

Legal Issues of E-Commerce and (or E business)

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Growing importance

- E Commerce is not all Amazon, Flipkart and Snap deal
 - E Banking
 - Uber and Ola
 - E Education and E Governance
 - OLX, Quikr, 99acres.com,
 - all mobile apps including PayTm, UPI, BHIM, Bitcoin
 - E Communication such as Social Media, WhatsApp etc
 - Smart Cities, IOT, Smart Power network, Driver less cars/Metro
 - are all E Commerce components

How Do we categorize

- B2B
- B2C,
- C2C,
- G2C,
- G2B etc
 - It is omnipresent and omni-potent

E-Legal Issues

Doing Business within
the boundaries of law

Issues

- E-Presence
 - Domain Name, Hosting, E Mail Server
 - Mobile App Name, UPI ID
- Contractual Communication
- Payment settlement
- IPR issues

E Presence

Legal Issues



What is a Domain Name?

- A mapping of a name to an IP address of the host maintained under the supervision of ICANN/CcTLD agencies through “Registrars”
 - To avoid duplication
- A Brand that recognizes the service behind the name
 - Has a trademark like value
 - Generic domain names may be possible but cannot be trademarked

Conflicts

- First Cum First Served registration in conflict with trademark rights
 - Trademark right is geographic and classification dependent
- Multiple TLDs in fundamentally in conflict
- Sunrise period registration insufficient
- Name with or without TLD is a debatable issue
 - Tes.co and Tesco
- Technical Issues may cause problems in de-duplication

TLDs crossed 1500 in 2019

- More than 1500 TLDs (Jan 2019) and 350 million domain names
 - Generic, CcTLDs (around 255 as compared to 193 members in UN)
- Name Related disputes are unavoidable
 - We need to learn to co-exist
 - Check lookalikes.in

Domain Name Registration

Essence of a typical agreement



Fees, Term and Renewals, Changes

- **In the event of a charge back, the dishonoring of a check or other non-payment after registration**
 - **Registrant relinquishes all rights**
 - may result in cancellation of your registration.
 - Registrar has the right to make the domain name registration available to other parties for purchase.
 - Registrar may reinstate any such domain name registration at its discretion, subject to its availability and receipt of the applicable registration or renewal fee and then-current reinstatement fee.

Inaccurate Information

- Wilfully providing inaccurate or unreliable information or
- wilfully failing to update information promptly
 - will constitute a breach of the Agreement that will be sufficient basis for cancellation or seizing of your domain name registration

Privacy

- Registrar may make publicly available, or directly available to third parties,
 - some, or all, of the information the registrant provides, for purposes of inspection (such as through WHOIS service)
- Registrant consents
 - to any and all such disclosures and use of, and guidelines, limits and restrictions on disclosure or use of, information provided you in connection with the registration of a domain name or use of any Services (including any updates to such information), whether during or after the term of your registration of a domain name or other Services.
- Registrant irrevocably waives any and all claims and causes of action you may have arising from such disclosure

Concurrent Registrations

- Registrar does not guarantee that you will be able to register or renew a desired domain name, even if systems indicate that domain name is available

Representations

- By applying to register a domain name, or by asking to renew a domain name registration, registrant hereby represents and warrant that
 - (a) the statements u made in connection with such registration, maintenance or renewal are complete and accurate;
 - (b) the registration of the domain name will not conflict with, infringe upon or otherwise violate the rights of any third party;
 - (c) the domain name is not registered in bad faith or for an unlawful purpose, including, without limitation, tortious interference with contractual relationships, unfair competition, injuring the reputation of another, or for the purpose of confusing or misleading visitors to a website; and
 - (d) the domain name will not be used in violation of any applicable laws or regulations

Special Conditions attached to some registrations

- **Dot Biz**

- certify that:

- (i) the domain name will be used primarily for bona fide business or commercial purposes and not
 - (a) exclusively for personal use or
 - (b) solely for the purposes of selling, trading or leasing the domain name for compensation, or the unsolicited offering to sell, trade or lease the domain name for compensation; and

- **Dot US**

- Restricted to US Residents

Dispute Resolution

- Registrant agrees to be bound by the registrar's current domain name dispute policy that is incorporated in the agreement and made a part of this Agreement by reference.

