refunds, exchanges or returns. These issues will be amplified in cross-border e-commerce transactions because the regulations contain no information on basic consumer rights in this type of transaction, such as refunds, returns and exchanges, how these rights should be exercised or a timeframe. Therefore, the consumer would not be aware of the possible legal remedies if something goes wrong with the transaction, which will affect consumer protection.

3 Effective Dispute Resolution

As discussed in chapter one, an ideal consumer protection law should provide adequate dispute mechanisms that are appropriate for cross-border e-commerce transactions. This requires the law to provide a realistic approach to complaints from the consumer's country.³⁴⁰ The law

335 Ibid Art.328.

336 Ibid Art.329 [1].

337 Ibid Art.329 [2].

338 Ibid Art.327.

339 ('ECL') (n12) Art.14[1].

340 Ch.1 (G)(2)(c).

should also provide information about the process of initiating a dispute with sellers, particularly in cross-border e-commerce transactions.³⁴¹ It should direct the consumer about the approach to take to make a complaint. Unfortunately, the KSA's existing consumer protection laws do not provide clear mechanisms to resolve issues with sellers, particularly international sellers because information is absent in this regard. The Ministry of Commerce has published guidelines for consumers, namely the Guide to Consumer Rights and Responsibilities.³⁴² This guide provides a chapter that discusses filing when there is a consumer incident. As a first step, the guideline encourages consumers to try to amicably resolve the issues with the seller by contacting the seller or the providers of maintenance and warranties.³⁴³ The seller is required to mention clear mechanisms for the consumer to report the incident as well as to handle or react to the complaint by contacting the consumer in writing of the outcome within 30 days. If the seller has not responded or resolved the claim within the 30 days, the consumer then reports to the Ministry of Commerce through its official channels, such as by calling the ministry or through the Report App.³⁴⁴ The complaint must include information, including an invoice, order number, information about the claim, a picture of the product and the e-store link.³⁴⁵ Should the consumer be unhappy with the settlement and compensation offered, they should seek to file a claim within the appropriate 'judicial body'.³⁴⁶ However, there is confusion about reporting incidents with online sellers. This is evident by a recent study that determined the Ministry of Commerce is responsible for receiving consumer incidents from consumers against sellers who register in either the commercial register system in the KSA or have a freelancer practitioner certificate. However, unregistered sellers that engage in e-commerce are reported by consumers to the Ministry of the Interior through police stations or electronic security applications.³⁴⁷ Therefore, the law should clearly identify the process for complaints with special attention to cross-border e-commerce transactions.

A realistic dispute resolution process is a combination of dispute resolution processes, such as the out-of-court dispute process of ADR, a low-value process or sellers' internal and external systems for resolving consumer disputes.³⁴⁸ It is submitted that dispute mechanisms in the KSA

341 Ibid.

342 This guideline can be accessed through the link <<https://mc.gov.sa/en/guides/Pages/default.aspx>>.

343 ('Guide to Consumer Rights and Responsibilities') (n186) 29.

344 Ibid 29.

345 Ibid 29-30.

346 Ibid 30.

347 Almalki (n77) 1135.

348 ('OECD Recommendation Disputes and Redress 2007') (n 114) 9.

do not meet these ideals since there is an over-reliance on court processes, there are associated issues related to access to justice for consumers and there are inherent difficulties in cross-border e-commerce transactions regarding the enforcement of local laws upon international sellers. Moreover, there is uncertainty within the existing KSA consumer protection law over which courts are competent to deal with consumer litigation. These issues are further explored in this section.

KSA laws rely heavily on courts to provide adequate remedies for consumers.³⁴⁹ This reliance may be associated with the existing form of the KSA national legal framework, which is unclear about what information should be included at the pre-contractual stage as well as available remedies if there is a breach of contract. A court is thus the appropriate entity to determine the right remedy for the consumer issue since court judges have the tools with which to extrapolate from the principles of Islamic law.³⁵⁰ However, this means that consumers are unable to access a combination of different dispute-resolution mechanisms. The issue with court disputes is that they are expensive, ineffective, and can take a long time.³⁵¹ Therefore, the consumer may need to pay more for litigation plus the price of the product or service since KSA policymakers do not provide a low-value dispute resolution mechanism. The court fee in KSA is 5% of the claim values for litigation valued under 100,000 S.R.³⁵² This may be not a high cost. However, the fact that local laws or judgments may not be enforced upon international sellers across the border means that the consumer loses the value of the product or service plus the value of the court fees. Therefore, it is important to provide out-of-court dispute mechanisms and a low-value dispute process that would be cheap, easy to use, and timely.³⁵³

The reliance on traditional courts to provide remedies is arguably inappropriate for cross-border e-commerce transactions, as this can lead to jurisdictional issues regarding the enforcement of local laws.³⁵⁴ Enforcing local laws in another jurisdiction is complicated. The

349 ('ECL') (n12) Art.22. The argument that the consumer needs to claim before the court is emphasised by several studies. Alshahrani (n14) 97; Al-Alwani (n15)10.

350 ('LCP') (n190) Art.1.

351 Chin Ong and David Teh, 'Redress Procedures Expected by Consumers during a Business-to-Consumer E-commerce Dispute' (2016) 17 *Electronic Commerce Research and Applications* 150,159 <<https://www.sciencedirect.com/science/article/pii/S1567422316300254>>.

352 The Executive Regulation of Judicial Costs Law 2021 (KSA) Art.2 ('TERJCL'). An Arabic version of this law can be found through the link <<https://laws.boe.gov.sa/BoeLaws/Laws/LawDetails/d7e8efd3-4021-4413-8255-ae7c00f190de/1?csrt=17184169300042470816>>.

353 This was emphasised in the recommendation for effective dispute-resolution mechanisms issued by the OECD. ('OECD Recommendation Disputes and Redress 2007') (n114) 9[A].

354 Ong and Teh (n341)159.

ability to enforce law or court judgments upon international sellers is controlled by various approaches including bilateral and multilateral agreements, as well as local legal procedures, rules and regulations.³⁵⁵ There are legal principles for enforcing a judgment in a foreign jurisdiction. The local jurisdiction has the right to: 1) determine whether the court that issued the judgment had jurisdiction; 2) determine whether the respondent was notified appropriately; 3) determine whether the proceedings should be rescinded due to fraud; and 4) establish that the foreign judgment is not contrary to local legal frameworks.³⁵⁶ For example, within the jurisdiction of the KSA, foreign court judgments against residents in the KSA are heard by the Regulation of Execution.³⁵⁷ The enforcement of foreign judgments in the KSA is based on reciprocity and the following conditions: 1) a KSA court has no jurisdiction to review the case to which the judgment is related, and the foreign court that issued the judgment has jurisdiction according to the rules or principles of the international judicial jurisdiction; 2) the litigation parties are called to appear, are properly represented and have the right to defend themselves; 3) the judgment is the final court judgment in the foreign jurisdiction; 4) the judgment is not inconsistent or in conflict with a judgment in a similar case in a KSA jurisdiction; and 5) the judgment is not inconsistent or in conflict with public order in the KSA.³⁵⁸ The difficulty in obtaining remedies through traditional litigation (court) in cross-border e-commerce transactions will result in a failure to hold sellers responsible since international sellers are operating in international jurisdictions.³⁵⁹ Accessing effective remedies requires the wrongdoer to be extradited from international jurisdiction or the aggrieved party to pursue litigation across the border, which may be costly and beyond the consumer's ability.³⁶⁰

Obtaining consumer remedies through a court is arguably not an effective option because the value of the contract may not be worth the effort or the cost of accessing the remedy, which may be greater than the cost of the goods and may take a long time. Therefore, KSA

355 Lexology, Enforcement of Foreign Judgment 2021 (online at 25 December 2021) Enforcement of Foreign Judgment 2021, '3 Global Overview'[2] 3.

356 'Enforcement of Judgments', Travel.State.Gov U.S. Department of State_ Bureau of Consular Affairs (Web Page,) [4] <<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/international-judicial-asst/Enforcement-of-Judges.html>>.

357 *Law of Enforcement* 2011 (KSA) Art.8.

358 *Ibid* Art 11.

359 Kariyawasam and Wigley (n267) 85.

360 *Ibid*.

policymakers have failed to provide a variety of dispute-resolution mechanisms, including alternative dispute-resolution mechanisms and low-value dispute-resolution mechanisms.³⁶¹

Another issue with the current form of the KSA dispute-resolution mechanism is that there is uncertainty over which courts are considered as competent to deal with consumer disputes.³⁶² Since the law does not clearly state how to determine competent courts that can deal with disputes between contracting parties, there is uncertainty over whether court litigation would be before a commercial court or a general court.³⁶³ According to *Al-Baqami*, a competent court is a commercial court since it is a competent court according to commercial court law,³⁶⁴ but a general court can deal with consumer disputes over online contracts.³⁶⁵ The justification for having two different circuit courts dealing with the same issues or disputes is that Article 16 of the commercial court law indicates that the value of the contract must be more than SAR 100,000 for the commercial court to accept the claim.³⁶⁶ In other words, the law does not mention values lower than this. For lower amounts, the competent court is the general court, as it deals with disputes over contracts worth less than SAR 100,000.³⁶⁷

It can be contended this causes ambiguity regarding the submission of claims to a court, and this is one of the major issues that hinders good dispute-resolution mechanisms. KSA policymakers have failed to identify the competent courts or circuit courts and the value of the claims that can be heard by these courts, whether of low or high value. Clear, comprehensive information needs to be available to the consumer regarding how to initiate claims and what is the appropriate competent court according to the value of the disputed products or services.³⁶⁸

KSA policymakers need to provide a variety of dispute-resolution mechanisms, including alternative dispute-resolution mechanisms and low-value dispute-resolution mechanisms.³⁶⁹

361 This was recommended by the OECD. ('OECD Recommendation Disputes and Redress 2007') (n114) 10[7]

362 Al-Baqami (n10) 68.

363 ('ECL') (n12) Art 22.

364 ('LOCC') (n10) Art.14.

365 ('LOJ') (n10) Art.16.

366 Al-Baqami (n10) 68.

367 ('LOJ') (n10) Art.16 [2].

368 ('OECD Recommendation Disputes and Redress 2007') (n114) 9 [A-4]

369 This was recommended by the OECD. Ibid 10[7]

As stated in chapter one, the consumer dispute should be either individually initiated or collectively by consumer protection agencies.³⁷⁰ An effective consumer protection system requires several tools that support vulnerable consumers and adequately protect them.³⁷¹ International organisations issue guidelines to assist countries to provide adequate protection. For instance, the OECD recommends as an effective tool to access remedies that access be facilitated for an entity that initiates proceedings on behalf of the consumer.³⁷² The UN Guidelines for Consumer Protection recommend access to collective resolution procedures.³⁷³ The argument is that KSA laws have not established an effective tool that can provide an adequate system to protect consumers as no entity handles consumer issues and there is a lack of information on collective dispute mechanisms. Therefore, KSA policymakers established the Consumer Protection Association on 3 July 2007 by resolution no. 202 of the KSA Council of Ministers.³⁷⁴ This entity aims to protect the consumer from all forms of product or service adulteration, deception, counterfeiting and price manipulation; it represents consumers in public and private entities and raises consumer awareness of consumption approaches, essential information and consultations.³⁷⁵ Its function is to conduct studies regarding consumer protection activities, to receive consumer claims and to inform governmental agencies about reported incidents. It also represents consumers before consumer protection committees in both local agencies and internationally, and it proposes and develops consumer protection laws.³⁷⁶ However, the current role of the Consumer Protection Association is consultative.³⁷⁷ It does not provide an adequate tool that can support consumers since the law does not allow initiation or intervention in court on consumer dispute issues. There is also no collective dispute process in KSA national legal frameworks. However, this would be better accessed through consumer protection agencies since consumer movements are not established by KSA consumers and

370 Ch.1 (G)(2)(c)(i).

371 'Consumer Policy: Principles and Instruments', *Fact Sheets on the European Union* (Web Page, 2023) [1] <<https://www.europarl.europa.eu/factsheets/en/sheet/46/consumer-policy-principles-and-instruments>>

372 ('OECD Recommendation Disputes and Redress 2007') (n114) 12 [5-B].

373 ('UN Guidelines for Consumer Protection 2015') (n7)[40]

374 'Origin and Definition', *Consumer Protection Association* (Web Page, 2019) [1] <https://web.archive.org/web/20190417201137/https://cpa.org.sa/?page_id=20>

375 *Consumer Protection Association Law 2015* (KSA) Art.4 ('CPAL').

376 'The Function of the Association', *Consumer Protection Association* (Web Page) <<https://www.cpa.org.sa/function-of-the-association>>.

377 Ibid.

consumers rely on governmental interventions to protect them.³⁷⁸ The lack of a focused regulatory committee that handles consumer issues is a shortcoming in the system of effective dispute-resolution mechanisms. Therefore, KSA consumers have no regulatory committee that takes on consumer issues and initiates court proceedings on behalf of a consumer.

4 Go Beyond State Borders

It was pointed out in chapter one that the nature of cross-border e-commerce transactions requires the development of multilateral or bilateral arrangements to enhance international enforcement of local laws on consumer disputes.³⁷⁹

The OECD recommends cooperation between jurisdictions to develop conventions or other arrangements for the mutual recognition of internationally enforceable laws or court judgments as an effective tool for protecting consumers in cross-border e-commerce transactions.³⁸⁰ Even though the cost and time to establish such a convention may be a barrier, a convention is an effective solution for mutually recognising local laws internationally. However, the barrier can be mitigated by establishing the convention through global or regional coalitions, such as GCC countries. These are relevant because this thesis examines the nature of e-commerce transactions, which are conducted across borders. The argument is that KSA laws have not established an effective tool that can provide an adequate system to protect consumers, and there is a lack of mutual recognition of local laws by consumer protection agencies internationally.

Regarding cooperation between consumer protection agencies to mutually recognise local laws in international jurisdictions, the author is unaware at the time of writing this thesis of membership of the KSA in any convention that investigates and cooperates with international consumer agencies regarding consumer complaints. However, there is an agreement by the United Nations concerning international sales of goods that aims to provide an identical legal framework for international sales of goods and remove barriers to international trade, including

378 A study confirmed that KSA consumers rely on government intervention rather than consumerism. See Shahid Bhuian and Alhassan Abdulmuhim, 'Consumerism in the Arab Middle East: The Case of Saudi Arabia' in Ajay Manrai and Lee Meadow (ed) *Global Perspective in Marketing for the 21st Century* (Proceedings of the Academy of Marketing Science, 2015) 93,95. A recent study confirmed that KSA consumers face external and internal challenges. See Alaa Alrifai, 'دراسة سلوك المستهلك في المملكة العربية السعودية بعد جائحة كورونا' [a Study of KSA consumer Behaviour after Covid-19 Pandemic] (2023) 15(2) *Legal Journal* 482,501<https://jlaw.journals.ekb.eg/article_286377.html>. One of these challenges is the lack of a governmental entity to take on consumer issues and fight for their rights.

379 Ch.1 (G)(2)(d).

380 ('Recommendation for Consumers in E-Commerce 2016') (n7)12[54].

the choice of governing law.³⁸¹ This convention does not apply to consumers since the scope of it is businesses that are located in different jurisdictions.³⁸² Therefore, the KSA government recognises the importance of multinational conventions regarding cross-border transactions. There is an economic agreement between GCC countries that aims to achieve economic integration among these countries regarding the trade of goods and services as well as industry purchase and government procurement.³⁸³ This agreement entered into force on 1 November 1981.³⁸⁴ Article 25 of the agreement contains a provision regarding e-commerce, which indicates that member states should facilitate trade exchange and bank dealings by e-communication and unify the regional legal frameworks related to e-commerce.³⁸⁵ Therefore, member states should maximise their efforts to implement e-commerce unified laws to reinforce the joint work on e-commerce, unified legislation regulations and local measures.³⁸⁶ In 2020, the KSA agreed to join the Unified Strategic Framework of E-Commerce between the GCC countries. This aims to ease cross-border e-commerce and unify consumer protection principles related to e-commerce.³⁸⁷ This framework further aims to reinforce consumer participation in e-commerce and consumer protection, for example, by reinforcing the cooperation among consumer protection committees in GCC countries by creating measures to monitor the market.³⁸⁸ Another purpose of this initiative is to provide a unified regional legal framework among GCC countries that can protect consumers against deceptive conduct and guarantee that consumers will be provided with adequate information before they engage in an e-commerce transaction. In addition, this framework guarantees the ability to withdraw, return

381 KSA agreed to join this convention in July 2023. See KSA Royal Decree, Umm Al-Qura, No M/196, 14 July 2023, Art.1. the Royal Decree can be accessed through the link < <https://uqn.gov.sa/details?p=23265>>

382 United Nations Convention on Contracts for the International Sale of Goods, KSA, 14 July 2023, (entered into force 1 January 1988) art.2–3.

383 'GCC Economic Agreement' *Saudi General Authority of Foreign Trade* (Web Page) [1] < <https://gaft.gov.sa/en/knowledge-center/CommercialAgreements/Pages/%D8%A7%D9%84%D8%A7%D8%AA%D9%81%D8%A7%D9%82%D9%8A%D8%A9-%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A%D8%A9-%D8%A8%D9%8A%D9%86-%D8%AF%D9%88%D9%84-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%AA%D8%B9%D8%A7%D9%88%D9%86-%D8%A7%D9%84%D8%AE%D9%84%D9%8A%D8%AC%D9%8A.aspx>> ('GCC Economic Agreement').

384 Ibid.

385 GCC Economic Convention, GCC Countries, Signed 31 December 2001, (entered into force 1 November 1981) Art.25.

386 'E-commerce' *The Cooperation Council for the Arab States of the Gulf (GCC)* (Web Page, 06 2021)18 < <https://www.gcc-sg.org/ar-sa/CognitiveSources/DigitalLibrary/Pages/Details.aspx?itemid=835>> ('The Cooperation Council for Arab States').

387 ('MC') (n62) 2.

388 ('The Cooperation Council for Arab States') (n376) 53

the commodity and receive a refund of the incurred amount, and it provides corrective measures if the product does not match the description in the contract.³⁸⁹

The second strategic purpose of the unified frameworks is to support and facilitate e-commerce by providing measures to remediate issues. This includes the integration of cross-border e-commerce transaction principles in order to integrate the policies for returning goods and obtaining a refund, to remediate consumer disputes and to establish consolidated platforms for remediating consumer disputes through informal measures such as ADR. The agreement also reinforces the cooperation measures between competent authorities that investigate customer grievances and appeals in e-commerce.³⁹⁰ According to *Alajaji*, the enforcement of local laws in other GCC countries is not possible since ‘the statute to establish a cooperation council does not give its resolutions the legislative authority to take precedence over local legislative authorities’.³⁹¹ Therefore, local laws cannot be enforced upon sellers if the consumer agencies refuse to enforce the law of the KSA. The other issue is that out-of-court dispute resolution mechanisms are absent and have not yet been introduced in the KSA national legal frameworks. This indicates that the legal frameworks in the GCC countries need to be developed before they can be harmonised. The cooperation of consumer enforcement agencies is also important. GCC countries need to give priority to mutually recognising local laws after paving the way for the implementation of the convention.

The KSA’s national legal frameworks lack some of the elements that are considered necessary for effective dispute-resolution mechanisms. Accordingly, an effective solution needs to be found that introduces low-value dispute mechanisms and out-of-court resolution mechanisms. The KSA should also establish an entity that handles consumer issues and can advocate for consumer rights and that cooperates with international consumer agencies to enforce local law through bilateral and multinational conventions.

389 Ibid 55.

390 Ibid 59.

391 Abdulrahman Alajaji, ‘An Evaluation of E-commerce Legislation in GCC States: Lessons and Principles from the International Best Practices (EU,UK,UNCITRAL)’ (PhD Thesis, Lancaster University, 2016)56
<<https://eprints.lancs.ac.uk/id/eprint/83401/1/2016Abdulrahmanphd.pdf>>

B Conclusion

This chapter discussed issues with consumer protection laws in the context of cross-border e-commerce transactions. The chapter discussed the online disclosure, particularly in pre-contractual information, that would serve as a remedy for consumer inability to inspect (examine) products and be aware of the product's status. It then examined the remedies that could remediate a contractual breach of an agreement, the tools used to access those remedies, and effective tools that could protect consumers.

The main reason for arguing that the KSA has failed to state which information should be provided in the pre-contractual stage is that the existing form of KSA consumer protection law lacks definitions that cover the characteristics of e-advertisements, including the contracting parties, forms and approaches, and the purpose of advertisements. There is no detail on the information that should be disclosed within the advertisement context or the pre-contractual stage except for the seller's name and address. There are no guidelines on how to provide the information related to possible situations such as considering a targeted group, the tool used or particular terms. There is a lack of provision that governs all kinds of misleading conduct/statements and a provision regarding possible unfair practices that occur in e-commerce transactions.

Basic consumer rights are considered to be an issue in the existing form of KSA consumer protection laws because there is a lack of regulations regarding certain consumer rights, such as returns and exchanges. Some rights, such as refunds, are considered under the existing consumer protection laws, but there is a lack of information regarding the obligations of the contracting parties, such as the timeframe for refunding and reporting. As another example, the KSA consumer protection laws fail to provide protection for the consumer against a mismatch between a product and the KSA's required quality and specification standards or the pre-contractual statement.

The reason for identifying reliance on courts as an issue that impedes access to consumer remedies is that a remedy in court is inappropriate for the nature of cross-border e-commerce transactions as it takes a long time, is expensive and, most importantly, difficult to enforce with no convention on the mutual recognition of laws. The other reason is that the existing form of KSA consumer protection laws lacks an effective dispute-resolution process, such as ADR and a law-value dispute process, which needs to be established within the KSA. The mechanisms

of an effective consumer protection system are inadequate in the KSA because the current form of the consumer protection system lacks fundamental tools that support consumer access to remedies. An appropriate tool would be an entity or agency that adopts consumer issues, collectively or individually initiates court litigation for them and cooperates with consumer protection agencies to enforce local laws.

The following chapter examines the new developments in KSA consumer protection laws and analyses whether the new draft Consumer Protection Law in its current form would be effective in remediating the identified deficiencies.

III *NEW DRAFT CONSUMER PROTECTION LAW IN THE KSA*

Chapter two identified deficiencies within the KSA consumer protection laws, including the Civil Transactions Law: the lack of information related to the pre-contractual stage; the lack of provisions that govern misleading and unfair practices; the lack of consumer remedies for a breach of contract; an ineffective dispute process; and the lack of consumer support for consumer issues. This chapter discusses whether these issues have been addressed by the new draft consumer protection law.

The discussion revolves around information related to the seller, commodity, transaction, conditions and dispute-resolution processes. This is followed by a discussion of the adequacy of fair contractual provisions regarding misleading and unfair practices, commodity quality and consumer redress. Effective dispute resolution is then discussed. Finally, the chapter explores how consumer issues are addressed along with cooperation with international consumer enforcement agencies to enforce local laws. The final section concludes the chapter.

The layout of this chapter is as follows. This chapter comprises two sections. The first section discusses development of the new Consumer Protection Law. The second section examines online disclosure. It discusses the definition of an advertisement, and it covers the inclusion of information regarding the seller, commodity, transaction, terms and conditions, and dispute-resolution processes. It also examines the information that should be included in the pre-contractual stage, including advertisement and the stage before entering into a contractual relationship. The third section is a discussion of the provision of fair and lawful contractual provisions regarding misleading conduct/statements, unfair practices, commodity quality and consumer redress. The fourth section explores the KSA's dispute-resolution mechanisms and discusses taking on consumer issues. The fifth section discusses cooperating with international consumer enforcement agencies to enforce local laws. Conclusions to this chapter are then provided.

A New Legal Development in the KSA Consumer Protection Law

It should be noted initially that the introduction of a new draft consumer protection law supports the proposition that existing national legal frameworks and mechanisms may not adequately regulate cross-border e-commerce transactions and, hence, a new regime is needed to adequately protect consumers. The KSA government has acknowledged that the purpose of introducing the new draft consumer protection law is to enhance the regulatory frameworks by

addressing the issues of consumer protection in the KSA.³⁹² The new draft consumer protection law consists of 82 articles, and it is still in its drafting stage. It was opened for review to the public from 31 March 2022 to 9 June 2022.³⁹³ There were 214 comments received regarding the provision of this law.³⁹⁴ All of those comments have criticised the current form of the new draft of the Consumer Protection Law through the consultation platform in the Arabic language.³⁹⁵ Some of these are not relevant to the scope of the thesis, such as the mechanisms of determining winners or obtaining a license for competition to promote or increase product buying and the mechanisms of determining the qualification of government officials who monitor the market. Some comments criticise the core issues in this chapter, such as the lack of information regarding the mechanisms of enforcing local laws across the border (including cooperation with consumer protection agencies); the uncertainty of products or services information that should be separated between the product label and the pre-contractual stage; the banning of several forms of commercial practices, such as claims that limited buying of products or services on specific terms, time and conditions, by criticising them as inapplicable; and a lack of information regarding the determination of the competent court and the values of the claim. In addition, the lack of information regarding the mechanisms to report consumer incidents should be clarified by the law.

