

Legal Challenges of E-commerce in Kuwait during the COVID-19 Pandemic

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Abstract

E-commerce in Kuwait faces many hurdles. COVID-19 has increased the size of these hurdles and amplified the urgency of overcoming them. This article discusses and analyses these issues in light of the sudden and necessary shift in business to adopt e-commerce because of the lockdowns caused by the pandemic. This study uses documentary research as a methodology to discuss the major e-commerce issues caused by weak cyberspace laws and COVID-19, which consist of technical issues, trust and confidence, social and cultural issues, consumer protection, and cybersecurity.

The paper will consider the above issues as they relate to Kuwaiti laws, identifying the reasons behind each issue and the shortcomings in the laws. This study recommends development of all areas of cyberspace to keep up with the fast pace of technology, a reformation of the laws, and a campaign to raise awareness amongst Kuwait citizens on the possible threats and how to avoid them.

Keywords: Cyberspace, Electronic Transaction, Threats, Cybersecurity, Consumer Protection.

1. Introduction

A new type of virus was discovered late in 2019 in Wuhan, China, which the World Health Organisation (WHO) named the coronavirus disease 2019 (COVID-19) on 11 February 2020⁽¹⁾. On 11 March 2020, the WHO declared the outbreak to be a pandemic⁽²⁾. This fast-transmitting disease has caused massive disruption, killing thousands, destroying economies, and overwhelming healthcare systems globally.

The severity of the pandemic has required most countries to rapidly apply lockdowns and enforce social distancing. The Kuwaiti government has also declared a lockdown, closing gathering places like shopping malls and cinemas and stopping commercial flights to limit and combat the spread of the virus.

The COVID-19 pandemic and the resulting lockdown have severely impacted daily life in Kuwait, leading to a significant increase in the demand for e-commerce. E-commerce in Kuwait suffered from many regulatory and legal shortcomings even before the pandemic, but the pandemic amplified these deficiencies, making the governance of e-commerce in Kuwait an acute problem in need of attention.

For a complete understanding of the problem, this study considers the law, technology, and social issues surrounding e-commerce. This paper investigates the weaknesses in e-commerce in Kuwait exacerbated by the COVID-19 pandemic and critiques the current protections and safeguards.

This article is divided into seven parts. The first part introduces the topic and purpose of the article, and the second section outlines the aim and methodology. The third part discusses the issues surrounding e-commerce and its relation to COVID-19 in Kuwait, including technical issues, trust issues, social and cultural issues, and consumer protection issues. The fourth part considers the cybersecurity threats to e-commerce, the fifth looks at the shortcomings of the law on e-commerce in Kuwait, and part six provides recommendations. The final section draws conclusions.

(1) WHO, (WHO Director-General's remarks at the media briefing on 2019-nCoV on 11 February 2020) (*World Health Organization Website*, 11 February 2020) <<https://www.who.int/dg/speeches/detail/who-director-general-s-remarks-at-the-media-briefing-on-2019-ncov-on-11-february-2020>> accessed 14 June 2020.

(2) WHO, (WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020) (*World Health Organization Website*, 11 March 2020) <<https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>> accessed 14 June 2020.

1. 1. Methodology

This research intends to identify the issues in e-commerce in Kuwait exacerbated by the increased demand for e-commerce during the COVID-19 pandemic. The article will then provide a number of suggestions to develop the area of e-commerce and its legal framework in Kuwait.

In order to achieve this, the article uses documentary research as a methodology to create a clear understanding of the issues surrounding e-commerce under the pandemic. Because cyberspace is interdisciplinary in nature, the documents that this research considers fall under two types: legal and non-legal⁽³⁾.

With regards to legal documents, this article will consider primary legal documents (original legal texts and policy documents) and secondary documents such as journal articles. Thus, legal doctrinal research involves the analysis and knowing the law in a certain area⁽⁴⁾. The research will also analyse non-legal documents, such as journal articles on technology and social issues because of the multifaceted components of e-commerce.

2. E-commerce and COVID-19 in Kuwait

Since many governments have imposed social distancing and travel regulations on citizens and forced the closure of many commercial and retail outlets⁽⁵⁾, the best way to conduct business is via online platforms, that is, through e-commerce. E-commerce refers to commercial transactions fulfilled through the Internet and is defined by the World Trade Organisation (WTO) as ‘the production, advertising, sale and distribution of products via telecommunication networks’⁽⁶⁾.

