

India Enacts New Consumer Protection Legislation



incedg.com

Asia, Middle East, Europe

India Enacts New Consumer Protection Legislation



India has enacted a new consumer protection law replacing the more than three decades old Consumer Protection Act, 1986. The New Consumer Protection Act, 2019 ('Act') came into force on 20 July 2020¹. Some of the salient features of the Act are:

- (a) setting up a Central Consumer Protection Authority;
- (b) introducing a simplified dispute resolution process;
- (c) procedure re e-filing of cases;
- (d) specific rules for class action suits dealing with product liability;
- (e) specific rules dealing with e-commerce and electronic retailers;
- (f) strict penalties, including jail term.

We review each of the aforementioned features promulgated by the Act, in detail below.

(a) Establishment of Central Consumer Protection Authority

Section 10 of the Act provides for the establishment of a Central Authority to be known as the Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers as a class, prevent unfair trading practices and takes action against false / misleading advertisements.

The CCPA will be assisted by a director-general for the purposes of conducting investigations (as is the case with the Competition Commission of India).

(b) Simplified Dispute Resolution Process

The Act provides for the establishment of a tiered dispute resolution mechanism being:

¹ <https://consumeraffairs.nic.in/sites/default/files/Act%20into%20force.pdf>

- (i) *District Consumer Disputes Redressal Commission* (District Commission) which will have jurisdiction over complaints where the value of the goods and/or services paid as consideration does not exceed one crore rupees (approximately USD 130,000);
- (ii) Appeals against the decisions of the District Commission lie with *State Consumer Disputes Redressal Commission* (State Commission) which will have jurisdiction over complaints where the value of the goods and/or services paid as consideration does not exceed ten crore rupees (approximately USD 1.3m);
- (iii) Appeals against the decisions of the State Commission will lie with *National Consumer Disputes Redressal Commission* (National Commission) which will have jurisdiction over complaints where the value of the goods and/or services paid as consideration exceeds ten crore rupees;
- (iv) All appeals against the decisions of the National Commission shall lie with the Supreme Court of India.

To ease the workload of the courts, the Act also envisages a simplified dispute-resolution mechanism, vide state-sponsored mediation.

Per section 37 of the Act, if the District Commission is of the opinion that there is a possibility of a settlement in a dispute, it may direct the parties to have such dispute settled by mediation, the timeframe for which will be set out under the relevant rules.

To this effect, the State Governments are empowered to establish a consumer mediation cell to be attached to each District Commission and the State Commission within a particular State.

(c) Procedure Re E-Filing Of Cases

The Act provides for electronic filing of cases wherein the aggrieved consumer will be able to file cases in the nearest commission under the jurisdiction of which he resides. Consumers can file complaints from anywhere and they do not need to hire lawyer to represent their cases.

(d) Specific Rules For Class Action Suits Dealing With Product Liability

For probably the first time, the Indian legal system is allowing “class action” specifically in matters relating to product liability. The language of the Act is pretty onerous for product manufacturers and also covers the liability of product sellers.

While a product manufacturer may be held liable for manufacturing defects, defective designs, deviation from specifications and not confirming to express warranties; a product seller may also be held accountable if he had substantially altered the product, made an express warranty without receiving the same from the manufacturer, or had even exercised ‘substantial’ control over the designing / manufacturing of the product in question.

In addition to the aforementioned ‘larger’ scope of liabilities of the product manufacturers and sellers, the new Act sets out a (probably) first-of-its-kind class action legal proceeding. Under section 10 of the Consumer Protection (Consumer Disputes Redressal Commissions) Rules, “[W]here an order is passed ... directing the opposite party to pay such amount as may be determined by it on account of loss or injury suffered by a large number of consumers, who are not identifiable conveniently, such sum shall be credited by the District Commission and the State Commission in the Consumer Welfare Fund established by the State Government, and by the National Commission in the Consumer Welfare Fund established by the Central Government.”

This means that in a product liability case, even if a consumer is not personally identifiable, as long as he/she is part of a class of the aggrieved consumers who had used the defective product / service, such consumer’s injury would be taken into consideration at the time of determining penalty, even if such consumer had not actually taken part in the product liability proceedings.