It is unusual in the Middle East to provide a mechanism for knowing public opinions or criticisms regarding laws. Therefore, the author praises this move that would promote transparency with the public. Criticising laws related to consumers before their enactment would allow policymakers to overcome deficiencies that consumers and not policymakers may be aware of or that were ignored in the proposed law. This is evident by the report that was published regarding the received comments. The report acknowledged changes in several provisions, such as the definition of consumer, which used to be limited to the natural person. This view was changed to include natural and legal persons in the definition of consumer.³⁹⁶

392 Bandar Al-Mosalam, 'Saudi Arabia Introduces Project to Guarantee Consumers Rights', Asharq Al-Awsat (Web Page, 1 April 2022)

[4]<<https://english.aawsat.com/home/article/3566766/saudi-arabia-introduces-project-guarantee-consumers-rights>>

393 A translated version of this new draft law can be accessed through the link

<<https://istitlaa.ncc.gov.sa/en/Trade/mci/Consumer/Pages/default.aspx>>

394 There was a published report regarding the number of received comments in Arabic, which can be accessible through the link

<<https://istitlaa.ncc.gov.sa/ar/trade/mci/consumer/Documents/results.pdf>>.

395 This can be accessed through the link < <https://istitlaa.ncc.gov.sa/ar/Trade/mci/Consumer/Pages/default.aspx#!>>

396 National Competitiveness Centre, (نظام حماية المستهلك) مشروع (نظام حماية المستهلك) [A Summary Report on Most Important Observation Received about (Consumer Protection Law) Project (Report)]

Therefore, the consumer will be defined as ‘legal and nature persons who seek to acquire goods or services for personal, family or household use’.³⁹⁷ The definition of consumer varies in legal frameworks since there are two concepts of consumer. Firstly, the concepts that cover any persons who deal with professional despite the purpose of acting (professional or personal).³⁹⁸ The other concept narrows consumer to any persons who deal with professional acting for personal purposes.³⁹⁹ Therefore, the KSA policymaker considers both natural and legal persons to be consumer as long as they act for personal, family and household purposes.

Regarding the report, there was also criticism of uncertainty regarding the determination of competent departments. However, this will be changed by including the roles of the competent departments.⁴⁰⁰ Unfortunately, the report highlighted only 33 observations. It omitted several comments discussed in this chapter, such as the determination of the competent court and the claim value; and the determination of information regarding products or services on the label as well as in the pre-contractual stage. Therefore, entirely modifying the current form of the new draft consumer protection law is not possible. This new draft law aims to provide the contracting parties with balanced rights and to protect consumers from dangerous, defective goods or services that do not conform to the required KSA standards.⁴⁰¹ It also supports consumer education, rights and sustainable consumption;⁴⁰² eliminates unfair conduct; efficiently controls the market; and provides better dispute-resolution mechanisms.⁴⁰³ In addition, it regulates advertisements that are disseminated through online environments;⁴⁰⁴ and provides the consumer with new rights, including the right to information, that allow the consumer to make informed decisions and respect the religion, values and morality of society.⁴⁰⁵ This new draft law applies to transactions or contractual relationships between

<<https://istitlaa.ncc.gov.sa/ar/trade/mci/consumer/Documents/results.pdf>> (‘National Competitiveness Centre’)

397 Ibid.

398 Mohmoud Abu Farwa, ‘ (دراسة تحليلية في مفهوم عقود الاستهلاك) [Consumer Contract Between Legislative Theory and Reality]’ (2020) 111(539) L’Egypte Contemporaine 195,199 < https://espesl.journals.ekb.eg/article_213839.html>.

399 Ibid

400 National Competitiveness Centre, (نظام حماية المستهلك) [A Summary Report on Most Important Observation Received about (Consumer Protection Law) Project (Report)]

<<https://istitlaa.ncc.gov.sa/ar/trade/mci/consumer/Documents/results.pdf>> (‘National Competitiveness Centre’)

401 (‘Consumer Protection Law’) (n33). *The New Draft of Consumer Protection Law 2022* (KSA) Art.2 (TND CPL).

402 (‘TND CPL’) (n388) Art.2.

403 Ibid.

404 Ibid Art.20.

405 Ibid Art.4.

consumers and sellers that are made available in the KSA by whatever means, including e-commerce.⁴⁰⁶ Its application is extended to local and international sellers, and it considers all kinds of sellers.⁴⁰⁷ Furthermore, an e-commerce contract that is concluded at a distance by a consumer living in the KSA is considered to be concluded in the location of the consumer.⁴⁰⁸ The governing law of consumer contracts is thus KSA law. This applies to natural and legal consumers who concluded the transaction to ‘acquire goods or services for personal, family or household use’.⁴⁰⁹ It also applies to standard contracts and negotiated contracts.⁴¹⁰ However, the new draft law gives priority to negotiated-terms contracts since their application has precedence to standard-terms contracts.⁴¹¹ It seems that the draft law reinforces that the consumer has free will to discuss the contract with the seller.⁴¹² From a practical perspective, this may not happen since the low-value contracts are based on standard-terms contracts.⁴¹³ The new draft law exempts several contracts from its scope, including automatic vending machines and the supply of financial services.⁴¹⁴ In case of uncertainty or doubt about the contractual conditions, an interpretation favourable to the consumer shall prevail.⁴¹⁵

Once this proposed draft is passed, it will terminate the provisions of the E-commerce Law and the Anti-Commercial Fraud Law.⁴¹⁶ This law will be implemented in approximately December of 2023.⁴¹⁷ The new draft of the consumer protection law terminates any provisions that contradict its provisions.⁴¹⁸ It should be noted that the application of Civil Transactions Law does not affect the provisions of specialised laws.⁴¹⁹ Therefore, private law regulates the subject

406 Ibid Art.3.

407 The law refers to sellers as economic operators and defines an economic operator as ‘A natural or legal person, private or public, who carries out a commercial, industrial, professional or craft activity, and provides a service to the consumer or produces a product, manufactures, imports, exports, sells, rents, displays, distributes or markets it with the aim of providing it to the consumer or entering into a transaction or a contract therewith by any means, including electronic means’. Ibid Art.1.

408 Ibid Art.3 [2].

409 Ibid Art.1.

410 Ibid Art. 27[1].

411 Ibid Art. 27[1].

412 The seller bears the burden to prove the standard term contracts are negotiated individually with the consumer. See Ibid Art. 27[1].

413 Halis Likhadar, ‘مرحلة المفاوضات التعاقدية’ [Stage of Contractual Negotiations] (2017) 1(1) *Al-Manar Journal for Legal and Political Studies and Research* 162,162<<https://www.asjp.cerist.dz/en/article/67556>>.

414 (‘TND CPL’) (n388) Art. 40.

415 Ibid Art. 34.

416 Ibid Art.82.

417 (‘Dr. Majid Al Qasabi Announced Implementation Time’)(n81)

418 (‘TND CPL’) (n388) Art.82.

419 (‘CTL’) (n182) Art.1 [2].

of its scope. However, if there are conflicts with Civil Transactions Law, the latter makes it clear that it terminates any provision that conflicts with the provision in Civil Transactions Law.

The following part discusses the online disclosure of pre-contractual information within the new draft Consumer Protection Law.

1 Online Disclosure of Information in New Draft Consumer Protection Law

The new draft consumer protection law contains requirements that must be met before entering into a contractual relationship,⁴²⁰ including a provision for online disclosure that includes advertisements. It provides a quantum leap in the KSA consumer protection laws regarding advertisements, as it includes new provisions for children. The following section discusses advertisements within the newly proposed Consumer Protection Law, beginning with the definition of an advertisement.

(a) Definition of an Advertisement in the Consumer Protection Law

As explained earlier, the KSA consumer laws, including the Civil Transactions Law, lack clear information regarding advertisements, such as definitions of advertisements that are appropriate for e-commerce, as the frameworks fail to mention the purpose of advertising or the coverage of the contracting parties.⁴²¹ The current form of the new draft Consumer Protection Law defines advertising as ‘Any form of communication intended to market or promote products or services, or to enhance the reputation and position of an economic operator in the market’.⁴²² This definition covers all types or purposes of advertisements including e-advertisements. It also covers all types of economic operators. It is submitted here that this definition is more appropriate because it covers a broad range of purposes and sellers. It also solves the issue of the lack of a definition of advertisement in KSA consumer protection laws, as it provides an adequate definition that is appropriate for the nature of offering products or services in e-commerce.

(b) Definition of an Economic Operators in the Consumer Protection Law

The current form of the new draft Consumer Protection Law defines the economic operators as

420 This law applies to natural and legal consumers. Therefore, it applies to both natural and legal persons. (TND CPL) (n388) Art.1.

421 See above Ch.2 (A)(1)(a).

422 (‘TND CPL’) (n388) Art.1.

A natural or legal person, private or public, who carries out a commercial, industrial, professional or craft activity, and provides a service to the consumer or produces a product, manufactures, imports, exports, sells, rents, displays, distributes or markets it with the aim of providing it to the consumer or entering into a transaction or a contract therewith by any means, including electronic means.⁴²³

This definition includes all types of sellers who may deal with consumers. It also applies to all types of advertisements, both unpaid advertisements for products or services with descriptions/photographs provided as part of the seller's profile on the website or social media site and paid advertisements on other websites, such as banner advertisements.

Before starting the discussion in this section, it is worth noting that the current form of the new draft Consumer Protection Law provides several provisions regarding the information that should be provided to the consumer. Some are specified for the products or services with no reference to a particular stage or transaction, such as Article 6.⁴²⁴ However, the law points out that the information in Article 6 should be provided through written advertising, wrapping, labels, warnings and instructions for use.⁴²⁵ The issue with this is that other provisions did not require the inclusion of all information in Article 6. This may cause uncertainty regarding the information to be provided in the advertisement or the stage after reviewing the advertisement.

(c) Seller's Information

It was stated in chapter two that KSA consumer laws neither require the inclusion of the trader or legal name nor the address of the main branch of the seller's business.⁴²⁶ The current form of the new draft Consumer Protection Law requires the inclusion of certain information before the contractual agreement is concluded,⁴²⁷ meaning that the consumer is able to make informed choices or decisions.⁴²⁸ Article 28 determines the pre-contractual information in general. Article 44 determines the pre-contractual information that is required to be mentioned in

423 Ibid.

424 Article 6 provides specific information that should be disclosed about products or services, such as quantity, composition, etc. Ibid Art.6.

425 Ibid Art.7 [2].

426 See above Ch.2 (A)(1)(b).

427 This fundamentally indicated that the information shall be provided in the pre-contractual stage or in the pre-contractual information. ('TND CPL') (n388) Arts.28 [1]- 44 [1].

428 Ibid Art.4[C].

distance contracts, including e-commerce,⁴²⁹ in a clear and comprehensible approach.⁴³⁰ Article 6 provides information regarding the products or services.

Articles 28 and 44 of the new draft law require that before entering into a contractual relationship, seller identification information, including trade name, be included.⁴³¹ Article 6 requires the inclusion of the trademark and license data, if any, and the manufacturer's certificate or a licence to provide a service that requires a licence.⁴³² Articles 6, 28 and 44 require the inclusion of a business location with no mention that it be that of the main branch of the business.⁴³³ Article 6 also requires providing telephone numbers and the e-communication tools of the manufacturer, representative, importer, distributor or agent.⁴³⁴ However, Article 28 requires telephone numbers, email addresses or other e-communication, if available,⁴³⁵ whereas Article 44 requires providing communication tools to contract directly.⁴³⁶ Therefore, the seller is required to mention any tools to directly communicate with the consumer, which could be an email address, telephone number or any other means. The reason for this is not clear. It is better to require particular tools in addition to the additional means to communicate with the seller, such as in Article 28. The current form of the new draft law does not require providing information, such as trade name and address, in the advertisement since it only requires that the seller or advertiser must be named in an e-advertisement.⁴³⁷ This will help to control the market if consumers report an issue. This will achieve one of the purposes of the new draft law, namely to 'contribute to the efficiency of market controls'.⁴³⁸ In turn, this will facilitate control of the market, including e-advertisements, as the advertising party can be easily identified. The issue with this is that the regulation has not required the identification of the party responsible for the advertisement if it is a joint advertisement or which party bears the responsibility for the advertisement's content or any claims.⁴³⁹ The law needs to clarify the legally responsible party or require the details of

429 Distance contracts are 'contracts concluded between an economic operator and a consumer by any distance communication means such as telephone, fax, e-mail, website and any other means specified by the Regulations'. Ibid Art.39.

430 Ibid Art.44 [1].

431 Ibid Arts.28-44.

432 Ibid Art.6.

433 Ibid Arts.6-28- 44.

434 Ibid Arts.6-28.

435 Ibid Art.28

436 Ibid Art.44.

437 Ibid Art.20 [3-B].

438 Ibid Art.8.

439 Qatar Law identifies this by requiring the inclusion of details of the party responsible for the advertisement. ('CAMB') (n232) Art.38.

the legally responsible party to be included in the advertisement. This means that the seller is not required to disclose the trade name or address in the advertisement.

Pre-contractual information has been separated between Articles 28 and 44. It seems that the purpose behind this decision by KSA policymakers is to provide more information about distance contracts. It would be more logical not to separate this information into two articles since Article 44 refers to the provisions in Article 28. This could be done more efficiently by adding a clause or paragraph to Article 28 that would eliminate uncertainty and the repetition of some information that is required, such as the business name and location. The other issue is that there is uncertainty because it is not clear whether this information should be provided in the advertisement or at the following pre-contractual stage. Therefore, it would be better to stipulate the information that needs to be included in the advertisement and the information that should be provided at the pre-contractual stage.⁴⁴⁰ Moreover, if introduced in its current form, the law will not overcome some of the identified issues in terms of the sellers' information, such as requiring the inclusion of the legal name of the seller and the address of the main branch of the seller's business. However, Article 1 of the new draft law states that the merchant address is the address that is registered in the commercial register system, either a national or residential address or the address that shows on the online platform on which the merchant offers products or services.⁴⁴¹ If introduced in its current form, the law will not obligate sellers to disclose the registration number granted by a website.

The proposed seller's information does not meet the requirements for an ideal consumer protection law because there is a lack of information regarding the inclusion of the main branch of the business and the legal name of the trader. This would not cover the quantum leap that is provided by the new consumer protection law regarding the provision of adequate information regarding seller identity, such as licence information.

(d) Commodity Information

As discussed in chapter two, the KSA consumer protection laws fail to require disclosure of information or guidelines for providing information about products, such as specifications,

⁴⁴⁰ Qatar Law provides clear guidelines regarding the information that should be included in the advertisement as well as the way in which the consumer can request further information. Ibid.

⁴⁴¹ ('TND CPL') (n388) Art.1.

standards, limitations, warranties and after-sales services information, including the necessary periodic maintenance and the provider of service.⁴⁴²

The current form of the new draft law, particularly Article 28, requires the inclusion of the essential characteristics of the goods.⁴⁴³ This Article does not specify the information that should be disclosed; however, Article 6 requires particular information about products or services. The information is product type, batch, serial number, code or other elements that identify the product.⁴⁴⁴ It also requires that information be provided about the name of the product or service, quantity, product composition or service components, weight and the origin of the product.⁴⁴⁵ Articles 28 and 6 require the inclusion of the product or service prices.⁴⁴⁶ The price should be clearly shown on the product or in a prominent position.⁴⁴⁷ Prices, including all taxes and additional costs, are to be shown in the official currency of the KSA, along with the price of any additional products or services that the consumer needs to buy with the original product.⁴⁴⁸ The current form of the new draft law also requires providing an instruction guide for using the goods, conditions of installation, use and maintenance; the risks of the goods and how to prevent and mitigate the risks, if available; the condition of goods, including any defects if they are second-hand; and a technical report demonstrating the condition, including defects, of a used vehicle.⁴⁴⁹ Article 28 requires the inclusion of maintenance information but does not require providing periodic maintenance services.⁴⁵⁰ Article 49 of the current form of the new draft law requires informing the consumer about the warranty and its scope at the time of contracting in a clear, comprehensive and legible manner.⁴⁵¹ Therefore, it does not require the inclusion of warranty information. This may cause uncertainty as the approach to providing the information is up to the seller. The inclusion of warranty information should be required in the pre-contractual stage.

442 See above Ch.2 (A)(1)(c).

443 ('TND CPL' (n388) Art.28.

444 Ibid Art.6.

445 Ibid.

446 ('TND CPL' (n388) Art.6- Art.28.

447 Ibid Art.9 [1].

448 Ibid Art.11 [1-2].

449 Ibid Art.28.

450 Ibid.

451 ('TND CPL' (n388) Art.49.

If introduced in its current form, the law will represent an improvement in the disclosure of information about the product that describes the features of the product, including prices in the KSA currency. It will also fail to oblige the inclusion of after-sales service information, including the provider of the service, the necessary periodic maintenance, warranty services and product limitations.

(e) Transaction Information

As discussed in chapter one, the KSA consumer protection laws fail to require the inclusion of withdrawal, refund, exchange and return information in the pre-contractual stage.⁴⁵² Article 44 of the current form of the new draft law requires the provision of information about the withdrawal right, including the modalities of exercising it, and information about the payment methods.⁴⁵³ Article 28 requires the inclusion of the delivery and payment arrangements, terms of exchange and return.⁴⁵⁴ Article 20 of the current form of the new draft law stipulates that there must be a clear indication that the material is an advertisement.⁴⁵⁵ If introduced in its current form, the law will overcome some of the issues identified in chapter two, such as requiring information in the pre-contractual stage about withdrawal, return and exchange. However, it will fail to provide adequate information for consumers since it does not require that information be provided about the approaches to conclude the transactions and the tracking number of the shipment.

(f) Terms and Conditions Information

It was mentioned in chapter two that the KSA consumer protection laws fail to require the terms and conditions information within an adequate time.⁴⁵⁶ The current form of the new draft law Article 28 requires the inclusion of the contract terms and conditions in the pre-contractual stage.⁴⁵⁷ This is an adequate time for the consumer to make an informed decision. The Article also requires the information to be provided in a clear, accurate and satisfactory manner, and it must not deceive or mislead the consumer.⁴⁵⁸ The current form of the new draft law also requires providing the information in consumer-friendly language.⁴⁵⁹ Therefore, if introduced

452 See above Ch.2 (A)(1)(d).

453 ('TND CPL') (n388) Art.44.

454 ('TND CPL') (n388) Art.28.

455 ('TND CPL') (n388) Art.20 [3-A].

456 See above Ch. 2 (A)(1)(e).

457 ('TND CPL') (n388) Art.28

458 Ibid Art.7.

459 Ibid Art.8.

in its current form, the law will meet the information requirements for ideal consumer protection regarding the terms and conditions of the contract. Nonetheless, it will fail to provide the consumer at any point in the transaction with a printed or downloadable approach to keep a record of the terms and conditions of the contract. This is because it will not require the consumer to access such a requirement in the pre-contractual stage.

(g) Information on Dispute-Resolution Processes

As mentioned in chapter two, KSA consumer protection laws fail to mandate the inclusion of information regarding the law governing the contract, limitations on redress and forms of alternative dispute-resolution mechanisms, such as ADR.⁴⁶⁰ Article 6 of the current form of the new draft law requires the inclusion of information regarding the party who can assist the consumer to obtain additional information or to complain.⁴⁶¹ Article 28 requires the inclusion of policies for handling consumer complaints, including a dedicated e-address to use to submit the claim, if available, and the availability of resolution mechanisms such as ADR or online dispute resolution (ODR) platforms.⁴⁶² Therefore, if introduced in its current form, the law will solve one of the gaps identified in chapter two, namely providing information regarding dispute-resolution mechanisms. The current form of the new draft law will not mandate the inclusion of information regarding the governing contracts and any limitations on consumer redress. These will need to be provided to assist the consumer in making informed decisions and the governmental consumer protection agencies to assess the fairness of the contract.

(h) General Guidelines for the Information

As discussed in chapter two, the KSA consumer protection laws fail to mandate the inclusion of information in the pre-contractual stage except for certain information such as name, address and contact information. It also fails to provide printable or downloadable terms and conditions of the contract at any time in consumer-friendly language and to groups that are considered vulnerable.⁴⁶³ This means that it is up to the vendors to decide the product information to provide as the law does not require specific information to be mentioned regarding products or services. In addition, it is up to the seller to include extra information about consumer rights of withdrawal, warranty, refund, exchange, return and delivery as the law does not require the

460 See above Ch. 2 (A)(1)(f).

461 ('TND CPL' (n388) Art.6.

462 Ibid Art.28.

463 See above Ch.2 (A)(1)(g).

inclusion of that information.⁴⁶⁴ The current form of the new draft Consumer Protection Law contains general provisions regarding information about products and services and the basic rights of the consumer, but it does not specifically require that this information be included in an advertisement or on things like labels or wrapping. However, if introduced in its current form, the law will provide new rights, including the right to information, to assist consumers with making informed choices⁴⁶⁵ and in exercising the right to have their religion, values and morality respected while conducting a transaction.⁴⁶⁶ The current form of the new draft law also requires the provision of certain information about the product, but it is not clear whether this information needs to be provided in an advertisement for the product or at some later stage. Therefore, there is still a lack of certainty as to whether the mandatory information needs to be included in an advertisement or just on something like a product label.⁴⁶⁷ On the other hand commercial communication should be identifiable and that advertisements, in particular, should be clearly and unambiguously identified.⁴⁶⁸ In other words, the requirement to include information should be interpreted as applying to advertisements because consumers rely on these to make decisions to purchase. Therefore, if introduced in its current form, the law will need to explicitly separate or identify the information that must be included in advertisements and on packages or labels. This is important to eliminate uncertainty and ambiguity in the information that consumers rely on to make informed decisions.

If introduced in its current form, the new draft law is a quantum leap in regard to providing information with special attention to vulnerable groups, such as children. It regulates information that targets children because it is important to consider the different needs and levels of knowledge of the audience regarding the advertised product or service. The content of the advertisement should be adjusted to take into consideration these differences. For example, if the target group is consumers, the language of the advertisement should be simple and clear and should eliminate technical words that consumers may not understand. If the advertised product targets consumers with special needs, such as vision impairment, the advertiser should provide the advertisement content in an appropriate font and colour. This is

464 Ibid.

465 ('TND CPL' (n388) Art.4[C]

466 Ibid Art.4[F]

467 Ibid Art.7.

468 *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market ('Directive on Electronic Commerce')* [2000] OJ L 178/1, Art.6[A];Art.7[1].

to increase the readability of the advertisement content. If the product is targeting children, advertisers should prevent terms that minimise the effect of the price such as ‘only’ or ‘just’. The current form of the new draft law contains a provision in one of its articles to protect children from advertisements by prohibiting the inclusion of unsuitable content for children or content that may harm their safety.⁴⁶⁹ By contrast, the existing KSA consumer protection laws have failed to determine the types of content that are unsuitable for children of different ages. They have failed to provide a comprehensive provision regarding products that target specific groups based on their age, ability and level of knowledge.⁴⁷⁰ KSA policymakers need to provide guidelines for advertisers to take into consideration the targeted audience of the advertisement according to their age, ability and level of knowledge.⁴⁷¹ However, the current form of the new draft law requires sellers to pay special attention to protecting consumers with a disability if they are aware of the disability.⁴⁷² Yet, it does not provide guidelines for the approach to be used to convey the content of the advertisement to them.

Regarding providing a way to download or print information, the current form of the new draft law states that the consumer should be allowed to print the information at no additional cost.⁴⁷³ If introduced in its current form, the law will not require this at any particular time. However, Article 15 requires providing consumers with a copy of the standard contract free of charge at any time upon consumer request.⁴⁷⁴ While this requirement is an enhancement to KSA laws, the law should require providing the consumer with the contract without the consumer’s request to ensure adequate protection of the consumer.

Regarding providing a summary of the transaction and allowing the consumer to correct mistakes before the conclusion of the contract, if introduced in its current form, the new draft law will require 24 hours as a period for the correction of errors, particularly for distance

469 (‘TND CPL’) (n388) Art.21.

470 Qatari law provides comprehensive guidelines regarding targeted groups in advertisements. Therefore, it guides an advertiser to consider the product targeted group based on the product, for example, it prohibits including terms that may influence children, such as ‘only’ or ‘just’ before the price. Also, they provide guidelines to advertisers to remind children to ask for permission from their parents before they buy the product with their parent’s money. (‘CAMB’) (n232) Art.26 [26.3].

471 Ibid Art.26 [26.3].

472 (‘TND CPL’) (n388) Art.5[2].

