



Middle East Legislative Insight: Saudi Arabia E-Commerce Law

Type	E-journal
Date	13 sept. 2019
Jurisdiction	Saudi Arabia
Copyright	LexisNexis
Legal reference	Saudi Arabia Cabinet Decision No. 628/1440, Saudi Arabia Royal Decree No. M126/1440
Relevant company	Nasreen Alissa Law Firm

Document link: https://www.lexismiddleeast.com/eJournal/2019-09-13_14



Table of contents

Analysis	3
Background	3
The implications of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)	3
Main provisions of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)	3
Definitions	3
Applicability of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)	4
Workplace as defined by Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)	4
Error correction by consumer	4
Consumer privacy	4
Disclosures to be made by the retailer on website	4
Invoices	5
Electronic advertisements and regulations	5
Termination of the contract by the consumer	6
Termination due to delay	6
Registration of e-shops	6
Actions and punishments against violation	6
The mechanism for adjudicating disputes	6
Objections against punishments	7
Date of enactment	7
E-commerce in the context of Saudi Arabia's Vision 2030 and National Transformation Program	7
Improving the ease of doing business	7
Boost local industries	7
Promote fair trade	7
Foster innovation and entrepreneurship	7
Government, regulatory bodies, and policymakers	7
Conclusion	8
Author	8
Notes	9

Analysis

Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440 on the Approval of the E-Commerce Law) is significant in application to thrust the development vision of the crown named as Vision 2030. Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) aim at enhancing the reliability of business transactions, stimulating and developing e-commerce activities, providing consumer protection against fraud, deception or misinformation and preserving all rights.

Background

Pursuing the Vision 2030 initiative, the Ministry is looking to benefit from the steady growth of e-commerce across the Kingdom under 39 initiatives to enhance infrastructure, payment systems, postal and logistic services which forms the reason for enacting Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440).

The Kingdom is considered one of the ten fastest-growing states in e-commerce around the world, with a growth rate exceeding 32% per year. E-commerce is regarded as one of the pillars of the Kingdom's Vision 2030 under the National Transformation Program and is a significant contributor to its economy. The volume of the e-commerce market in the Kingdom stands at SAR 80 billion. Minister of Commerce and Investment Dr. Majid al-Qasabi, while introducing the law, stated that '[t]he e-commerce system is a new historical stage in the national economy. He said it bolsters the economy's position and ability to keep pace with all the world's changes and modern trading patterns.' Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) represents the intent of the regime in promoting commerce within the Kingdom.

The implications of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)

Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) seeks to regulate the relationship between consumers and e-commerce entities that do not have a commercial registration. According to Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440), the service providers must disclose data of their trade, goods and services to consumers, protect consumers' personal data, regulate consumers' right to retrieve goods, and address delay in delivery, among other measures. The provisions will be explored in more depth below.

Main provisions of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)

Definitions

Article 1 of Saudi Arabia Royal Decree No. M126/1440 (Article 1 of Saudi Arabia Cabinet Decision No. 628/1440) clearly defines the various terms associated with e-commerce and their applicability in the law. The following terms are defined:

- **Regulation:** *Implementing Regulation of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440).*
- **Ministry:** Ministry of Commerce and Investment under the Kingdom.
- **Minister:** Minister of Commerce and Investment in the Kingdom.
- **E-commerce:** An activity of an economic nature carried out by the service provider and the consumer - in whole or in part - by an electronic means so as to sell products or provide services, advertise the same, or exchange their respective data.
- **Data:** Any statement, regardless of its source or form, used directly or indirectly when dealing with e-commerce.
- **Person:** A physical or juristic person.
- **Trader:** A registered person in a commercial register and practising e-commerce.
- **Practitioner:** A person not registered in a commercial register and practising e-commerce.
- **Service provider:** A trader or practitioner.
- **Consumer:** A person who deals with e-commerce in order to obtain the products or services provided by the service provider.
- **Contract:** An agreement concluded electronically between the parties dealing with e-commerce.
- **E-shop:** An electronic platform that allows the service provider to display or sell a product, provide a service, advertise the same or exchange the respective data thereof.
- **E-shops authentication authorities:** Entities authorised by the Ministry to take over the process of authenticating e-shops.
- **Electronic communication:** A statement, declaration, notice, request or offer made by the parties to the contract by electronic means at the stage of negotiation of the contract or during its execution.
- **Electronic advertising:** Any advertisement made by the service provider by electronic means and aims to encourage the sale of a product or the provision of a service in a direct or indirect manner.