Since the arrival of COVID-19, many companies have switched to doing business online, and some have even contemplating the possibility of following an online-only business model until a sustainable solution is found. One study argued that online businesses face difficulties selling online during the pandemic because they mostly offer Chinese products feared to spread the

(3) For further information about doctrinal research see: Terry Hutchinson and Nigel Duncan, ‘Defining and describing what we do: Doctrinal legal research’ (2012) 17 Deakin Law Review.

(4) Frans Leeuw and Hans Schmeets, *Empirical legal research: A guidance book for lawyers, legislators and regulators* (Edward Elgar Publishing 2016) 3.

(5) Centre for Economic and Policy Research (CEPR), Introduction. In Richard Baldwin, and Beatrice Weder di Mauro, (eds), *Economics in the Time of COVID-19*, Centre for Economic Policy Research (CEPR) Geneva, 20, 2020.

(6) World Trade Organization, ‘Electronic Commerce’, https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm accessed 9/5/2020.

virus⁽⁷⁾. U.S. officials, however, have dismissed this argument as there is no verified evidence that COVID-19 can be transmitted via imported goods⁽⁸⁾.

Before the pandemic, businesses operating online could switch back to brick-and-mortar stores if they encountered major problems with their online platforms, such as consumer protection difficulties, technical issues, lack of trust and confidence, or even cyber (in) security or cybercrime.

However, to survive economically, they must now take a serious look at solving these problems rather than avoiding them. Although e-commerce in Kuwait could flourish during the COVID-19 pandemic, it still must overcome some serious issues, as discussed below.

2.1 Technical Issues

Because e-commerce is conducted through the Internet, websites serve as the platform. Thus, technical constraints are one of the primary challenges faced by countries as they try to promote e-commerce. Technology, IT services, and infrastructure play fundamental roles in accessing the Internet and so must be adequate for the development of e-commerce⁽⁹⁾.

Unfortunately, some developing countries have poor connectivity and low Internet speeds in key regions, and businesses wishing to establish an online presence cannot do so because their websites take a long time to load or cannot be accessed by customers⁽¹⁰⁾.

In the Middle East, connectivity issues have continued to prevent the development of online businesses⁽¹¹⁾. Although online business is more developed in Kuwait than in most other countries in the Middle East, it still lags behind countries in West and East Asia⁽¹²⁾. Local businesses wanting to establish an online presence are prevented by an insufficiently competitive infrastructure.

(7) Mohammad Hasanat, Ashikul Houqe, et al., The impact of coronavirus (COVID-19) on e-business in Malaysia, *Asian Journal of Multidisciplinary Studies*, 3(1), 85-90, 2020.

(8) () CDC, Transcript of 2019 novel coronavirus (2019-nCoV) update (Centres for Disease Control and Prevention, 27/1/2020) <<https://www.cdc.gov/media/releases/2020/t0127-coronavirus-update.html>> accessed 29 April 2020

(9) European Commission, SEC (2011) 1641 final, Commission Staff Working Document Online Service, Including E-commerce, in the Single Market, Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Policy Paper, 52, 11/1/2012.

(10) Sumita Ushio, Zuo Jinshui, The impact of mobile access to the Internet on information search completion time and customer conversion, *Electronic Commerce Research and Applications*, 9 2010.

(11) Mustafa Al-Shaikh, et al., Internet commerce In Jordanian firms, *Journal of Internet Commerce*, 9(2), 410–417, 2010.

(12) Marijn Janssen, et al., *E-government, e-services, and global processes*, Springer, 2010.

However, the Kuwaiti government has demonstrated a willingness to expand e-commerce centres by enhancing technology and ensuring that Internet speeds and accessibility are at levels that allow Kuwaiti businesses to compete favourably with those in other countries⁽¹³⁾. At the moment, however, businesses must wait for the infrastructure levels seen in the developed world.

To be successful in e-commerce, businesses also require well-designed websites or apps. Because websites are the main platform for conducting online business, they must be of high quality and satisfy the customer⁽¹⁴⁾. Kuwait currently lacks good support for online shopping and has poorly designed websites⁽¹⁵⁾. To gain customers' trust in e-commerce, well-designed websites are crucial⁽¹⁶⁾. A well-designed website has many facets, such as easy-to-follow pages, an easy and secure payment system, and many other features that attract the consumer to buy.