473 Ibid Art.7.

474 Ibid Art.15.

contracts.⁴⁷⁵ It aims to provide some time for checking the order and realising that a mistake has occurred so that the order can be amended before the confirmation of the transaction.⁴⁷⁶ The current form of the new draft law excludes certain situations from the correction right, such as if the contracting parties agree to extend this right to a certain time or if the consumer has already made use of the products or services.⁴⁷⁷ It is unfortunately not yet possible to scrutinise the legal ways to confirm or exercise the correction right because the procedure for confirmation and the conditions under which the correction right can be exercised will be provided by the executive regulation.⁴⁷⁸ However, the current form of the new draft law is silent on providing a summary to the consumer. This will create uncertainty around providing a summary for the consumer to check before sending the confirmation of the transaction. The current form of the new draft law requires the seller to provide the consumer with a clear approach to enter into a contract, such as showing the consumer the obligation to pay, or the contract shall not be binding.⁴⁷⁹

If introduced in its current form, the new draft law will meet the requirement of adequate consumer protection for e-commerce transactions since it provides information that should be mentioned in the pre-contractual stage. However, there will be an issue of uncertainty due to presentational issues within the current form of the new draft law, as mentioned at the beginning of this section. If introduced in its current form, the new draft law will overcome the issue of information targeting particular groups since it provides a provision for children's information; a gap will remain regarding the terms to be provided to them as well as a consideration of other vulnerable groups, such as those with special needs. If introduced in its current form, the new draft law will also fail to overcome the issue of allowing the consumer to print the information because it does not allow access to the approach at any point in the transaction. If introduced in its current form, the new draft law will not meet the requirements of the model consumer protection law on the issue of providing a summary for the consumer to view the transaction and correct mistakes since there is a lack of information regarding the summary after the conclusion of the transaction. The next section discusses whether the new draft law overcomes the identified issues of fair contractual provision.

475 Ibid Art.45. The distance contracts are concluded between the consumer and seller by distance communication methods, such as e-mail, website, etc. Ibid Art.39. The law provides that consumers shall enjoy the level of protection equal to the means they use. Ibid Art.39[2].

476 Ibid.

477 Ibid.

478 Ibid.

479 Ibid Art.44.

3 Fair Contract Provisions

As stated in chapter two, the KSA consumer protection laws fail to provide adequate protection to the consumer regarding misleading and unfair provisions, commodity quality and consumer redress. This section first discusses the provisions in the current form of the new draft law on misleading information.

(a) Adequate Protection Against Misleading Conduct/Statements

It was stated in chapter two that the KSA consumer protection laws fail to provide definitions of misleading conduct/statements; they also fail to cover misleading conduct/statements in their entirety since the law is limited to certain conduct/statements. They further fail to differentiate between false content and the omission of information, which prevents the consumer from making an informed decision because it limits misleading to particular conduct/statements.⁴⁸⁰

If introduced in its current form, the new draft law will not contain a definition of misleading conduct/statements. However, it will set out two categories of misleading practices: those in which false information is provided and those that omit information. The current form of the new draft law considers that a commercial practice is misleading if it includes false information or deceives the consumer by whatever means, including its overall presentation, or by omitting relevant information, providing unclear information or failing to indicate the nature of the product or service.⁴⁸¹ Article 18 forbids misleading commercial practices that involve false information that may deceive the consumer in any way.⁴⁸² This provision covers the following elements: the nature, critical specifications, composition and quantity of the product or service; the source, weight, size or method of manufacture; the date of production and expiration date; conditions and dangers of use; the expected benefits, features or the outcome from using the product or service; prices or tariffs, including any additional prices; identification of the seller; service types and the location of service provision; the essential characteristics and the dangers of use; contract terms and their process; after-sales service, warranties and guarantees; awards and certificates that products or services have achieved; trademarks or logos; sales and discounts of products or services; and other elements that are added by the executive regulations.⁴⁸³

480 See above Ch.2 (A)(2)(a).

481 ('TND CPL' (n388) Art.18.

482 Ibid Art.17.

483 Ibid Art.18.

An alternative view is that this provision will fail to cover all the aspects of misleading advertisements since it does not extend to conduct/statements that may affect or are likely to affect a consumer's ability to make an informed decision. It also will fail to extend to conduct that results in transactional decisions that the consumer would not otherwise have taken, and it will not provide black-listed actions or terms that sellers must avoid.⁴⁸⁴ Therefore, the specification of certain misleading commercial practices may limit the coverage of the protection to those elements. In other words, it applies only to the certain elements mentioned in Article 18. It should be noted that the current form of the new draft law classifies the exploitation of a consumer's weaknesses or ignorance of a particular event or condition as an action that impairs the consumer's judgement or influences their decision, which is considered to be an unfair commercial practice.⁴⁸⁵ If introduced in its current form, the new draft law will not prevent the publication of information that is true but incomplete and that causes or is likely to cause the consumer to make a transactional decision.⁴⁸⁶ In other words, the current form of the new draft law does not consider this a misleading practice. Misleading practices are exclusively those that are listed in the current form of the new draft law, making it difficult for courts to assess other characteristics or actions as misleading conduct.⁴⁸⁷

This may prevent various types of conduct that mislead the consumer from qualifying as misleading conduct, and the perpetrators may avoid liability.⁴⁸⁸ If introduced in its current form, the law will need to include a provision that can apply to all sorts of misleading conduct.⁴⁸⁹ One example of this oversight is that the provision on misleading advertising does not apply to situations in which the phrase 'terms and conditions apply' is included in an advertisement, but these terms cannot be found in the sellers' profile or on the product webpage. Therefore, if introduced in its current form, the new draft law will not satisfy the model of adequate consumer protection law because the law is exclusive to particular conduct or statements.

484 The Unfair Commercial Practices Directive specified 31 misleading actions, including aggressive commercial practices that should be avoided while dealing with consumers. ('Unfair Commercial Practices Directive')(n264) [1].

485 ('TND CPL') (n388) Art.17[F]

486 ('Unfair Commercial Practices Directive')(n264) Art. 6[1].

487 Mahmoud Fayyad, 'Misleading Advertising Practices in Consumer Transactions: Can Arab Lawmakers Gain an Advantage from European Insight' (2012) 26(3) *Arab Law Quarterly* 287,303 < <https://www.jstor.org/stable/23235574?seq=1>>

488 Ibid 309.

489 ('Unfair Commercial Practices Directive')(n264) Art. 2[E], 6[1], 7[1].

(b) Adequate Protection Against Unfair Practices

As mentioned in chapter two, KSA consumer protection laws fail to provide legal provisions that are capable of governing cross-border e-commerce transactions, such as imposing a burden on the consumer to access a particular right that may cause an imbalance in the contractual relationship between the parties.⁴⁹⁰

It is essential to introduce provisions for unfair contractual terms as standard distance contracts are made before the contract, which may exempt the seller from certain obligations.⁴⁹¹ The current form of the new draft law considers several terms or behaviours as unfair commercial practices. First, it considers the advertisement of unavailable products or services as an unfair commercial practice.⁴⁹² This arguably is problematic in distance contracts because the e-shop may run out of a product for a certain time or may have an overwhelming number of orders that they may not be able to process due to a product shortage — and sellers may not know in advance about goods shortages. Therefore, it is better to guide advertisers or sellers to mention if the listed product is subject to availability and to provide a notification of availability to the consumer before payment confirmation.⁴⁹³

It is also an unfair commercial practice to claim that products or services are available for a limited time, under specific terms or requirements, or are limited in quantity while there is inadequate stock to cope with the overwhelming demand that may be caused by the statement or announcement.⁴⁹⁴ The extent of this provision is arguably unclear since it is almost impossible in a distance contract to know whether there is sufficient stock to cope with the high demand caused by the advertisement. However, it may be right that there is limited stock. There is also ambiguity related to terms such as ‘available on specific terms’, as this term may apply to reasonable justifications, such as limiting access to the product to a certain number per household, the existence of a product shortage or a seller that wants to let everyone have access

490 See above Ch. 2 (A)(2)(b).

491 Hamidah Ayob, ‘Consumer Protection in Islam: An Overview’ (2017) 20(1) *Malaysian Journal of Consumer and Family Economics* 1,3 <<https://majcafe.com/wp-content/uploads/2022/11/1.-consumer-protection-in-Islam.pdf>>.

492 (‘TND CPL’) (n388) Art.17 [A].

493 Siti Razali, ‘The Invitation to Treat and Mu'atah in Online Contracts’ (2009) 26(2) *American Journal of Islam and Society* 80, 82 <<https://doaj.org/article/a621ede74b51487aa070cede4873ea7e>>.

494 (‘TND CPL’) (n388) Art.17 [B].

to this product in order to avoid bulk buying. Therefore, it is better to clarify such terms to provide legal certainty.⁴⁹⁵

Another unfair commercial practice is affecting a product's lifecycle by reducing the proficiency of the commodities to increase consumption.⁴⁹⁶ It seems that the KSA policymakers intended to eliminate actions like selling products such as mobile phones or upgraded software that are of poor quality just to increase repeat sales.

Failure to identify a promotion as an advertisement as well as encouraging persons to write false reviews or endorsements or misrepresentative consumer reviews is considered an unfair commercial practice.⁴⁹⁷ It is also an unfair commercial practice to threaten or abuse consumers by either behaviour or language; to take advantage of a consumer's lack of awareness or weaknesses or any circumstances that may affect the consumer's decision or judgement; and to threaten to take an action that is not legally recognised as well as 'imposing burdensome or unjustified conditions or restrictions' once consumers express their legal rights.⁴⁹⁸ Therefore, if introduced in its current form, the new draft law will eliminate tactics that may be used to affect the consumer's ability to make informed decisions or choices or to restrict the consumer's choice of redress, such as limiting consumers to returning the product or stipulating a particular jurisdiction for the settlement of disputes.

It is also an unfair commercial practice to eliminate the right to return or exchange the product, impose charges for restoring or returning products or services, and impose charges for using particular forms of payment.⁴⁹⁹ The use of consumers' data without their permission, either by collecting or storing it, is an unfair commercial practice.⁵⁰⁰ It is also an unfair commercial practice to advertise products or services directly to a consumer without their consent; to enforce contractual obligations on consumers via the telephone or electronic tools, such as email, websites, applications or other remote media; and to discriminate between consumers based on race, gender or nationality.⁵⁰¹

495 Qatari Law permit such claims and requires the advertiser to mention the terms clearly in the advertisement and that the stock is limited. ('CAMB') (n232) Art.52-53-54.

496 ('TND CPL') (n388) Art.17[C]

497 Ibid Art.17 [D-N].

498 Ibid Art.17 [E, F, G, H].

499 Ibid Art.17 [I, L, M].

500 Ibid Art.17 [J].

501 Ibid Art.17 [K, O].

The current form of the new draft law nullifies unjust terms that are determined to be invalid and void. However, the rest of the contract is valid and binding on both parties.⁵⁰² It also bans many conditions that may create an imbalance of positions between the contractual parties or that cause detriment to the consumer.⁵⁰³ A condition that exempts sellers from a legal obligation under the proposed law is considered to be unfair. This could be terms that allow sellers to unilaterally annul or alter the contract to the seller's benefit; that limit or exempt the seller from liability for faults and negligence; and that limit the consumer's ability to claim, in general, before a court and, in particular, before a court in the consumer's home country. It is also considered an unfair commercial practice if the seller stipulates that a certain jurisdiction will be the governing law of the contract and other requirements or conditions.⁵⁰⁴

It is submitted here that if introduced in its current form, the new draft law will overcome one of the main issues faced by consumers in e-commerce transactions, as there was a lack of information relating to unfair practices in Islamic law or state-made laws.⁵⁰⁵ If unfair commercial practices were defined and described, it would make it clear that sellers must not engage in those practices and make consumers aware of their rights. This would make it easier for courts to assess whether conduct or terms are unfair commercial practices, rather than comparing them to similar situations that are considered unfair commercial practices in Islamic law.

This new draft law covers a vast number of unfair conditions or terms that apply to distance contracts since it specifies a general provision for an unfair term in a contract — it is one that imbalances the contractual obligations between the parties and causes harm or detriment to the consumer. The mentioned scenarios endeavour to solve one of the issues related to cross-border e-commerce transactions, namely requiring a particular jurisdiction to govern the contract. Yet, the validity of this is questionable as it is difficult for KSA jurisdictions to enforce the law in other jurisdictions — they need to be associated with treaties and exchanges of information, etc. if introduced in its current form, the new draft law will cover most of the elements of adequate protection against unfair commercial practices, such as limiting a consumer's ability to use remedies or unilaterally altering contractual terms. Furthermore, it regulates sellers' liability exclusions, such as requiring particular laws to be the governing law. It will also

502 Ibid Art.30 [1].

503 Ibid.

504 Ibid Art.31.

505 Al-Alwani (n15) 25.

regulate advertisement limitations. However, certain issues may be problematic in e-commerce transactions, such as claiming the commodity is available on certain terms or within a particular time with no guidelines on the approach to disclose the terms.

(c) Regulate Commodity Quality

As discussed in chapter two, the KSA consumer protection laws fail to protect the consumer since there is a lack of lawful provisions covering the quality of the commodity, such as requiring that the commodity should be in accordance with the KSA quality standards, match the pre-contractual claims and meet consumer expectations.⁵⁰⁶

If introduced in its current form, the new draft law will protect the consumer since it mandates sellers to guarantee that the product or services conform to the standards and quality specifications in the KSA.⁵⁰⁷ It will require the seller to notify ‘the competent department’ if there is a breach of this warranty, including a product defect and possible damage, within 10 days of becoming aware of it as well as to indicate the corrective measures that have been taken or will be taken.⁵⁰⁸ The seller is also required to provide the name and address of other sellers who have been supplied with the same product, if required.⁵⁰⁹ There is arguably a lack of legal certainty regarding this kind of warranty as the purpose of providing the information of other sellers is not given, and the law fails to state which department is the ‘competent department’.⁵¹⁰ And what is the available remedy? Article 46 did not highlight whether the seller was required to recall the product or whether the competent department would do so.⁵¹¹ The current form of the new draft law also requires the seller to guarantee that products or services are free from defects; that they conform to the contractual terms and conditions; that the provided sample, if there is one, has similar qualities and specifications to the product on the market: that the goods conform to the statement provided before entering into a contractual

506 See above Ch.2 (A)(2)(c).

507 (‘TND CPL’) (n388) Art.46 [1].

508 Ibid Art.47 [1].

509 Ibid Art.47 [2].

510 The law defines the competent department as ‘the authority responsible for the enforcement of the Law; the preparation and development of consumer protection policies, regulations and rules in the Kingdom; overseeing their implementation; and carrying out market surveillance activities’. Ibid Art.1.

511 UAE law requires the seller to recall the product. *The Consumer Protection Federal Law 2020 (UAE)* Art.11 (‘UAECPL’). QA Law requires a consumer remedy for the breach of this warranty, such as return, refund, etc. *The Executive Regulation of Consumer Protection Law 2012 (QA)* Art.7 (‘QAERCPL’).

relationship; and that they conform to the provided description and the installation structure, ensuring that the consumer is well-informed of new updates in the case of intangible goods.⁵¹²

It can be contended that the introduction of these warranty provisions is a substantial leap in KSA national legal frameworks because they were previously absent. The current form of the new draft law considers a guarantee that the products or services are of good quality, meet KSA quality standards and are in accordance with pre-contractual statements as well as that they satisfy consumer expectations because the law requires conforming to the product quantity in the market. If introduced in its current form, the law will meet the model of adequate consumer protection law in e-commerce. Nonetheless, there will still be several issues, such as the current form of the new law does not explain the different purposes of reporting a breach of contract to the competent department; it does not stipulate the obligations of the seller, such as recalling a product or which party is responsible for recalling it; it does not explain the remedies available to the consumer if there is a breach of conformity to the KSA quality standards; and the obligations of the consumer are unclear because the law has not provided information on this or on the timeframe and approach for notifying the seller about issues with warranties.

(d) Regulate Consumer Redress

As discussed in chapter two, KSA consumer protection laws lack basic consumer rights, such as rights to refunds, returns and exchanges; there is also a lack of an approach to exercise these rights or a timeframe for exercising them.⁵¹³ This section discusses the key elements that should be provided to the e-consumer, such as refund, return, exchange, withdrawal and delivery provisions, all of which should be fair, accessible and timely.⁵¹⁴

There are issues with KSA's existing consumer protection laws regarding a lack of fundamental information about the timeframes for exercising withdrawal, the contracting parties' obligations after withdrawal is exercised and the mechanisms for providing remedies.⁵¹⁵ The current form of the new draft law grants withdrawal under section 2 (off-premises contracts) and section 3 (distance contracts).⁵¹⁶ It requires withdrawal from the contract within seven days

512 Ibid Art.49.

513 See above Ch.2 (A)(2)(d).

514 See above Ch.1 (G)(2)(b)(iv).

515 See above Ch.2 (A)(2)(d).

516 Off-premises contracts are concluded where the deal takes place during a visit organised by the seller outside the seller's store. ('TND CPL') (n388) Art.35.

from the date of receiving the product or from the contract's conclusion if it is for services.⁵¹⁷ However, the current form of the new draft law exempts several circumstances from being subject to this right unless there is a defect or mismatch with the required specifications.⁵¹⁸

The obligations of the consumer regarding exercise of the withdrawal right are clarified in the current form of the new draft law. The consumer is obliged to write to the seller stating that they wish to withdraw, and they must return the product within seven days from the notification date.⁵¹⁹ They have to take reasonable care of the product and limit its use to what is necessary to verify its status in accordance with the legal warranty.⁵²⁰ The burden of proof that the exercise of the withdrawal right was appropriate rests with the consumer.⁵²¹ The current form of the new draft law states that the withdrawal right cannot be exercised if the defect occurs as a result of misuse by the consumer.⁵²²

The current form of the new draft law also determines the obligations of the seller. For example, it requires a refund to be paid to the consumer within 14 days from the withdrawal notice unless the seller desires to withhold the reimbursement until they receive the product or the consumer proves that the return has been initiated.⁵²³ The method used for the refund should be the same payment method as that used by the consumer unless the consumer agrees to the use of another method or there is difficulty with refunding through the same method due to unforeseeable factors that are outside the seller's control and that place no additional costs on the consumer.⁵²⁴ Unfortunately, analysing the approach to exercising this right is unachievable since it will be provided by the executive regulation to the new draft law.⁵²⁵

If introduced in its current form, the new draft law will arguably be successful in determining the obligations of both contracting parties in terms of exercising the withdrawal right as it

517 Ibid Art.36 [1]-Art.41 [1].

518 The new draft law exempts several circumstances from the withdrawal right: if the service contract has already been executed; if the product was made to the consumer's special specifications (unless the product is defective or does not match the requested specifications); newspapers, magazines, newsletters or books and digital content that is available online; sealed content that is made available after delivery, such as computer software or audio or video recordings; accommodations; transportation of products or people; car rental services; and catering and leisure events that specify a date or time for execution. Ibid Art.42.

519 Ibid Arts.37 [1]-43[1].

520 Ibid Arts.37 [4]-43 [4].

521 Ibid Arts.36 [3]-41 [3].

522 Ibid Art.42[G]

523 Ibid Art.37[2]- Art.43[2]

524 Ibid Art.37[3]-Art.43[3]

525 Ibid Art.36[4]-Art.41[4]

details the legal remedy and the mechanisms that can be employed to make a refund to the consumer. There will be still a gap regarding the timeframe for expressing the withdrawal right because the current form of the new draft law does not consider the situation in which the consumer receives multiple goods. Therefore, it is unclear whether the stipulated seven days starts from the receipt of the first product or the receipt of the final one when the contract includes many goods that are delivered over several days. There is also a presentational issue as the withdrawal rights are detailed in two different sections. It seems that KSA policymakers did this in order to include more information about the exceptions to the exercise of withdrawal rights. However, this causes repetition in information regarding off-premises and distance contracts. It would be better to include all the information in one provision, refer to both types of contracts and add more information, particularly for distance contracts. In addition, if introduced in its current form, the draft law will fail to determine the party that should bear the cost of returning a product, along with other consumer remedies, such as re-performing the service or exchanging the product.⁵²⁶

As mentioned in the previous chapter, the KSA consumer laws highlight certain elements of a transaction, such as the status of the received product, how product accessories should be delivered, taking possession of the product and receiving damaged products.⁵²⁷ Failure to comply with these provisions results in the determination of return and withdrawal as consumer remedies. However, the timeframe for accessing the remedy or informing the vendor of the issue is absent from the existing consumer protection laws, and there is no mention of the obligations of the contracting parties after they have provided the appropriate remedy. It is also unclear how to deal with refunds, exchanges and returns.⁵²⁸

The current form of the new draft law requires goods or services to be delivered within 15 days, starting from the date the contract is concluded unless the contracting parties have stated otherwise. If the seller has not stipulated different terms, the consumer has the right to withdraw from the contract.⁵²⁹ The current form of the new draft law requires that the consumer be notified of any difficulty or delay with the delivery of the goods or the contract execution, and

526 Kuwait Law provides additional consumer remedies such as a right to return, exchange and refund with no burden, such as a particular condition or paying extra. ('CPL') (n293) Art.10.

527 See above Ch.2 (A)(2)(d).

528 Ibid.

529 ('TND CPL') (n388) Art.32 [1-3].

they should be informed of the new expected date of the contract execution or delivery.⁵³⁰ Withdrawal is the consumer's legal remedy for the failure to deliver the object of the contract. The law requires the seller to reimburse all amounts paid within 14 days of the termination notice.⁵³¹ Moreover, the seller bears the transportation risks unless the consumer appoints a logistics company that is not recommended by the seller.⁵³²

KSA policymakers have improved the scope of the country's national legal frameworks as the current form of the new draft law establishes which party is responsible for the transportation risks and the timeframe for initiating the refund resulting from a withdrawal notice. However, there will still be arguably uncertainty over the timeframe for reporting issues.

If introduced in its current form, the law will satisfy the model of adequate consumer protection laws to some extent since the current form of the new draft law introduces provisions such as refunds and returns. It also provides a provision addressing delivery risks. However, there will be a lack of information regarding the exchange of products, and some issues cause uncertainty regarding the exercise of those rights, such as the mechanisms to exercise those rights. For instance, there will be uncertainty in terms of providing accurate timing when the contract is for multiple products that are delivered over several days and the reporting of issues to the seller. There will be uncertainty regarding terms that exempt the consumer from using withdrawal rights, such as misuse of the product. There is an absence of definitions or situations in which conduct may be considered as misuse of the product. This will lead to a random use of this term by the seller to prevent liability. There is also a lack of information regarding the responsible party to bear the return of the product.

4 Adequate Dispute-Resolution Mechanisms

As indicated in chapter two, the existing KSA consumer protection laws heavily depend on the courts, which is ineffective in cross-border e-commerce transactions due to the difficulty of enforcing local laws in international jurisdictions.⁵³³ Therefore, KSA policymakers need to introduce just, cheap and speedy forms of dispute resolution,⁵³⁴ such as ADR dispute mechanisms, in order to facilitate claim resolution, with special attention to low-value products

530 Ibid Art.32 [2].

531 Ibid Art.32 [3].

532 Ibid Art.33 [1-2].

533 See above Ch.2 (A)(3).

534 ('UN Guidelines for Consumer Protection 2015') (n7)

or cross-border e-commerce transactions.⁵³⁵ There is also an absence of a regulatory or consumer protection agency to handle collective or individual consumer issues.⁵³⁶ In this section, the new developments provided by the current form of the new draft law regarding handling consumer issues by a regulatory authority and the introduction of the new dispute process are discussed. First, the existing KSA consumer protection laws fail to provide a clear approach to initiating consumer disputes.⁵³⁷ The current form of the new draft law states that a competent court is a court where the consumer is located.⁵³⁸ Thus if introduced in its current form, the law will provide the appropriate approach for consumers to initiate disputes within the consumer jurisdiction. However, this needs to be supplemented by cooperation with international consumer protection agencies. Even though the current form of the new draft law requires the seller to provide information regarding how to file a complaint, information is still lacking because that requirement seems to refer to the seller's internal and external dispute process. The approach to making a complaint is still unclear to the consumer given the nature of cross-border e-commerce transactions.

One of the objectives of the current form of the new draft law is to facilitate dispute settlement between the contracting parties, and KSA policymakers recognise the importance of providing an effective dispute process that facilitates access to remedies in cross-border e-commerce transactions.⁵³⁹ Accordingly, the current form of the new draft law introduces a new provision on accessing urgent dispute resolution for low-value products and accessing dispute resolution for alternative dispute resolution (ADR).⁵⁴⁰ However, it seems that disputes over low-value products will be handled through the court system, as Article 66 of the current form of the new draft law determines that a competent court will look at low-value product disputes, which is separate from the provision of ADR mentioned in Article 67. It is unclear whether low-value claims will be heard in court or through the ADR dispute system, as the approach and requirements for accessing this provision are to be provided by the executive regulation of the

535 ('Recommendation for Consumers in E-Commerce 2016') (n7)11[45]; ('UN Guidelines for Consumer Protection 2015') (n7) 15.

536 See above Ch.2 (A)(3).

537 Ibid.

538 ('TND CPL') (n388) Art.74.

539 Ibid Art.2 [F].

540 Article 66 states that the competent court has the power to hear disputes between the consumer and the seller. It requires the proceeding to be simple and fast, especially for low-value claims. Ibid Art.66.

new draft law that is yet to be introduced. Hence, it is not possible to assess the impact of these provisions if they are introduced in their current form as further explanation is needed.⁵⁴¹

The introduction of the ADR process will mean that consumers should be able to pursue out-of-court resolutions, particularly through ADR and ODR platforms.⁵⁴² Understandably, the KSA jurisdiction will establish its own ADR since the current form of the new draft law indicates that ADR bodies and ODR platforms will be established under the supervision of the KSA Ministry of Justice.⁵⁴³ The Ministry of Justice will form a committee that is responsible for resolving disputes between contracting parties.⁵⁴⁴ The current form of the new draft law also highlights the tasks of this committee: to guide the interpretation of the quality requirements and assurance mechanisms of the law; to determine the training requirements for ADR and ODR officials; and to publicly present a summary of the key findings from ADR bodies and ODR platforms after collecting and analysing operational reports.⁵⁴⁵

Uncertainty will still exist regarding the approaches and mechanisms to be used for accessing the ADR or ODR dispute mechanisms as these are not highlighted in the current form of the law.⁵⁴⁶ The current form of the new draft law also fails to overcome the uncertainty as to which court is a competent court for consumer disputes, since it states that a competent court is the court where the consumer is located.⁵⁴⁷ Therefore, there will still be uncertainty over circuit courts and the value threshold for submitting claims to the court.