- *Electronic means:* Any technology used by the means of communication and information technology, whether electrical, electromagnetic, optical, visual, and digital or any other form of similar technology.

Applicability of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)

Article 2 of Saudi Arabia Royal Decree No. M126/1440 (Article 2 of Saudi Arabia Cabinet Decision No. 628/1440) states the entities that come under the scope of the law, which include:

- service providers within the Kingdom dealing in e-commerce;
- practitioners outside the Kingdom who provide products or services within the Kingdom by offering them in such a way that the consumer can access them; and
- consumers.

Workplace as defined by Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440)

Article 3 of Saudi Arabia Royal Decree No. M126/1440 (Article 3 of Saudi Arabia Cabinet Decision No. 628/1440) defines the concept of workplace of various entities coming under the scope of the law:

- A service provider's workplace means the following:
 - For a trader, the workplace will be their address as specified in the commercial register;
 - For a practitioner, the workplace will be the place determined in their e-shop, unless otherwise proven.
- If the service provider has more than one workplace and has not identified any, the workplace to be taken into account will be deemed the place of business which is the most closely related to the contract, taking into account the circumstances that the parties were aware of or have anticipated at any time before or at the time of conclusion of the contract.
- If a physical practitioner does not have a place of business, the workplace will be deemed their regular place of residence, and the Regulation should specify the standards and conditions necessary therefor.

The premises may not be deemed a workplace solely because it includes equipment and technology supporting the information system used by the service provider to conclude the contract, or where other parties can access the information system in question.

Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) also states that the use by the service provider of a domain name or e-mail address relevant to a particular state does not establish a presumption evidencing that the workplace is located in that state.

Error correction by consumer

Article 4 of Saudi Arabia Royal Decree No. M126/1440 (Article 4 of Saudi Arabia Cabinet Decision No. 628/1440) states that where the consumer commits an error in an electronic communication and the communication technology did not allow them to correct it, they may inform the service provider of the said error immediately within the time limit specified in the Regulation. This reporting will be deemed an error-correction if the consumer has not benefited from the service provider's product or service or has not received a benefit from either of them.

Consumer privacy

Article 5 of Saudi Arabia Royal Decree No. M126/1440 (Article 5 of Saudi Arabia Cabinet Decision No. 628/1440) clearly shows the intent of the Kingdom in protecting the privacy of the consumer. Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) states that the service provider may not keep the consumer's personal data or electronic communications except for the period required by the nature of the e-commerce dealing and will be responsible for protecting the consumer's personal data or electronic communications in their possession or under the control of the parties they deal with or their agents.

Article 5 of Saudi Arabia Royal Decree No. M126/1440 (Article 5 of Saudi Arabia Cabinet Decision No. 628/1440) says that the service provider, except with the consent of the consumer to whom the personal data relates to or other than permitted by regulation, may not use the consumer's personal data or electronic communications for unauthorised or unpermitted purposes, nor disclose this information to another party, whether or not for a consideration.

Disclosures to be made by the retailer on website

Article 6 of Saudi Arabia Royal Decree No. M126/1440 (Article 6 of Saudi Arabia Cabinet Decision No. 628/1440) says that the service provider must disclose the following data in their e-shop:

- their name or any distinctive statement thereof, and their address, unless they are registered with one of the e-shops authentication authorities;

- their means of communication;
- the name and number of the register where they are registered, if registered in a commercial register or other registers available to the public; and
- any other data specified by the Regulation.

Article 7 of Saudi Arabia Royal Decree No. M126/1440 (Article 7 of Saudi Arabia Cabinet Decision No. 628/1440) states that the service provider should provide a statement to the consumer indicating the terms and conditions of the contract to be concluded, provided that the statement includes the following:

- the procedures to be taken for the conclusion of the contract;
- the data relating to the service provider;
- the basic characteristics of the products or services;
- the subject-matter of the contract;
- the total price including all fees, taxes or additional amounts relating to the delivery;
- the payment, delivery and execution arrangements;
- the warranty data; and
- any other data specified by the Regulation.

Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) reiterates that the Regulation promulgated will specify the necessary controls for the data that the service provider commits to submit in accordance with the nature of each transaction.

