

## GOVERNMENT OF INDIA NOTIFIES NEW REGULATORY REGIME FOR E-COMMERCE ENTITIES

The Ministry of Consumer Affairs, Food and Public Distribution, on 23<sup>rd</sup> July 2020, in exercise of powers conferred by Section 101 (1) (zg) of the Consumer Protection Act, 2019, notified the Consumer Protection (E-Commerce) Rules, 2020 ("Rules") with the aim of securing the rights and interests of consumers by preventing all forms of unfair trade practices across different models of e-commerce.

### □ Important Definitions under the Consumer Protection (E-Commerce) Rules, 2020:

#### ≡ The Rules ascribe the following definitions to these terms:

- **"E-commerce entity"** includes any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but excludes sellers offering their goods or services for sale on a marketplace e-commerce entity.
- **"Marketplace e-commerce entity"** is an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers.
- **"Inventory e-commerce entity"** is an e-commerce entity which owns the inventory of goods or services and sells such goods or services directly to the consumers including single brand retailers and multi-channel single brand retailers;
- **"Seller"** means all such persons as per Section 2(37) of the Consumer Protection Act, 2019 including service providers;
- **"Platform"** means an online interface in the form of any software including a website or a part thereof and applications including mobile applications;

### □ Applicability of the Consumer Protection (E-Commerce) Rules, 2020:

#### ≡ The Rules will apply to all of the following:

- Goods and services sold over digital or electronic networks including digital products;
- Different models of e-commerce including marketplace and inventory models of e-commerce;
- All e-commerce retail, including multi-channel single brand retailers and single brand retailers in single or multiple formats;

- E-commerce entities, whether registered in India or abroad, which systematically offer goods and services to Indian consumers.

#### ≡ However, the Rules will not apply to:

- Any activity of a natural person carried out in their personal capacity if such activity is not for a professional/commercial purpose on a regular or systematic basis.

#### ≡ The violation of the Rules will attract penal action under the Consumer Protection Act, 2019.

### □ Duties of E-Commerce Entities under the Consumer Protection (E-Commerce) Rules, 2020:

#### ≡ The Rules require the e-commerce entity to:

- Establish an adequate grievance redressal mechanism based on the number of grievances ordinarily received by such entity from India;
- Endeavor to become a partner in the convergence process of the National Consumer Helpline of the Central Government on a best effort basis;
- Effectuate payments towards accepted refund requests of the consumers in the manner prescribed by the Reserve Bank of India or any other competent authority under any law for the time being in force, within a reasonable period of time;
- Record the consent of a consumer for the purchase of any good or service offered on the platform only where such consent is expressed through an explicit and affirmative action.

#### ≡ The Rules require the e-commerce entity to refrain from:

- Indulging in any unfair trade practices, whether in the course of business on its platform or otherwise;
- Imposing cancellation charges on consumers cancelling after confirming purchase, unless similar charges are also levied on the e-commerce entity, when they cancel the purchase order unilaterally for any reason;
- Manipulating prices of the goods or services offered on their platform to gain unreasonable profits by imposing any unjustified price subject to the prevailing market conditions;
- Discriminating between consumers of the same class and arbitrarily classifying them in a way that affects their rights under the Consumer Protection Act, 2019;

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- Recording consent of customers automatically, including via use of pre-ticked checkboxes.
- ≡ **The Rules require the e-commerce entity to appoint:**
  - A nodal person of contact or an alternate senior designated functionary residing in India, to ensure compliance with the provisions of the Consumer Protection Act, 2019 or the rules made thereunder;
  - A grievance officer for consumer grievance redressal who must acknowledge the receipt of any consumer complaint within forty-eight hours and resolve the complaint within one month from the date of receipt of the complaint.
- ≡ **The Rules mandate every e-commerce entity to provide the following information in a clear and accessible manner on its platform for all its users:**
  - Legal name of the e-commerce entity;
  - Principal geographic address of its headquarters and all branches;
  - Name and details of its website;
  - Contact details like e-mail address, fax, landline and mobile numbers of customer care as well as of grievance officer.
- ≡ **For an e-commerce entity offering imported goods or services for sale, following details must be stated on its platform:**
  - Name and details of any importer from whom it purchased such goods or services, or who may be a seller.
- ☐ **Duties of Sellers on Marketplace:**
- ≡ **Sellers offering goods or services through a marketplace e-commerce entity must not:**
  - Adopt any unfair trade practice whether in the course of the offer on the e-commerce entity's platform or otherwise;
  - Represent itself as a consumer and post reviews about goods or services or misrepresent the quality or the features of any goods or services;
  - Refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are:
    - i. Defective, deficient or spurious;
    - ii. Not of the characteristics or features as advertised or as agreed to; or
    - iii. Delivered later than the stated delivery schedule. Provided that in the case of late delivery, such late delivery was not due to force majeure.
- ≡ **Sellers offering goods or services through a marketplace e-commerce entity shall:**
  - Have a prior written contract with the respective e-commerce entity in order to undertake or solicit such sale or offer;
  - Appoint a grievance officer for consumer grievance redressal and ensure that the grievance officer acknowledges the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint;
  - Ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services;
  - Provide to the e-commerce entity its legal name, principal geographic address of its headquarters and all branches, the name and details of its website, its e-mail address, customer care contact details such as fax, landline, and mobile numbers and where applicable, its GSTIN and PAN details.
- ≡ **Sellers offering goods or services through a marketplace e-commerce entity shall provide the following information to be displayed clearly on the platform:**
  - Contractual information required to be disclosed by law;
  - Total price in single figure of any good or service, along with the breakup price for the good or service, showing all the compulsory and voluntary charges such as:
    - i. Delivery charges;
    - ii. Postage and handling charges;
    - iii. Conveyance charges;
    - iv. The applicable tax;
  - Mandatory notices and information provided by applicable laws, and the expiry date of the good being offered for sale, where applicable;
  - Relevant details about the goods and services offered for sale by the seller including country of origin which are necessary for enabling the consumer to make an informed decision at the pre-purchase stage;
  - Name, contact numbers, and designation of the grievance officer for consumer grievance redressal or for reporting any other matter;

