

ERGO

Analysing developments impacting business

NEW RULES FOR OTTS: DISCLAIMERS FOR CIGARETTES AND TOBACCO PRODUCTS

14 June 2023 The Ministry of Health and Family Welfare (MOHFW) [notified](#) the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2023 (Amendment) on 31 May 2023 i.e., World No-Tobacco Day. This Amendment has been made to the existing Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 (Rules), which restrict smoking in public places, advertisement of cigarettes and tobacco products, sale to minors, and requires inclusion of tobacco related warnings. The Amendment mandates inclusion of anti-tobacco health spots, warnings, and disclaimers by publishers of online curated content (OTT Platforms) in audio-visual programs depicting use of cigarettes and tobacco products.

While the [intent](#) of the Amendment is to curb rising tobacco consumption amongst the younger generation, it imposes a heavy burden of compliance on OTT Platforms. To comply with the Amendment, OTT Platforms will be required to edit large volumes of content available on their platforms (including content acquired prior to the Amendment being enacted), to incorporate the requisite health warnings and disclaimers in all content available or to be made available on the platforms.

The key compliances set out in the Amendment are as follows:

- [Application](#): The Amendment will come into effect 3 months from the date of its publication in the official Gazette.
- [Disclaimers](#): Every OTT Platform displaying tobacco products or their use is required to display:
 - (i) anti-tobacco health spots for atleast 30 seconds each at the beginning and middle of the relevant program;
 - (ii) anti-tobacco health warnings as a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the program; and
 - (iii) audio-visual disclaimers on the ill effects of tobacco use for atleast 20 seconds each at the beginning and middle of the relevant program.

- Sample Disclaimers: OTT Platforms will have access to sample disclaimers made available on the National Control Tobacco Programme website (*available at ntcp.mohfw.gov.in*) or the MOHFW website (*available at mohfw.gov.in*).

- Manner of Display: Anti-tobacco health warning messages displayed as a static message must be legible and readable, with black font on a white background, and must include the warnings 'Tobacco causes cancer' or 'Tobacco kills', anti-tobacco health warning, health spot and audio-visual disclaimer should be in the same language as used in the program.

- Additional Restrictions: Tobacco products displayed in online curated content should not include:
 - (i) display of brand of cigarettes or tobacco products or any product placements thereof, or

 - (ii) display or use of tobacco products in promotional materials.

- Enforcement of Amendment: In the event any OTT Platform fails to comply with the Amendment, an inter-ministerial committee including representatives from the MOHFW, Ministry of Information and Broadcasting (MIB), and Ministry of Electronics and Information Technology can take *suo motu* action or take action pursuant to a complaint.

Reportedly, OTT Platforms intend to challenge the validity of the Amendment on the grounds that OTT Platforms fall only within the ambit of the MIB. This follows a previous challenge to the [2006 amendment](#) to the Rules, which: (is) banned the display or use of tobacco products in film and television, (ii) required owners / managers of cinema halls and broadcasters to include anti-tobacco health spots or warnings, and (iii) required blurring of brand names of tobacco products displayed on any media. The Delhi High Court held that these provisions were violative of Article 19(1)(a) of the Constitution of India and ultra vires of the parent act (reference Mahesh Bhatt v Union of India [156 (2009) DLT725]). However, the Supreme Court of India stayed the order of the Delhi High Court, and the petition is still pending before the Supreme Court (reference Union of India v Mahesh Bhatt and Another [SLP (C) Number 3709-3711/2009]). It will be interesting to see the manner in which the Amendment is implemented.

- Tanu Banerjee (Partner), Ishan Johri (Principal Associate) and Garima Kedia (Associate)

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).