



ACPF 2024

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Shared Prosperity Dignified Life



Consolidating the Legal Framework for Consumer Protection

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A 7-Step Global Process

1. Situation and gap analysis : reviewing the national consumer protection system in place.
2. Benchmarking.
3. Preparing and approving a National Strategy on Consumer Protection.
4. Working on a Framework *Law on consumer protection*.
5. Building up/Strengthening an adequate institutional set-up.
6. Making the enforcement of the *Law* effective.
7. Enabling the implementation of the *Law*.

Situation and Gap Analysis



Policy-guidelines/Strategy/Action Plan ?



Legal mapping



Institutional mapping



Public and private enforcement tools

market surveillance measures, practices and resources; collection and management of consumer complaints; court and out-of-court settlement of consumer disputes.

Benchmarks: International

UNITED NATIONS

UNCTAD Guidelines on consumer protection(2015)

Intergovernmental Group of Experts in Consumer Law and Policy: working groups on product safety, vulnerable consumers, e-commerce, consumer protection and gender.

OECD

Committee on consumer policy: publications on product safety, e-commerce, peer platform markets.

Global recalls portal

CONSUMERS INTERNATIONAL (World Federation of consumer associations), G20 (Financial services), ISO (Quality, safety and performance standards), ICPEN – International Consumer protection Enforcement Network (national consumer agencies, market surveillance authorities), IACL – International Association for Consumer Law (academics and researchers).

Benchmarks: Regional

GULF COOPERATION COUNCIL (GCC)

GCC Unified System for Consumer protection (2016): *see our comments below.*

EUROPEAN UNION (EU)

EU Consumer Acquis: set of Consumer Strategies, Directives and Regulations approved since 1985.

ASEAN

Committee on Consumer protection: Strategic Action for Consumer Protection 2016-2025, High-level Principles (2016)

Benchmarks: National

GCC COUNTRIES

UAE:	Federal Law No 15/2020 on Consumer Protection
Kowait:	Law No 39/2014 on Consumer Protection
Bahrain:	Law No 35/2012 on Consumer Protection
Oman:	Royal Decree No 66/2014 to promulgate the Law on Consumer Protection.
Qatar:	Law No 8 of 2008 on consumer protection
Saudi Arabia:	Draft Law on consumer protection (currently reviewed by the Bureau of Experts).

MENA COUNTRIES (selected)

Egypt (2018), Jordan (2017), Turkey (2013), Morocco (2011), Algeria (2009), Lebanon (2005), Palestine (2005), Tunisia (1992).

COUNTRIES WITH SOLID CONSUMER PROTECTION ECO-SYSTEMS

Brazil (Consumer Code), France (Consumer Code), Peru (Consumer Code), Australia, United Kingdom, India, Quebec (Canada)

National Strategy on Consumer Protection

Overall objective

✓ To set out the State's approach to consumer protection policy and allow for a better planning, organization and implementation of activities aimed at providing consumers with a high level of protection, in line with best international practices.

Economic and social-policy rationales

✓ Correction of market failures, information deficits, unequal bargaining power, fair level playing field, increased consumer confidence, = well functioning of consumer **markets**.

✓ **Social justice**, fair business conduct, recognition of basic consumer rights, protection of consumer's health and safety, protection of consumer's purchase power, more consumer satisfaction and less frustration from market transactions.

Strategy map

✓ Including Vision and missions, Pillars, Strategic Initiatives, List of Activities, and Key Performance Indicators

Implementation schedule

setting-out priorities over a 3-or 5-year period.

Framework *Law on consumer protection* - Scope of application

« *framework/generic/umbrella law* »

- **All basic consumer rights/needs/expectations**, as proclaimed by the UN *Guidelines on consumer protection* (2015), including consumer considerations relevant in emerging policy areas like privacy and data protection, digital products and services, e-commerce transactions, and sustainable production and consumption patterns.
- **All economic operators**: producers, manufacturer's representatives or agents, importers, distributors, service providers, peer platform operators and online traders.
- **All consumers**: buyers, users, with special attention to vulnerable consumers (aged, children, the handicapped).

!!! Definition of consumer !!!

« natural and legal person » = in line with consumer laws in the region, but **NOT** in line with international practice

Framework *Law on consumer protection* - Scope of application

- **All products and services**, incl. digital products (like software), products incorporating digital content or digital services, such as electronically connected products, Internet of Things (IoT) and products using Artificial Intelligence (AI) and similar technology applications.
- **All trade and marketing practices**, whether off- or on-line.
Level of protection of consumers using e-commerce shall be not less than that afforded in other forms of trade.
Special features of e-commerce call for additional protective measures.
- **All contracts**, including e-transactions and sector contracts (with banks, repair providers, suppliers of public utilities, providers of telecommunication services, etc.)

