



## ERGO

*Analysing developments impacting business*

### STRICTER REGULATIONS ON E-COMMERCE – THE CONSUMER PROTECTION (E-COMMERCE) RULES, 2020

27 July 2020

#### Background

The Ministry of Consumer Affairs, Food, and Public Distribution, Government of India notified and made effective the provisions of the Consumer Protection (E-Commerce) Rules, 2020 (E-Commerce Rules) under the Consumer Protection Act, 2019 (Act) from 24 July 2020.

The E-Commerce Rules have been under discussion for a while now. In August 2019, the government had released the draft Consumer Protection (e-Commerce) Guidelines, 2018 under the erstwhile Consumer Protection Act, 1986. Later, in November 2019, the government released the same guidelines as draft Consumer Protection (E-Commerce) Rules, 2019 and sought comments from the public. While the E-Commerce Rules are similar in structure to their predecessors, some obligations vary; for instance, the requirement for e-commerce entities to submit a self-declaration to a government agency confirming compliance with the rules is no longer prescribed.

#### Applicability

The common subject matter of regulation under the E-Commerce Rules is an “e-commerce entity” which is defined broadly to mean any person who owns, operates, or manages digital or electronic facility or platform for e-commerce. Other key definitions in the E-Commerce Rules include, “inventory e-commerce entity” which is an e-commerce entity which owns the inventory of goods or services and sells such goods or services directly to the consumers; and “marketplace e-commerce entity” which is defined to mean an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.

The E-Commerce Rules apply to all e-commerce transactions involving goods or services, including e-commerce entities which are not established in India but systematically offer goods or services to consumers in India, with the only exception being individuals in certain limited circumstances.

The E-Commerce Rules broadly prescribe the duties of e-commerce entities which apply to all e-commerce entities irrespective of the nature of their operations.

In addition, the E-Commerce Rules also prescribe: (a) liabilities of marketplace e-commerce entities; (b) duties of sellers on marketplace; and (c) duties and liabilities of inventory e-commerce entities (which include single brand and multi-channel single

brand retailers as well) which are specific and apply only to specific persons depending on the manner in which they conduct their business.

## Key duties of e-commerce entities

- Operation in India. In terms of Rule 4(1)(a) of the E-Commerce Rules, e-commerce entities should be: (a) registered as a company in India; or (b) set up as an office, branch, or agency outside India which is owned or controlled by persons resident in India. For this purpose, Rule 4(1)(a) refers to a provision under the Indian exchange control regulations which is worded differently than Rule 4(1)(a), and this difference in wordings may possibly give rise to conflicting interpretations.
- Compliance officer. E-commerce entities are required to appoint a nodal person or senior designated functionary to ensure compliance with the Act and the E-Commerce Rules.
- Disclosures. E-commerce entities are required to disclose information about: (a) themselves, including their legal name, location of offices, details of website, and contact details of customer care and a grievance officer; and (b) location from where goods are imported, the details of the importer or the seller.
- Grievance redressal. E-commerce entities are required to establish an adequate grievance redressal mechanism. A timeline of 48 hours for acknowledgment and one month for redressal has been prescribed for the consumer complaints.
- Other obligations. E-commerce entities are prohibited from adopting any unfair trade practices. Specifically, the E-Commerce Rules states that e-commerce entities cannot: (a) charge cancellation charges from consumers unless similar charges are also borne by the e-commerce entities on unilateral cancellation of orders by them without any reason; (b) record consent for purchase automatically (such as pre-ticked checkboxes) and must record explicit consent for each purchase; (c) manipulate the price of the goods or services offered on their platforms in such a manner as to gain unreasonable profit by imposing an unjustified price on consumers; and (d) discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act.

## Key liabilities of marketplace e-commerce entities

- Intermediaries. The E-Commerce Rules recognise that marketplace e-commerce entities may seek benefits of being regarded as an intermediary by complying with the Information Technology (Intermediary Guidelines) Rules, 2011. The Act, however, imposes other liabilities on electronic service providers which includes marketplace e-commerce entities.
- Disclosures. Marketplace e-commerce entities are required to disclose on their platforms: (a) details of sellers; (b) information relating to return, refund, exchange, warranty and guarantee, delivery and shipment, payment methods, and grievance redressal mechanism; (c) explanation of the ranking algorithm that determines the ranking of goods or sellers on the platform; (d) terms and conditions generally governing their relationship with sellers; and (e) information provided by the sellers to them including, mandatory notices and information as required to be provided by the sellers under applicable law, details of goods and services offered for sale (including country of origin, details of grievance officer, and guarantee related to authenticity of products). Marketplace e-commerce entities are required to obtain an undertaking from each seller to confirm that the information provided by such seller is true.

- Grievance redressal. Marketplace e-commerce entities are required to provide for a dispute resolution mechanism on their platforms for consumers to approach the sellers.
- Records. Marketplace e-commerce entities are also required to record details of sellers where they repeatedly offer goods or services that were previously removed under the Copyright Act, 1957, the Trade Marks Act, 1999, or the Information Technology Act, 2000.

### Key duties of sellers on marketplace

Sellers offering goods and services through a marketplace e-commerce entity are required to, among other requirements, (a) ensure that advertisements are consistent with the goods or service, (b) there is no misrepresentation of facts, and (c) they do not refuse to accept returns if such goods or services are defective, deficient, or delivered late (other than owing to *force majeure*), (d) execute a written contract with the marketplace e-commerce entity; and (e) appoint a grievance officer.

### Key duties and liabilities of inventory e-commerce entities

Inventory e-commerce entities are subject to similar duties and liabilities as that of sellers and marketplace e-commerce entities. They are required to, among other requirements: (a) make necessary disclosures about their policies (including, return, refund, exchange, warranty and guarantee, delivery, payments, and grievance redressal); (b) provide mandatory notices and information as required under applicable law; (c) display the total price of the product; (d) ensure that advertisements are consistent with the goods or service, (e) there is no misrepresentation of facts, and (f) they do not refuse to accept returns if such goods or services are among other factors, defective, deficient, or delivered late (other than owing to *force majeure*).

### Conclusion

The recognition of marketplace e-commerce entities as intermediaries and the obligation on the sellers to provide proper information to the marketplace which is then required to be disclosed on the platform sets right a delicate balance between the obligations of the marketplace e-commerce entities and sellers on the platform.

However, the E-Commerce Rules do, at instances, seem to address consumer issues based on precedents rather than laying out a wider guideline which can be adopted for change in market practice and technology.

The difference between wordings of Rule 4(1)(a) and the relevant provision of Indian exchange control regulations referred to therein needs further clarification. Absence of such a clarification may cause considerable adverse impact to foreign e-commerce platforms that are accessible to Indian consumers.

The omission of limited liability partnerships from the definition of 'e-commerce entities' is also conspicuous, and leaves open the question as to whether or not e-commerce business can be conducted by a limited liability partnership which are entirely owned and controlled by Indian residents. This omission appears to be because of aligning the definition of 'e-commerce entities' with the one under Indian exchange control regulations. However, given that the rationale behind the definition under the Indian exchange control regulations is fundamentally different from the one under the E-Commerce Rules, the inclusion of limited liability partnership which are entirely owned and controlled by Indian residents may merit reconsideration.

Lastly, the E-Commerce Rules have come into force from 23 July 2020 and there are several penalties for non-compliance. Given the number of changes that existing

players may need to make to their operations, a compliance window would have been fair and reasonable.

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