



Guidelines for Foreign Direct Investment on e-commerce

E-commerce in recent times has been growing rapidly in India. By 2020, the e-commerce market size is expected to reach USD80 billion¹, showing year on year growth in the range of 30 to 35 per cent². This growth is likely to sustain for the next few years as e-commerce continues to reach new geographies, encompass new markets and provide greater benefits to e-tailers, consumers in terms of providing a large number of traders an additional source of sales, providing consumer greater convenience and access to a large number of products, etc.

The absence of an express foreign investment policy pertaining to e-commerce was limiting the flow of foreign capital in this sector. In order to address the concern of various stakeholders and facilitate further investment, the government has provided with awaited guidelines on foreign investment in e-commerce vide Press Note No. 3 (2016 series) dated 29 March 2016. The key features of the press note issued by Department of Industrial Policy and Promotion in this regard are enumerated below:

Introduction of definitions

- **E-commerce:** It means buying and selling of goods and services including digital products

over the digital and electronic network which include a network of computers, television channels and any other internet application used in an automated manner such as web pages, extranets, mobiles, etc.

- **E-commerce entity:** An entity (i.e. Indian or foreign company including its office/branch in India) conducting e-commerce business.
- **Inventory based model of e-commerce:** An e-commerce activity where the inventory of goods and services is owned by an e-commerce entity and is sold to the consumers directly.
- **Marketplace based model of e-commerce:** An e-commerce activity where an information technology platform will be provided by an e-commerce entity on a digital and electronic network to act as a facilitator between buyer and seller.

Guidelines for foreign investment in the e-commerce sector

- Foreign investment will not be allowed in the inventory based model of e-commerce.
- 100 per cent foreign investment will be allowed under the automatic route in an entity undertaking sale of service through e-commerce.

¹ Impact of e-commerce on SMEs in India: KPMG-Snapdeal Report

² Impact of e-commerce on SMEs in India: KPMG-Snapdeal Report

- 100 per cent foreign investment will be allowed under the automatic route in market place-based model subject to the following conditions.
 - Permission to marketplace e-commerce entity to enter into B2B transactions with sellers registered on its platform.
 - The marketplace may provide support services to a seller in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
 - Sales from one vendor or its group companies should not exceed 25 per cent of the sales affected through the marketplace.
 - Website should clearly provide name, address and other contact details of the seller.
 - Post sale, delivery of goods to the customer, customer satisfaction, warranty/guarantee of goods and services sold will be the responsibility of the seller.
 - The marketplace will not exercise ownership over the inventory.
 - Payment for sale may be facilitated in conformity with the guidelines of the Reserve Bank of India.
 - E-commerce entities will not directly/indirectly influence the sale price of goods or services and shall maintain a level playing field.

Our comments

The above clarification by the government is certainly a welcome move and should address the concern of both offline and online retailers. On one hand, the concern of offline traders on sales price of goods being influenced by market place entities has been addressed by mandating market place to maintain a level playing field, and on the other hand, the marketplace entity is being given the flexibility to provide support services like warehousing, logistics, order fulfillment, call center, etc.

Additionally, the guidelines are likely to impact the prevalent industry practice on vendor relationships, customer acquisition, etc. and may require to re-visit the 'go to market strategy' for e-commerce companies. For instance, the guidelines on maintaining a level playing field in terms of influencing sales price will have a significant impact on how discounts/cashback are passed on to the customers.

In summary, it's a significant attempt on the part of Government to provide clear and transparent regime for this sector to raise foreign investment.



Ahmedabad

Commerce House V, 9th Floor,
902 & 903, Near Vodafone House,
Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051
Tel: +91 79 4040 2200
Fax: +91 79 4040 2244

Bengaluru

Maruthi Info-Tech Centre
11-12/1, Inner Ring Road
Koramangala, Bangalore 560 071
Tel: +91 80 3980 6000
Fax: +91 80 3980 6999

Chandigarh

SCO 22-23 (1st Floor)
Sector 8C, Madhya Marg
Chandigarh 160 009
Tel: +91 172 393 5777/781
Fax: +91 172 393 5780

Chennai

No.10, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034
Tel: +91 44 3914 5000
Fax: +91 44 3914 5999

Delhi

Building No.10, 8th Floor
DLF Cyber City, Phase II
Gurgaon, Haryana 122 002
Tel: +91 124 307 4000
Fax: +91 124 254 9101

Hyderabad

8-2-618/2
Reliance Humsafar, 4th Floor
Road No.11, Banjara Hills
Hyderabad 500 034
Tel: +91 40 3046 5000
Fax: +91 40 3046 5299

Kochi

Syama Business Center
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682019
Tel: +91 484 302 7000
Fax: +91 484 302 7001

Kolkata

Unit No. 603 – 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata 700 091
Tel: +91 33 44034000
Fax: +91 33 44034199

Mumbai

Lodha Excelus, Apollo Mills
N. M. Joshi Marg
Mahalaxmi, Mumbai 400 011
Tel: +91 22 3989 6000
Fax: +91 22 3983 6000

Noida

6th Floor, Tower A
Advant Navis Business Park
Plot No. 07, Sector 142
Noida Express Way
Noida 201 305
Tel: +91 0120 386 8000
Fax: +91 0120 386 8999

Pune

703, Godrej Castlemaine
Bund Garden
Pune 411 001
Tel: +91 20 3050 4000
Fax: +91 20 3050 4010

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