If the current form of the new draft law is introduced, it will enhance the dispute process in KSA by providing access to an out-of-court resolution. However, the specific mechanisms for accessing this process are unclear in the current version of the law. Therefore, the approach to low-value product disputes is unclear. Information is also absent regarding the eligibility of the seller's internal or external dispute processes. If introduced in its current form, the new draft law will fail to provide the consumer with clear, accurate and comprehensive information

541 Ibid Art.67 [2].

542 Ibid Art.67.

543 Ibid Art.67 [2]-Art.68 [1].

544 Ibid Art.68 [2].

545 Ibid Art.68 [2].

546 Ibid Art.70.

547 Ibid Art.74.

regarding initiating disputes, with special attention paid to cross-border e-commerce transactions.

Regarding handling consumer issues collectively or individually by a regulatory agency, this issue would be potentially overcome if the new draft law is implemented in its current form. If the new draft law is passed as it is, consumer agencies will have the power to handle consumer problems. They can start or join legal proceedings to get compensation for consumer damages caused by violations of the new draft Consumer Protection Law.⁵⁴⁸ The approaches and procedures for individual or collective consumer court proceedings are to be provided by the executive regulation of the new draft law. Therefore, evaluation of this provision is not possible due to the absence of information in the current form of the law.⁵⁴⁹ This is arguably a major enhancement in the KSA national legal frameworks, but it is unclear whether this new rule will be assigned to the current Consumer Protection Association or another consumer protection agency as the current form of the new draft law does not mention.

5 Go Beyond State Border

There is still a deficiency within KSA consumer protection laws related to the issue of cooperating with consumer protection agencies overseas to mutually recognise local laws or judgments. This is because the current form of the new draft law does not mention whether the KSA will cooperate with international consumer protection agencies. Arguably, the current form of the new draft law needs to clarify whether the KSA will cooperate with international consumer protection agencies to investigate and enforce local laws upon the international seller. This is imperative to facilitate access to remedies by the consumer. This means that the seller cannot refuse the dispute-resolution mechanism. In other words, if the international seller refused to comply, then the consumer would be unable to access remedies. Moreover, it seems that KSA policymakers are not giving special attention to the importance of cross-border cooperation with international consumer agencies because the current form of the new draft law does not highlight or facilitate this by including a provision that promotes cooperation with such agencies. This is a shortfall in the dispute-resolution mechanisms related to mutual

⁵⁴⁸ The newly assigned role of the consumer association is 'to stand before the competent courts in order to obtain compensation for damage caused to the collective interests of consumers' as well as 'to join criminal proceedings brought against infringements of the provisions of this Law and its Regulations, and to claim, in case of a criminal conviction, compensation for the damage caused to the collective interests of consumers'. Ibid Art.73 [1].

⁵⁴⁹ Ibid [2].

recognition and the enforcement of judgments on a dispute between international sellers and consumers.⁵⁵⁰

B Conclusion

This chapter has reviewed the current form of the new draft consumer protection law. It discussed this new proposed development from different angles, beginning with adequate online disclosure, then providing fair contract provisions, effective dispute resolution and cooperation with overseas consumer protection agencies.

The current form of the new law addresses the issues with online disclosure by providing substantial development regarding the definition of an advertisement, and it provides information about advertisements for children. However, there are issues associated with these provisions that still need to be dealt with by KSA policymakers, such as identifying content that is unsuitable for children, for example, information that may exploit children's innocence to trick them into buying a particular product. In addition, the current form of the new draft law does not require advertisers to provide the content of an advertisement according to the consumer's level of knowledge, ability and age.

The current form of the new draft law stipulates the information that should be mentioned in the pre-contractual stage, but it fails to mandate that information related to consumer remedies must be included in the advertisement or the pre-contractual stage. The current form of the new draft law requires certain information to be provided in advertisements, on labels and in warnings, but it fails to determine the information that must be disclosed. This current form of the new draft law also lacks guidelines for disclosing information in the pre-contractual stage that consider the target audience of the advertisement, for example, whether they are children, professional consumers or small enterprises.

The current form of the new draft law provides provisions regarding misleading and unfair commercial practices. It does not define misleading conduct/statements. It also fails to cover all the possible situations that should be considered misleading, as it exclusively mentions particular conduct that is considered misleading. The other enhancement introduced by the current form of the new draft law is the inclusion of provisions on unfair commercial practices. An issue remains with some of the provided clauses because they do not consider the nature of

⁵⁵⁰ ('Recommendation for Consumers in E-Commerce 2016') (n7) 12[54].

e-commerce as they prohibit the mention of particular terms that may be lawful in other jurisdictions, such as limiting purchases to a particular requirement. The current form of the new draft law offers adequate protection to the consumer in cases in which the commodity does not meet consumer expectations, KSA quality standards or pre-contractual claims. The current form of the new draft law addresses some important issues related to withdrawal from a contract. One of these issues is determining the obligations of both the seller and the consumer after the consumer notifies the seller about their intent to exercise the withdrawal right. This clarification can help provide a clearer framework for both parties involved. Issues remain with the current form of the new draft law regarding the timeframe for expressing the withdrawal right when the contract is for multiple products delivered over several days.

The current form of the new draft law does seem to have some gaps when it comes to providing information about returning products, notifying sellers of withdrawal, and exercising the right to withdraw. It's important for the executive regulation to address these details to ensure clarity and consistency for consumers. These aspects will be included in the final version of the law to provide clear guidelines for both consumers and sellers. In addition, the current form of the new draft law fails to regulate other consumer remedies, such as exchanging a product. It enhances the KSA's national legal frameworks by including a provision detailing the party responsible for the delivery risks. However, information is absent regarding the approaches open to the consumer for reporting issues to the seller.

The current form of the new draft law establishes new dispute-resolution mechanisms, including those for low-value products and to provide ADR; but information is lacking regarding how to access those mechanisms. There is also still uncertainty over how to submit claims as the law does not identify the competent court. Moreover, the current form of the new draft law names consumer protection agencies as among those allowed to handle consumer issues, including representation of the consumer in court, which is a substantial development for effective consumer protection. How this mechanism will be accessed is to be decided by the executive regulation.

The current form of the new draft law does not provide information on cooperation with overseas consumer protection agencies to enforce local laws across the border.

The next chapter examines the experience of other jurisdictions with regard to consumer protection legal frameworks, with the aim of finding solutions that will overcome the gaps within the current form of the new draft consumer protection law.

IV CONSUMER PROTECTION LAWS IN GCC COUNTRIES

In chapters two and three, the discussion was about existing KSA consumer protection laws, including Civil Transactions Law, and the new draft Consumer Protection Law in relation to consumer protection issues. In particular, the discussion focused on online disclosure, including pre-contractual information, consumer rights in the case of a breach of contract and dispute-resolution mechanisms in the KSA, such as courts and out-of-court dispute processes. The mechanisms that support consumer protection were also discussed, such as initiating or intervening in consumer court cases and cooperating with international consumer protection agencies to mutually enforce local laws between jurisdictions. This chapter discusses those points in GCC countries, particularly in the UAE, Qatar and Kuwait, to find a solution to the identity inadequacy within the existing and proposed consumer protection laws in the KSA.

The reason for focusing on these jurisdictions is that Islamic law is the ‘golden thread’ in GCC countries, which means that the sources of law in these countries are similar to those in the KSA; that is, they are derived from Islamic law.⁵⁵¹ Furthermore, GCC countries are considered homogeneous since there are similarities in their traditions, culture, religion, language and political regimes, and this makes the adoption of a legal framework from a GCC country appropriate for the KSA.⁵⁵² It is submitted that several GCC countries, such as the UAE and Qatar, have a mature e-commerce market, which indicates that the systems in those countries are functioning well. According to the UNCTAD B2C E-commerce Index, the UAE was positioned 23rd out of 144 economies in 2017, with a score of 87.⁵⁵³ In 2019, the UAE was ranked 28th with a score of 83.8.⁵⁵⁴ However, in 2020, the UAE fell back to 37th with a score of 78.2. In 2017, Qatar was ranked 58th with a score of 62.⁵⁵⁵ Interestingly, in 2019, Qatar jumped from 58th to 47th position with a score of 74.2,⁵⁵⁶ but then fell back in 2020 to 50th

551 Ballantyne (n1) 3. *The Constitution of the United Arab Emirates* 1997 (UAE) Art.6. An unofficial translation of the UAE Constitution can be accessed through the link <<https://ecnl.org/sites/default/files/files/2021/UnitedArabEmiratesConstitution.pdf>>. The Constitution of the State of Qatar 2004 (QA) Art.1 ('TCSQ'). An official copy of the Qatari constitution can be found through the link <<https://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=6673&LawID=2284&language=en>>. The constitution of the State of Kuwait 1992 (KW) Art.2 ('TCSK'). An Arabic version of the constitution can be accessed through the link <<https://www.kna.kw/Dostor/Dostor/15/37>>.

552 At-Twajiri and Al-Muhaiza (n2)122.

553 UNCTAD B2C E-commerce Index 2017 (n3) 10.

554 UNCTAD B2C E-commerce Index 2019 (n4) 5.

555 UNCTAD B2C E-commerce Index 2017 (n3) 18.

556 UNCTAD B2C E-commerce Index 2019 (n4) 5.

position with a score of 72.1.⁵⁵⁷ The other factor in the choice of these countries is that they are doing better than the KSA in terms of consumer protection laws; they have regulations that provide certainty for consumers with respect to issues such as providing clear information about consumer rights, providing a variety of consumer dispute processes and supporting consumers by adopting their issues.

A Consumer Protection in GCC Legal Frameworks

The discussion in this chapter revolves around the online disclosure of information about the seller, commodities, transactions, conditions and dispute-resolution processes. This is followed by a discussion of the adequacy of fair contractual provisions applicable to misleading, unfair practices, commodity quality, consumer redress and effective dispute resolution. Finally, the chapter explores how consumer issues are addressed as well as cooperation with international consumer enforcement agencies to enforce local laws. This chapter focuses on four issues, namely online disclosure, fair contractual provisions, effective dispute resolution and cooperation with international consumer protection agencies. The final discussion concludes the chapter.

1 Online Disclosure of Consumer Protection Laws in GCC Countries

Several laws regulate information disclosure, including advertising of products and services. Some of these laws apply only to certain forms of advertising, such as billboard advertising⁵⁵⁸ and advertising in an online form,⁵⁵⁹ while other laws apply to different mediums.⁵⁶⁰ Among other objectives, these laws and regulations seek to protect consumers against misinformation. Some advertisements are prohibited — for example, those prejudicing societal morals;⁵⁶¹ other advertisements require permits, such as advertisements for medical products⁵⁶² or advertisements that offer discounts.⁵⁶³ Other laws require the inclusion of information

557 UNCTAD B2C E-commerce Index 2020 (n43) 15.

558 *The Chairman of the Board's Resolution on Media Activities Licenses* 2017 (UAE) ('UAECBRMAL'); *The Law on the Regulation and Control of the Placement of Advertising* 2012 (QA) ('QALRCPA'); *The Law on Press and Publication* 2006 (KW) ('KWLPP').

559 ('CAMB') (n232).

560 *The Federal Press and Publication Law* 1980 (UAE) ('UAEFPPL'); *Advertising Guide* (Report, October 2018) <<https://u.ae/en/media/media-in-the-uae/media-regulation>> ('AG'); *Consumer Protection Law* 2008 (QA) ('QACPL'); *The Law in the Matter of Selling at Reduced Prices and Advertising Products and Services* 1995 (KW) ('KWLMSPAPS').

561 ('KWLPP') (n545) Art.21; ('UAECPFL')(n498 Art.22; ('QALRCPA') (n545) Art.5; ('CAMB') (n232) Art.49.

562 ('UAEFPPL') (n547) Art.83; ('QALRCPA') (n545) Art.2.

563 ('KWLMSPAPS') (n547) Art. 1; ('CPL') (n293) Art.13; *The Executive Regulation of Consumer Protection Federal Law* 2023(UAE) Art. 31[2] ('UAERCPL').

regarding the trader's activity and trademarks, if available, when conducting business or communicating with consumers.⁵⁶⁴ Some of these regulations require particular information to be disclosed within the product box or on the label.⁵⁶⁵ Others require further information to be provided, such as name or trade name and the address and trademarks of both the producer and importer.⁵⁶⁶ However, they do not require particular information to be mentioned in the advertisement. Another law provides a comprehensive code for advertising, marketing and branding to enhance consumer protection by helping advertisers understand their obligations.⁵⁶⁷ This code is a regulatory source for consumers and vendors since it stipulates detailed information that should be included in advertisements and the criteria that determine whether an advertisement is compliant with the code.⁵⁶⁸ The criteria encompass various factors, inter alia the media used to convey the advertisement, including short messaging services (SMS). It takes into account the number of words that can be used; therefore, the consumer needs to be provided with additional information before entering into a contractual relationship.⁵⁶⁹ The targeted audience is also considered; for instance, if the advertisement targets small enterprises and consumers, its language should be simple, avoiding technical terminology that most likely would not be part of the audience's normal use, whereas technical terminology can be used if the target consumer is a specialist.⁵⁷⁰ This section covers various elements of advertisements: the definition of an advertisement; online discourse of information regarding the seller, commodity, transaction, terms and conditions and available dispute-resolution processes; and e-communication targeting a particular group. First, definitions of the term *advertisement* are going to be discussed.

(a) Definitions of Advertisements in GCC Countries

GCC countries, particularly the UAE, Qatar and Kuwait, have consumer protection laws that provide definitions of both advertisers and advertisements.⁵⁷¹ Concerning advertisers, the UAE

564 ('CPL') (n293) Art.19; ('UAEERCPFL') (n550) Art.40.

565 ('UAECPFL')(n498) Art.7 [1]; ('UAEERCPFL') (n550) Art.3; *The Executive Regulation of Consumer Protection Law 2012* (QA) Art.2 ('QAERCPL'); *The Executive Regulation of Consumer Protection Law 2015* (KW) Art.28 ('KWERCPL').

566 ('UAEERCPFL') (n550) Art.40.

567 ('CAMB') (n232) 7.

568 Ibid 11.

569 Ibid Art.26 [26.1].

570 Ibid Art.9 [26.2].

571 The UAE defines an advertiser as 'every juristic person who, by itself or through others, advertises the Good, Service or information by various means of advertising or announcement, whether the Advertiser is the Supplier himself or a person authorised to do so'.

and Kuwait definitions consider the approach used to advertise, including the internet. The UAE definition only applies to the ‘legal person’, such as the supplier or authorised person, whereas the Qatar and Kuwait definitions consider all persons, whether legal or natural, except that the Kuwait definition makes it clear by stating ‘legal and natural persons’. This affects the applicability of the law, as in the UAE, the law only applies to legal persons. In contrast, the KSA consumer laws define advertisements, but not advertisers.⁵⁷² The UAE provides general and specific online advertisement definitions,⁵⁷³ whereas Qatar defines advertisements in general.⁵⁷⁴ The UAE and KSA policymakers provide a particular definition for online advertisements.⁵⁷⁵ Both definitions consider the advertising approach. The difference between the definitions is that the UAE definition clearly states that it extends to electronic means, network applications and paid or unpaid advertisements, whereas the KSA definition opens the extension to electronic means only. In addition, only the KSA definition mentions parties who promote the seller and people who engage in e-commerce; the UAE regulation omits this. The UAE, Qatar and KSA provide a general definition that can be extended to online advertisements since they open the method of advertising to all approaches. The UAE, Qatar and KSA definitions also consider all forms of advertising.

Another difference between the definitions is that the Qatar definition only considers the consumer as the receiver of the advertisement, whereas the UAE definition considers all persons. However, the KSA definition does not specify which party receives the advertisement. The other difference is that the KSA definition is extended to any other communication that aims to advertise a commodity, such as email or phone calls, as it does not specify the method

(‘UAECPL’)(n498) Art.1; Qatar defines an advertiser as ‘any person who advertises or promotes a commodity or service, whether personally or through third parties’. (‘CPLQA’) (n547) Art.1; Kuwait defines an advertiser as ‘any natural or legal person who, personally or through another, advertises a good or service, or promotes it through various means of publicity and advertising, whether the advertiser is the same provider or a person authorised to do so’. (‘CPL’) (n293) Art.1 [8].

572 Abrar Almutairi, Consumer Protection from False Advertisement in the Pre-contractual Phase of Electronic Contracting (2015) (12) *Kuwait International Law School Journal* 87, 91-92 <<https://journal.kilaw.edu.kw/consumer-protection-from-false-advertisement-in-the-pre-contractual-phase-of-electronic-contracting/?lang=en>>.

573 The general definition of an advertisement is: ‘Any means intended to inform all people about certain commodity or purpose, whether by presentation or publication in writing, drawing, image, symbol, sound or other means of expression’. (‘AG’) (n547) 4; An online advertisement is defined as: ‘the means for offering and promoting concepts, commodities, and services by electronic means or the applications of the telecommunications network, whether paid or unpaid’. *The Chairman of the Board Resolution No (3) on Organising E-Media Activities* 2018 (UAE) Art.1 (‘UAECBROEMA’).

574 An advertisement is defined as ‘any means of bringing a product or service or entity to the attention of Consumers, including any branding, marketing or promotional activity’. (‘CAMB’) (n232).5.

575 (‘ECL’) (n12) Art.1; (‘UAECBROEMA’) (n560) Art.1.

of communication — it states, ‘any form of communication’. This could apply to all forms of communication and all forms of and approaches to advertising because the KSA definition mentions the purpose of the advertisement and the effect it has.⁵⁷⁶

(b) Seller’s Information

The UAE law provides e-commerce provisions related to the disclosure of information. It requires the inclusion of the name, legal status, location or address of the online registered traders as well as licensing bodies.⁵⁷⁷ In another Article, it requires that the laws include the name or trade name and the address and trademarks of both the producer and importer.⁵⁷⁸

The Kuwait law requires the inclusion of the names of the producer and importer, including their commercial names, addresses and trademarks.⁵⁷⁹

The Qatar law requires the inclusion of the name, address and contact information, including email address, details of the commercial register and the authority that authorises the licence.⁵⁸⁰ If the business requires a permit, the consumer is entitled to information about the entity that registered the profession or business and the country that granted the permit.⁵⁸¹ The law also requires the inclusion of the name of the importer, including commercial name, address and trademark.⁵⁸²

Although the consumer protection laws in these GCC jurisdictions vary in mandating seller’s information, they all fail to meet the standards of the model consumer protection framework since there is a lack of information that assists in locating the seller. Moreover, they do not require the inclusion of the trader’s legal name or the main branch of the business. The laws also fail to provide the information in adequate time as they do not require the inclusion of the

576 (‘TND CPL’) (n388) Art.1.

577 (‘UAE CPFL’)(n498) Art.25 [1]. A translated version of this law can be accessed through the link <https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_CONSUMER/UAE-LC-En_2020-11-10_00015_Kait.html?val=EL1&Words=2015>.

578 Ibid Art.3; (‘UAE ECPFL’) (n550) Art.40.

579 (‘KWERCPL’) (n552) Art.28. The Executive Regulation of the Kuwait Consumer protection law can be accessed through the link <<https://faolex.fao.org/docs/pdf/kuw184478.pdf>>.

580 *The Electronic Transactions and Commerce Law 2010* (QA) Art.51 (‘QAETCL’). A translated version of this law can be accessed through the link <<https://www.cra.gov.qa/en/document/electronic-commerce-and-transactions-law-no-16-of-2010#:~:text=Decree%20Law%20No.%20%2816%29%20of%202010%20Promulgating%20the,on%20areas%20such%20as%20e-signatures%2C%20e-documents%20and%20authentication>>.

581 Ibid Art.52.

582 (‘QACPL’) (n547) Art.7. A translated version of the Qatar Consumer Protection Law can be accessed through the link <<https://www.almeezan.qa/LawPage.aspx?id=2647&language=en>>

information in the pre-contractual stage. The seller can decide whether to disclose the information before or after the transaction.

(c) Commodity Information

In e-commerce, the UAE law mandates the disclosure of commodity information, including the specifications, payment and warranty.⁵⁸³ In another provision, it requires the inclusion of information regarding the commodity, such as product name, types, nature, ingredients and quantity; country of origin and export country; production and expiry dates; product hazards; and trading and storage conditions.⁵⁸⁴ This is a general provision regarding the information about the product that may be provided on a label, wrapping or box for the commodity. The law does not require disclosing this information in the pre-contractual stage. In contrast, the Qatar law provides certainty regarding the information that needs to be disclosed before the conclusion of the contract. The consumer should be provided with a description of the essential characteristics of the commodity and prices, including delivery cost and taxes.⁵⁸⁵ The Qatar law requires the currency of the commodity to be in Qatar currency.⁵⁸⁶ Therefore, the mentioned jurisdictions fail to provide adequate commodity information prior to the conclusion of the contract, except for Qatar law, which requires specific information. The Qatar law does not meet the requirements in the model of adequate consumer protection law because it lacks: a provision mandating the inclusion of limitations on the product; warranty information; after-sales services information and information about the provider of the services; the needed periodic maintenance information; and safety information and warnings. Nonetheless, the law requires the inclusion of this information on the label or container. This does not provide adequate protection to the consumer as the seller is not required to disclose that information before conducting the transaction, which does not allow the consumer to make an informed decision. Nonetheless, Qatar law provides extensive guidelines for the information that advertisers should provide in a specific code regulating advertising in general, including e-advertising. This code does not mention the key information that should be contained in the

583 ('UAECPFL')(n498) Art.25 [1].

584('UAEERCPFL') (n550) Art.3. An Arabic version of the UAE law is available through the link <<https://www.moec.gov.ae/documents/20121/0/.pdf/1e993a40-2326-9c81-9458-35ac4e4777f9?t=1689132689751>>

585 ('QAETCL') (n567)Art.52.

586 ('QAERCPL') (n552) Art.3. An Arabic version of the Qatar executive regulation of the Consumer Protection Law can be found through the link <<https://almeezan.qa/LawPage.aspx?id=4899&language=ar>>.

advertisement, but it provides rich guidelines that cover almost every aspect of advertisements. It requires disclosing in the advertisement whether the product is bundled or packaged and that the consumer be informed upon request about the commodities. The seller must provide a full description, including the prices of each commodity if sold individually, and inform the consumer whether it is possible to buy each commodity individually.⁵⁸⁷ If the advertiser is not in a position to provide all the components of the advertised packaged or bundled commodity, then the supplier of the other commodity and the legally responsible party must be disclosed to the consumer within the advertisement.⁵⁸⁸ If the full description cannot be provided for any reason, the advertiser is required to disclose in the pre-contractual stage any commodity that is supplied by more than one person.⁵⁸⁹ If advertisers do not provide after-sales services for the advertised commodity, then they are required to disclose in the advertisement that after-sales services are provided by a third party and to include the details of the third party; otherwise, the information must be disclosed at the pre-contractual stage.⁵⁹⁰ The law also requires the price to be clearly disclosed. If this is not possible for any reason, the price of the advertised commodities is to be provided in the pre-contractual stage.⁵⁹¹ The consumer should also be provided with the applied charges and what the prices are for; the amount of each type of charge and the method of calculation; the recurring charges payable and whether the paid prices will change during the contract. This should all be explained to the consumer before they enter into a contract.⁵⁹² Commodity limitations need to be visible, legible, apparent and understandable, and they must not contradict the information in the advertisement.⁵⁹³ Despite this, the laws in the UAE, Qatar and Kuwait do not identify information that must be disclosed in the advertisement, but they do require the inclusion of information on labels or in a pre-contractual stage before the conclusion of the e-commerce transaction. The Qatar law goes further to provide a code for advertising activity, including e-advertisements. In contrast, KSA law requires the inclusion of certain information on a label or in an advertisement, but it fails to differentiate between the information that should be disclosed in an advertisement and the

587 ('CAMB') (n232) Art.39. this code can be accessed through this link: <<https://www.cra.gov.qa/en/document/code-on-advertising-marketing-and-branding--25-september-2014#:~:text=Code%20on%20Advertising%2C%20Marketing%2C%20and%20Branding%20-%202025,to%20protect%20consumers%20from%20misleading%20and%20anticompetitive%20advertisements>>.

588 Ibid Art.41.

589 Ibid.

590 Ibid Art.61

591 Ibid Art.43.

592 ('CAMB') (n232) Art.44.

593 Ibid Art.47.

information that should be included on the label of the product.⁵⁹⁴ Therefore, KSA policymakers could benefit from the approaches used in the UAE, Qatar and Kuwait and provide separate articles for label information.

