



February 2025

## Understanding India's new e-commerce self-governance guidelines

On January 16, 2025, the Bureau of Indian Standards (“BIS”) under the Ministry of Food and Consumer Affairs, has proposed a draft guideline titled ‘E-commerce - Principles and Guidelines for Self-Governance’ (“**Draft Guidelines**”) with an aim to enhance transparency, consumer protection, and fair business practices, marking a significant stride in regulating online marketplaces in a consumer-centric manner. The Draft Guidelines seeks to fortify consumer rights and ensure a level playing field in the e-commerce landscape.

### Principles of self-governance

The Draft Guidelines introduces 3 (three) phase principles covering pre-transaction, contract formation and post-transaction stages for e-commerce operations.

#### Pre-transaction principles

The ‘Pre-Transaction Principles’ outline essential guidelines for e-commerce entities to ensure transparency, authenticity, and consumer protection prior to any transaction:

1. **Registration and Know Your Customer (“KYC”):** E-commerce platforms are required to ensure that sellers on their platforms verify their identity, provide detailed information about their legal entity, contact details, key managerial personnel, and financial information relevant to their credit eligibility. Additionally, platforms must conduct rigorous KYC checks for all business partners, especially third-party sellers, and maintain a checklist of these procedures for transparency.
2. **Listing products:** Every product listed must have detailed information such as the product title, seller's contact details, identification number, and supporting images or videos. This is to ensure that consumers can fully understand the product's features, utility, and cost. The platform must also review these listings to ensure compliance before they go live.
3. **Disclosure of relevant information:** E-commerce platforms must make all pertinent information easily accessible and legible to consumers. This includes comprehensive product descriptions, pricing details, privacy policies, terms and conditions, and information on cancellation and refunds, safety warnings, applicable restrictions, policy for wrong delivery and non-delivery etc. This information should be easy to find without needing to navigate through multiple pages.
4. **Display of product/service information:** Information related to the products' or services' functionality, warranty, manufacturer or importer, country of origin, and after-sale support should be prominently displayed on the platform. High-resolution images and videos should also be included to aid consumer decision-making.

5. **Placement of disclosures:** All necessary disclosures should be provided in a manner that is relevant to the **consumer's** decision-making stage and displayed prominently across the platform to ensure they are easily accessible.
6. **Identification of e-commerce entity:** Platforms are required to clearly display information sufficient for identifying the legal operating entity, ensuring effective communication and grievance redressal as per consumer protection laws, and fulfilling customer service obligations such as returns, refunds, and warranty claims.

### Contract formation principles

1. **Express informed consent:** E-commerce platforms must obtain explicit consumer consent for all transactions, avoiding automatic methods like pre-ticked checkboxes.
2. **Transaction review:** Consumers should have the ability to review all transaction-related details, including costs and policies, at the confirmation point, with options to edit, modify, or cancel the transaction before final payment. Ordering information should include order summary. E-commerce entities will ensure that the point at which consumers are asked to confirm a transaction ("**Confirmation Point**"), will be understood as the point at which payment is due from the consumer or where the consumer is contractually bound to proceed with the transaction, is clearly and unambiguously indicated to the consumer.
3. **Reversal processes and policy:** Platforms must establish clear and accessible policies for cancellations, returns, replacements, and refunds, detailing any associated charges and time limits. Communication during these processes should be transparent, keeping the consumer informed at all stages.
4. **Transaction record:** Complete and accurate transaction records must be maintained, with consumers having access to their transaction history as required by law.
5. **Payment principles:** A variety of secure payment methods must be offered, with all associated costs clearly disclosed. Payment transactions should be protected through encryption, two-factor authentication, and compliance with relevant laws.
6. **Platform hosted payment instruments:** Any payment options hosted by the e-commerce platform must comply with all applicable laws and clearly disclose any terms, including additional charges or conditions.
7. **Recurring charges and subscriptions:** Full disclosure of terms related to recurring charges or subscriptions is required, including the ability to opt-out or cancel. Any changes to the terms should be communicated in advance and require express consent from the consumer.
8. **Refund in case of cash on delivery:** For cash on delivery transactions, refunds must be processed in the manner chosen by the consumer, ensuring flexibility and adherence to consumer preferences.

