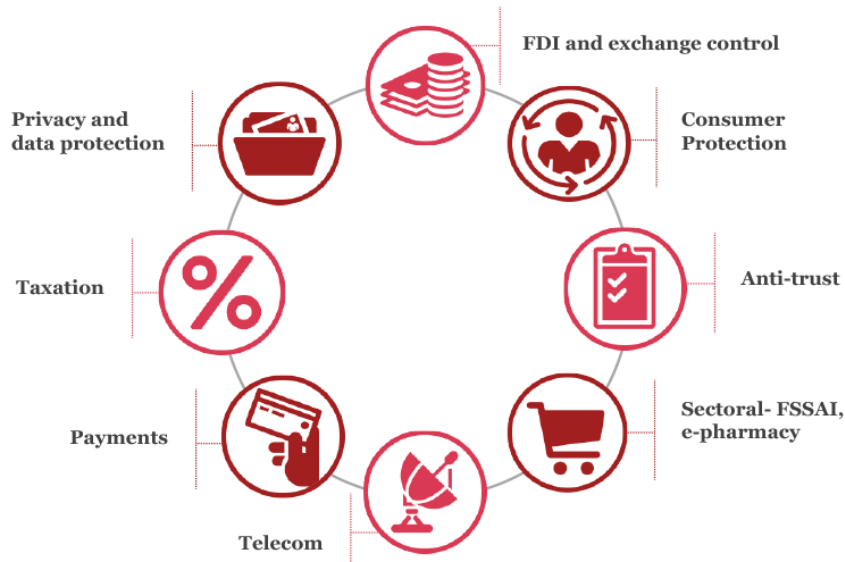


Key enactments applicable to E-commerce industry

In earlier articles, we dealt with the different business models that are prevalent in the E-Commerce industry. Different business plans revolve around such business models. And therefore, it is pertinent to be aware of the various enactments associated with any industry. E-commerce is governed by multiple regulatory bodies and several horizontal regulations:



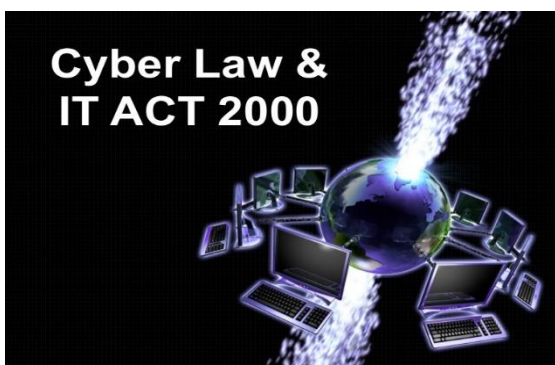
Following are legal aspects of the business which are needed to be taken care of by any e-commerce business running entity:

1. Indian Contracts Act, 1872 read with Information Technology Act, 2000



Indian contract act is significant to determine the validity of contracts formed through electronic means. This lays down the rules as to communication and acceptance of proposals, revocation, and contract formation between customers, sellers, and the marketplace provider. Terms of Service, Privacy Policy and return policies of any online platform are to be laid out such that they are legally binding agreements.

2. Information Technology Act, 2000 (IT Act) and General Data Protection Regulations (GDPR).



E-commerce consists of all business conducted by means of computer network. The I.T Act 2000 aims to provide the legal recognition for transaction carried out by means of electronic data interchange and other means of electronic communication known as electronic commerce when the buying and selling is included over Web it involves a formation of contract known as e-contract or cyber contracts. So in this regard the following aspects should be taken care:

- Compliances under Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011
- Intermediary Rules 2011 under the IT Act stipulates the regulations relating to the content displayed on the intermediary website especially pertaining to defamation and obscenity.
- Under section 79 of the IT Act certain safe-harbours are available to e-commerce entities functioning as 'Intermediaries'.
- Regulations applicable to 'Intermediaries' relating to the content displayed on the portal, especially pertaining to defamation and obscenity.
- If the end consumers happen to be an EU resident, GDPR compliance becomes mandatory.