Insecure websites or payment systems are another major obstacle to e-commerce. Cybercrimes are caused by the lack of secure systems and weak legislation⁽¹⁷⁾. Weak legislation means that the law does not provide security measurements for the online system.

In the Middle East and North Africa (MENA) region, which includes Kuwait, e-commerce only began around 2005, making this region a relatively late mover in the global shift toward e-commerce⁽¹⁸⁾. During the current pandemic, many Kuwaiti e-commerce websites have encountered technical drawbacks because of the sudden shift to online business as a result of customer demand; this has highlighted the lack of investment in e-commerce by Kuwaiti merchants.

The shift was caused by the Kuwaiti government announcing a lockdown, including the closure of shops⁽¹⁹⁾. The lockdown was declared by the Ministry

(13) Ahmad Khatib, and Steven Telford, S., A comparative analysis of selected sectors of the Kuwaiti economy, *International Journal of Economics, Commerce, and Research*, 8, 2018.

(14) Tao Zhou, & Shuren Zhang, Examining the effect of e-commerce website quality on user satisfaction, 2009 Second International Symposium on Electronic Commerce and Security, 1, 418–421, 2009.

(15) Luai Al Shalabi, Online shopping adoption factors in Kuwait market based on data mining rough set approach, *International Journal of Computer Application*, 180(32), 10-17, 2018.

(16) Tao Zhou, & Shuren Zhang, Examining the effect of e-commerce website quality on user satisfaction, 2009 Second International Symposium on Electronic Commerce and Security, 1, 418–421, 2009.

(17) National Cyber Security Strategy for the State of Kuwait 2017-2020, Communication and Information Technology Regulatory Authority (CITRA), 13, 2017.

(18) Kenneth C. Laudon, and Carol Guercio Traver, *E-commerce 2018: business, technology, society* (Global ed.), Pearson, 745, 2018.

(19) Kuna, Kuwait government closes malls, hairdressers, arcades to confront COVID-19 - spokesman, Kuwait News Agency, 15/3/2020, <<https://www.kuna.net.kw/ArticleDetails.aspx?id=2879098&Language=en#>> accessed 24 April 2020.

of Health and other authorities in Kuwait, and it is uncertain when it will end. In order to limit their losses, Kuwaiti businesses must sell goods online. However, the lack of preparedness has had a negative effect. Kuwaiti e-commerce businesses face many obstacles, especially because of the inadequacy of e-commerce law, which will be discussed later.

2.2 Trust and Confidence

Trust and confidence are essential considerations in any business dealing. However, in the absence of trust and confidence, customers are hesitant to deal with an e-commerce-based business with no reviews or background information⁽²⁰⁾. Without trust, it is almost impossible to nurture a strong online presence, as many businesses attract customers through referrals or physical experiences. Consumers value trust as one of the core ingredients of successful business dealings⁽²¹⁾. In e-commerce, trust becomes even more important because of the lack of face-to-face contact.

Currently, one of the most lucrative businesses in Kuwait is e-education, whereby local students take online courses offered by universities overseas⁽²²⁾. Without trust, students would not be willing to invest their money in paying for tuition fees. However, most universities in developed countries appreciate the importance of an online presence⁽²³⁾. Trust can be built by the university through clear rules and regulations and by building a strong positive reputation which may encouraging students to study online.

The need for online education has become more apparent with the COVID-19 pandemic, because of the closure of many schools. During such times, schools can take advantage of online platforms to continue educating students without disruption. However, for this to occur, there must be a high level of trust and confidence between students and educational institutions, even ones where they used to study in person, before they will exchange personal data⁽²⁴⁾.

A business must not underestimate the importance of trust and confidence: many companies have built their reputations on them. For instance, shipping

(20) Tharam Dillon, Farookh Hussain, Elizabeth Chang, *Trust and reputation for service-oriented environments*, John Wiley & Sons, 2006.

(21) Brian Corbitt, Theerasak Thanasankit, Han Yi, *Trust and e-commerce: a study of consumer perceptions*, 2003.

(22) Ali Al Kandari, and Mousa Al Qattan, *E-task-based learning approach to enhancing 21st-century learning outcomes*, *International Journal of Instruction*, 13(1), 2020.

(23) Jason Bazylak, and Peter Eliot Weiss, *Online evolution: advantages and challenges of online course components*, *Proceedings of the Canadian Engineering Education Association (CEEA)*, 2017.