(d) Transaction Information

The UAE law requires the inclusion of information regarding returns and exchanges.⁵⁹⁵ The Qatar law requires that before entering into a contract, information be provided about the approach to conclude the transaction; payment, delivery and execution arrangements; and withdrawal information.⁵⁹⁶ It does not mandate the inclusion of expected date and method of delivery. The UAE requires providing an invoice after the conclusion of the transaction that discloses the delivery or execution date,⁵⁹⁷ whereas the laws in Qatar and Kuwait require an invoice disclosing the delivery date.⁵⁹⁸ The Qatar law also mandates identifying the purpose of commercial communication,⁵⁹⁹ but points out the mere inclusion of the information before concluding the transaction. It lacks information that is considered to be substantial elements of adequate consumer protection law, such as tracking number and return of the product. The UAE mandates the inclusion of return and exchange information.

(e) Terms and Conditions Information

The UAE and Qatar laws mandate the inclusion of the terms and conditions of the contract.⁶⁰⁰ Nonetheless, the UAE requires the inclusion of this in e-commerce, whereas Qatar law requires the inclusion before concluding the transaction. The Kuwait law has additional requirements for store owners to provide in Arabic in a visible place in the shop a statement that includes the terms and conditions of return and exchange.⁶⁰¹ This statement should not state that there are certain terms and conditions under which commodities cannot be returned or exchanged, nor should it oblige the consumer to pay a certain amount to exercise this right or to provide payment in vouchers.⁶⁰² This seems to be for traditional commerce since the law indicates store

594 ('TND CPL') (n388) Art.7.

595 ('UAE ERCPFL') (n550) Art.40.

596 ('QAETCL') (n567) Art.55.

597 ('UAE ERCPFL') (n550) Art.6.

598 ('QAERCPFL') (n552) Art.4; ('UAE CPFL') (n498) Art.15; ('KWERCPL') (n552) Art.41.

599 ('QAETCL') (n567) Art.53.

600 ('UAE CPFL')(n498) Art.25 [1]; ('UAE ERCPFL') (n550) Art.40; ('QAETCL') (n567) Art.55.

601 ('KWERCPL') (n552) Art.25 [9].

602 Ibid Art.25 [9].

owners but does not indicate the timing for the inclusion of this particular condition. Qatar law also provides certain provisions for terms and conditions in the pre-contractual stage. It requires that advertisements do not directly or indirectly disclose terms and conditions that were not imposed during the advertising period.⁶⁰³ However, unilateral changes to the terms of the contract are permitted if they were clearly conveyed to the consumer and the advertiser obtained approval from the Qatar authority.⁶⁰⁴ Failure to notify the consumer would result in termination of the contract with no penalties imposed on the consumer.⁶⁰⁵ The advertisers have the option to provide the terms and conditions in the advertisement; otherwise, they should indicate that terms and conditions apply and make sure that they provide the information directly to the consumer or that they direct the consumer to where the information can be found.⁶⁰⁶ The laws in the UAE and Kuwait fail to provide adequate information to the consumer about the terms and conditions of the e-commerce contract since the UAE and Kuwait do not provide certainty regarding the time of the inclusion of the terms and conditions. They also do not require that information be provided in consumer-friendly language in a downloadable and printable manner so that the consumer can keep a record of the terms and conditions. In Qatar law, the supplier should provide the consumer with documentation that proves the statement made in the advertisement regarding the commodity's warranty,⁶⁰⁷ but it does not require this information to be disclosed in the pre-contractual stage. Therefore, the UAE, Qatar and Kuwait laws fail to meet the requirement for an adequate consumer protection framework. This is due to the failure to provide access to the information at any point of the transaction except for Kuwait law, which requires the inclusion of the terms and conditions after the conclusion of the contract.⁶⁰⁸ This is still inadequate since the law does not require the inclusion of the terms and conditions before concluding the transaction.

(f) Dispute-Resolution Process Information

The UAE and Kuwait law fail to require the inclusion of the resolution process since they do not provide provisions for the inclusion of limitations on the sellers' lawful liability, the governing law, limitations on the claim for redress and available resolution mechanisms,

603 ('CAMB') (n232) Art.62 [A].

604 Ibid Art.62 [B].

605 Ibid.

606 Ibid Art.63.

607 ('QAERCPL') (n498) Art.16.

608 ('CPL') (293) Art.15; ('KWERCPL') (n552) Art.41.

including out-of-court dispute processes. The Qatar law provides provisions regarding the use of limitations. Therefore, it legalises the use of limitations in the advertisement. This legality is based on two requirements: First, the advertisement must disclose the precise duration of availability if the product or service is available for a particular time,⁶⁰⁹ and second, the advertisement should disclose that stocks are limited if there is a limitation on the product or services.⁶¹⁰ Qatar law also considers limitations and disclaimers that are mentioned in different kinds of advertising. First, if the advertisement is in a written format, limitations/disclaimers must be disclosed in a font size and colour that the consumer can easily see and read.⁶¹¹ Second, if the advertisement is in an oral form, such as radio, the limitations/disclaimers shall be given in the same voice, tone and rhythm as the rest of the advertisement.⁶¹² Third, if the advertisement is in a visual form, the written words that appear on the screen should be at a readable speed or in the same manner as the rest of the advertisement.⁶¹³ Moreover, if the limitations/disclaimers cannot be disclosed in the advertisement, then the advertiser should include phrases that acknowledge the limitations/disclaimers, such as ‘subject to exclusions’, before entering into the contract.⁶¹⁴ The law forbids the use of limitations/disclaimers that contravene the advertisement's standard message.⁶¹⁵ However, Qatar law does not require the inclusion of information regarding the lawful limitations of the sellers. If the available redress is provided by a third party rather than by the advertiser, then the consumer should also be informed of this before entering into a contractual relationship.⁶¹⁶

All the mentioned laws fail to provide adequate provisions for the inclusion of information about the dispute process. This will affect the consumer’s ability to make an informed decision and the ability of consumer protection agencies to access the fairness of the information that is disclosed about the dispute process.

⁶⁰⁹ ('CAMB') (n232) Art.53.

⁶¹⁰ Ibid Art.54.

⁶¹¹ Ibid Art.56 [A].

⁶¹² Ibid Art.56 [B].

⁶¹³ Ibid Art.56[C].

⁶¹⁴ Ibid Art.57.

⁶¹⁵ Ibid Art.59.

⁶¹⁶ ('CAMB') (n232) Art.60 [A].

(g) General Guidelines for the Information

GCC countries, particularly the UAE, Qatar and Kuwait, fail to require the inclusion of all the necessary information regarding seller, commodity, transaction, terms and conditions, and dispute-resolution process. Qatar requires the inclusion of some information before the conclusion of the contract, such as terms and conditions.

The issue is that the UAE, Qatar and Kuwait policymakers specify the information that should be mentioned on a label on the box or container of the commodity,⁶¹⁷ as well as information to be mentioned in e-commerce.⁶¹⁸ However, the UAE and Kuwait laws fail to identify the information that should be provided in the pre-contractual stage. The KSA and Qatar laws require information to be provided to the consumer before entering into a contractual relationship.⁶¹⁹ However, KSA law fails to provide guidelines on how to request further information after viewing the advertisement and Qatar law fails to clearly identify the stage at which the information should be provided, such as in the advertisement or the pre-contractual stage.⁶²⁰ All the UAE and Kuwait laws have an issue with regard to identifying the timeframe for providing the information. This creates uncertainty over the information required in e-commerce before entering into a contractual relationship to allow the consumer to make an informed decision. The Qatar law provides greater legal certainty since the information that is not mentioned in the advertisement, such as redress information, limitations and disclaimers, terms and conditions, prices, and legally responsible party, is required to be mentioned before entering into a contractual relationship.⁶²¹ The code emphasises that if the consumer requests additional information after reviewing the advertisement, it should be clear, comprehensive, factual and up-to-date. This should be provided to the consumer in a simple format within 10 working days of the seller receiving the request. This could be through the frequently asked questions section on a website,⁶²² as the consumer could be directed⁶²³ to a website if the additional information cannot be provided by the means requested by the consumer.⁶²³ The information shall be provided in plain language and include a clear and comprehensive

617 ('UAECPFL')(n498) Art.7 [1]; ('QAERCPL') (n552) Art.2; ('CPL') (293) Art.12; ('UAEERCPFL') (n550) Art.3

618 ('UAECPFL')(n498) Art.25 [1]; ('UAEERCPFL') (n550) Art.40; ('QAETCL') (567) Art.51-52-55; ('QAERCPL') (n552) Art.16.

619 ('TND CPL') (n388) (KSA) Art.28 [1]-44 [1]; ('CAMB') (n232).

620 ('TND CPL') (n388) (KSA) Art.28 [1]-44 [1]; ('QAETCL') (567) Art.55.

621 ('CAMB') (n232).

622 Ibid Art.32.

623 Ibid Art.33.

description of the commodities with instructions on how to use them.⁶²⁴ Therefore, GCC countries need to provide certainty regarding the timing of providing the information before entering into a contractual relationship.

The information should also be provided with particular attention to vulnerable groups. The Kuwait law does not include specific provisions on advertising to young people. Instead, it provides a general provision that applies to advertisements that prohibit acts or information. For example, the advertisement should not be inappropriate for children or breach the values and morality of society, such as drugs and alcohol.⁶²⁵ However, the UAE, KSA and Qatar laws provide certain provisions for children's advertising. The difference between these provisions is that the KSA policymakers have banned the advertising of anything that may harm children,⁶²⁶ whereas the UAE law prohibits certain actions or information from being advertised.⁶²⁷ In contrast, the Qatar law provides guidelines for advertisers to keep the nature of the targeted group in mind while advertising. In other words, advertisers need to remind children that they need to obtain consent from their parents, and they need to eliminate terms that may minimise the prices of the advertised commodity in children's minds, such as 'just' and 'only'.⁶²⁸ Qatar law also considers other targeted audiences, such as small enterprises and consumers; thus the advertisement language should be simple, avoiding technical terminology that most likely is not part of their daily vocabulary, whereas technical terminology can be used if the target consumer is a specialist.⁶²⁹ If the online disclosure targets people with disabilities, it should be provided in a suitable approach. For instance, people with vision impairment should be provided with appropriate fonts and colours in the advertisement.⁶³⁰

It can be contended that the KSA policymakers could benefit from Qatar's approach to considering the needs of various targeted groups in addition to the legal provisions. This would

624 Ibid Art.34.

625 *The Law on Children Rights* 2015 (KW) Art.87. An Arabic version of the law can be accessed through the link <https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=101761>.

626 ('TND CPL') (n388) Art.21.

627 UAE Law prohibits advertising drugs or intoxicants, sexual content or actions that are against the morality of the public or that support unusual actions. It protects children from economic exploitation by advertisements. See *The Federal Law on Child Rights (Wadeema)* 2016 (UAE) Arts.14-20-26. A translated version of the law can be accessed through the link <<https://u.ae/en/information-and-services/justice-safety-and-the-law/children-safety/childrensrights>>.

628 ('CAMB') (n232) Art.26 [26.3].

629 Ibid Art.9 [26.2].

630 Ibid Art.26 [26.3].

provide more protection for the consumer as vendors would be required to consider the different needs of the advertisement's targeted audience.

Another aspect of adequate consumer protection is to provide the consumer with an approach to download or print online discourse to ensure that the information is not altered by the seller. The UAE, Qatar and Kuwait laws do not require providing printable or downloadable approaches so the consumer can keep a record of the information in consumer-friendly language. In Qatar law, the supplier should provide the consumer with documentation that proves the statement made in the advertisement related to the commodity's warranty,⁶³¹ but the law does not require this information to be disclosed in the pre-contractual stage. Therefore, the UAE, Qatar and Kuwait laws fail to meet the requirements of an adequate consumer protection framework. However, these laws require an invoice to be provided containing certain information after the conclusion of the contract.⁶³² The purpose of this is to prove the transaction. However, the information that needs to be included varies between these laws. KSA law differs from the others regarding the remedy that must be provided to the consumer if the seller fails to comply with this provision. It allows the consumer to prove the transaction by whatever means are available, such as a screenshot.⁶³³ This arguably provides more protection to the consumer since the proof of the transaction can be accessed whether the seller complies with the invoice provisions or not. Therefore, UAE, Qatar and Kuwait laws fail to provide the consumer with an approach to printing or downloading pre-contractual statements.

The UAE, Qatar and Kuwait laws do not mandate that a review summary of the transactions be provided and that the consumer be allowed to correct errors before placement of the order.

631 ('QAERCPL') (n498) Art.16.

632 The UAE law requires a dated invoice in Arabic that includes the trader's name, location and product types as well as the price and quantity of the product or service. ('UAECPL')(n498) Art.8 [3,4]. The following information also needs to be mentioned in the invoice: supplier name, address and contact information; products or services description, selling unit, quantity or quantity of the sold units; products or services prices in UAE currency; warranty period, if applicable; delivery or execution date; product serial number and the different parts that make up the product, depending on the nature of the product; record number; tax number, if any. ('UAEECPFL') (n550) Art.6. The Qatar law requires a dated invoice in Arabic to be provided after the conclusion of the contract, proving the contractual agreement. It must contain: the supplier's name, commodity type, essential specifications, quantities, the commodity status, if used, the price in Qatar currency, expected delivery date, signature of the legally responsible party, the serial number of the commodity and the component and selling unit. ('QAERCPL') (n498) Art.4. The Kuwait law requires that the consumer be provided with an invoice in Arabic that proves the contractual relationship and includes the commodity's information relating to the date of purchase, prices and specifications, country of origin, nature, types and quantity; the supplier's name, address and contact number; the status or condition of a second-hand commodity; date of delivery; the signature of the supplier or whoever is acting on the supplier's behalf; the commodity serial number and its parts; the terms and conditions and period of the warranty.('CPL') (293) Art.15; ('KWERCPL') (n552) Art.41.

633('TNDCL') (n388) Art.14 [3].

Qatar law mandates correcting mistakes before the placement of the transaction.⁶³⁴ Therefore, KSA and Qatar policymakers provide the right to correct mistakes.⁶³⁵ Qatar policymakers have stated that mistakes must be corrected before the conclusion of the contract, but the law does not provide a definite time. KSA policymakers allow 24 hours from the conclusion of the contract for the correction of mistakes. The Qatar law also requires the consumer to be able to confirm the conclusion of the payment, but it does not require the consumer to consent to the acknowledgment.⁶³⁶ The Qatar law thus provides better protection to the consumer. However, there are shortcomings regarding providing a summary review of the information and the consumer's ability to consent to the conclusion of the transaction.

2 Fair Contract Provisions

Adequate consumer protection law should provide the consumer with appropriate protection from misleading and unfair commercial practices. It should also provide the consumer with adequate provisions that cover the conformity of the product to the quality standard, pre-contractual statements and meeting the expectations of the consumer. Finally, it should provide adequate consumer remedies or rights, such as refund, exchange, return, withdrawal and delivery.

(a) Adequate Protection Against Misleading Conduct/Statements

The KSA, Qatar and Kuwait laws fail to define misleading. The UAE defines misleading advertisements as those that are based on deception or the omission of essential or basic information regarding goods or services that influence consumers to enter into a contract that they would not have entered into without that information. Announcing fake or unrealistic rewards or discounts is considered misleading advertising.⁶³⁷ Therefore, the UAE law limits misleading conduct/statements to those that contain false essential or basic information, including fake rewards or discounts. In addition, the term 'misleading' is extended to the omission of information or false essential information about the products or services. It is arguable that this does not cover all misleading practices, meaning that other misleading conduct/statements are not actually considered to be misleading practices. Therefore, UAE, Qatar, Kuwait and KSA laws limit misleading conduct/statements to those that contain

634 ('QAETCL') (n567) Art.56 [1].

635 Ibid Art.56 [1]; ('TND CPL') (n388) Art.45.

636 Ibid Art.56 [2].

637 ('UAECPL')(n498) Art.1.

particular information,⁶³⁸ and they consider the omission of information as a misleading act.⁶³⁹ However, the approaches of UAE, Qatar, Kuwait and KSA policymakers arguably may not allow access to redress for misleading acts or omissions since their laws limit the term ‘misleading’ to particular information. The policymakers in those jurisdictions have also not provided blacklisted actions that are considered misleading acts. The UAE, Qatar and Kuwait Laws fail to provide adequate protection that applies to all kinds of misleading conduct/statements, including false representations/omissions of information.⁶⁴⁰ They also fail to provide a list of conduct/statements that are prohibited because they are misleading.⁶⁴¹

(b) Adequate Protection Against Unfair Practices

The UAE law prohibits conditions or terms that harm the consumer and nullifies any condition that exempts the seller from its lawful obligations under consumer protection law.⁶⁴² It grants the court the right to alter or relieve the compliance party of unfair conditions in the agreement.⁶⁴³ This will lead to court intervention, which is inappropriate for cross-border e-commerce transactions.⁶⁴⁴ The Qatar law nullifies any attempt to exempt the seller from its

638 Qatar and UAE laws consider any conduct/statements as misleading if it displays false statements or claims that directly or indirectly create a deceptive false impression of the commodity’s nature including its composition, crucial characteristics, components, or ingredients, quantity, shape, and appearance; the commodity’s source including its essence, manufacturing method, date of production and expiration, conditions of use including precautions, weight, size, measurements, capacity, standard or any other using metrics; country of origin including the exporting country or the entity that produced it; terms and conditions of the contract including after-sales services, warranty, prices, and the payment method; awards and certificate; trademarks or logos; the commodity specification and the expected result of using it. Moreover, the conduct/statements should not deceive or confuse the consumer directly or indirectly by action or omission nor make false claims about the commodity’s availability, price, or quality, whether the commodity belongs to the advertiser or another entity or person. (‘CAMB’) (n232) Art.32; (‘UAEERCPFL’) (n550) Art.8. The Kuwait law considers the conduct/statements as misleading if it includes statements or false claims that directly or indirectly create false or misleading impression regarding the following elements: nature, installation, essential specification, components, quantity, form or appearance of the commodity; the commodity’s source, ways of making it, production and expiry date, methods of use and hazards, weight, measures, quantity, or any other measurements; county of origin, country of export; terms and conditions of concluding the contract including after-sale services; certificate, awards; trademarks and logos; the characteristics or the expected result of using the product or service. (‘KWERCPL’) (n552) Art.40.

639 (‘UAEERCPFL’) (n550) Art.8; (‘CAMB’) (n232) Art.30; (‘KWERCPL’) (n552) Art.40.

640 Alqodsi (n 122) 8.

641 Fayyad (n289) 302.

642 (‘UAECPFL’)(n498) Art.21; (‘UAEERCPFL’) (n550) Art.34.

643 The Civil Transaction Law 1985 (UAE) Art.248 (‘UAECTL’). A translated version of this law can be found through the link <https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_CIVIL%20TRANSACTIONS%20AND%20PROCEDURES/UAE-LC-En_1985-12-15_00005_Kait.html?val=EL1>.

644 Alqodsi (n 122) 8.

lawful obligations.⁶⁴⁵ The Kuwait law nullifies any condition that exempts sellers from any obligations stipulated, in particular, in consumer protection law.⁶⁴⁶ Terms or agreements that exempt sellers from recognising consumer rights are also nullified in Kuwait's legal frameworks.⁶⁴⁷ The UAE, Qatar and Kuwait policymakers all provide general provisions for unfair commercial practices and ban all kinds of terms that may harm consumers. The UAE provides specific provisions that highlight unfair contractual terms or actions that harm the consumer.⁶⁴⁸ Therefore, the UAE provides more certainty regarding unfair commercial practices. KSA policymakers eliminate all unfair commercial practices that put the consumer in a disadvantaged position and provide specific scenarios for unfair commercial practices.⁶⁴⁹ They also prohibit advertisement limitations, such as specifying a particular time to offer products or conditions that are problematic since the laws need to regulate those in an approach that suits the nature of e-commerce. An example is the Qatar approach, which legalises limitations as long as they comply with the conditions in the law. The limitations must be visible, legible, apparent and understandable, and they must not contradict the information in

645 This was emphasised three times; Article 6, in particular, nullifies exempting the seller from providing fair compensation to consumers. ('QACPL') (n547) Art.3; Article 24 generally prohibits any condition that exempts sellers from any lawful provision imposed by Qatar law. Ibid Art.24; Article 26 makes it illegal for advertisers to exempt the seller from the lawful provision of The Code on Advertising, Marketing and Branding. ('CAMB') (n232) Art.26.

646 ('CPL') (n293) Art.11.

647 Ibid Art.33.

648 The UAE law considers specific terms or actions that harm the consumer. It considers the following situations as unfair contractual terms or actions: supplier self-interpretation or modifications of some contractual clauses or unilaterally terminating the contract with no negotiation with the consumer; authorising the supplier to unilaterally terminate undefined-period contracts; authorising the supplier to have the right to define whether the product matches the contractual agreement; cancelling or derogating the consumer's right to compensation; unilaterally changing the specifications of the product or the terms of the service in subscription contracts unless the consumer is aware of the change and the purpose of the change is to update and upgrade, or the reason for the change is beyond the supplier's control; waiving consumer rights in UAE consumer law; cancelling consumer rights if the supplier fails to execute their commitments entirely or partially or not execute them well; obligating the consumer to compensate the supplier in a way that does not match the value of the damage caused by the consumer; unilaterally determining the price of the product on delivery or changing the price of the service for long-lasting contracts and not allowing the consumer to withdraw; using the term 'no return or exchange of the product', unless the consumer is aware of the defect or malfunction before buying it and accepts it in its condition which is proven in the invoice, and the product nature, specification, packing or packaging method does not allow the product to be in its original status or condition unless the reason for the return or exchange is a defect in the production or non-conformity to quality standards or the contractual agreement and if the product is perishable unless it is corrupt or expired or created based on consumer request or requirements, books, newspapers and magazines; refusing a refund of the price of the product or service; obliging the consumer to deal with particular financing or insurance institutions; requiring maintenance to be performed in a particular centre or agency for a particular time; and eliminating the supplier's responsibility for the commodity during the execution of service. ('UAEERCPFL') (n550) Art.34.

649 ('TND CPL') (n388) Art.17.

the advertisement.⁶⁵⁰ Therefore, the KSA could benefit from the Qatar approach and regulate advertisement limitations instead of banning them.

(c) Regulate Commodity Quality

The UAE, Qatar and Kuwait laws contain provisions on meeting the quality standards of the consumer countries by providing a guarantee that products or services match the standards and specifications of the consumer's country.⁶⁵¹ The UAE and Kuwait laws consider non-conformity to the quality standards as a defect in the product.⁶⁵² The Qatar and KSA laws provide a warranty that stipulates that products or services must match the standards and specifications of the consumer's country and that the quality of a product or service must be in accordance with the statement or agreement provided before the conclusion of the contract.⁶⁵³ KSA law also requires that guaranteed products or services match the provided sample, if any, match the provided description and the installation structure, and have similar qualities and specifications to the product on the market.⁶⁵⁴ The UAE, Qatar and Kuwait laws satisfy the model of good consumer protection law on mandating that quality standards and the pre-contractual claims or statements be met. However, they do not cover the provision on meeting consumer expectations since they do not mandate that the description of the product be matched and that the product have similar qualities and specifications to the product on the market.

The UAE, Qatar, KSA and Kuwait laws require the competent department to be informed of the existence of a defect.⁶⁵⁵ The timeframe for informing the department varies among these laws since the UAE and Qatar policymakers simply require the competent department to be informed after the defect has been discovered.⁶⁵⁶ Kuwait differentiates a product that may pose risks to the consumer. In that case, the supplier is required to inform the department immediately after discovering the defect; otherwise, the department needs to be informed within seven days.⁶⁵⁷ The KSA law requires a defect to be reported 10 days after discovering

650 ('CAMB') (n232) Art.47.

651 ('UAECPL')(n498) Art.1; ('TNDCL') (n388) Art.46 [1].

652 ('UAECPL')(n498) Art.1; ('KWERCPL') (n552) Art.1 [13].

653 ('QAERCPL') (n498) Art.12; ('TNDCL') (n388) Art.49.

654 ('TNDCL') (n388) Art.49.

655 ('UAECPL')(n498) Art.11; ('QAERCPL') (n498) Art.7; ('TNDCL') (n388) Art.47 [1]; ('CPL') (n293) Art.16.

656 ('UAECPL')(n498) Art.11; ('QAERCPL') (n498) Art.7.

657 ('CPL') (n293) Art.16.

it.⁶⁵⁸ The UAE, Qatar and Kuwait laws offer redress to the consumer, including the recall of defective goods.⁶⁵⁹ KSA policymakers do not require the defective goods to be recalled.⁶⁶⁰ They require that the competent department be notified of the names and addresses of other sellers who have been supplied with the same product.⁶⁶¹ The Qatar and UAE laws provide a mechanism for the recall process: The commodity should no longer be offered for sale and the consumer should be informed of the defect through advertising or by contacting the consumer.⁶⁶² The UAE law also requires defective products or services to be withdrawn from the market.⁶⁶³ The mechanism for the remedy for failure to meet the quality standards and pre-contractual statements is clearer in the UAE, Qatar and Kuwait. Therefore, the KSA policymakers should benefit from those jurisdictions in terms of recalling the product and the process of informing the consumer about the defect.