3. Trade Mark Act, 1999



- The entity must secure all trademarks and copyrights intended to be used by it, one must also be mindful to not infringe the trademarks and copyrights of other businesses as well.
- Selling of counterfeit goods and misuse of trademark rights by sellers listed on platform is a significant challenge, and must be dealt with by the platform operator to avoid prosecution.
- In the age of such wide use of internet e-commerce entities shall be aware of various

intellectual property infringements that may happen online such as cybersquatting, identity theft, copyright infringement, caching, derivative works, domain name protection and etc.

- The entity should comply with the provisions of the Trade Mark Act, 1999.

4. Copyright Act, 1957



The copyright act, 1957 protects original literary, dramatic, musical and artistic works and cinematograph films and sound recordings from unauthorized users.

In e-commerce businesses copyright protects the creative content, including photographs, written material, music, graphics and videos, altogether protects the Computer database of the company. It gives the owner a certain set of minimum rights over

his work and the protection from anybody tries to copy his work.

5. Payment and Settlements Systems Act, 2007 and other RBI regulations on payment mechanisms



Under the law "payment system" means a system that enables payment to be affected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them, but does not include a stock exchange. An e-commerce entity has to make sure if it qualifies as a payment system and shall comply accordingly. As per the RBI notification, it is mandatory for an intermediary which is receiving payments through electronic modes to

have a Nodal Account in operation for settling the payments of the merchants on its online e-commerce platform.

Further depending on the arrangements for payments for the transactions on the portal, the entity must comply with the relevant rules relating to online payments made by the Reserve Bank of India (RBI).

6. Consumer Protection



As a provider of goods or services under the Consumer Protection Act, 1986, the entity must have in place adequate policies to address consumer complaints. Moreover, it is advisable for the e-commerce platforms to have mediation and arbitration mechanisms in place as well.

An entity who carries or intend to carry an e-commerce business in India should comply with the rules laid down in the consumer protection (e-commerce) rules 2019.

7. Competition



Fixation of prices by arrangements between sellers listed on the platform and the entity, exclusive sales agreements, and other practices under the scope of Sections 3 and 4 of the Competition Act, 2002 can be brought under the scrutiny of the Competition Commission of India. The entity very careful of these factors while entering into any arrangements which may leverage its existing

dominance in the market, or work towards the creation of foreclosure or entry barriers in the relevant market.

8. GST Applicability



Irrespective of whether the annual turnover of the entity is lower than the prescribed threshold, e-commerce operators are not eligible for composition levy scheme under the GST laws of India. Moreover, it is mandatory for all e-commerce operators and sellers/distributors/suppliers who sell through e-commerce to get GST registration in all States where they purport to sell their goods/services.

An e-commerce operator should also comply with the TCS provisions provided under section 52 of GST Act.

9. Income tax



The total income of the previous year of every person shall be charged to income-tax at the rates prescribed in the Finance Act as applicable to the relevant Assessment year. In respect of income chargeable to income-tax, tax shall be deducted at source or paid in the form of advance tax in accordance with the relevant provisions.

Section 194O has been introduced in the Union Budget 2020. According to Section 194O, an e-Commerce operator is required to deduct TDS for facilitating any sale of goods or providing services through an e-Commerce participant. TDS on e-commerce operators under section 194-O is applicable from 1 October 2020

10. Companies Act and FEMA regulations

E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.

Anyone who intends to start an e-commerce business in India should comply with the provisions of the companies act 2013 along with the FEMA relations.

11. Draft e-commerce policy

The Department for Promotion of Industry and Internal Trade (DPIIT) on February 23, 2019 published the 'Draft e-commerce Policy'. The Draft Policy focuses on data protection, the State's paternalistic attitude towards the use of the citizen's data and cross border transactions. The Draft Policy intends to regulate some things beyond e-commerce i.e. it proposes to regulate technologies like AI, IoT, Cloud computing and Cloud-as-a-Service etc. On a holistic level it is understood that these technologies empower e-commerce industry currently and are integral to its growth and therefore the Government intends to bring these technologies under the purview of the Draft Policy. The Draft Policy is a mix of visionary thought process, advanced technological solutions, putting in place digital infrastructure to support India's digital economy.

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