

# National E-commerce Policy, 2019 – Draft

February 26, 2019

## In brief

The Department for Promotion of Industry and Internal Trade (DPIIT) has released a draft National E-commerce Policy<sup>1</sup> (draft policy) for public consultation. The objective of this draft policy is to enable India to benefit from digitisation by creating a governance framework for various stakeholders and strategies for data localisation, consumer protection and promoting micro, small and medium enterprises (MSMEs) and start-ups.

## In detail

- Three prominent themes emerge from the newly proposed ecommerce draft policy by the DPIIT: **data**, **domestic** and **consumer**. Within these themes, the draft policy proposes strategies to address consumer protection, data localisation, governance framework for various stakeholders, growth of MSMEs, and creation of supporting infrastructure in the e-commerce sector. The draft policy is also an attempt to address the potential binding obligations of the World

Trade Organisation, such as permanently accepting a moratorium on imposing customs duties on electronic transmissions.

- E-commerce has been broadly defined to include the buying, selling, marketing or distribution of (i) goods, including digital products and (ii) services; through an electronic network.
- The draft policy deals with issues in six broad themes: (i) data; (ii) infrastructure development; (iii) e-commerce marketplaces; (iv) regulatory issues; (v)

stimulating the domestic digital economy; and (vi) export promotion through e-commerce.

- The draft policy recognises the cross cutting nature of e-commerce, which is tackled by various departments and Government (both Central and State). Therefore, a Standing Group of Secretaries on e-commerce is proposed as a mechanism to tackle inter-departmental issues effectively.

Some major suggestions in the draft policy are as follows:

Sl. No.	Focus area	Provision
1.	Retain ownership and control of Indian user generated data	<ol style="list-style-type: none"> <li>1. Data regarded as a <b>sovereign</b> resource.</li> <li>2. Emphasis on data localisation: A period of three years would be given to allow the industry to adjust to data storage requirements.</li> <li>3. Restrictions on cross-border flow of data</li> </ol>

<sup>1</sup> [https://dipp.gov.in/sites/default/files/DraftNational\\_e-commerce\\_Policy\\_23February2019.pdf](https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf)

Sl. No.	Focus area	Provision
		<p>whether it is collected by Internet of Things (IoT), devices installed at public space or by e-commerce platforms, social media, search engines, etc.</p> <ol style="list-style-type: none"> <li>Sensitive data collected in India and stored abroad cannot be shared with other foreign business entities or third parties even with customer consent. Such data can be shared with foreign Governments only with the permission of Indian authorities. Access to such data stored abroad must be provided immediately to Indian authorities upon request.</li> <li>Promotion of data infrastructure, i.e., data centres, server farms, towers, etc., by giving infrastructure status, thereby, providing financial and infrastructure support.</li> <li>Promotion of domestic alternatives to foreign-based clouds and e-mail facilities.</li> <li>Data not collected in India, B2B data sent to India under a commercial contract, software and cloud computing services not involving personal or community data and multinational corporation (MNC) internal firm data is exempt from cross-border restrictions.</li> </ol>
2.	MSME and start-up focus	<ol style="list-style-type: none"> <li>Small firms and start-ups to be given “infant-industry” status.</li> <li>Promote data access to start-ups and firms.</li> <li>E-commerce will also be included separately in the National Integrated Logistics Plan.</li> <li>India Post to anchor negotiation of costs with international freight carriers for MSMEs and start-ups for exports.</li> <li>Eliminating fees applicable for claiming export benefits, replacing Bank Realisation Certificate (BRC) charges with Export Data Processing and Monitoring System (EPDMS) access to reduce cost of exports.</li> <li>Process of on-boarding MSMEs may be simplified as the Government intends to strengthen platforms that host MSMEs.</li> </ol>
3.	Rigorous monitoring of cross border imports	<ol style="list-style-type: none"> <li>Discouraging capital dumping – mandates import shipments through customs. Prohibiting access to non-compliant app/ website.</li> <li>All gifting parcels under courier mode banned except life-saving drugs; due diligence responsibility with India Post.</li> <li>Track suspicious activities, such as sample shipping, gifting, etc., by capping samples or gifts to a certain value per shipper per month.</li> </ol> <p><i>As a result, the government is demanding mandatory India presence –</i></p> <ol style="list-style-type: none"> <li>Mandatory Indian business entity for e-commerce sites/ apps downloadable in India as importer on record.</li> <li>Nomination of local representative.</li> <li>Concept of significant economic presence to be activated.</li> <li>Sites displaying prices in INR need to have maximum retail price (MRPs) on all packaged products, physical products and invoices; to be regulated by the Department of Consumer Affairs.</li> <li>Payments from banks and gateways to unauthorised and unregistered (GST non-compliant) sites/ apps to be prohibited.</li> </ol>
4.	Export promotion initiatives	<ol style="list-style-type: none"> <li>Increase in existing cap of INR 25,000 for courier exports.</li> </ol>