Prohibited content

- uploading, posting or otherwise transmitting of any User content on websites that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable
 - ..etc

Dispute Resolution

- Uniform Domain Name Dispute Resolution Policy (UDRP)
- Uniform Rapid Suspension System
- INDRP

UDRP

- adopted in late 1999 by ICANN
 - to offer an alternative to litigation in local courts to settle complaints by trademark owners about cybersquatting.
- binding on all domain name holders in .com, .org, .net, .info and .biz as well as [ccTLDS]
- nothing in the UDRP prevents either the trademark owner or the domain name holder from choosing to go to court before, during, or after the UDRP proceeding.
 - Panel can decide whether to postpone the proceeding or so that the Registrar won't implement the Panel's decision until the court reaches its own decision

UDRP..2

- Remedy
 - Cancellation or transfer or suspension of the domain registration
- UDRP created a definition of "bad faith registration and use" of domain names,
 - identified some situations that would be considered defenses to a trademark complaint

UDRP..3

- What is Bad faith?
 - Acquiring the domain name primarily for the purpose of selling or renting it to the mark owner (or the mark owner's competitor) for money or other value that greatly exceeds the costs of the domain name.
 - a pattern of registering domain names in order to prevent the mark owners from using their marks as domain names or to primarily disrupt a competitor's business.
 - Intentionally using the name in a manner that confuses or misleads users into believing that your site is affiliated with or endorsed by the mark owner, and getting commercial value from that confusion,.
 - Panelists are also allowed to determine whether other acts, not specified in the Policy, may also amount to bad faith.
 - Eg:false or inaccurate contact information on the registration is frequently considered evidence of bad faith.

UDRP..4

- Under UDRP, the trademark owner must prove three things:
 - (1) that s/he has a trademark right that is identical or confusingly similar to your domain,
 - (2) that you have no right or legitimate interest in the domain name, and
 - (3) that you registered and used the domain in bad faith.

List of Dispute Resolution Service Providers

- World Intellectual Property Organization [WIPO]
- The National Arbitration Forum [NAF]
- CPR Institute for Dispute Resolution [CPR]
- (Asian Domain Name Dispute Resolution Centre [ADNDRC])
- The Czech Arbitration Center
- Arab Center for Domain Name Dispute Resolution (ACDR)

Uniform Rapid Suspension System

- Applicable for certain TLDs (new)
- Clear and convincing evidence such as Court order to be produced
- Filing fee is less (\$375 vs 1500)
- Remedy is temporary but immediate suspension (average: 17 days vs 60 days)

INDRP

- Policy Similar to UDRP
 - May provide for expenses reimbursement
- **The Complaint should be addressed to:**
 - **.IN Registry**
National Internet Exchange of India (NIXI)
C/o Software Technology Parks of India
2nd Floor, Sector 29,
Noida, UP-201303
Tel: +91-120-5316795
Tel. Fax: +91-120-5318082
E-Mail: info@nixi.org.in

Non UDRP Option

- Anti cybersquatting Consumer Protection Act (ACPA) of 1999
 - Applicable in the US jurisdiction
 - May have criminal punishments
- India does not have a similar law