Article 9 of Saudi Arabia Royal Decree No. M126/1440 (Article 9 of Saudi Arabia Cabinet Decision No. 628/1440) states that a service provider practising a profession subject to a particular regulation and requiring a licence or authorisation for its practice should disclose the following:

- the entity they are registered with and the data of the licence or authorisation;
- the applicable professional title and the state which granted it; and
- any other data specified by the Regulation.

Invoices

Article 8 of Saudi Arabia Royal Decree No. M126/1440 (Article 8 of Saudi Arabia Cabinet Decision No. 628/1440) provides that the service provider should submit an invoice to the consumer after the conclusion of the contract indicating the costs of purchasing each product or providing each service, and the total price including all fees, taxes or additional amounts related to the delivery, if any, and the date and place of delivery, as specified by the Regulation.

Electronic advertisements and regulations

Article 10 of Saudi Arabia Royal Decree No. M126/1440 (Article 10 of Saudi Arabia Cabinet Decision No. 628/1440) defines electronic advertisement as a contractual document supplementing the contracts and binding on the parties. It states that advertisement will include:

- the name of the advertised product or service;
- the name of the service provider and any distinctive statement unless registered with one of the e-shops authentication authorities;
- the means of communication with the service provider; and
- any other data specified by the Regulation.

Article 11 of Saudi Arabia Royal Decree No. M126/1440 (Article 11 of Saudi Arabia Cabinet Decision No. 628/1440) prohibits the following in an electronic advertisement:

- a false offer or statement or allegation, expressed in terms that would directly or indirectly mislead or deceive the consumer; and
- a logo or trademark that the service provider does not have the right to use, or a counterfeit mark.

Article 12 of Saudi Arabia Royal Decree No. M126/1440 (Article 12 of Saudi Arabia Cabinet Decision No. 628/1440) provides the actions that will be taken for contravention of the advertisement provisions. If the service provider is found to have violated any of the provisions of Article 10(2) and 11 of Saudi Arabia Royal Decree No. M126/1440 (Article 10(2) and 11 of Saudi Arabia Cabinet Decision No. 628/1440), the Ministry will oblige them to remove the violation or withdraw the advertisement within one day from the date of notification. They may also be subjected to punishment under Article 18 of Saudi Arabia Royal Decree No. M126/1440 (Article 18 of Saudi Arabia Cabinet Decision No. 628/1440)

Termination of the contract by the consumer

The consumer, as provided in Article 13 of Saudi Arabia Royal Decree No. M126/1440 (Article 13 of Saudi Arabia Cabinet Decision No. 628/1440), may terminate the contract within the seven days following the date of receipt of the product or the date of contracting on the service provision, as long as they have not used the product of the service provider, have not benefited from their service, or have not received any benefit from either of them, in which case the consumer must bear the costs resulting from the termination of the contract ,unless the parties to the contract agree otherwise

The consumer will not be entitled to terminate the contract according to Article 13 of Saudi Arabia Royal Decree No. M126 /1440 (Article 18 of Saudi Arabia Cabinet Decision No. 628/1440):

- if the subject-matter of the contract is a product manufactured at the request of the consumer or according to the specifications they have determined, except for products that are defective or inconsistent with the agreed specifications;
- if the subject-matter of the contract is videotapes, disks, CDs or information programs that have been used;
- if the contract deals with the purchase of newspapers, magazines, publications or books;
- if there is a defect in the product due to the consumer's poor possession;
- if the contract deals with provision of accommodation, transportation or feeding services;
- if the contract deals with the purchase of products for software download over the Internet, except for programs that have a defect that prevents the completion of the download or not conforming to the agreed-upon terms; or
- other cases specified by the Regulation as required by the nature of the products or services.

Termination due to delay

Article 14 of Saudi Arabia Royal Decree No. M126/1440 (Article 14 of Saudi Arabia Cabinet Decision No. 628/1440) states that the consumer may terminate the contract if the service provider delays delivery or execution for a period exceeding 15 days from the date of conclusion of the contract or the agreed date, and may recover the payment made under the contract for the product, service or other costs resulting from such delay, unless the delay is inevitable. It is also clearly mentioned in Article 14 of Saudi Arabia Royal Decree No. M126/1440 (Article 14 of Saudi Arabia Cabinet Decision No. 628/1440) that it is the duty of service provider to inform the consumer of any anticipated delay or difficulties that have a material effect on the delivery of the subject-matter or execution of the contract

Registration of e-shops

Article 15 of Saudi Arabia Royal Decree No. M126/1440 (Article 15 of Saudi Arabia Cabinet Decision No. 628/1440) entrusts duty upon the trader to register their e-shop in the commercial register in accordance with Saudi Arabia Royal Order M21/1375 Related to the Approval the Commercial Register Law (Saudi Arabia Cabinet Decision No. 36/1416 Approving the Law on the Commercial Register).