(24) Murat Kurucay, and Fethi Inan, *Examining the effects of learner-learner interactions on satisfaction and learning in an online undergraduate course*, *Computers & Education*, 115, 2017.

companies are expected to safely transport and deliver expensive goods. Clients select specific companies based solely on trust levels⁽²⁵⁾. In the current business environment, trust and confidence are even more critical because of the restrictions imposed by social distancing.

Customers want to be confident in placing orders online and expect that the business will deliver as per the order and on time. Even essential products, such as groceries and drugs, are now being bought online⁽²⁶⁾. Therefore, investing in trust and confidence should be a top priority for businesses in the digital ecosystem.

Trust and confidence are the foundation for online businesses. As mentioned earlier, one reason for the importance of trust in e-commerce transactions is the limited physical interaction between the buyer and the seller. Trust in technology and transaction safety are also important⁽²⁷⁾, as is trust in the legal system.

During the COVID-19 pandemic, trust in businesses has become a more evident problem, as goods are sometimes not delivered because of logistical incompetence, restrictions and other technical reasons that had not been adequately considered in advance. Greater attention should be paid to trust because it is essential to online commercial transactions⁽²⁸⁾. It is important to consider the number of failures to deliver reported by customers in Kuwait and the ways trust in e-commerce can be secured

Kuwaiti laws pertaining to cyberspace lack many important regulations for ensuring trust in e-commerce and cyberspace, creating a big gap between the law and the technology, as discussed below.

2.3 Social and Cultural Issues

In Kuwait, social and cultural issues around cyberspace increase the threat of becoming a cybercrime victim and discourage e-commerce.

Kuwaitis' lack of awareness of cybercrimes and technology is a big hurdle

(25) Roger Bennett, Helen Gabriel, Reputation, trust and supplier commitment: the case of shipping company/seaport relations, *Journal of Business & Industrial Marketing*, 16, 2001.

(26) Owk Mrudula, Impact of corona virus – a statistical evaluation, *Journal of Advanced Research in Dynamical and Control Systems*, 12, 2020.

(27) Waleed Mohammed Al Nemer, E-commerce in Saudi Arabia: between inadequacy and necessity, LL.M Thesis, University of Warwick, 20, 2009.

(28) European Commission, SEC (2011) 1641 final, Commission Staff Working Document Online Service, Including E-commerce, in the Single Market, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Policy Paper, 52, 11/1/2012.

when conducting e-commerce transactions, especially with regard to financial and personal information. The second issue is the difficulty evaluating products in an e-commerce transaction⁽²⁹⁾.

During the current pandemic, there is a need to raise Kuwaitis' awareness of the use of e-commerce platforms for buying products. Considering issues such as undelivered goods, price changes, scams, and other types of cybercrime, customers must know how to examine websites and to not deal with unknown businesses to avoid becoming victims of cybercriminals.

2.4 Consumer Protection

Because of the pandemic, Kuwait currently provides the perfect market for businesses that are looking to attract customers online. However, consumer protection in e-commerce transactions is immature, owing to the lack of regulations preventing businesses from taking advantage of online shoppers⁽³⁰⁾.

The government should show greater urgency in protecting online shoppers⁽³¹⁾, but at the moment there is a lack of comprehensive guidelines protecting consumers from exploitation by online businesses. Customers are vulnerable in a number of ways when they perform online transactions.

For example, some criminals sell goods that they do not have and then disappear with the money. Others accept payments and send substandard goods that differ from those shown on their website. In Kuwait, if a consumer faces such an issue, their only recourse would be to inform the Electronic and Cybercrime Combating Department. Kuwait needs to improve their cyberspace laws to provide consumers around the country with adequate protection.

Saudi Arabian developed a good practice called 'Maroof', which involves cooperation between the Saudi government and a private company to verify e-commerce websites as reliable and safe⁽³²⁾. Customers also risk losing crucial financial information, such as credit card passwords, that are fraudulently used⁽³³⁾. Because Kuwaiti consumers are not protected from online criminals

(29) Kuwait - e-commerce, 2017, <<https://www.export.gov/article?id=Kuwait-E-Commerce>> accessed 1/5/2020.

(30) Peter Leonard, Business-to-consumer IoT services, consumer protection and regulation, SSRN Electronic Journal, 2017.

(31) Wolf Sauter, A duty of care to prevent online exploitation of consumers? Digital dominance and special responsibility in EU competition law, *Journal of Antitrust Enforcement*, 2019.