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		<ol style="list-style-type: none"> <li>Reserve Bank of India regulations to dispense requirement of postal bill of exports against payment transaction reference number or consignment number.</li> <li>Implementation of Electronic Data Interchange (EDI) mode at courier terminals to fast track and ease dispatch of export consignments, including reducing documentation at air freight stations (AFS).</li> <li>Reducing air cargo congestion by setting up AFS for cargo preparation and documentation. Only “flight ready cargo” will move from the AFS to the airport.</li> <li>To increase awareness on export procedural formalities, the Government will conduct cluster specific programs for exporters.</li> </ol>
5.	Consumer protection responsibility on intermediary	<ol style="list-style-type: none"> <li>Legal metrology obligations on marketplaces.</li> <li>Updating consumer on purpose and use of data collection upfront.</li> <li>All ratings and reviews are mandated only for verified purchases.</li> <li>Stricter grievance redressal through e-consumer courts.</li> <li>Unsolicited commercial messages and calls will be regulated.</li> <li>Create a system for acknowledgement of consumer complaints and provide a first-level resolution within one week.</li> </ol> <p><i>Focused measures for addressing counterfeits</i></p> <ol style="list-style-type: none"> <li>Mandating seller details on website.</li> <li>Obtain undertakings from seller on genuineness, warranty and authenticity of products.</li> <li>Onus on platform to inform a trademark (TM) owner about the listing of a TM product and of complaints about fake TM products.</li> <li>Approval of TM owner required for listing of luxury, cosmetic or goods impacting public health.</li> </ol>
6.	Addressing piracy – expanding responsibility to all stakeholders in the digital content space	<ol style="list-style-type: none"> <li>Intermediary obligated to create systems to identify and prevent dissemination of pirated content.</li> <li>Ensure removal of copyrighted content/ work without prior permission/ authorisation of owner.</li> <li>Government to create a body of industry stakeholders to identify “rogue websites,” i.e., websites hosting predominantly pirated content. The body can direct Internet Service Providers (ISPs) to remove or disable access to the websites, prohibit payment gateways from making payments and stop advertisers from hosting any advertisements.</li> </ol>
7.	Regulations for IoT devices	<ol style="list-style-type: none"> <li>Restrictions will be placed on cross-border transfers of data collected by IoT devices in public spaces.</li> <li>Domestic industrial standards will be formulated for smart devices and IoT devices.</li> </ol>

This draft e-commerce policy, when approved, will have far-reaching impact on various stakeholders, beyond e-commerce marketplaces, who form a part of the ecosystem. Some of the regulatory implications have been illustrated below.

Some stakeholders	Data	Infra	Marketplace			Regulatory issues			Export promotion
			India presence	Counterfeits/ piracy	Rating of sellers	SEP Taxability	Consumer protection	Content liability	
E-commerce goods marketplace	✓		✓	✓	✓	✓	✓		
E-commerce services marketplace	✓		✓	✓	✓	✓	✓		
Sellers				✓	✓		✓		✓

Some stakeholders	Data	Infra	Marketplace			Regulatory issues			Export promotion
			India presence	Counterfeits/piracy	Rating of sellers	SEP Taxability	Consumer Protection	Content liability	
Payment cos.			✓	✓			✓		
Cloud service providers	✓	✓							
Social media	✓		✓			✓	✓	✓	
Content owners	✓		✓	✓		✓	✓	✓	
Logistics providers								✓	
IoT devices	✓	✓							
Advertisers									
Search engines	✓		✓	✓		✓			
Internet service providers				✓					
MSMEs	✓							✓	

**The takeaways**

- Comments are invited from stakeholders on the draft policy until 9 March, 2019. Once approved, the policy shall be implemented by making relevant changes in various laws, including but not limited to, the Information Technology Act and Rules thereunder, the Competition Act, Consumer Protection Act,

Foreign Exchange Management Act, Income-tax Act and Rules thereunder, etc.

- The policy affects the entire eco-system around the e-commerce space, i.e., marketplaces, sellers, content owners, cloud service providers, search engines, payment companies, MSMEs, start-ups, logistics service

providers, etc. Therefore, it is necessary to align the business requirements of each stakeholder with the policy objectives.

**Let's talk**

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

## Our Offices

### Ahmedabad

1701, 17th Floor, Shapath V,  
Opp. Karnavati Club,  
S G Highway,  
Ahmedabad – 380051  
Gujarat  
+91-79 3091 7000

### Hyderabad

Plot no. 77/A, 8-2-624/A/1, 4th  
Floor, Road No. 10, Banjara Hills,  
Hyderabad – 500034  
Telangana  
+91-40 44246000

### Gurgaon

Building No. 10, Tower - C  
17th & 18th Floor,  
DLF Cyber City,  
Gurgaon – 122002  
Haryana  
+91-124 330 6000

### Bengaluru

6th Floor  
Millenia Tower 'D'  
1 & 2, Murphy Road, Ulsoor,  
Bengaluru – 560 008  
Karnataka  
+91-80 4079 7000

### Kolkata

56 & 57, Block DN.  
Ground Floor, A- Wing  
Sector - V, Salt Lake  
Kolkata – 700 091  
West Bengal  
+91-033 2357 9101/  
4400 1111

### Pune

7th Floor, Tower A - Wing 1,  
Business Bay, Airport Road,  
Yerwada, Pune – 411 006  
Maharashtra  
+91-20 4100 4444

### Chennai

8th Floor  
Prestige Palladium Bayan  
129-140 Greams Road  
Chennai – 600 006  
Tamil Nadu  
+91 44 4228 5000

### Mumbai

PwC House  
Plot No. 18A,  
Guru Nanak Road (Station Road),  
Bandra (West), Mumbai – 400 050  
Maharashtra  
+91-22 6689 1000

### For more information

Contact us at  
[pwctrs.knowledgemanagement@in.pwc.com](mailto:pwctrs.knowledgemanagement@in.pwc.com)

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