Framework *Law on consumer protection* - Benefits from a framework approach

Legal consistency

- ❖ To adopt one common and harmonized set of basic rules applicable to all products and services, and all contracts (basic consumer protection net)
- ❖ Unified terms and definitions
- ❖ Uniform guiding principles (complementarity, proportionality, non-discrimination, fair commercial practice, fair contract term)
- ❖ Common protective tools (disclosure requirements, right of withdrawal, warranty and after-sales services schemes, etc.
- ❖ Common remedies and redress procedures.
- ❖ Common market inspection protocols and sanctions

Economic efficiency

- ❖ To make consumers more informed and better aware
- ❖ To enhance fair business conduct and competition practices
- ❖ To ensure that the marketplace is a fair level playing field .
- ❖ To put in place a modern, coordinated, efficient and operational system for enforcing consumer rights.
- ❖ To increase consumer's trust in the way the market functions.
- ❖ Legal certainty will attract investors and tourists.
- ❖ To build bridges with SDG objectives by promoting sustainable production and consumption patterns
- ❖ To ensure that innovation and research meet consumer expectations.

Consumer rights and welfare

- ❖ To confirm universally-admitted consumer rights.
- ❖ To build up a consumer culture in the country and on the marketplace
- ❖ To reduce the consumer detriment linked to loss of value of unsafe, non-compliant and low-quality products.
- ❖ To protect consumers against misleading, deceptive or unfair practices.
- ❖ To enhance fair terms in consumer contracts.
- ❖ To allow consumers voicing complaints .
- ❖ To facilitate access to redress.
- ❖ To enhance participative governance.

International recognition

- ❖ To align with international best practices
- ❖ To align with countries/regions with most advanced consumer laws and regulations.
- ❖ To increase consumer's trust in e-trade.
- ❖ Country viewed as a safe place for tourism, leisure and shopping excursions.
- ❖ To increase international and regional cooperation.
- ❖ To promote participation in international high-level meetings and decision-making forums.

Framework *Law on consumer protection*

Interface between the Law and other laws

Rule of complementarity

The provisions of the LCP apply as long as there are no specific provisions in other laws having the same object and being more protective of consumers.

- ✓ The provisions of the framework law shall apply to products, services, contracts covered by sector legislation (e.g., food, drugs, telecommunications, financial services, tourism, transport, public utilities).
- ✓ Sector laws may deal with matters that are not covered by the framework law.
- ✓ Sector laws may provide consumers with more protection, but not less.
- ✓ In case of conflicting provisions, the ones providing consumers with a higher level of protection shall apply.

Framework *Law on consumer protection*

Model structure and content

Structure: from placing a product on the market to the end of its lifecycle (incl. repair, reuse, recycle).

Model content

General provisions: terms and definitions, scope of application, list of basic consumer rights.

Education and information of consumers: e.g., product labeling, price indication, invoice delivery.

Consumer safety (reference to general *Law on product safety*).

Commercial practices: black list of unfair (hence prohibited) practices, misleading practices, e-advertising, discount campaigns, contests, abnormal increase in prices, etc.

Consumer contracts: disclosure requirements at contracting, presentation of contract terms, black list of unfair (hence prohibited) terms.

Framework *Law on consumer protection*

Model structure and content

Distance contracts (incl. **e-trade**)

Special contracts (e.g., **consumer credit**, travel, repair services, etc.) = *included or in separate laws..*

Legal warranty of conformity and commercial guarantees.

Obligation of durability and reparability: availability of spare parts and repair services (eco-design requirements).

Consumer institutions: governmental and non-governmental (*see below*).

Market surveillance: proactive, reactive (*see below*).

Consumer redress, incl. product liability (*see below*).

Administrative and criminal sanctions.

Final provisions: implementing regulations, entry into force, grace period, laws repealed and/or amended.

Institutional set-up - State institutions

1. Competent authority

There is **not one unique institutional model that would correspond to best international practice.**

International practice suggests a choice among 3 options

- (1) **Department/Directorate/Deputy Ministry in charge of consumer protection within a line ministry** (Industry, Trade, Economy, Justice, etc.): most common among Arab countries: Bahrain, Saudi Arabia, UAE, Lebanon, Jordan, Morocco. Also India, New Zealand, Japan, Belgium, Germany, Brazil, etc.
- (2) **One single authority or ministerial department for both competition and consumer protection:** e.g., Australia, USA, France, UK.
- (3) **One autonomous administrative authority for consumer protection** (National Consumer Agency): e.g., Sultanate of Oman, Egypt, Canada, Scandinavian countries, Latin American countries, Spain.

There are pros and cons for each option. Nevertheless, considerations such as **transversality** (capacity to influence and coordinate other line ministries and State agencies), **autonomy** (absence of conflicts of interests, independence from undue pressure from economic operators), **focus** (scope of competences focused on specific problems directly related to consumer concerns), and **visibility** plead for an autonomous or semi-autonomous Consumer Protection Agency.