(32) For more information about Maroof: <https://maroof.sa/Home/About> Accessed 9/5/2020.

(33) Michalis Bekiaris and Georgios Papachristou, Corporate and accounting fraud: types, causes and fraudster's business profile, *Corporate Ownership and Control*, 15, 2017.

pretending to be businesses⁽³⁴⁾, online theft may increase as they turn to online shopping during the pandemic.

3. Cybersecurity Threats to e-Commerce During the COVID-19 Pandemic

All of the problems mentioned here existed in Kuwait before the pandemic but have been made more acute by COVID-19's impact on the growth of e-commerce and the failures of businesses adopting e-commerce for selling their goods.

Commercial risk during these uncertain times constitutes a significant threat to businesses, consumers, and the country. The Kuwaiti business sector has been late in developing e-commerce, and the legal system has fallen short in regulating cyberspace.

As consumers increasingly shop online, businesses are faced with the limitations of cybersecurity and the possible implications that follow. Therefore, Kuwaiti businesses need to take precautions to protect their online operations⁽³⁵⁾.

However, implementing cybersecurity is often costly and uncertain, and only large companies can afford effective security systems⁽³⁶⁾. Thus, the government should invest significantly in cybersecurity to protect businesses within its jurisdiction.

Kuwait needs a place that regulates cybersecurity, such as the National Cyber Security Centre that many countries around the world adopt. Growing concerns have prompted countries in the Gulf region to discuss the best strategies for dealing with cybersecurity jointly⁽³⁷⁾. This is because, in practice, no one country or organisation alone can adequately address this issue.

Even huge companies like Facebook have had their systems compromised recently⁽³⁸⁾. The general realisation is that the cybersecurity sector is still a long way from assuring companies of a safe digital ecosystem. The current pandemic has made the situation trickier because of the increased use of the

(34) Kuwait Online Marketing Country Profile, Istizada, 2020, <<http://istizada.com/kuwait-online-marketing/>> accessed 4 May 2020.

(35) Allan Friedman, and Singer. «Cybersecurity and Cyberwar: what everyone needs to know.» New York, Oxford University (2014).

(36) US Government, The Council of Economic Advisers, The cost of malicious cyber activity to the US economy 2018.

(37) 2nd Gulf Cybersecurity Conference & Exhibition, *Kuwaitcybersec.com*, 2020, <<http://kuwaitcybersec.com/en/>> accessed 4 May 2020.

(38) Natalia Macrynikola and Regina Miranda, Active Facebook use and mood: when digital interaction turns maladaptive, *Computers in Human Behaviour*, 97, 2019.

Internet for shopping and entertainment⁽³⁹⁾. The increased activity increases the likelihood of cyberattacks.

Governments should make cybersecurity the responsibility of all stakeholders, from end-users to Internet service providers⁽⁴⁰⁾. If each stakeholder took responsibility for their Internet use, cybersecurity could be improved significantly. Hackers take advantage of loopholes and users' carelessness to beat security systems and gain unauthorised access to information, but if all parties collaborate and share intelligence, security levels would improve even with the increased online traffic of the current situation.

As e-commerce requires personal information and payment details, cybersecurity is fundamental to secure transactions and to minimise cybercrime. The Kuwaiti Communication and Information Technology Regulatory Authority (CITRA) defines cybersecurity as the set of different approaches, such as policies, tools, practice, and training, to secure assets in a cyberspace environment⁽⁴¹⁾.

Cybersecurity poses many threats to e-commerce, including threats to the system, information, and individual and commercial risks. A threat to the system means that the target is a business website. A business can be a victim of viruses and malware that damage the website⁽⁴²⁾. Because of the nature of e-commerce businesses, particularly the processing of payments and the need for private information to be stored, security threats such as fraud and theft are common⁽⁴³⁾.

The Kuwaiti Department of Justice found that online fraud and identity theft are the most common e-commerce security threats⁽⁴⁴⁾. As mentioned earlier, weak technical systems and the lack of regulations are key causes of cybercrime⁽⁴⁵⁾.

Because people are increasingly working and using the Internet from home

(39) Daniel Ringbeck, Dominic Seeberger, Toward personalized online shopping: predicting personality traits based on online shopping behaviour, *SSRN Electronic Journal*, 2020.