### Post-transaction principles

1. **Merchantability:** E-commerce platforms must facilitate easy returns, exchanges, refunds, or dispute resolutions if products sold do not meet the advertised purposes, are unusable, or are deficient in some way. Clear timelines for refunds, replacements, or exchanges must be prominently disclosed, and special provisions should be made for counterfeit goods, allowing additional time beyond general timelines.
2. **Dispute redressal:** E-commerce entities are required to ensure that consumer grievances and disputes are resolved in accordance with the procedures laid down in the Consumer Protection Act, 2019, and its associated rules. This ensures that consumer rights are protected and that there is a formal process for addressing complaints.
3. **Notification of delivery:** The platform must ensure timely notifications of the delivery of goods, whether the delivery is facilitated directly through the platform or by a third-party service provider. Notifications should be

clear and provided through multiple channels like SMS or email, including tracking information to enhance the consumer experience.

## General principles

1. **Sale of banned products:** E-commerce platforms must ensure that no banned goods are sold. This includes conducting rigorous KYC checks on sellers, maintaining a list of banned products, and employing technology to monitor listings and perform background checks. Platforms should also provide mechanisms for consumers to report any violations.
2. **Data protection:** Platforms must comply with all applicable data protection laws, ensuring that personal data collected from consumers is used solely for transaction facilitation and other disclosed purposes for which express consent has been obtained. Data must not be misused for any non-disclosed commercial activities.
3. **Unsolicited commercial communication:** E-commerce entities must obtain express consent for any communication sent to consumers and provide options for consumers to opt-out of non-transactional communications.
4. **Fair business practice principles:** E-commerce operations must be neutral and transparent, providing a level playing field for all participants without preferential treatment. This includes restrictions on platforms giving preferential treatment to any sellers, especially those with direct or indirect ties to the platform itself.
5. **Anti-counterfeiting measures:** Platforms are required to implement policies and processes to prevent the listing of counterfeit products. This includes mechanisms for rights owners and consumers to report violations, and processes for investigating and responding to such reports.
6. **Representations on goods:** E-commerce entities should avoid making any representations about the quality or fitness of goods unless it is non-deceptive and the relationship with the seller is clearly disclosed.
7. **Unfair trade practices and fairness in competition:** E-commerce platforms should not adopt practices that coerce consumers into transactions or favor certain sellers. They should ensure that consumers have a free choice in their purchases, including the choice between bundled and singular services.
8. **Advertisements:** Advertisements and sponsorships on platforms should be clearly identifiable and distinguished from editorial or review content.
9. **Correct representations:** Platforms require sellers to ensure their product descriptions and images are accurate and correspond to the actual features of the products. Platforms should also undertake periodic reviews of seller content for authenticity.
10. **Fairness of consumer reviews and ratings:** All consumer reviews and ratings must comply with standards for collection, moderation, and publication to ensure their authenticity and reliability.

## Conclusion

The Draft Guidelines set forth by the government marks a significant advancement in crafting a comprehensive regulatory environment for the burgeoning e-commerce industry. These Draft Guidelines address a wide range of operations within the sector, from enforcing rigorous KYC checks and ensuring transparent transactions to implementing strict measures against counterfeit goods and promoting fair business practices. By mandating clear and equitable practices, the Draft Guidelines aim to safeguard both consumers and legitimate businesses, promoting an ethical marketplace where competition is based on quality and service rather than deceptive practices or preferential treatment. The successful implementation of these guidelines is pivotal in sustaining consumer trust and facilitating the healthy growth of the e-commerce landscape.

## Consumer Protection Practice

JSA has a vast experience on matters relating to consumer protection laws and related matters. We have advised clients (both domestic and global), across sectors and industries on complex queries around consumer protection laws and rules thereunder, and its interplay with other related legislations, like data privacy and exchange control laws.

We have developed a leading consumer protection practise supported by a group of extraordinarily gifted and experienced solicitors with knowledge of the essential consumer law sector. Our team has experience in managing complex consumer cases at the national level in India. We are renowned for our proficiency in successfully defending the interests of our clients.

Our key areas of advice include:

- Analysis of business activities from consumer protection laws perspective including import regulations and foreign trade policy of India;
- Advise on registration and licensing requirements;
- Advising on e-commerce rules;
- Advise on single brand retail and multi-brand retail from foreign exchange laws perspective;
- Advise on product liability issues and compliances;
- Advising on standards issued by the BIS and quality control orders including advisory in relation to inspection and enquiries by authorities;
- Advising on advertisement, packaging and labelling requirements.

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41 Ranked Lawyers



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