(d) Regulate Consumer Redress

As previously mentioned, it is imperative to provide the consumer with a cooling-off period to withdraw from the contract with no charges or burden on the consumer. Adequate consumer law should also provide other consumer rights, such as return, exchange and refund, as well as providing delivery provisions that cover the risk of delivering damaged or destroyed products.⁶⁶⁴

UAE law does not permit a cooling-off period to withdraw from the contract unless there are legitimate reasons.⁶⁶⁵ The withdrawal right can be exercised if it is stipulated in the contract,⁶⁶⁶

658 ('TND CPL' (n388) Art.47 [1].

659 ('UAEC PFL')(n498)Art.11; ('QAERC PL' (n498) Art.7; ('CPL' (n293) Art.16.

660 ('TND CPL' (n388) Art.47 [2].

661 Ibid.

662 ('QAERC PL' (n498)Art.7-9 [1]; the advertisement in two local newspapers which disclose the name and address of the supplier, the trademark of the commodity, the commodity name and the country of origin and description of the defect. ('QAERC PL' (n498) Art.9 [3]; ('UAEC PFL' (n550) Art.20. The UAE law states that the seller can reach out to consumers by advertising in two newspapers and websites, including the social media account of the supplier and the competent department, within 24 hours from discovering the defect. The notice must disclose the name, address and email of the supplier; product description; product name and country of origin; picture; description of the defect; model; instructions for consumers to avoid possible risks and gain access to repair, exchange and refund. ('UAEC PFL' (n550) Art.22.

663 Ibid Art.20.

664 See above Ch.1(G)(2)(b)(iv).

665 Emad Dahiyat 'Online Shopping and Consumer Rights in the UAE: Do We Need a Specific Law' (2019) 33(1) *Arab Law Quarterly* 35, 43 <<https://www.jstor.org/stable/26768489>>; Alqodsi (n122)12.

666 ('UAECT L' (n630) Art.219.

if there is a defect in the product⁶⁶⁷ or if there is an inspection clause in the contract.⁶⁶⁸ The withdrawal right can be exercised if the defect is pre-existing, affects the value of the commodity, the consumer is unaware of it and the seller did not provide a stipulation preventing the defect option.⁶⁶⁹ In these cases, the contract is not binding and the consumer can withdraw and is entitled to a refund.⁶⁷⁰ However, the withdrawal right cannot be exercised if the consumer accepts receipt of the commodity with the knowledge that there is an issue with it.⁶⁷¹ The right to withdraw in the UAE cannot be exercised unless there are adequate reasons for such withdrawal.⁶⁷² The KSA, Qatar and Kuwait provide a cooling-off period within which the withdrawal right can be exercised without a reason. However, this period varies as the KSA law allows seven days from taking possession of the goods or the conclusion of the contract in services.⁶⁷³ The Kuwait law allows 14 days from receiving the product.⁶⁷⁴ The Qatar law allows three days from the conclusion of the contract.⁶⁷⁵ Kuwait law also allows five days for products that come in different sizes, such as clothes.⁶⁷⁶ KSA, UAE, Qatar and Kuwait policymakers have failed to consider the case in which the consumer receives multiple products, which leads in this instance to uncertainty over the period for exercising the withdrawal right. The Qatar law does not consider the available redress for the consumer when exercising the withdrawal option. The KSA and UAE laws allow refunds, but this is not appropriate for services or intangible goods.⁶⁷⁷ Kuwait policymakers provide legal certainty by making the redress clearer and excluding products that are not appropriate for such rights. Kuwait is thus the only country that provides a variety of consumer remedies, such as return, exchange and refund.⁶⁷⁸ However, if the exchange is unavailable or the product or services are adulterated or counterfeit, the consumer is entitled to a refund.⁶⁷⁹

667 Ibid Art.237.

668 Ibid Art.226.

669 Ibid Art.238.

670 Ibid Arts.238-240; ('UAEERCPFL') (n550) Art.25.

671 ('UAECTL') (n630) Art.523 [4].

672 Dahiyat (n652)44.

673 ('TND CPL') (n388) Arts.36 [1]-41[1].

674 ('CPL') (N293) Art.10.

675 ('QAETCL') (n567) Art.57.

676 ('CPL') (N293) Art.10.

677 ('UAECTL') (n630) Arts.238-240; ('UAEERCPFL') (n550) Art.25; ('TND CPL') (n388) Art.37.

678 ('CPL') (N293) Art.10.

679 ('KWERCPL') (n552) Art.25 [3-5].

Kuwait, Qatar and KSA laws do not grant withdrawal rights in certain situations, but there are substantial differences between them regarding the situations in which withdrawal will not be granted. Qatar law does not grant this right if the services have been fully executed or the product has been used;⁶⁸⁰ that is, if the services have been implemented or the product has been used, then the withdrawal right is gone. Kuwait law does not grant this right if the product is used or perishable, unless it is corrupted or beyond an expiry date, because the nature of the commodity does not allow return or exchange.⁶⁸¹ Access to refund and exchange remedies is not granted in cases in which the consumer is aware of the defect or malfunction and still accepts the goods or if the nature of the commodity does not allow it to be resold as it is not possible to assemble it back to its original condition, unless it contains a defect.⁶⁸² KSA law does not grant withdrawal if the defect occurs as a result of misuse by the consumer.⁶⁸³

UAE law does not meet the model of good consumer protection law since it does not provide a cooling-off period or allow withdrawal rights other than if there is a defect and inspection clause in the contract, etc. The other discussed laws allow a cooling-off period, which varies between KSA, Qatar and Kuwait. The Kuwait law arguably provides the best approach since it considers a different cooling-off period. KSA law provides the best approach to determining the obligations of sellers and consumers regarding the provided remedy (refund), including the timeframe for returning the goods and initiating the refund.⁶⁸⁴ However, it fails to determine the party responsible for returning the product or other consumer remedies, such as exchange. KSA policymakers should learn from the Kuwait law, which determines the remedies and requires the product to be returned for consumers to incur no charges and considers a variety of cooling-off periods.⁶⁸⁵

The KSA and Qatar policymakers provide a certain time for delivery of the commodity to the consumer. The timeframe varies since the Qatar law requires 30 days and the KSA law requires 15 days.⁶⁸⁶ Otherwise, the consumer has the right to withdraw from the contract.⁶⁸⁷ The UAE

680 ('QACPL') (n547) Art.14.

681 ('KWERCPL') (n552) Art.25 [1].

682 Ibid Art.25 [1-2].

683 ('TND CPL') (n388) Art.42 [G].

684 Ibid Arts.37 [2]-43 [2].

685 ('CPL') (N293) Art.10.

686 ('TND CPL') (n388) Art.32 [1-3]; ('QAETCL') (n567) Art.58.

687 ('TND CPL') (n388) Art.32 [3]; ('QAETCL') (n567) Art.58.

and Kuwait laws do not define a certain time for delivery of products or services. However, Kuwait law requires the delivery to be in accordance with the nature of the commodity,⁶⁸⁸ whereas the KSA and Kuwait laws allow the parties to agree on a particular time for the commodities to be delivered.⁶⁸⁹

The KSA, UAE, Qatar and Kuwait laws consider situations under which the commodity is considered delivered.⁶⁹⁰ These laws agree on particular situations, such as taking possession of the commodities and using them with no obstacles, and they agree on particular terms for considering commodities as delivered.⁶⁹¹ Nonetheless, the KSA law provides more situations in which the commodities are considered to have been delivered, for example, if there is a lawful clause or if the consumer takes possession of the commodities before the conclusion of the contract.⁶⁹²

The KSA, UAE, Qatar and Kuwait laws consider the issues that the consumer may face with the delivery of items, such as receiving damaged goods. They provide possible scenarios, such as a third party damaging the product. The Qatar and Kuwait laws remediate this by requiring a refund to the consumer.⁶⁹³ The KSA, UAE, Qatar and Kuwait laws differentiate between full and partial destruction of the product. KSA law differentiates between damages caused by the intervention of the seller and third party and damages caused with no intervention. If the delivered product is entirely or partially destroyed by the seller or a third party, the consumer has the right to withdraw from the contract, accept the contract, demand compensation from the party that caused the damage or ask for a refund for the value of the destroyed part.⁶⁹⁴ If the product is destroyed without the intervention of any party, then the consumer is entitled to withdraw from the contract.⁶⁹⁵ If the product is partially destroyed, the consumer can withdraw from the contract for the destroyed part and ask for a refund of its value or demand the

688 *The Civil Code Law 1980 (KW)* Art.472 ('KWCCCL'). An Arabic version of this law is accessible through this link:

<https://www.icnl.org/wp-content/uploads/Kuwait_KuwaitCivilCode1980.pdf>

689 ('TND CPL') (n388) Art.32 [1-3]; ('KWCCCL') (n675) Art.474.

690 ('UAECTL') (n630) Arts.525 [1]-529 [1]; *The Civil Code Law 2004 (QA)* Arts.438-439 ('QACCL'); ('KWCCCL') (n675) Arts.472-473; ('CTL') (n187) Arts.324-325-326. A translated version of the Qatar civil code can be found through the link <

<https://almeezan.qa/LawPage.aspx?id=2559&language=en>>.

691 ('CTL') (n187) Arts.324-326; ('QACCL') (n677) Arts.439-438; ('UAECTL') (n630) Arts.525 [1] - 529[1].

692 ('CTL') (n187) Arts.325-326.

693 ('QACCL') (n677) Art.444; ('KWCCCL') (n675) Art.478.

694 ('CTL') (n187) Art.328.

695 ('CTL') (n187) Art.329 [1].

withdrawal of the entire contract and a refund for the value of the whole product.⁶⁹⁶ The UAE, Qatar and Kuwait laws require a refund if the product is destroyed in full,⁶⁹⁷ whereas if it is partially destroyed or damaged, the consumer is entitled to either withdraw or receive compensation for the value of the partial defect.⁶⁹⁸ Kuwait law also states that the consumer has the right to either terminate the contract or request compensation for the reduction in the value of the commodity if the product is destroyed by the seller.⁶⁹⁹ Qatar law provides an additional provision indicating that the consumer is entitled to either return the goods and receive a refund or keep the goods and be compensated if the received commodity does not match the agreed specifications.⁷⁰⁰ Kuwait law requires compensation for the defect unless the defect covers most of the commodities and the consumer would not have engaged in the transaction if they were aware of this.⁷⁰¹ In this case, the consumer can terminate the contract.⁷⁰²

The UAE law establishes another scenario in which the damage is done by a third party before the conclusion of the contract. In this case, the consumer is entitled to either terminate the contract or accept it and recover the value of the destroyed commodity from the responsible person.⁷⁰³ If the commodity is partially destroyed, the consumer is eligible to either withdraw from the contract for the destroyed part and recover its value or accept the partially destroyed commodity and recover the value of the destroyed portion from the responsible party.⁷⁰⁴

The KSA and Kuwait laws require the consumer to bear the responsibility if they damage the product, even if damage occurs before it is legally delivered;⁷⁰⁵ this means the consumer is required to pay for the damaged commodity if they have caused the damage.⁷⁰⁶ KSA law goes even further to regulate that transportation risks are borne by the seller unless consumers appoint a logistics company that is not recommended by the seller.⁷⁰⁷ Other laws in the KSA, UAE and Kuwait apply to the status of received goods and whether they match the pre-

696 ('CTL') (n187) Art.329 [2].

697 ('UAECTL') (n630) Art.531 [1]; ('QACCL') (n677) Art.444; ('KWCCCL') (n675) Art.478.

698 ('UAECTL') (n630) Art.531 [2]; ('QACCL') (n677) Art.445.

699 ('KWCCCL') (n675) Art.480.

700 ('QACCL') (n677) Art.464.

701 ('KWCCCL') (n675) Art.479.

702 Ibid.

703 ('UAECTL') (n630) Art.533 [1].

704 Ibid Art.533 [2].

705 ('CTL') (n187) Art.327; ('KWCCCL') (n675) Art.480.

706 Ibid.

707 ('TND CPL') (n388) Art.33 [1-2].

contractual statement,⁷⁰⁸ including the accessories or parts connected to the product according to the contracting agreement or when it is customary to include these with the product.⁷⁰⁹ Other laws apply to the method of delivery. The UAE simply requires delivery of the product.⁷¹⁰ Qatar and Kuwait require the product to be delivered to the agreed location.⁷¹¹ Qatar law goes even further by requiring the seller to bear the responsibility of delivering the wrong commodity; in this case, the consumer has no responsibility to either pay or to return the commodity.⁷¹²

Some of these countries meet the model of adequate consumer protection law, such as KSA and Qatar. This is due to providing a timeframe for delivery of the commodity. However, the KSA timeframe is better than the Qatar timeframe since the Qatar timing is too long. All the countries consider situations in which the commodity is legally delivered as well as the remedies for receiving damaged products. The Kuwait law provides the appropriate approach to a remedy that recognises the nature of cross-border e-commerce transactions (a refund). The other laws provide different remedies for various situations. This may be inadequate in e-commerce because the remedy may need to be determined by the court, which places a burden on the consumer to access remedies, such as determining the shortfall for the value of a partial defect in a commodity. The UAE, Qatar and Kuwait laws fail to determine the party responsible for transportation risks. This is considered a shortfall for adequate consumer protection law. The only jurisdiction that considers this is the KSA.⁷¹³

3 Effective Dispute Resolution

It is imperative to provide a combination of dispute-resolution mechanisms, with particular attention paid to cross-border e-commerce transactions. This includes out-of-court dispute-resolution mechanisms.⁷¹⁴

Consumer Protection Law in the UAE does not explicitly acknowledge the court as a tool to access consumer disputes since it states that the Ministry of the Economy and the Consumer Protection Association should receive consumer disputes and take the necessary measures to

708 ('CTL') (n187) Art.321; ('UAECTL') (n630) Art.514; ('KWCCCL') (n675) Art.467.

709 ('CTL') (n187) Art.322; ('UAECTL') (n630) Art.517.

710 ('UAECTL') (n630) Art.514.

711 ('QACCL') (n677) Art.442; ('KWCCCL') (n675) Art.476.

712 ('QAETCL') (n567) Art.58.

713 See above Ch.3(A)(2)(d).

714 Ch.1(G)(2)(c).

resolve or refer the dispute to the competent authorities.⁷¹⁵ Another law names the Ministry of Economy and other competent authorities as the competent departments that can deal with consumer disputes.⁷¹⁶ However, the Ministry of Economy and the competent authority will determine the situations in which a complaint can be made to the Ministry of the competent authority.⁷¹⁷ The Ministry will inform the consumer of the outcomes of the complaint.⁷¹⁸ According to *Dahiyat*, the Consumer Protection Department is the responsible committee for receiving consumer claims. However, this does not prevent the consumer from filing a dispute in court.⁷¹⁹ It is clear that the consumer can claim in court, but it seems that the Ministry or the competent authority informs the consumer if the dispute will be referred to other departments.⁷²⁰ Another law establishes the first-degree court as the competent court for several types of litigation, including civil and commercial litigation.⁷²¹ The UAE law considers civil and commercial disputes valued at 500,000 or less UAE Dirham as low-value disputes that can be resolved within one court session.⁷²² UAE law excludes non-registered sellers from this provision of the law since the law eliminates the responsibility of government entities if consumers deal with unlicensed traders.⁷²³ Therefore, the consumer is not able to complain about non-registered sellers to the Consumer Protection Department. This indicates that consumers in the UAE may not have been provided with protection in online commerce that is equivalent to traditional commerce.

The UAE law also establishes alternative approaches to resolving disputes, including civil and commercial disputes. Before filing the case in court, If the litigation could be resolved amicably before filing the case in court, it would reduce the cost burden of accessing the judiciary.⁷²⁴ The UAE has established several centres for resolving disputes through arbitration and

715 ('UAECPL')(n498) Art.22 [5].

716 ('UAEERPFL') (n550) Art.1.

717 Ibid Art.35 [2].

718 Ibid Art.35 [1-G].

719 *Dahiyat* (n652) 36.

720 ('UAECPL')(n498) Art.22 [5].

721 The Civil Procedural Law 1991 (UAE) Art.25. A translated version of this law can be accessed through the link <<https://u.ae/en/information-and-services/justice-safety-and-the-law/litigation-procedures/general-provisions->>.

722 *The Executive Regulation of Civil Procedural Federal Law* 1992 (UAE) Art.22 [1-A].

723 ('UAECPL')(n498) Art.25 [2].

724 'Alternative Methods of Dispute Resolution', *UAE* (Web Page, 19 October 2022) [2] <<https://u.ae/en/information-and-services/justice-safety-and-the-law/litigation-procedures/civil-cases-/mediation->>.

mediation.⁷²⁵ Several centres can be used as out-of-court mechanisms to resolve issues, such as the Abu Dhabi Commercial Conciliation and Arbitration Centre,⁷²⁶ the Dubai International Arbitration Centre,⁷²⁷ the International Islamic Centre for Reconciliation and Arbitration⁷²⁸ and the Sharjah International Commercial Arbitration Centre.⁷²⁹ A consumer dispute-resolution service has also been launched to accelerate the amicable settlement of consumer disputes. This is a substantial step to provide out-of-court dispute mechanisms in the UAE.⁷³⁰

The UAE law provides a clear approach for the consumer to submit disputes because the department that deals with consumer disputes is identified. However, there is uncertainty over the competent authority and over the courts being considered as the final step in a complaint. It is a positive step to facilitate the resolution of consumer disputes as well as to provide several centres as out-of-court mechanisms to resolve issues between the contracting parties.

E-commerce Law in Qatar names the ‘Grievances and Dispute Settlement Committee’ as the competent department to resolve many disputes, including disputes between service providers and users.⁷³¹ The decision of this committee can be appealed before the administrative circuit under the Court of the First Instance.⁷³² This seems to be for disputes arising as a result of e-commerce transactions since the law defines a service provider as ‘a person providing an electronic commerce service’.⁷³³ Therefore, this applies to products and services offered online.

725 UAE provides laws regarding arbitration and mediation. The first law is the Federal Law No. 6 of 2018 concerning arbitration; it contains 61 Articles. It applies to arbitration conducted within the UAE’s jurisdiction unless the agreement states another law; foreign commercial agreements that specify the UAE law as the governing law; and ‘Any Arbitration arising from a dispute on a contractual or non-contractual legal relationship organised by the Laws in force in the State’. *Arbitration Law 2018 (UAE) Art.3*. A translated version of Arbitration Law can be accessed through the link <https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_ARBTRATION%20AND%20RECONCILIATION/UAE-LC-En_2018-05-03_00006_Kait.html?val=EL1>. In addition, the UAE provides Mediation Law No. 6 of 2021 concerning Mediation for the Settlement of Civil and Commercial Disputes. The Mediation Law applies to the whole or part of the dispute subject, regardless of whether the mediation is within the borders of the UAE or international, and to all disputes that can be resolved amicably unless they contradict the laws of the UAE and public morals. *The Law of Mediation for the Settlement of Civil and Commercial Disputes 2021 (UAE) Art.2*. An Arabic version of this law can be accessed through the link <<https://laws.uaecabinet.ae/ar/materials/law/1501>>.

726 This centre can be accessed through the link <<http://www.adccac.ae/English/Pages/Default.aspx>>.

727 This centre can be accessed through the link <<https://www.diac.com/en/home/>>.

728 This centre can be accessed through the link < <https://iicra.com/>>.

729 This centre can be accessed through the link < <https://www.tahkeem.ae/en/about>>.

730 ‘Abu Dhabi Launches Consumer Dispute Resolution Service’, *department of Economic Development (Web Page, 1 September 2022) [1]* < <https://added.gov.ae/en/Media-Center/Business-News/Abu-Dhabi-Launches-Consumer-Dispute-Resolution-Service>>.

731 (‘QAETCL’) (n567) Art. 65

732 Ibid Art.66.

733 Ibid Art.1.

The Qatari Ministry of Commerce and Industry names the Combating Commercial Fraud and Services Control divisions in the Department of Consumer Protection and Combating Commercial Fraud of the Ministry of Commerce and Industry as the competent department that receives and reviews consumer complaints.⁷³⁴ However, the process of handling the claim in the Ministry of Commerce and Industry is unclear, even though consumers can make a claim through a link on the Ministry website.⁷³⁵ Obviously, consumer complaints regarding e-commerce can be submitted to the Grievance and Dispute Settlement Committee.⁷³⁶ It is unclear whether the consumer can claim through the Combating Commercial Fraud and Services Control divisions in the Department of Consumer Protection and Combating Commercial Fraud.

Qatar law also establishes alternative approaches to resolving disputes through arbitration and mediation.⁷³⁷ For example, Qatar establishes out-of-court resolutions, such as through the Qatar International Court and Resolution Centre.⁷³⁸ This court provides arbitration and mediation services for civil and commercial disputes that can be used by consumers.⁷³⁹

The National Committee for Consumer Protection is the competent committee to handle consumer disputes in Kuwait.⁷⁴⁰ It receives disputes from consumers and consumer protection associations to examine and prove the filed complaints and then refers them to the competent departments.⁷⁴¹ While the law does not define the competent department, Article 32 points out that the Public Prosecution Office is the department responsible for investigating consumer

734 'The Consumer Protection and Combating Commercial Fraud', *Ministry of Commerce and Industry* (Web Page, 2023) [4-5] <<https://www.moci.gov.qa/en/about-the-ministry/departments/departments-under-the-assistant-deputy-of-consumer-affairs/the-consumer-protection-and-combating-commercial-fraud/>>

735 This can be accessed through the link <<https://www.moci.gov.qa/en/our-services/consumer/submit-and-complain/>>.

736 The consumer can claim through the link <<https://www.cra.gov.qa/en/document/qatars-e-commerce-law>>.

737 Qatar provides laws regarding arbitration and mediation. Firstly, there is Law No. 2 of 2017 on Issuing the Law of Arbitration in Civil and Commercial Matters. An English translated version of this law can be accessed through this link <<https://www.qicdrc.gov.qa/courts/court/regulations-and-procedural-rules/law-no-2-2017-issuing-law-arbitration-civil-and>>. Second, there is Law No (20) of 2021 concerning the Mediation Law for the Settlement of Civil and Commercial disputes. An Arabic version of the law can be accessed through the link <<https://www.almeezan.qa/LawArticles.aspx?LawTreeSectionID=19976&lawId=8759&language=ar>>

738 This court can be accessed through the link < <https://www.qicdrc.gov.qa/>>.

739 'Mediation', Qatar International Court and Dispute Resolution Centre (Web Page, 2023) <<https://www.qicdrc.gov.qa/services/mediation>>.

740 ('CPL') (n293) Arts.1-6 [2].

741 Ibid Art.6 [2]; ('KWERCPL') (n552) Art.17; the executive regulation of the Consumer Protection Law determines the process of handling disputes, including ways to submit claims and the steps involved in processing complaints to the committee regarding the claim within 45 days. ('KWERCPL') (n552) Art.22.

disputes.⁷⁴² The national committee can resolve issues reported by non-governmental consumer protection associations.⁷⁴³ It also seems that the committee resolves consumer complaints, as Article 22 of the executive regulation of the Consumer Protection Law points out that the committee will provide enforceable and final decisions on disputes.⁷⁴⁴ However, the decisions of this committee can be appealed before the administrative court.⁷⁴⁵ While the consumer protection law does not explicitly mention resolving consumer disputes, it is understood from the law that the committee handles and makes decisions on consumer disputes. This is evident by the establishment of a website on which consumers can lodge claims and check the status of their disputes.⁷⁴⁶

The Kuwait law acknowledges low-value civil and commercial litigation valued at 1,000 Kuwait dinar or less; these can be handled by the partial court. The verdict of the partial court is final if the value of the claim is 500 Kuwait dinars or less.⁷⁴⁷ There is a lack of information regarding mediation in Kuwait since it is not established by law.⁷⁴⁸ However, the Explanatory Memorandum of the Kuwait Consumer Protection Law permits the resolution of disputes before arbitration committees.⁷⁴⁹ The law permits the contracting parties to agree to settle disputes through arbitration.⁷⁵⁰ Due to an absence of information, the author is unaware of whether any arbitration and mediation centres have been established in Kuwait.

742 ('CPL') (n293) Art.32.

743 ('KWERCPL') (n552) Art.5 [2].

744 Ibid Art.22.

745 ('CPL') (n293) Art.4.

746 The consumer can file a claim through different means, such as the website, which can be accessed through this link <https://cpd.moci.gov.kw/CPD/WebPages/index_TICKET_COMMUNICATIONS_REQ.aspx#>. This can also be done through WhatsApp or a hotline number etc. See Khaled, 'How to File a Consumer Protection Complaints in Kuwait', Wiki Kuwait (Web Page, 10 June 2023) [3] <<https://wikikuwait.com/%D8%AA%D9%82%D8%AF%D9%8A%D9%85-%D8%B4%D9%83%D9%88%D9%89-%D8%AD%D9%85%D8%A7%D9%8A%D8%A9-%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D9%87%D9%84%D9%83/>>. The consumer can also follow up on complaints through the link <https://cpd.moci.gov.kw/CPD/WebPages/index_TICKET_COMMUNICATIONS_REQ.aspx#>.