(40) Todor Tagarev and George Sharkov, Multi-stakeholder approach to cybersecurity and resilience, *Information & Security: An International Journal*, 34, 2016.

(41) CITRA, ICT Terms and Definitions, Information Technology Sector Governance Department, 25, 2018.

(42) Kenneth C. Laudon and Carol Guercio Traver, *E-commerce 2018: business, technology, society* (Global ed.), Pearson, 251, 2018.

(43) Mona Al-Ashqar Jabbour, *A Cyber Obsession of the Age*, The Arab Centre for Legal and Judicial Research, League of Arab States, Beirut 2016 2016 (ARABIC).

(44) Ministry of Justice, Sector of Information Technology and Statistics, *A fieldwork study on cybercrime in the Kuwaiti society*, Policy paper, 128, 2017-2018 [Arabic].

(45) National Cyber Security Strategy for the State of Kuwait 2017-2020, Communication and Information Technology Regulatory Authority (CITRA), 13, 2017.

since the lockdown, they have become an attractive target for cybercrime⁽⁴⁶⁾. Pandemic-related news and information are used to perpetrate scams and ransomware and phishing attacks⁽⁴⁷⁾. Kuwaiti e-commerce businesses that are new or have poorly designed websites are more likely to face cybercrimes. Moreover, poor security systems may lead to the theft of sensitive information, such as payment and financial data⁽⁴⁸⁾.

4. Kuwaiti Law

The current pandemic has highlighted the shortcomings in Kuwaiti laws on cyberspace and its different uses. Kuwaiti laws that regulate cyberspace are limited to two information technology laws: Law No. 20/2014 Concerning Electronic Transactions and Law No. 63/2015 Combatting Information Technology Crimes. These two laws have many shortcomings considering the issues faced in e-commerce and cybersecurity.

They need to be significantly reformed to properly regulate cyberspace, as the COVID-19 pandemic has clearly highlighted their shortcomings and the urgent need to protect e-commerce and its users. Hence, this section reflects the shortcomings in the laws as they relate to the different issues discussed in this paper.

There is no specific law that regulate the different aspects of e-commerce. Law No. 20/2014 Concerning Electronic Transactions is the law applicable to e-commerce in Kuwait, but deals with electronic transactions in general, ranging from governmental to civil transactions. Thus, there is no specific law that deals with the problems faced by e-commerce businesses or consumers.

The Electronic Transaction Law contains eight chapters: Definitions, General Provisions, Electronic Documents, E-signatures, Government Use of Documents and e-Signatures, e-Payments, Privacy and Data Protection, and Penalties. In general, the law focusses on governmental use of e-transaction and fails to consider e-commerce; there needs to either be a separate chapter discussing e-commerce or a new law should be introduced.

A good example of a law that regulates e-commerce is the United Kingdom's

(46) Marites Fontanilla, Cybercrime pandemic, *Eubios Journal of Asian and International Bioethics*, 30(4), 161-165, 2020.

(47) *ibid.*

(48) Kenneth Okereafor and Olajide Adebola, Tackling the cybersecurity impacts of the coronavirus outbreak as a challenge to Internet safety, *International Journal in IT & Engineering (IJITE)*, 8(2), 1-14, 2020.

e-Commerce Directive of 2002⁽⁴⁹⁾, which was appropriately developed in connection with information technology laws and the law has performed well in practice.

Another good example is the Singapore Electronic Transaction Act 2011, which highlights cyberspace in a comprehensive analysis including e-commerce and cybersecurity⁽⁵⁰⁾. When developing a new law or reforming the existing laws, Kuwait needs to learn from the practices of developed countries that have a great deal of experience in the field of cyberspace.

The second law that regulate cyberspace in Kuwait is Law No. 63/2015 Combating Information Technology Crimes. The law is limited to two chapters - Definitions and Penalties - and is applicable to e-commerce usage, concerning a number of crimes that involve e-commerce, such as unauthorised access and theft.

As mentioned earlier, a weak legal system is one cause of cybercrime, and the Kuwaiti laws that regulate information technology are very limited: the laws only deal with crimes associated with the Internet and electronic transactions. Kuwait does have the National Cyber Security Strategy 2016–2020, which is, so far, the only attempt to regulate cybersecurity through policies. This policy is useful in theory but is lacking in practice.

For example, the strategy suggests the establishment of a National Cyber Security Centre (NCSC), but the centre has still not been established. Thus, enhancing cybersecurity policies, laws, websites, and payment systems is crucial, and the COVID-19 pandemic has indicated the urgency of these needs.