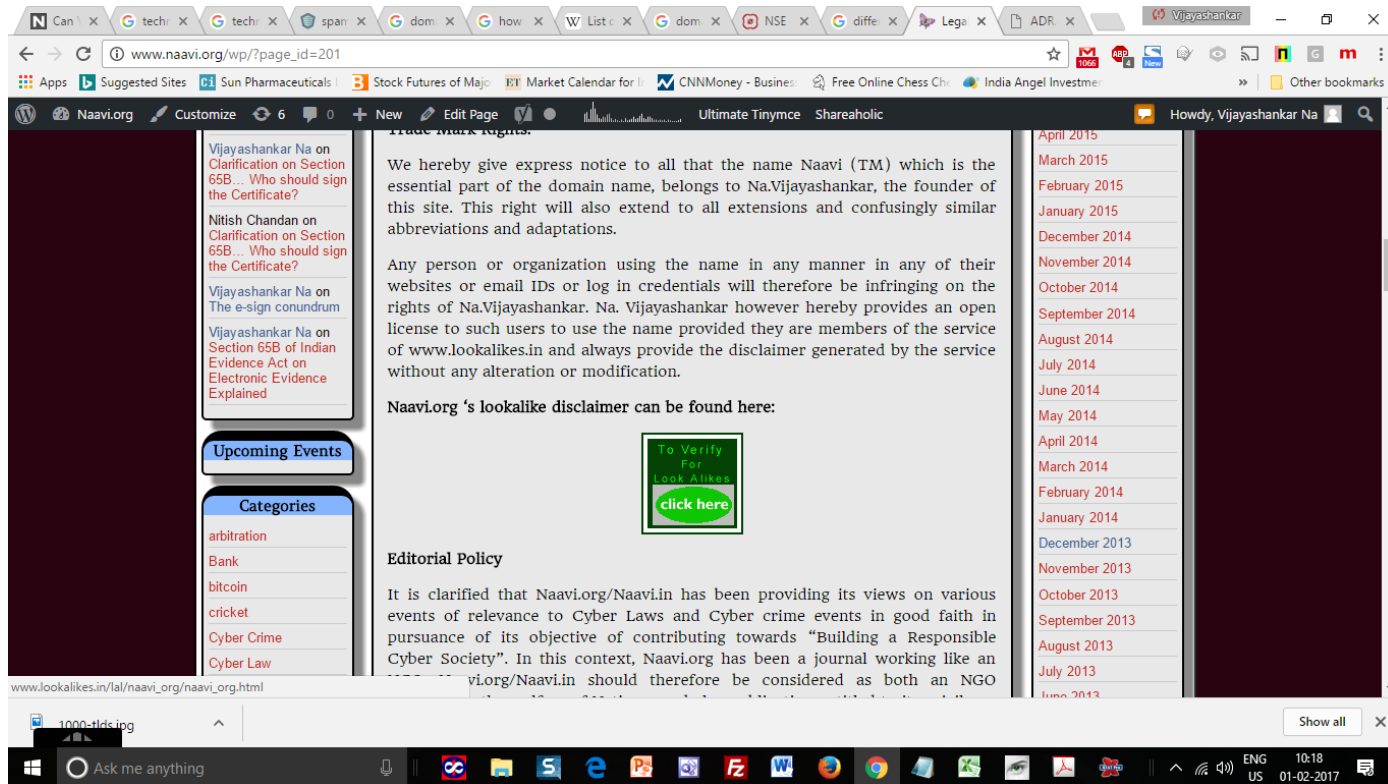
Verify For Look Alikes

A Suggested method of
resolving disputes
through disclosures

Lookalikes.in

- A Service to Website owners
- To Be used by netizens
- To Avoid Confusion of Domain name

Naavi.org-Legal



Lookalike-disclaimer

Dear Netizen,
You are now visiting : www.naavi.org

Following are the Lookalike Sites brought to you from verify4lookalikes.com (lookalikes.in)

If you are browsing through this website, please be advised and notified that this site does not have any relations with the sites listed here in as "Look Alikes" and any similarity is only accidental.

Please note that www.naavi.com which belongs to naavi is being presently squatted by BuyDomains.com. A Notice has been issued to BuyDomains.com to vacate. Any person dealing with the said domain naavi.com will be liable for action from naavi.

Look Alikes by Similarity of Names
www.naavi.co
www.navee.com ; www.navee.net ; www.naavi.it
www.navinmail.com
www.naviamarkets.com ; www.navindia.com
www.nav.com ; www.nav.org ;
nav.org.uk ; www.nav.net ;
www.navi.com ; www.navi.org ; www.navi.net
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WELCOME TO THE NEW WORLD OF VIRTUAL ODR SOLUTIONS

- ✓ ODR Global is a service for **On line Dispute Resolution (ODR)**
- ✓ Available for any Global user.
- ✓ Cost effective, Convenient and Cyber Law Compliant.
- ✓ Unique evidentiary proposition.
- ✓ Best suited for use by Institutions of Arbitration and E Commerce Companies

WHAT IS VIRTUAL ODR?

VIRTUAL ODR is the modern way of conducting an Alternate Dispute Resolution or ADR which includes all dispute resolution mechanisms outside the conventional litigation in Courts such as Arbitration, Mediation and Conciliation.