747 *The Civil and Commercial Procedure Law 1980 (KW)* Art.29 ('KWCCPL'). This law is available in Arabic, translated by the author of this thesis. It can be accessed through the link <<https://www.e.gov.kw/sites/kgArabic/Forms/QanoonAlMurafaatAlMadaniyah.pdf>>; *The Law of Low Value Litigations 1989 (KW)* Art.1. An Arabic version of this law can be accessed through the link

<<https://law.almoami.com/%d9%85%d8%b1%d8%b3%d9%88%d9%85-%d8%a8%d8%a7%d9%84%d9%82%d8%a7%d9%86%d9%88%d9%86-%d8%b1%d9%82%d9%85-46-%d9%84%d8%b3%d9%86%d8%a9-1989-%d9%81%d9%8a-%d8%b4%d8%a3%d9%86-%d8%a7%d9%84%d8%af%d8%b9%d8%a7-2/>>

748 Abdul Amir Al-Faraj, قانون الوساطة وتسوية المنازعات, [Mediation and Dispute Settlement Law] (Web Page, 08 April 2022) [4] <<https://www.aljarida.com/articles/1649341155987001700>>. Arbitration in Kuwait is governed by Law No. 38 of 1980 concerning the Civil and Commercial Procedure Code and Law No. 43 of 1995 Concerning Arbitration.

749 *The Explanatory Memorandum of Consumer Protection Law 2014 (KW)*[6].

750('KWCCPL') (n734) Art.173.

It is essential that circuit courts are named as the courts approved to hear claims up to a certain value, but this has not yet occurred in KSA law, as mentioned in chapter two. KSA policymakers can thus benefit from the approaches of GCC laws regarding the determination of the claim value and the circuit court. The process of submitting consumer claims is clear in the UAE, Qatar and Kuwait laws since the competent authority for consumer claims is determined and the process of submitting the claims is established by the law. Therefore, KSA policymakers could benefit from implementing these laws to determine the relevant department and how consumer claims will be handled.

The mentioned laws meet the requirement for adequate consumer protection law to some extent. This is due to providing the consumer with a clear map to initiate a dispute, particularly in the UAE as it provides clear boundaries for consumer disputes and that the UAE consumer protection agencies are not responsible for disputes against unlicensed sellers, even though this may provide the consumer with less protection in cross-border e-commerce transactions. This is a good step towards being transparent with consumers. There is also a lack of information regarding initiating the dispute with the seller. The UAE, Qatar and Kuwait laws provide clear mechanisms for accessing the court by determining the competent court accompanied by the value of the claim. This is a shortfall in the KSA's existing consumer protection laws, including the new draft law. KSA policymakers can benefit from those jurisdictions by adopting/adapting the same approach to determine the competent court accompanied by the value of the claim. These laws meet the requirement for accessing a combination of dispute-resolution mechanisms. However, information is lacking regarding initiating the dispute with the seller, and provisions are lacking regarding the seller's internal and external dispute processes.

Regarding handling consumer complaints by consumer protection agencies, some laws meet the requirement for the model of adequate consumer protection law. For instance, Kuwait law establishes governmental and non-governmental departments that handle consumer issues by initiating litigation on behalf of consumers or by intervening in existing litigation.⁷⁵¹ One of the tasks of the National Committee for Consumer Protection Law is to do just that.⁷⁵² Private

751 ('CPL') (n293) Arts.1-8.

752 Ibid Art.1. This committee consists of several governmental agencies: The Ministry of Commerce and Industry; the Ministry of Health; the Ministry of Information; the Public Authority for Agricultural Affairs and Fish Resources; the Legal Advice and Legislation Department; the Qualitative Union of Consumer Protection Societies; the Public Authority for Environment Affairs; the Public Authority for Industry; the Union of Cooperative Societies; the Kuwait Municipality; the General Administration for Customs; and the Chamber of Commerce and Industry. Ibid Art.2.

or non-governmental consumer protection associations have the same power.⁷⁵³ The Kuwait Association for Consumer Protection was established by the Kuwait Ministry of Commerce and Trade decree no. 354 in 2019.⁷⁵⁴ One of its purposes is to initiate litigation on a consumer's behalf and intervene in existing litigation.⁷⁵⁵ The same is true of the Consumer Protection Association, which was established by the Kuwait Ministry of Commerce and Trade decree no 61 in 2021.⁷⁵⁶ One of the aims of this Association is to initiate or intervene in consumer litigation.⁷⁵⁷

In Qatar, there is a lack of governmental or non-governmental consumer protection associations to take on this role.⁷⁵⁸ This causes Qatar consumers to question when such committees will be established.⁷⁵⁹ In the UAE, the Emirates Society for Consumer Protection is a governmental department established in 1987.⁷⁶⁰ Its purpose is to handle consumer issues by receiving them and then following up with the competent department. It handles consumer claims, raises consumer issues with governmental and non-governmental associations and protects consumers from all forms of cheating.⁷⁶¹ Kuwait and the KSA are the only countries that have laws that allow the nominated associations to initiate or intervene in consumer disputes before a court. The difference between these jurisdictions is that Kuwait law allows this to be done by governmental and non-governmental associations, whereas KSA law does not mention whether the association should be a governmental or non-governmental department. In Kuwait,

753 ('CPL') (n293) Art.8; ('KWERCPL') (n552) Art.24 [1].

754 تأسيس الجمعية الكويتية لحماية المستهلك [Establishing the Kuwaiti Association for Consumer Protection], *Kuwait Association for Consumer Protection* (Web Page, 2020) [1] <<https://www.kwcpcs.com/%d9%85%d9%86-%d9%86%d8%ad%d9%86%d8%9f/>>.

755 The purposes of this association are also to protect consumers from all forms of cheating, including counterfeiting, deceiving and deceptive selling conduct, or unjustified increases in product or services prices, and to raise consumer awareness.

رؤيتنا [Our Vision], *Kuwait Association for Consumer Protection* (Web Page, 2020) [1]

<<https://www.kwcpcs.com/%d8%b1%d8%a4%d9%8a%d8%aa%d9%86%d8%a7/>>.

756 'About', *Consumer Protection Association* (Web Page, 2020) [2] <<https://cpakw.com/about>>.

757 Other purposes of this association are to educate consumers; inform consumer governmental departments about consumer issues; receive consumer complaints; raise disputes with governmental departments and conduct surveys, including comparing prices and quality of product or services and informing the competent governmental departments of violations. See 'About', *Consumer Protection Association* (Web Page, 2020) [4] <<https://cpakw.com/about>>.

758 متى تری النور؟ [When is the Establishment of Consumer Protection Association], *Arab* (Web Page, 14 November 2021) [1] <<https://m.alarab.qa/article/14/11/2021/%D8%AC%D9%85%D8%B9%D9%8A%D8%A9-%D8%AD%D9%85%D8%A7%D9%8A%D8%A9-%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D9%87%D9%84%D9%83-%D9%85%D8%AA%D9%89-%D8%AA%D8%B1%D9%89-%D8%A7%D9%84%D9%86%D9%88%D8%B1>>.

759 Ibid.

760 'من نحن [Who We Are]', *Emirates Society for Consumer Protection* (Web Page, 2023) [1] <<https://uaescp.ae/#>>.

761 Ibid.

governmental and non-governmental departments are permitted to represent consumers. However, the picture is unclear in the KSA since this role may be adopted by the existing consumer protection association or another association may yet be established in the country.

4 Go Beyond State Borders

The nature of cross-border e-commerce transactions necessitates cooperation with international consumer protection agencies to enforce consumer protection laws because local consumer protection agencies cannot enforce the law against international sellers.

Regarding cooperation with consumer protection agencies to enforce local laws overseas, the KSA, UAE, Qatar and Kuwait jurisdictions have entered into conventions to recognise judicial verdicts of contracting members. These jurisdictions are members of multinational or bilateral treaties such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958),⁷⁶² and the Riyadh Arab Agreement for Judicial Cooperation.⁷⁶³ Even though, the KSA, UAE, Qatar and Kuwait are members of all of those conventions, they do not establish treaties for consumer protection agencies to cooperate and enforce laws upon international sellers since their scope does not include consumer protection. Moreover, the economic agreement between GCC countries mentioned in chapter two did not recognise the importance of consumer protection agencies for cooperating and enforcing laws, as its purpose was integration between member states regarding the trading of goods and services, industry, and government procurement.⁷⁶⁴ Even though GCC countries establish unified laws, such as the unified law to combat cheating in GCC countries,⁷⁶⁵ there are no provisions within the laws regarding cooperating with international agencies. Therefore, it seems that cooperation with consumer protection agencies is not recognised by GCC policymakers. At the time of writing this thesis, there is no convention related to cooperating with international consumer agencies

762 One of the purposes of this convention is to recognise the enforcement of Arbitral Awards in contracting member states. See *Convention of the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*, signed 10 June 1958, (entered into force 7 June 1959) Art.25. This convention can be accessed through the link <https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards>.

763 One of the purposes of this convention is to recognise judgments in contracting member states regarding civil, commercial, administrative and personal status judgments. See *Riyadh Arab Agreement for Judicial Cooperation*, signed 6 April 1983, (entered into force 6 May 1983) Art.25. An unofficial translation of this convention can be accessed through the link <<https://www.refworld.org/docid/3ae6b38d8.html>>

764 'GCC Economic Agreement' *Saudi General Authority of Foreign Trade* (Web Page) [1] <<https://gaft.gov.sa/en/knowledge-center/CommercialAgreements/Pages/default.aspx>>.

765 This law considers reporting adulterated products, the approach to destroy the adulterated product and the protocol for sizing adulterated products. *The Executive regulation for Unified Anti-Combating Cheating Law 2021* (GCC).

to investigate consumer complaints or enforce consumer protection laws upon foreign sellers. This is considered a shortfall for adequate consumer protection law, particularly in cross-border e-commerce transactions.

B Conclusion

This chapter focused on the UAE, Qatar and Kuwait laws to find solutions to the identified deficiencies within the existing KSA consumer protection laws and the new draft law. Those countries are the scope of the comparison because their laws, culture and religion are similar to those of the KSA. Solutions adopted/adapted from those jurisdictions are most likely to be accepted by the people of the KSA. Furthermore, those countries are outperforming the KSA in the field of consumer protection, particularly with regard to ways to provide information and the provision of consumer remedies. This is evident by the ranking of global organisations mentioned at the beginning of this chapter. The consumer protection law provisions in those countries could be a good solution for the uncertainty in KSA law about the information that needs to be disclosed or separated between a label and an advertisement. Moreover, the Qatar Code on Advertising and Marketing could be a practical solution for the lack of lawful provisions on how to provide information in an advertisement, including how to advertise to a particular group by keeping their needs in mind, disclaimers and limitations, terms and conditions and how to request additional information.

Qatar addresses unfair contractual terms in the field of consumer protection by regulating advertisement limitations, and its law could serve as a solution for the KSA, enabling policymakers to regulate some advertisement limitations that must be proven by facts and ensuring that any limitations are clearly mentioned to the consumer instead of banning them.

KSA policymakers could also review the provisions on consumer remedies in the UAE, Qatar and Kuwait laws that may overcome existing issues in KSA consumer protection laws, such as how to recall products and reach out to consumers either by direct contact or advertising.

Consumer disputes of a particular value are handled in the GCC countries by circuit courts. KSA policymakers could benefit from this and use the same approach to overcome the issue, stating the circuit court's scope and the value of disputes that it can hear. The ways to submit claims are clear in the laws of the compared countries, and these provisions are worth review and adoption by KSA policymakers. The compared laws do not solve the issue of limiting the term 'misleading' to certain information or considering the omission of information as misleading conduct. Furthermore, the timeframe for exercising withdrawal is still problematic

when multiple goods are going to be delivered over several days. Finally, there is a weakness regarding the enforcement of judgments overseas on consumer issues, as treaties are lacking that indicate state consumer agencies should cooperate to investigate and enforce judgments in the KSA, UAE, Qatar and Kuwait.

In the next chapter, solutions to the unresolved issues are discussed.

V SOLUTIONS

In chapters two, three and four, the discussion was about consumer protection laws related to online disclosure; adequate consumer protection regarding fair contractual provisions; dispute-resolution mechanisms and the cooperation of consumer protection agencies in the KSA, UAE, Qatar and Kuwait. This chapter discusses whether the issues in the existing KSA consumer protection laws and the new draft law have been overcome by consumer protection laws in the UAE, Qatar and Kuwait. The layout of this chapter will take the form of the previous chapter. Therefore, this chapter is divided into two sections. In the first section, the discussion will cover four aspects. The first point discusses the online disclosure of information regarding the seller, commodity, transaction and terms and conditions. Next, fair contractual provisions related to misleading and unfair practices, commodity quality and remedies for the consumer are addressed. The third point examines the provision of effective dispute-resolution mechanisms. Finally, there is a discussion of cooperation by international consumer agencies to share and enforce local laws. The second part is the conclusion.

A Consumer Protection Legal Frameworks

The first point in an adequate consumer protection model is to provide adequate online information in the pre-contractual stage.

1 Online Disclosure of Information

In e-commerce, consumers need to have access to pre-contractual information to make informed decisions. The first pre-contractual information is the identity of the seller.

(a) Seller Information

The existing KSA consumer protection laws fail to meet the model of adequate consumer protection. This is due to the failure to mandate the inclusion of the seller's legal and trade names and the location of the business' main branch.⁷⁶⁶ However, the new KSA draft law in its current form requires the inclusion of information regarding the seller's trade name, trademarks, licenses, manufacturer's certificate and licenses to conduct the business, business location, excluding the main branch of the business, telephone number, email address and means of e-

⁷⁶⁶ See above Ch.2 (A)(1)(b).

communication.⁷⁶⁷ The issue with this information is that it is scattered among several articles.⁷⁶⁸ Therefore, the new draft law in its current form fails to provide the information in a clear and timely approach, and there may be confusion about the timeframe to provide the information. This leads to a seller's inability to provide the information in adequate time (pre-contractual stage). The result of this is that consumers and consumer protection agencies would not be able to identify the seller and the location of the business. The UAE, Qatar and Kuwait consumer protection laws unfortunately fail to provide an approach to the issue represented in the current form of the new KSA draft law since these laws lack provisions that mandate the inclusion of sellers' legal names, the main branch of the business and the inclusion of information at an adequate time.⁷⁶⁹

KSA policymakers need to promptly provide the consumer with adequate information about the seller. This information should include the trade and legal names of the seller, business address, including the main branch of the business, and contact details, such as telephone number, an email address and other online communication tools. This would support the consumer and consumer protection agencies to locate the business and communicate with the seller.

(b) Commodity Information

The KSA's existing consumer protection law fails to provide adequate information about the commodity in a timely approach. It also fails to meet the model of adequate consumer protection law since the law does not require the inclusion of information in a timely approach related to the features or characteristics of the product, limitations on the product, the currency used, warranties, prices, after-sales services information, including the needed periodic maintenance and the provider of the services, and safety and warning information.⁷⁷⁰ The KSA new draft law provides better provisions regarding commodity information since it requires the inclusion of the features of the product and provides a provision regarding the type of information that should be mentioned about the commodity.⁷⁷¹ It also requires stating the price of the commodity, including the additional cost in KSA currency, the approach to maintaining

⁷⁶⁷ See above Ch.3 (A)(2)(b)

⁷⁶⁸ Ibid.

⁷⁶⁹ See above Ch.4 (A)(1)(b).

⁷⁷⁰ See above Ch.2 (A)(1)(c).

⁷⁷¹ See above Ch.3 (A)(2)(c).

the commodity, excluding the needed periodic maintenance and the provider of the service, and safety information and warnings about the commodity.⁷⁷² Therefore, the new draft law requires the inclusion of commodity information other than the commodity limitations, warranties and the needed periodic services and provider of such service. The law fails to mandate the inclusion of all the mentioned information before conducting the transaction.

The UAE, Qatar and Kuwait consumer laws fail to overcome the issues within the new draft law in the KSA since they do not require the inclusion of commodity limitations, warranties and the needed periodic services and provider of such service within an adequate time.⁷⁷³

It is proposed that KSA policymakers consider requiring the inclusion of information in the pre-contractual stage. The KSA policymakers should mandate the inclusion of other information regarding the warranty, commodity limitations and the needed periodic service, including the provider of the service. This would assist the consumer in making an informed purchasing decision. For instance, the purchase of products from a particular country may limit consumers' ability to access a warranty in their own country due to the geographical limitation of the warranty provider. Therefore, consumers may need to pay extra charges for shipping the product to access the warranty services. Being aware of such risks assists the consumer in making an informed decision.

(c) Transaction Information

The existing KSA consumer protection laws fail to mandate timely inclusion of information related to withdrawal, refund, exchange, return, the approach to conclude the transaction, payment and method arrangements and expected delivery date.⁷⁷⁴ The current form of the new KSA draft law overcomes the issue of mandating timely inclusion of information related to withdrawal, return and exchange, and delivery and payment arrangements. Inappropriately, it fails to provide information regarding the approach used to conclude transactions and tracking numbers of the shipments.⁷⁷⁵ Qatar law mandates timely inclusion of the approach to conclude the transaction (before concluding the transaction). However, all the consumer protection laws of the UAE, Qatar and Kuwait fail to mandate the inclusion of information regarding the

⁷⁷² Ibid.

⁷⁷³ See above Ch.4 (A)(1)(c).

⁷⁷⁴ See above Ch.2 (A)(1)(d).

⁷⁷⁵ See above Ch.3 (A)(2)(d).

tracking number of the shipment as well as refunds.⁷⁷⁶ The KSA policymakers may adopt/adapt the approach of the Qatar laws, which require the inclusion of the approach to conclude the contract. Policymakers should also consider the model for adequate consumer protection law related to the lack of requiring the approach to conclude the transaction and providing information about the shipment, including the tracking number. In this way, the consumer can avoid mistakes in concluding the transaction by being aware of the information. Requiring the inclusion of the shipment information would also allow the seller to be aware of shipping the product and tracking it.

(d) Terms and Conditions Information

The KSA's existing consumer protection laws fail to require the inclusion of fair terms and conditions of the transaction at any point in the transaction, and they do not mandate providing an approach to printing or downloading the information in consumer-friendly language, especially before the conclusion of the transaction.⁷⁷⁷ The current form of the KSA new draft law overcomes this issue by mandating the timely inclusion of the contract terms and conditions in a clear, understandable and satisfactory approach in consumer-friendly language. However, it fails to provide an approach to printing or downloading the terms and conditions at any time of the transaction.⁷⁷⁸ The UAE, Qatar and Kuwait consumer protection laws do not provide a solution for a shortfall in providing an approach to printing or downloading the terms and conditions at any point of the transaction.⁷⁷⁹

The consumer needs to access information at any point in the transaction. Nonetheless, the knowledge of the information is useless if the consumer is unable to prove the information (pre-contractual claims). In order to fulfil the standard of appropriate consumer protection, the law needs to provide an approach for the consumer to store or keep a record of the information. This will assist the consumer in proving the pre-contractual information and will prevent the seller from altering the information.

⁷⁷⁶ See above Ch.4 (A)(1)(d).

⁷⁷⁷ See above Ch.2 (A)(1)(e).

⁷⁷⁸ See above Ch.3 (A)(2)(e).

⁷⁷⁹ See above Ch.4 (A)(1)(e).

(e) Dispute-Resolution Process Information

The existing KSA consumer protection laws fail to mandate the inclusion of timely information in terms of the contract governing law, redress limitations and alternative dispute mechanisms.⁷⁸⁰ The current form of the KSA new draft law partially overcomes this issue since it requires the inclusion of an alternative dispute process; however, it does not mandate the inclusion of the governing law and redress limitations.⁷⁸¹ The UAE, Qatar and Kuwait consumer protection laws have not filled the gap within the KSA new draft law because there is a lack of legal provisions regarding the redress limitations and the governing law of the contract.⁷⁸² The proposed solution is that adequate protection requires that the consumer be aware of the governing law of the contract and redress limitations. This would allow the consumer to make an informed purchasing decision. It will also allow consumer protection agencies to measure the fairness of the contract provisions. Therefore, KSA policymakers are encouraged to mandate the inclusion of dispute process information in the pre-contractual stage and to include all the mentioned elements.

(f) General Guidelines for the Information

The existing consumer protection laws in the KSA fail to meet the model of adequate consumer protection. This is due to a lack of comprehensive information that covers what the consumer needs to know to make an informed decision in the pre-contractual stage. The laws also fail to provide general guidelines for online disclosure of information about the targeted group and limitations, and information is lacking about providing a summary of the order and allowing consumers to correct errors before the conclusion of the transaction.⁷⁸³ The KSA's new draft law does not mandate the inclusion of comprehensive information related to the mentioned information. It also does not provide general guidelines for online disclosure that considers the approach for disclosing the information with special attention to vulnerable groups. Although it bans information that harms children's safety or is inappropriate for them,⁷⁸⁴ it fails to provide the sort of information that is appropriate for children. Furthermore, the new draft law fails to provide timely access to printed or downloadable information that assists the consumer in

780 See above Ch.2 (A)(1)(g).

781 See above Ch.3 (A)(2)(g).

782 See above Ch.4 (A)(1)(g).

783 See above Ch.2 (A)(1)(g).

784 See above Ch.3 (A)(2)(g).

proving the pre-contractual information. The new draft law also requires 24 hours after placing the order before the confirmation for the consumer to correct mistakes, but it does not require providing a summary of the order and allowing the consumer to correct mistakes after reviewing the summary of the transaction that disclosed the information.⁷⁸⁵ The UAE, Qatar and Kuwait consumer protection laws overcome certain gaps within the KSA new draft law. Qatar law provides guidelines that regulate the approach to providing online disclosure in the pre-contractual stage. These guidelines highlight the approach to disclosing information through different tools, such as advertisements. It also covers the approach to requesting additional information and considering vulnerable groups, thereby requiring that the seller keep in mind the advertiser group, such as children, those with special needs and small enterprises. It provides a particular approach to conveying the information to these people.⁷⁸⁶ These could be adequate provisions that supplement the existing consumer protection laws after overcoming the issue of information inclusion in the pre-contractual stage. The KSA policymakers should adopt/adapt those provisions to provide a better approach for the seller to disclose the information in the pre-contractual stage. It is recommended that KSA policymakers benefit from the Qatar approach of considering different methods to convey the information, the approach to requesting additional information and the method to convey the information to vulnerable parties. This would qualify as adequate protection for the consumer by meeting the model of adequate consumer protection regarding the general information in the pre-contractual stage. The KSA policymakers should also provide an approach to review a summary of the transaction and correct mistakes before the consumer confirms the order.

2 Fair Contract Provisions

In this section, four points are discussed, namely providing adequate protection against misleading conduct/statements, unfair commercial practices, quality of the commodity and consumer redress.

(a) Adequate Protection Against Misleading Conduct/Statements

The KSA's existing consumer protection laws fail to cover all kinds of misleading conduct/statements and to provide a list of types of misleading conduct/statements.⁷⁸⁷ The new

⁷⁸⁵ Ibid

⁷⁸⁶ See above Ch.4 (A)(2)(g).

⁷⁸⁷ See above Ch.2 (A)(2)(a).

KSA draft law provides a provision that covers several misleading conducts/statements. However, it also fails to cover all misleading conduct/statements because it eliminates misleading to exclusive conduct/statements.⁷⁸⁸ UAE, Qatar and Kuwait consumer protection laws also fail to provide inclusive provisions that cover all misleading conduct/statements.⁷⁸⁹ An appropriate approach to solve this is the European Union (EU) approach to regulating misleading conduct/statements. The definition in the EU directive succeeds in covering all possible statements and conduct that are considered misleading, including providing false information or omissions of information. It creates certainty by including a list of misleading conduct or statements, which can be updated if new misleading conduct occurs.⁷⁹⁰ Therefore, it is recommended KSA policymakers review this and benefit from the provision of misleading conduct in the EU directive to include all kinds of misleading conduct and to provide a list of misleading actions/statements. This would allow KSA consumer protection law to meet the model of adequate consumer protection law regarding misleading statements/conduct.

(b) Adequate Protection Against Unfair Practices

The existing KSA consumer protection laws fail to provide legal provisions that cover the nature of unfair commercial practices in e-commerce transactions.⁷⁹¹ The current form of the KSA new draft law provides a provision that applies to e-commerce transactions.⁷⁹² However, it bans several limitations that can be regulated to better suit the nature of e-commerce transactions, such as commodities being available on certain terms or at a particular time.⁷⁹³ This can be solved by adapting/adopting the Qatar approach which regulates such limitations. Therefore, it is required to comply with Qatar law and clearly disclose the limitations in the online disclosure before the conclusion of the contract.⁷⁹⁴ By overcoming this challenge, KSA consumer protection laws would meet the standard of adequate consumer protection law.

788 See above Ch.3 (A)(3)(a).

789 See above Ch.4 (A)(2)(a).

790 (*'Unfair Commercial Practices Directive'*)(n264) Art. 2[E], 6[1], 7[1].