Because trust and confidence, as mentioned earlier, are fundamental aspects of e-commerce, the government should keep them in consideration when creating laws because trust in the legal system will maximise the use of e-commerce. In the pandemic, concern over the delivery of goods is an obstacle to e-commerce. Thus, the Kuwait Ministry of Commerce created Ministerial Resolution No. 104 in 2020 regulating the delivery mechanism of electronic goods⁽⁵¹⁾.

The ministerial resolution binds the online seller to make clear on the receipt the date for delivery of the goods. This step by the Ministry created the protection needed in Law No. 20/2014 Concerning Electronic Transaction. Clearly trust is important in e-commerce transactions, and the law is the

(49) The Electronic Commerce (EC Directive) United Kingdom, 2002.

(50) The Electronic Transaction Act, Singapore, 2011.

(51) Ministry of Commerce and Industry, Ministerial Resolution No. 104 of 2020 Regarding the Regulation of the Electronic Goods Delivery Mechanism.

best tool for creating trust and consumer confidence. Having a clear law that regulates all aspects of cyberspace enhances online business and, therefore, the country's economy.

Consumer protection is crucial to the success of e-commerce, and its lack may hinder the development of e-commerce businesses. Kuwait e-commerce does not have any special rules for e-commerce consumer protection; the rules protecting the consumer in physical markets are applied to e-commerce⁽⁵²⁾. The Kuwaiti Law No. 39 Concerning Consumer Protection was enacted in 2014 before cyberspace laws were considered, and so does not cover all the necessary cyberspace-consumer protections; it needs to be reformed to enhance e-commerce in Kuwait.

5. Conclusion

Kuwaiti e-commerce regulations have many shortcomings requiring reformation and are not keeping pace with rapid technological developments. Technical and institutional reforms are also lacking.

The COVID-19 pandemic has clarified the challenges in e-commerce, as it has restricted movement and quickly increased reliance on online shopping for essential goods. The challenges to e-commerce include consumer protection, technical issues, trust and confidence, cybersecurity, and cybercrime. These issues become more pronounced as more people use the Internet. Experts worldwide believe that e-commerce is the future, thus Kuwait should strive to address the abovementioned challenges so that businesses can survive and deliver during times when people are forced to stay indoors, such as during the current COVID-19 pandemic.

Recommendation and Solutions

This paper suggests that the time has come for Kuwait to consider developing the technical, commercial, and legal aspects of commerce in cyberspace. Kuwait must keep pace with the fast-changing technologies that create many hurdles that laws alone cannot overcome. Kuwaiti laws and policies must be flexible enough to keep pace with these changes and with other developed countries in order to be an attractive country with which to do business.

Kuwait needs to follow up on Kuwait Vision 2035, 'New Kuwait', laid out by His Highness Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah, Emir of the State of Kuwait: 'Transforming Kuwait into an attractive financial and commercial

(52) Law No. 39 2014 Consumer Protection Law, Kuwait.

centre for investment, in which the private sector leads the economic activity, encourages competition and raises production efficiency in the light of a supportive institutional organ of the state, consolidates values, preserves social identity and achieves human development and balanced development, which is an appropriate infrastructure and advanced legislation and an encouraging business environment’.

In order to follow His Highness’s vision, Kuwait needs to focus on reforming the technical, commercial, and legal aspects of e-businesses. Kuwait needs to build the National Cybersecurity Centre as soon as possible for a place that uniformly regulates the security of the country as well as having an emergency response team to address the threats and protect the government, businesses, and consumers.

The protection of the above institution will enhance the security of the country and economy. Moreover, Kuwait needs to amend and reform Law No. 20 of 2014 Concerning Electronic Transactions, Law No. 39 of 2014 Consumer Protection Law, and Law No. 63 of 2015 Combating Information Technology Crime. Reformation of the laws must consider minimising the threats to consumers and provide e-commerce users with legal protection to enhance trust and, subsequently, enhance the economy of the country in accordance with Vision 2035.

Kuwait also needs to develop awareness on all levels, starting with the general public. The awareness of how to avoid threats in cyberspace and to avoid being a victim of cybercrime is essential. Awareness of the possible threats that Kuwaiti Internet users face during the COVID-19 pandemic is also important, as the pandemic increases the economic need for e-commerce.

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