Concept	Uniqueness	CEAC Edge	Advantages
Disputes are best resolved when the parties are able to communicate instantly and clarify each other's position. A Virtual ODR process brings together all stake holders in one place for a virtual meeting across the table without the need	What is normally called as ODR in some circles involves only communication by e-mails. The featured service in this site involves the use of the Virtual Arbitration/Mediation room where the discussions take place, documents are presented,	A critical parity breaking aspect of the service offered here is that the entire proceedings in the virtual ADR meeting is recorded with audio and video in the virtual presence of a representative of the service provider viz "Registrar" certifying the electronic document on behalf of Cyber Evidence Archival center (www.ceac.in) to make it an admissible evidence in any Indian Court according to Indian Evidence Act.	ADR is useful process for dispute resolution to avoid the delays that are normal in traditional Court room litigation. ODR further cuts down the time for resolution and is ideal for "Fast Track ADR". Participants can join from any where with a just

Hosting

- Leasing of Bytes in a server located remotely
 - Based on Contractual bindings
 - Managed through access privileges
 - Legal issues similar to e-contractual aspects

E Mail Service

- A Service linked to
 - Domain name associated with the server
 - Hosting of a server
 - Legal issues similar to domain name registration, hosting and e-contractual aspects

Contractual Communication

Basis: ITA 2000/2008

Legal aspects of e-contracts

- Contract Formation
- Offer and Acceptance in Electronic form
- Authentication
- Click Wrap Contracts/Shrink Wrap contracts

Legal Recognition

- ITA 2000/8
 - Recognition of an Electronic Document
 - Section 4 read with Section 1(4)
 - Recognition of “Signing”
 - Section 5 read with Section 3 or 3A
 - Confirmation under Section 10A

Recognition of Electronic Documents

- **Sec-4:**

- Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is
 - (a) rendered or made available in an electronic form; and
 - (b) accessible so as to be usable for a subsequent reference

Excluded Documents

- Sec 1 (4)
 - (a) "Negotiable Instrument " other than cheque
 - (b) "Power-of-Attorney"
 - (c) "Trust"
 - (d) "Will"
 - (e) "Contract for the Sale "or "Conveyance "of Immovable property or any interest in such property;
 - (f) any such class of documents or transactions as may be notified by the Central Government in the Official Gazette.

Authentication

- **Sec-5**

- Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then,
- notwithstanding anything contained in such law,
- such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

E-Governance

- Sec 6,7,and 8
 - Government can accept applications, tenders, payment etc in electronic form
 - Government can store records in electronic form
 - Government can issue electronic gazettes
- Sec 9
 - Adoption of electronic documents in Government transactions cannot be compelled by the public.

Nature of the e-contracts

- Written contracts where either the offer or the acceptance or both are in electronic form
- Shrink-Wrap Contracts
 - Terms are accepted without the knowledge of details
- Website contracts are Click-Wrap contracts
 - Terms are deemed as accepted and understood by a click of a button on the web page

Nature of the e-contracts

- Hybrid contracts where offer and acceptance is in paper form but the
 - performance or consideration is in electronic form
- Hybrid contracts where offer and acceptance is in electronic form but the
 - Consent is in physical form
 - Hybrid signature with consent on the hash value of the electronic document

Section 10A Validity of contracts formed through electronic means

- Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record,
- such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

Contractual Capacity

- Who is entering into a contract?
 - Digital Certificate of the person?
 - Name
 - Age
 - Solvency
 - Sanity
 - Representative Capacity
 - Digital Certificate of the Electronic agent?
 - Is an electronic agent a “Person”?

Digital/Electronic Signature

- Digital Signature of a person of a document is the hash value of the document encrypted with the private key of the person
 - For legal validity, the digital certificate should be issued by a licensed certifying authority

Certifying Authorities..3

- Licensed Certifying Authorities

- **Safescrypt:** www.sifycorp.com: 5th Feb 2002
- **N-Code (GNFC):** www.ncodesolutions.com: 12th oct 2004
- **IDRBT:** idbrtca.org.in: 6th August 2017
- **E-Mudhra:** www.e-mudhra.com : 7th Nov 2018
- **CDAC Pune:** <https://esign.cdac.in> : 29th June 2015
- **Capricorn:** www.certificate.digital : 16th May 2016
- **NSDL:** www.egov-nsdl.co.in: 27th October 2016
- **Verasys** : www.vsign.in: 23rd July 2018
- **Indian Airforce:**

Section 11: Attribution of Electronic Records

- An electronic record shall be attributed to the originator
 - (a) if it was sent by the originator himself;
 - (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
 - (c) by an information system programmed by or on behalf of the originator to operate automatically.