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- Accurate information related to terms of exchange, returns, and refund including information related to costs of return shipping;
  - Relevant details related to delivery and shipment and applicable guarantees and warranties of goods or services.
- **Liabilities of Marketplace E-Commerce Entities:**
- ≡ **The following information shall be displayed prominently on its platform by a marketplace e-commerce entity in a clear and accessible manner:**
- Name of Seller's business;
  - Seller's Registration Status;
  - Seller's geographic address;
  - Seller's Customer care number;
  - Any rating or other aggregated feedback about the seller;
  - And any other information about the seller necessary for enabling consumers to make informed decisions at the pre-purchase stage.
  - Information on return, refund, exchange, warranty and guarantee, delivery and shipment;
  - Modes of payment, the security of those payment methods;
  - Any fees or charges payable by users under those payment methods;
  - Procedure to cancel regular payments under those payment methods, charge-back options, if any;
  - Contact information of the relevant payment service provider;
  - Grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
  - Ticket number for each complaint lodged through which the consumer can track the status of the complaint;
  - Information on available payment methods, information provided by the seller regarding contracts, pricing, notices, guarantees and warranties etc.;
  - Explanation of the main parameters which, individually or collectively, are most significant in determining the ranking of goods or sellers and the relative importance of those main parameters through an easily and available description drafted in plain and intelligible language.
- ≡ **The marketplace e-commerce entity shall:**
- On a written request made by a consumer who purchased any goods or services on its platform, provide him with information regarding the seller, including the principal geographic address of its headquarters and all

branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution;

- Include clauses in their terms and conditions which govern its relationship with sellers on its platform, and include a description of any exclusive treatment which it gives or might give between goods or services or sellers of the same category.
- Make reasonable efforts to maintain a record of relevant information for the identification of all sellers who have repeatedly offered goods or services that have previously been removed or access to which has previously been disabled under the Copyright Act, 1957, the Trade Marks Act, 1999 or the Information Technology Act, 2000. While it is not mandatory for such e-commerce entity to terminate the access of such sellers to its platform, but it may done on a voluntary basis.
- Take an undertaking from the sellers to ensure that descriptions, images, and other content pertaining to goods or services on the marketplace e-commerce entity's platform is accurate and corresponds directly with the appearance, nature, quality, purpose and other general features of such good or service.

≡ **Marketplace e-commerce entities seeking to avail the exemption from liability under section 79(1) of the Information Technology Act, 2000, must:**

- Comply with sub-sections (2) and (3) of that section, including the relevant provisions of the Information Technology (Intermediary Guidelines) Rules, 2011.

□ **Duties & Liabilities of Inventory E-Commerce Entities:**

≡ **Every inventory e-commerce entity shall provide the following information in a clear, prominent and accessible manner to its users:**

- Accurate information related to return, refund, exchange;
- Warranty and guarantee;
- Delivery and shipment, cost of return shipping;
- Grievance redressal mechanism, and any other similar information which may be required by consumers to make informed decisions;
- Mandatory notices and contractual information required to be disclosed by applicable laws;

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- Mode of payments, their security, the procedure to cancel regular payments under those methods;
- Any fees or charges payable by users, charge back options, if any, and the contact information of the relevant payment service provider;
- Total price in single figure of any good or service along with the breakup price for the good or service, showing all the compulsory and voluntary charges, such as delivery charges, postage and handling charges, conveyance charges and the applicable tax;
- Ticket number for each complaint lodged, through which the consumer can track the status of their complaint.

≡ **An inventory e-commerce entity shall not:**

- Falsely represent itself as a consumer and post reviews about goods and services or misrepresent the quality or the features of any goods or services.
- Refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund consideration, if paid, if such goods or services are:
  - i. Defective, deficient or spurious;
  - ii. Not of the characteristics or features as advertised or as agreed to; or
  - iii. Delivered later than the stated delivery schedule. Provided that in the case of late delivery, such late delivery was not due to force majeure.

≡ **An inventory e-commerce entity shall:**

- Assume appropriate liability in any action related to the authenticity of such good or service if it explicitly or implicitly vouches for the authenticity of the goods or services sold by it, or guarantees that such goods or services are authentic,.
- Ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services.

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