791 See above Ch.2 (A)(2)(b).

792 See above Ch.3 (A)(3)(b).

793 Ibid.

794 See above Ch.4 (A)(2)(b).

(c) Regulate Commodity Quality

The existing consumer protection laws in the KSA fail to meet the standard of an adequate consumer protection law model. There is an adequate legal provision that mandates meeting the pre-contractual claims or consumer expectations.⁷⁹⁵ The law also considers meeting KSA quality standards, yet fails to provide a consumer remedy for not meeting the KSA quality standards.⁷⁹⁶ The current form of the KSA draft law provides a better approach that ensures the consumer is getting a product that meets the consumer's expectations, KSA quality standards and pre-contractual claims;⁷⁹⁷ however, the new draft law fails to determine the remedy for a breach, such as recalling the product.⁷⁹⁸ UAE, Qatar and Kuwait consumer protection provide legal certainty related to recalling the product by stating that the commodity should not be provided for sale and the seller is required to reach out to the consumer either by direct contact or by advertising the recalled commodity.⁷⁹⁹ Therefore, the consumer is aware of the commodity recall. The KSA policymakers should consider adopting/adapting this approach for KSA consumer protection law to meet the standard of adequate consumer protection law. Achieving this would provide adequate protection to the consumer since the law mandates meeting the KSA quality standards, pre-contractual statements and consumer expectations. It also provides an adequate remedy for breaching such requirements.

(d) Regulate Consumer Redress

The existing KSA consumer protection laws fail to determine the approach to exercising the legal remedies after withdrawal from the contract, such as the obligation of the sellers and customers.⁸⁰⁰ It also fails to determine a situation in which the seller bears the cost of returning the commodity since the law mandates that the consumer bear the cost of return. This may be unfair if the reason for the return is an issue caused by the seller.⁸⁰¹ Another issue is with the timeframe for exercising withdrawal rights when the subject of the contract is multiple commodities that are delivered over several days. There are also issues with refunds, exchanges

795 See above Ch.2 (A)(2)(c).

796 Ibid.

797 See above Ch.3 (A)(3)(c).

798 Ibid.

799 See above Ch.4 (A)(2)(c).

800 See above Ch.2 (A)(2)(d).

801 Ibid.

and returns.⁸⁰² Finally, the consumer protection laws fail to determine the party responsible for the transportation risks.⁸⁰³ The current KSA draft law provides a better approach in terms of identifying the obligations of the consumer and the seller,⁸⁰⁴ but there are still issues with legal certainty related to the timeframe for exercising withdrawal rights if the contract is subject to multiple commodities delivered over several days.⁸⁰⁵ However, it provides a provision regarding the party responsible for transportation risks. It also provides new consumer rights regarding return and exchange but fails to provide an approach to exercising those rights⁸⁰⁶ and fails to determine the party responsible for the return cost. Kuwait's consumer protection laws overcome the issue with the responsible party for the cost of returning the product by mandating the consumer incur no charges for return.⁸⁰⁷ Therefore, the KSA policymakers should adopt/adapt this approach to mandate the seller to bear the cost of the return.

The UAE, Qatar and Kuwait consumer laws fail to overcome the issue of legal certainty regarding the timeframe if the commodities are delivered over several days. In order to meet the standard of adequate consumer protection law, KSA policymakers need to overcome several challenges regarding the timeframe of exercising withdrawal rights if the subject of the contract is multiple products that are delivered over several days as well as determining the approach to exercising return and exchange rights.

3 Effective Dispute Resolution

The existing consumer protection laws in the KSA fail to provide a clear process for the consumer to initiate disputes since there is confusion over reporting unregistered sellers that conduct e-commerce transactions.⁸⁰⁸ The KSA new draft law in its current form makes it clear that the competent court is the court located in the consumer's location.⁸⁰⁹ However, there is still confusion about the approach to initiating consumer disputes.⁸¹⁰ The UAE, Qatar and Kuwait consumer protection laws contain a clear process to initiate a dispute by determining

802 Ibid.

803 Ibid.

804 See above Ch.3 (A)(4)(d).

805 Ibid.

806 Ibid.

807 See above Ch.4 (A)(2)(d).

808 See above Ch.2 (A)(3).

809 See above Ch.3 (A)(4).

810 Ibid.

the department that deals with consumer disputes.⁸¹¹ The UAE law also provides a solution that can be adapted/adopted by KSA since it clarifies that the consumer protection law does not protect consumers from unregistered sellers in the UAE.⁸¹² Therefore, the UAE's approach to clarifying the boundary of the received claims is a good solution for consumer confusion reporting incidents with cross-border e-commerce transactions. Consumer protection laws should also provide an approach for complaining about either registered or unregistered sellers to the competent department in the KSA commercial register system.

Regarding providing a combination of dispute-resolution mechanisms, the existing consumer protection laws in the KSA fail to provide alternative dispute-resolution mechanisms since the court is the responsible department for disputes.⁸¹³ Consumer protection laws in the KSA also fail to determine the value of the claims and the competent court for consumer disputes.⁸¹⁴

The current form of the new draft law provides a combination of alternative dispute-resolution mechanisms, including an urgent dispute process for low-value disputes, ADR and ODR.⁸¹⁵ The mechanisms for accessing these methods are still unclear because the current form of the draft law does not mention them.⁸¹⁶ Therefore, it is not clear if the law validates resolving the dispute through sellers' internal and external dispute-resolution mechanisms as an initial step to resolve cross-border e-commerce transactions.

The current form of the KSA new draft law does not overcome the issue of uncertainty of the value of the claim in a competent consumer court.⁸¹⁷ The UAE, Qatar and Kuwait consumer protection laws provide adequate solutions for the KSA uncertainty regarding the value of a competent court since they provide the value and the circuit court that deals with consumer disputes.⁸¹⁸ KSA policymakers could benefit from this to provide information regarding the competent circuit court, accompanied by the value of the claim to allow certainty in terms of complaining to the competent court.

811 See above Ch.4 (A)(3).

812 Ibid.

813 See above Ch.2 (A)(3).

814 Ibid.

815 See above Ch.3 (A)(4).

816 Ibid.

817 Ibid.

818 Ibid.

Regarding handling consumer disputes by a regulatory department, the existing consumer protection laws in the KSA fail to provide consumer protection agencies that act on a consumer's behalf to initiate or join individual or collective consumer disputes.⁸¹⁹ The current form of the KSA new draft law provides the consumer with a consumer protection agency that acts individually or collectively on the consumer's behalf.⁸²⁰ However, it did not determine the department that would take over these tasks or the mechanisms to access them. Kuwait law is the only jurisdiction that provides governmental and non-governmental agencies that act on a consumer's behalf to initiate consumer disputes.⁸²¹ KSA policymakers solved the issue with a regulatory entity to handle consumer issues, but the approach to access this entity is not provided in the current form of the new draft law. Therefore, future research can touch base on this to evaluate the effectiveness and the approach to accessing this.

4 Go Beyond State Borders

(a) Cooperation with International Consumer Agencies

The KSA, UAE, Qatar and Kuwait laws as well as KSA's new draft law fail to provide a mechanism to cooperate with consumer protection agencies to share investigations or enforce laws upon international sellers.⁸²² The next point discusses an appropriate approach to solve the issue with cooperation across the border

(b) Proposed Solution in the Context of Cross-Border E-Commerce Transactions

This section provides two approaches to solve the issue of international cooperation to investigate and enforce local laws upon the international seller. The first approach is a multilateral solution.

(i) Multilateral Solutions

Establishing a multinational convention would provide better protection for the consumer since there is a possibility to enforce local laws upon international sellers. International organisations, such as the OECD, recommended the establishment of multinational conventions that allow the consumer to enforce local laws upon sellers between the contracting countries.⁸²³ Establishing a multinational convention may take a long time due to the discussion of the convention's agendas or provisions, such

819 See above Ch.2 (A)(3).

820 See above Ch.3 (A)(4).

821 See above Ch.4 (A)(3).

822 See above Ch.2 (A)(4); Ch.3 (A)(5); Chapter Ch.4 (A)(4).

823 ('Recommendation for Consumers in E-Commerce 2016') (n7) 12[54].

as the obligation of the convention is to comply with the laws of the member state.⁸²⁴ If not, alteration to the local law is mandatory to comply with the obligations, provisions and agendas of the convention.⁸²⁵ New laws may also be needed to implement the convention's obligations.⁸²⁶ The member state may exempt several obligations or provisions from the member state commitments if the convention provision allows such an action, for instance, KSA exempts particular obligations from the commitments of a joined convention.⁸²⁷ Those challenges can be mitigated by establishing a multinational convention between countries with similar laws, such as the GCC countries. This solution can be hard to establish as it is associated with a long process that will need time and has a high cost. Therefore, another solution that may be easier to establish is discussed.

(ii) Technical Solutions

Information governance in the KSA can be used in favour of KSA consumers by building or developing systems to first verify the internationally trusted sellers. In this section, the implementation of such systems will be examined.

Several studies have argued that trust is the main element that drives the consumer to conduct cross-border e-commerce transactions.⁸²⁸ A logically adequate proposed solution is, arguably, for the Ministry of Commerce to provide a list of trusted sellers. Such a system is familiar in the KSA since there is a similar system called Maroof. This system was established for consumers to deal with authenticated vendors,⁸²⁹ but it has been transferred to the Saudi Business Centre.⁸³⁰ Sellers in and outside of the KSA can register in this new e-commerce authentication service if they fulfil the requirements of having an active commercial registration or freelancer practitioner certificate and a business bank account.⁸³¹ The international seller is unable to register in the commercial register systems in KSA because

824 Renee Leon, 'Enforcement of International Convention Australian' (2000) *Mining and Petroleum Law Association Yearbook* 36, 64 <<https://search.informit.org/doi/abs/10.3316/agispt.20015408>>.

825 Ibid.

826 Ibid.

827 For instance, the KSA joined the United Nations concerning international sales of goods and disagreed or refused to agree to several provisions of the convention. See KSA Royal Decree, Umm Al-Qura, No M/196, 14 July 2023, Art.1. the Royal Decree can be accessed through the link <<https://uqn.gov.sa/details?p=23265>>.

828 Alshahrani (n14) 39; Al-Alwani (n15) 2; Fallatah (n13) 11.

829 Maroof is an online platform for online stores administered by the Ministry of Commerce to enhance the trust between vendors and customers. It allows consumers to evaluate registered sellers. See ' "Maroof" An Initiative to Support E-Commerce in the Kingdom', *Ministry of Commerce* (Web Page, 17 April 2016) <<https://mc.gov.sa/en/mediacenter/News/Pages/17-04-16-01.aspx>>.

830 'E-commerce Authentication', *Saudi Business Centre* (Web Page, 2023) <<https://business.sa/en/ServicesAndPrograms/ServicesDetails.html?ServiceID=13>>

831 Ibid.

international or foreign merchants need to have a physical store or branch within KSA jurisdictions⁸³² and registering in the commercial register system requires a local bank account.⁸³³ Therefore, international sellers are unable to obtain commercial registration numbers in the KSA. The seller can instead get a freelancer practitioner certificate for the commercial registration number, but to obtain this certificate, the seller needs to be Saudi.⁸³⁴ Therefore, international sellers are unable to get the freelancer practitioner certificate. The issue with the current system is that it is not effective in the context of cross-border e-commerce transactions since international sellers are unable to fulfil the requirements for qualifying to be listed in the e-commerce authentication system.

The researcher proposes providing or modifying the e-commerce authentication system to cover both local and international sellers. This is a better approach for adequate protection since KSA consumers trust sellers who register in the commercial registry system in the KSA.⁸³⁵ The proposed mechanism is that the KSA Ministry of Commerce facilitate the registration of the commercial register system or the freelancer practitioner certificate to international sellers by assisting them in obtaining local bank accounts since it is a requirement for registering in the commercial register system.⁸³⁶ This can be achieved by an initiative between the Ministry of Commerce and local banks in the KSA to facilitate establishing a bank account for international sellers.⁸³⁷ The KSA bank account can then be used for dealing with consumers in the KSA and to ensure compliance with the consumer regulations in the KSA. In case of non-compliance, the KSA can use the bank account to enforce its local laws upon the international seller.

The seller is encouraged to register to benefit from being published as a trusted seller who can be dealt with internationally. The seller list may be updated once more sellers join the list or are removed from the list. Sellers who are removed from the trusted seller list are placed in the blacklisted sellers for breaching consumer laws in the KSA and are banned from trading in the country.⁸³⁸ Publishing the list of trusted sellers can work as a reminder to the consumer, which

832 *The Law of Commercial Register 1995 (KSA) Arts.3-6*

833 Al-Mani (n229) 46.

834 'Issuance of Documents for Freelancer Work', Human Resources and Social Development (Web Page, 2023) <<https://www.hrsd.gov.sa/en/ministry-services/services/1065686>>.

835 Al-Mani (n229) 46.

836 *Ibid.*

837 It should be noted that local banks in the KSA provide a service to open a bank account with no need to visit the local bank. Examples of this can be accessed through the link <<https://www.bankaljazeera.com/en-us/Personal-Banking/Accounts/Online-Account-Opening>>.

838 Banning sellers is one of the punitive approaches in consumer laws in the KSA. ('ECL' (n12)Art. 18[D]; (TND CPL) (n388) Art.78 [1].

may impact the consumer's decision to buy from a particular vendor since the seller may be removed from the list if it breaches the law. Consumers are also encouraged to deal with trusted sellers who are complying with KSA laws and have no history of deceiving the consumer. It discourages consumers to deal with reported sellers who breach the law, and these sellers can be found on the blacklisted seller list. The researcher believes that this would encourage local or international vendors to comply with KSA laws as not complying with the law will result in a decrease in profits, while complying with the law will lead to the seller's name being published as one of the trusted sellers and, thus, more profits will be made or more money will be earned. This would not completely protect the consumer at the beginning of this program as the number on the list will increase over time. In other words, the consumer may be exposed to deception by a vendor at some point, but after a certain time, the list will contain a vast number of trusted sellers or blacklisted sellers, which means the consumer has a vast number of vendors to choose from. There are certain limitations to this solution and some provisions of the laws need to be altered, such as the provision in the commercial register system to not require physical stores to be established for sellers conducting e-commerce in KSA. Corporations with local banks also have to establish bank accounts for international sellers, which may need authentication from foreign countries regarding seller identifications.

(iii) Summary Of The Solution

The research recommends several solutions to the issues that are not addressed by the discussed laws: particularly, the current form of the new draft consumer protection law in KSA or UAE, Qatar and Kuwait consumer protection laws.

- Firstly, it is proposed to require the inclusion of information in the pre-contractual stage. This information should include the trade and legal name of the seller, business address including the main branch of the business, contact details such as telephone number, email address and other online communication tools. Furthermore, mandate the inclusion of other information regarding the warranty, commodity limitation and the needed periodical service including the provider of the service. It is essential to mandate the inclusion of the governing law of the contract, redress limitation and dispute process information. Additionally, the consumer should be able to store or keep a record of the information and correcting mistakes while reviewing the information summary before the conclusion of the transaction.

- It is recommended that KSA policymakers review and benefit from the provision of misleading conduct in the EU directive to include all kinds of misleading and provides a list of misleading action/statements.
- It is recommended to establish a convention to enforce local laws upon international sellers.
- It would be really beneficial if the Ministry of Commerce in KSA could provide a list of trusted sellers. This list could be regularly updated to include new sellers who meet the criteria and remove those who no longer meet the requirements. By having an official list, consumers would have a reliable resource to find trustworthy sellers and make more informed purchasing decisions.
- It is really important to raise consumer awareness about the risks involved in online transactions, especially when it comes to cross-border e-commerce. Sharing information about common scams, fraudulent sellers, and secure payment methods can go a long way in mitigating the risks consumers may face.

B Conclusion

This chapter discussed whether the new KSA draft law and consumer protection laws in GCC countries, namely UAE, Qatar and Kuwait, overcome the issues of the existing KSA consumer protection laws. It shows that several issues were overcome by the KSA's new draft consumer protection law or GCC consumer protection laws. Those issues are a lack of a combination of alternative dispute mechanisms and urgent dispute processes, unfair commercial practices, ensuring the quality of the product is adequate, establishing an entity that acts on the consumer's behalf in terms of consumer disputes and considering vulnerable groups while disclosing the information.

There is still an issue with the determination of inclusion at the comprehensive pre-contractual stage. There is still an issue with inclusion of some information required by the model of adequate consumer protection law, such as the main branch of the seller and the legal name; tracking number and refund; information regarding the governing law and redress limitations; and providing the consumer with an approach to print or download the pre-contractual information at any point. There is still an issue with providing legal provisions that cover all misleading actions/statements. Therefore, it is recommended that further research examine the new KSA draft law after its implementation to examine whether those issues are resolved by the law.

VI CONCLUSION

A Thesis Summary

This thesis has analysed the efficiency of the KSA consumer protection laws in the context of cross-border e-commerce transactions. The research is significant as it discusses the deficiencies in the existing literature in terms of cross-border e-commerce transactions. It discusses unique challenges that are posed by the nature of cross-border transactions, such as enforcing local laws upon international sellers. It discusses a preventative approach to be provided to the consumer to mitigate the risks of cross-border transactions. It is also significant because it evaluates the effectiveness of the new legal developments in the KSA in filling gaps within the existing consumer protection laws.

The thesis evaluated the efficiency of the existing KSA consumer protection laws based on a model for adequate consumer protection that was developed in the thesis and pays particular attention to the nature of cross-border e-commerce transactions. The framework was drawn from the UN and OECD guidelines for effective consumer protection. The purpose of drawing from these guidelines is that they have been developed over the years and, thus, reflect many of the consumer issues that have emerged from time to time. Hence, they should be mature in terms of consumer issues, particularly for cross-border e-commerce transactions, because there are specified guidelines for e-commerce that consider the nature of cross-border e-commerce transactions. The framework tackled the issues faced by the consumer in e-commerce transactions, as it pays particular attention to the scope of the research (cross-border e-commerce transactions). Therefore, it considers the risks faced by the consumer in the pre-contractual stage regarding the lack of inspection or examination of the commodity. It requires that prior to conducting the contract, certain information regarding the seller, commodity, transaction, terms and conditions and dispute-resolution process be included. It focuses on the need to provide a protective environment or measures to increase consumer confidence in conducting cross-border e-commerce transactions. Therefore, it requires the disclosure of fair contractual provisions regarding misleading, unfair practices, commodity quality and consumer redress. The model framework also requires the necessity to provide a combination of dispute-resolution mechanisms to mitigate the risk of enforcing local laws overseas. Finally, the framework pays particular attention to the approach to enforcing local laws internationally, mandating cooperation with international consumer protection agencies to share investigations and enforce local laws upon international sellers.

The argument is that there is a lack of clear information regarding online disclosure of information before entering into a contractual relationship; lack of adequate regulation that covers all kinds of misleading and unfair practices; a lack of protection of adequate quality of the commodity and consumer redress and a lack of a combination of alternative dispute mechanisms and the handling of consumer disputes on their behalf. Finally, there is a lack of cooperation with overseas consumer protection agencies to investigate and enforce local laws upon foreign sellers. Since the research focuses on consumer protection in cross-border e-commerce transactions, it is fundamental to identify and understand the deficiencies within existing consumer protection laws in the KSA.

This research sheds light on the new draft consumer protection law to assist in overcoming the deficiencies within the existing consumer protection laws in KSA. If the new draft law has not overcome the identified issues in chapter two, consumer protection laws within CGG countries, namely the UAE, Qatar and Kuwait were examined to fill the gaps within KSA consumer protection laws, including the new draft law.

The precise question of this thesis is: ‘What gaps exist in consumer protection in the existing national legal frameworks of KSA law, and to what extent would the proposed consumer protection law, if enacted in its current draft form, fill these gaps?’ To answer the first part of the question, chapter two of the thesis focused on an analysis of the adequacy of the existing consumer protection laws to identify the deficiencies when the consumer engages in cross-border e-commerce transactions. The author found that the existing consumer protection laws do not provide adequate protection for the consumer. The existing consumer protection laws in the KSA fail to meet the standard of the model of adequate consumer protection law. This is because there is a lack of certainty regarding the inclusion of information in the pre-contractual stage. There is also a failure to determine the information mandated by the model of adequate consumer protection law in terms of seller, commodity, transaction, terms and conditions and dispute-resolution processes. Provisions that provide protective measures regarding misleading and unfair practices, commodity quality and consumer redress are also lacking, and it does not meet the standard of the framework in terms of allowing the handling of consumer disputes by a regulatory entity. The KSA consumer protection laws also fail to provide adequate dispute-resolution mechanisms that are accessible to the consumer, and there is a failure of cooperation with consumer protection agencies to investigate and enforce local laws internationally. Therefore, there is a need for another law to fill the gaps within the existing consumer protection laws.

In response to the second part of the question, the thesis examined the KSA's new draft consumer protection law in chapter three. It was found that the new draft law provides a significant enhancement to the KSA consumer protection frameworks. This is due to the new legal provisions that mandate the inclusion of certain information before the conclusion of the contract. However, there is confusion over the timeframe of providing the information as the law fails to determine the timing of all information to be disclosed before the conclusion of the contract. The law also fails to require all information required by the model of adequate consumer protection law. Therefore, it does not meet the standard of the model consumer protection law.

There is a new development regarding fair contractual provisions since the current form of the new draft law provides provisions that apply to misleading, unfair practices, commodity quality and consumer redress. However, there is an issue with those elements, as the law limits misleading to certain conduct/statements that do not cover all kinds of misleading actions. Another issue is that the new draft law considers advertisement limitations to be unfair instead of regulating them. There are also issues with the timeframe of accessing consumer redress and the approach to accessing it, such as the failure to determine the timeframe for exercising withdrawal when the subject of the contract is multiple goods that are to be delivered over several days. Thus, there is a lack of information that is going to be considered by the executive regulation of the new draft law or information that is missing from the current form of the new draft law. There is another development in KSA's new draft law in terms of dispute-resolution mechanisms. If introduced in its current form, the new draft law will provide new dispute-resolution mechanisms for the consumer, such as ADR, ODR and an urgent dispute process with particular attention to low-value products. However, the approach to accessing those is unclear because this is absent from the current form of the new law. The new draft law also fails to determine the approach to initial consumer claims to either the seller or consumer protection department. Furthermore, it does not clarify the confusion over the circuit court depending on the value of the claim. A new development in the current form of the new draft law is the allowance of a regulatory body to handle consumer disputes on their behalf. However, there is still an issue with corporations with international consumer protection agencies investigating and enforcing local laws internationally.

The research identifies one model to explore for an effective solution, namely the UAE, Qatar and Kuwait consumer laws. It sought to compare the KSA's existing consumer protection laws, including the new draft law, to their GCC counterparts to identify a solution or best practices

to be adopted/adapted by KSA policymakers. The reasons for choosing these countries are the similarity regarding religion, culture and people's norms, that they are doing well regarding consumer protection regulations and they have a respected e-commerce market.

After examining consumer protection laws in those GCC countries, it was found that several gaps or deficiencies within the KSA consumer protection laws and the new draft consumer protection law have been filled. Those laws solve the gaps in the KSA consumer protection laws, including the new law, in terms of regulating advertisement limitations and providing a general approach to disclosing information before the conclusion of the contract; providing a clear approach to accessing or initiating consumer disputes; solving the issue of accessing consumer redress since they provide better information about the approach to accessing consumer redress; and providing an adequate solution for the confusion of the circuit court with the value of the claim, as there are clear provisions that determine the circuit court with the value of the disputes. However, there are insufficient solutions for all the identified issues due to the absence of information regarding the inclusion of certain information before the conclusion of the contract; limiting particular misleading conduct/statements, lack of cooperation with international consumer protection agencies to investigate and enforce the law; and the failure to determine the withdrawal timeframe when the contract is multiple products that are delivered over several days. This leads to the author's proposal in chapter five of solutions for some of the shortcomings that are still not filled by GCC countries. The author suggests adoption of the EU approach to cover all kinds of misleading conduct/statements and determine the timeframe for exercise withdrawal when the contract is subject to multiple products delivered over several days. The author also suggests establishing a convention to investigate and enforce local laws as well as establishing technical solutions to verify sellers as trusted sellers.

B Thesis Limitations

The author faced many issues while conducting this research. The first issue is that there was a lack of existing literature regarding consumer protection in the KSA. The second limitation is that since this subject is a dynamic field that may require the updating of information on consumer protection laws, the author changed the context of chapters two and four because new laws came out that might impact the landscape of the identified gaps. Therefore, there was substantial discussion of these new consumer laws. This led to changes in the information in the thesis until the last months prior to its submission.

C Future Work

Based on the examination of the existing literature in the KSA regarding consumer protection laws, the new draft of the consumer protection law is going to be implemented in late 2023, which is confirmed to be changed in some ways. It is unclear whether the change will be extended to all or some lawful provisions of the new draft consumer protection law. Therefore, it is encouraged to examine the provision of the new draft law after it is enacted or implemented.

In addition, information is absent regarding several provisions that are planned to be highlighted by the executive regulation of the new draft consumer protection law, and this should be looked at.

The new draft consumer protection law provides other sections outside the scope of this thesis that regulate control of the market, including the way to inspect stores or size products, and that provide a variety of punitive approaches that are worth discussing. Furthermore, it suggests measuring the impact of handling consumer disputes by a regulatory body and whether this provides better protection to the consumer.

Other researchers may consider measuring consumer awareness regarding this law and the approach to being aware of the new draft law.

There is a plan to publish parts of this thesis in peer reviewed journal articles to share the research findings with the academic community and contribute to the field. Additionally, the thesis findings observations will be discussed in social media platforms such X and LinkedIn. This would assist to reach out to wider audience and engage in meaningful discussions about the research.

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