Section 13 Time and place of despatch and receipt of electronic record

- (1) Save as otherwise agreed to between the originator and the addressee,
- the dispatch of an electronic record occurs
- when it enters a computer resource outside the control of the originator.

Time of despatch..

- (2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely -
 - (a) if the addressee has designated a computer resource for the purpose of receiving electronic records
 - (i) receipt occurs at the time when the electronic record enters the designated computer resource; or
 - (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

Time of despatch.

- (b)if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

Place of business

- (3) Save as otherwise agreed between the originator and the addressee, an electronic record is deemed to "be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.
- (4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

Place of Business..

- (5)For the purposes of this section –
 - (a)if the originator or the addressee has more than one place of business, the principal place of business shall be the place of business;
 - (b)if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;
 - (c)"Usual Place of Residence", in relation to a body corporate, means the place where it is registered.

Jurisdiction

- Normally Jurisdiction is specified in the terms
- If not
 - Some International practices consider the Proximity of the service to the victim (eg: is there a local office?.. Is the service available for local people? ...etc
 - ITA 2000 provides clarity ..
 - The place where the acceptance was given as per ITA 2000 can be assumed to be the place where the contract is concluded unless otherwise agreed to between the parties. This could determine the jurisdiction

Jurisdiction..

- Place of acceptance may be impacted by the nature of the offer document
 - Is it an Offer or Invitation to Offer
 - A communication is an offer if it can be accepted in to-to by the other party
 - An invitation to offer will result in an offer from the other end which can be accepted at the inviter's end.
 - Revocation can be done by either party until the unconditional acceptance is irrevocably communicated to the other party.
 - That freezes the place of acceptance

Jurisdiction...

- Jurisdiction for Law may be different from
 - Jurisdiction for the dispute resolution process
 - Eg: In arbitration, law on which the principles of contract may be defined as either the country of the acceptor or the offeror but the arbitration can be held even in third country or online
- Jurisdiction for application of law has no meaning unless there is jurisdiction for enforcement
 - May be determined by the treaties

Jurisdiction..for dispute Resolution

- ITA 2000 has provided exclusive jurisdiction to
 - Adjudicating Officer under Section 46
 - For civil claims upto Rs 5 crores

Consumer Rights

- E Service

- Also is a service under Consumer Act
- E Consumer of an e-retailer such as Flipkart has the same rights as that of the consumer who avails the service in the physical world
- The evidence however is electronic

Electronic Evidence

- Whether it is the consumer or the Merchant, any dispute in E Commerce requires
 - Evidence in electronic form
 - Has to be produced with Section 65B certificate
 - (Check naavi.org for details)