Actions and punishments against violation

Article 17 of Saudi Arabia Royal Decree No. M126/1440 (Article 17 of Saudi Arabia Cabinet Decision No. 628/1440) states the actions that will be taken by the Kingdom against the violators of provisions of law.

Article 17 of Saudi Arabia Royal Decree No. M126/1440 (Article 17 of Saudi Arabia Cabinet Decision No. 628/1440) also states that for the service provider who violates any provision of the law or the Regulation, the Minister (or their authorised representative) may, in urgent and necessary cases, take a decision to block the e-shop in whole or in part, until the violation is addressed or decided and refer the violation to the Committee provided for in Article 19(1) Saudi Arabia Royal Decree No. M126/1440 (Article 19(1) of Saudi Arabia Cabinet Decision No. 628/1440) within a period not exceeding three days from the block of the e-shop. The Committee will take its decision on the violation within a period not exceeding ten days from the date of the referral of the violation. The Committee may stay the decision to block the e-shop in whole or in part where it is justifiable.

Article 18 of Saudi Arabia Royal Decree No. M126/1440 (Article 18 of Saudi Arabia Cabinet Decision No. 628/1440) states the punishments for violations, which may include:

- warning;
- a fine not exceeding SAR 1 million;
- suspension of the practice of e-commerce temporarily or permanently; and
- block of the e-shop, in coordination with the competent authority, partially or completely, temporarily or permanently.

The punishments stated here can be given individually or can be accumulated punishments.

The mechanism for adjudicating disputes

Article 16 of Saudi Arabia Royal Decree No. M126/1440 (Article 16 of Saudi Arabia Cabinet Decision No. 628/1440) states that the Ministry of Commerce must issue the rules necessary for e-commerce regulation to enhance the role of e-commerce and protect the integrity of transactions, including the regulation of:

- the e-shops authentication authorities;
- the electronic platforms that act as intermediaries between the service provider and the consumer

Article 19 of Saudi Arabia Royal Decree No. M126/1440 (Article 19 of Saudi Arabia Cabinet Decision No. 628/1440) states that a committee (or more) will be formed by a decision of the Minister of Commerce to consider violations of the provisions of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) or the Regulation and to impose the penalties stipulated in Article 18 of Saudi Arabia Royal Decree No. M126/1440 (Article 18 of Saudi Arabia Cabinet Decision No. 628/1440), provided that the number of its members is not less than three including at least one regulatory counsellor. Decisions of the Committee must be issued by a majority of votes, and the Minister will issue a decision on the Committee's rules of procedure and determine the remuneration of its members. Article 23 of Saudi Arabia Royal Decree No. M126/1440 (Article 23 of Saudi Arabia Cabinet Decision No. 628/1440) provides that it will be the employees appointed by a decision of the Minister who will supervise and inspect the transactions of e-commerce and detect violations of the provisions of Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) and the Regulations.

Objections against punishments

Article 20 of Saudi Arabia Royal Decree No. M126/1440 (Article 20 of Saudi Arabia Cabinet Decision No. 628/1440) states that any person against whom a decision was issued based on the law may file an objection to that before the Administrative Court in accordance with the provisions of Saudi Arabia Cabinet Decision No. 13/1435 on the Approval of the Law of Procedure Before the Board of Grievances.

Date of enactment

Article 25 of Saudi Arabia Royal Decree No. M126/1440 (Article 25 of Saudi Arabia Cabinet Decision No. 628/1440) states that the Minister will issue the Regulation within 90 days from the date of publication of the law in the Official Gazette and will come into effect from the date of the entry into force of the law, which is 90 days from the date of publishing in gazette.