Institutional set-up

2. Coordination body

To ensure inter-governmental coordination: this will allow for the implementation of the integration principle according to which consumer policy considerations must be taken into account when developing and implementing other national policies = « **Standing Committee for Consumer Protection** ».

Representatives of key ministries or agencies dealing, directly or indirectly, with consumer-related affairs (Health, Food and Drugs, Municipalities, Communications, Central bank, Justice, Sustainable development, Digital development, etc.).

Key supervision, guidance and monitoring role.

3. Consultation body

To ensure effective representation of private stakeholders and participation to the making of decisions that affect their interests = « **Consumer Council** »

Representatives of consumers and economic operators, members of the judiciary, academics or experts.

4. Committee in charge of handling infringement cases, deciding on corrective measures and imposing sanctions in case of medium and serious violations: « Infringement Committee ».

Institutional set-up - Non-governmental organizations

- To allow for the creation and development, including funding, of **non-governmental associations whose exclusive or main social purpose is consumer protection.**

Criteria to assess the representativeness (independence, capacity, experience) of such associations must be defined, and their functions confirmed.

- To promote the formation of independent **trade and industry associations**, together with Chambers of commerce.

Making the enforcement of the *Law* effective

! « Law on paper v. Law in action »

Pubic enforcement

= **market surveillance** = all activities carried-out, measures taken, and procedures defined to ensure that economic operators comply with the provisions of the Law and its implementing regulations.

- ✓ **To evolve from a mostly reactive market surveillance system to a mostly proactive one:** annual planning, determination of minimum compliance rates (Conformity Index), market surveys, market knowledge-based policy tools, promoting self-discipline, removing the settlement of individual disputes from the missions of the competent authority (outsourcing to economic operators, ADR/ODR bodies or the courts).
- ✓ **To improve the efficiency of reactive market surveillance practices:** modern/smart investigation and inspection protocols, promoting corrective measures (like product recalls), moving from criminal to administrative penalties, harmonization of types and amounts of sanctions.

Making the enforcement of the *Law* effective

Private enforcement

= consumer redress or consumer compensation mechanisms.

- ✓ **Attempt to conciliate** (made mandatory?)
- ✓ **Out-of-court schemes** based on mediation or arbitration: ADR/ODR bodies.
- ✓ **Simplified court procedural rules** for the settlement of « small » consumer disputes.
- ✓ Collective compensation procedures (**group and class actions**).
- ✓ **No-fault liability** regime for unsafe products.

Enabling the Implementation of the *Law*

1. Carrying-out capacity-building activities

- ✓ Human Resource Plan and Continuous Professional Development (CPD) Plan.
- ✓ Training-of-trainers programs
- ✓ Ad-hoc training programs
- ✓ Study visits and internships.
- ✓ Participation in intensive programs offered by higher education institutions

2. Education and awareness raising actions.

- ✓ Education at school programs
- ✓ Publication of Law commentary
- ✓ Workshops and conferences targeting decision-makers, high- and mid-management staff of competent authorities, economic operators, consumer associations, members of the judiciary, lawyers, journalists and academics.
- ✓ One annual national/regional event.
- ✓ Celebration of World Consumer Day (15th March).

Is the GCC Unified Code of 2016 a valid alternative ?

To our opinion, the GCC unified Code presents too many gaps to be seen as a valid alternative. It may serve as a useful reference document, but remains far from international best practices in consumer protection.

- **The way the Code is structured is confusing**, gathering all obligations of economic operators under one single chapter without clear categorization of the consumer concerns at stake
- ✓ Article 2 of the Code enumerates **eight (8) fundamental consumer rights**, but this list is outdated as it does not consider the significant revision of the UN Guidelines adopted in December 2015.
- ✓ **The scope of the Code is far from comprehensive** as numerous core consumer protection issues remain not included:
 - Consumer information and education
 - List of unfair commercial practices,
 - Contracts concluded at distance, including e-transactions.
 - Formation and implementation of contracts, including disclosure requirements at contracting and list of unfair contract terms.
 - Market surveillance
 - Consumer redress, including product liability.

Is the GCC Unified Code of 2016 a valid alternative ?

- On some other core subject matters, like the list of definitions, product labelling and consumer guarantees, the Code provisions remain by far too limited and **uncomplete**.
- The GCC system would not prevent national consumer laws to remain dispersed and therefore **would not bring legal consistency and certainty in the field of consumer protection**. The issue of the interface between the Code and other relevant laws is not dealt with. Namely, the provisions of the Code relating to consumer safety are not in line with the *GSO-adopted System on Product Safety and Market Surveillance*, which indeed has inspired several product safety laws and regulations in GCC countries in the last few years.



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Thank you!