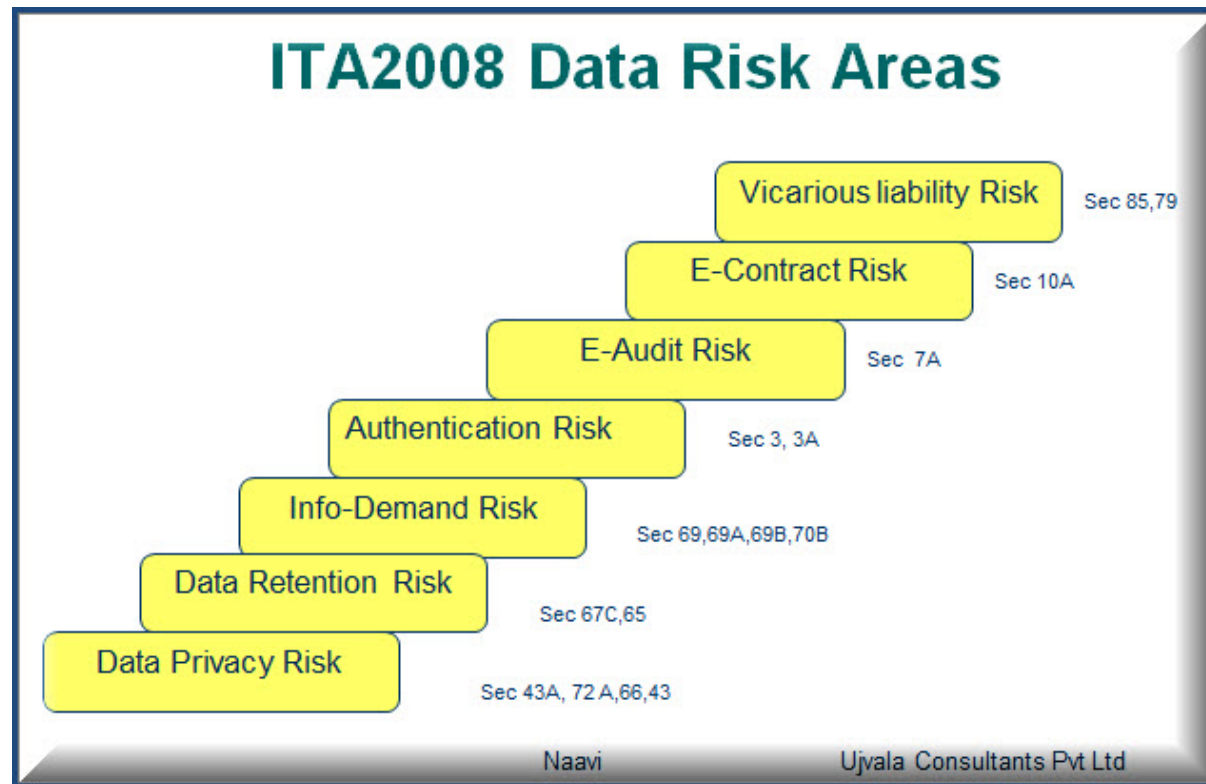
Payment Settlement

- In between the buyer and seller
 - There is a role for the intermediary/ies
 - Card Issuing Bank
 - Card Acquiring Bank
 - Payment Gateway
 - Authorization Gateway
 - Or their counterparts in Mobile Apps
- Disputes if any may arise either because of technical issues or third party crimes
 - Need to be handled with reference to the relevant laws

Crimes affecting E Commerce

- All offences under IPC related to buying and selling or contracts as well as crimes under ITA 2000/8 may affect E Commerce
 - Cheating, Forgery
 - Impersonation, Unauthorized access, Denial of service etc
 - Check Section 43, 43A, 65, 66,66C,66D,67C,72A etc
 - Intermediary liabilities under Section 79 and/or 85 including for Data Protection, Information Security, Data Preservation etc

Liabilities can arise under Sec 79/85...for various compliance shortfalls



Action Plan

- Determine the Risks through a Risk audit
- Have a compliancy plan
- Monitor regularly

E Commerce Taxation

Incidence

- Resident Companies are treated on par with other non E Commerce companies
 - Taxed for global income
- Non Resident Companies
 - If they have Permanent Establishment in India, taxed for local income locally
 - If not, designated services are taxed under equalization levy
 - Treaties in taxation may define specific terms

GST in E Commerce

GST

- Tax at the point of sale
- Liability is on the seller
- E Commerce operator for GST is the platform
- GST incidence is
 - when there is a transfer of title in goods for consideration **or**
 - when services pass hands for a consideration

FDI In E Commerce

Routes of Investment

- Automatic Route
 - No prior approval from Government required
- Government Route
 - Requires prior approval from Government

E Commerce Models

- Inventory based model

- means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

- No FDI

- Marketplace based model

- means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

- Upto 100% FDI permitted

Market Place Model

- E Commerce platform not allowed to directly or indirectly influence the sale price and offer a level playing field to all vendors
- If a vendor having the equity of the platform sells more than 25% of its wares through an e-commerce market place, the latter will be deemed to have an inventory model
- Applies to private labels and house brands

Impact of PDPA 2018

- PDPA 2018 will become operative some time
 - Will apply to E Commerce entities since they do profiling
 - Requires a proper consent format for collection of PI and SPI, security, data breach notification, data audit, DPO appointment, data localization etc

RBI obligation

- E Commerce players incorporating financial settlements through their own systems may require to operate in compliance with RBI guidelines
 - Under the Payments and Settlements Act
 - KYC, Data Localization, Ombudsman, Limited Liability etc

Summary

- A Successful conduct of E Commerce business in India includes
 - Compliance of ITA 2000/8
 - Compliance of GST
 - Compliance of FDI regulations
 - Compliance of PDPA 2018 (when it is applicable)
 - Compliance of RBI guidelines regarding payments
 - Compliance of other Crime related laws

Thank You

For More Information:

Query using the Android
App: **Cyber Law Guru**

Available for free download
in Google Playstore



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