E-commerce in the context of Saudi Arabia's Vision 2030 and National Transformation Program

The Saudi Arabian economy has experienced unprecedented growth over the past several years. The National Transformation Program (NTP) and Vision 2030 together envisage a multifaceted development of the economy, with both laying out significant plans to help make this happen. Transforming Saudi Post into a commercial company, enhancing its capabilities, and establishing a unique logistics platform across three continents are key objectives. Streamlining laws for licensing and company registration in the transportation and logistics sector will also boost e-commerce sector growth. The Kingdom intend to undertake a variety of policies, as outlined below.

Improving the ease of doing business

While actively promoting local e-commerce start-ups and encouraging traditional retailers and SMEs to adopt e-commerce, the government is also making it easier for international companies to establish a footprint in Saudi Arabia. By 2020, the government plans to increase foreign direct investment from SAR 30 billion to SAR 70 billion, improve the country's ranking on the World Bank's Doing Business Index from 82 to 20, and create a total of SAR 2,300 billion in investment opportunities. These initiatives will attract more domestic and international investors to the Saudi economy.

Boost local industries

E-commerce will create new growth opportunities for local producers and homebased sellers, both domestic and international. As local e-commerce sellers directly source their goods from the local market, the development of the industry will boost several local industries that are part of the supply chain.

Promote fair trade

Enhancing consumer confidence by promoting fair trade, strengthening the policies and frameworks that protect consumer rights, and creating awareness about consumer rights are vital aspects of the NTP's objectives. Indeed, the Ministry of Commerce and Industry is tasked with improving Saudi Arabia's score on the Consumer Confidence Index from 106 to 115 by 2020.

Foster innovation and entrepreneurship

The NTP has placed a substantial emphasis on enabling innovation and entrepreneurship, with focus on the technology industry, including e-commerce. Encouraging investment funds and venture capitalist firms to invest in start-ups, including e-commerce start-ups, could spur entrepreneurship in Saudi Arabia.

Supporting educational institutions to develop entrepreneurial skills and nurture start-ups, which are key objectives for the government, will also help build strong foundations for development of the e-commerce industry.

Government, regulatory bodies, and policymakers

Public sector entities such as ministries, regulators, and policymakers are among the key enablers of the Saudi e-commerce sector, as they are directly responsible for establishing and enacting the medium-to-long-term plans that will shape the future

of the sector. These government entities are responsible for developing a regulated business environment that supports the establishment of online businesses, protects buyers from rights violations, and creates an environment for all stakeholders to work collaboratively toward the development of the e-commerce sector. Enabling economic diversification, driving growth of the small and medium-sized enterprise (SME) segment, and fostering innovation and entrepreneurship are at the core of these objectives, and developing the e-commerce sector as part of the NTP will add further fuel to these economic development plans.

Conclusion

Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440) is intended to enhance confidence in the validity and integrity of e-commerce transactions, protect consumers from fraud, deception and disinformation, and support the development of e-commerce in Saudi Arabia. It applies to all those who engage in e-commerce in Saudi Arabia, or who offer goods or services, or make them available, in the Kingdom. Other laws, such as Saudi Arabia Royal Decree No. M126/1440 Saudi Arabian Electronic Transactions Law (Saudi Arabia Cabinet Decision No. 628/1440 on the Approval of the E-Commerce Law) and Saudi Arabia Royal Decree No. M17/1428 Related to the Approval of the Anti-Cyber Crime Law (Saudi Arabia Cabinet Decision No. 79/1428 Approving the Saudi Arabian Anti-Cyber Crime Law), will continue to have relevance in the context of e-commerce.

With a population of over 30 million people, many of whom are young, and tech-savvy consumers, it is no surprise that experts hold high hopes for the development of the e-commerce market in Saudi Arabia. The growth of the market also calls for advanced regulatory frameworks which have been constituted by the e-commerce law. Investors and Consumers can be assured of their safety under Saudi Arabia Royal Decree No. M126/1440 (Saudi Arabia Cabinet Decision No. 628/1440).

Author

Nasreen Alissa - Owner - Nasreen Alissa Law Firm (Riyadh, Saudi Arabia)

nasreen@nasreenalissalaw.com^[1 p.9]

Nasreen Alissa is an attorney specialising in corporate law. Prior to opening her own law firm, Nasreen worked as an attorney at Freshfields Bruckhaus Deringer LLP in association with The Law Firm of Salah Al-Hejailan for five years. She is the founder of KnowYourRights, a legal mobile application aimed at empowering Saudi women.

Notes

1. ^{^ [p.8]} <mailto:nasreen@nasreenalissalaw.com>