(e) Specific Rules Dealing With E-Commerce And Electronic Retailers

The Act provides for specific rules to be issued dealing with electronic commerce and electronic retailers. While these e-commerce rules have been issued, they have not yet been enacted and we expect them to be enacted in the very near future.

The rules cover marketplaces working as aggregators, and inventory-led models where the retailer owns the stocks. Additionally, e-retailers have to compulsorily display details about return, refund, exchange, warranty and guarantee, delivery and shipment, modes of payment, and grievance redressal mechanism, and any other similar information that may be required by consumers to make informed decisions.

Under the rules, e-commerce companies are also not allowed to manipulate the price of goods and/or services offered on their platforms to gain unreasonable profit or discriminate between consumers of the same class or make any arbitrary classification of consumers affecting their rights under the Act (case in point, the recent CCI decision in the *Swiggy* matter²).

(f) Strict Penalties

The Act encapsulates stricter penalties for breach of its provisions. The penalties range from one lakh rupees (approx. USD 1,500) to ten lakh rupees (approx. USD 15,000). In addition to the monetary penalties, the Act also provides for jail term of up to two years under certain circumstances, including for false or misleading advertisements that are prejudicial to consumer interests.

About The Author

Piyush Gupta is the India desk as well as the aviation and competition practice at Incisive Law LLC. Piyush has close to two decades of extensive experience advising on the full range of aviation, corporate finance, corporate regulatory and competition matters, including cartel enforcement, abuse of dominance, merger control and competition audit and compliance across Asia. Please click [here](#) to view the author's profile. .

Disclaimer: The contents do not constitute legal advice and should not be relied upon as such.

If you have any questions regarding this article, please contact:



Piyush Gupta
Head of Aviation & Competition,
Singapore
T: +65 6505 3422
E: piyushgupta@incegd.com

² <https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/cci-rejects-unfair-business-complain-against-swiggy/articleshow/76507525.cms>

Disclaimer Notice:

The contents of this document and any attachments are strictly confidential to the intended recipient(s) and may be privileged.

If you are not the intended recipient(s) please do not use or publish its contents and notify us as soon as possible. If received by email, please also delete the message from your system and destroy any copies.

Office Information:

Ince Gordon Dadds LLP and its affiliated entities practice law internationally as 'Ince' (the "affiliates"). References in this brochure and elsewhere to Ince means Ince Gordon Dadds LLP, its subsidiaries, the Affiliates, and the other partnerships and other entities or practices authorised to use the name 'Ince' or describe themselves as being in association with Ince as the context may require.

United Kingdom, Beijing and Shanghai

Ince is a trading name of Ince Gordon Dadds LLP. Ince Gordon Dadds LLP is a limited liability partnership registered in England & Wales (registered number: OC383616) authorised and regulated by the Solicitors Regulation Authority (SRA number: 596729). A list of members of the LLP, and of those non-members designated as partners, is displayed at our registered office: Aldgate Tower, 2 Lemn Street, London, E1 8QN. The term 'partner' used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm of equivalent standing. Ince Gordon Dadds LLP is a subsidiary of The Ince Group plc.

Singapore

Incisive Law LLC is a member of the Ince Group and is a limited liability company incorporated in Singapore with Unique Entity Number 201015337C. Incisive Law LLC is regulated by the Legal Services Regulatory Authority (under the auspices of the Ministry of Law) pursuant to the terms of the Legal Profession (Law Practice Entities) Rules 2015, made under the Legal Profession Act (Cap.161).

Dubai

Ince is a trading name of Ince & Co Middle East LLP, a limited liability partnership registered in England and Wales (with registered number OC361857) authorised and regulated by the Solicitors Regulation Authority (SRA Number: 563759). A list of members is available for inspection at the above address and at our registered office, Aldgate Tower, 2 Lemn Street, London E1 8QN, UK. The term 'partner' used in relation to the LLP, refers to a member of the LLP or an employee or consultant of the LLP or any affiliated firm of equivalent standing.

24 Hour International Emergency Response Tel: + 44 (0)20 7283 6999
LEGAL ADVICE TO BUSINESSES GLOBALLY FOR ABOUT 150 YEARS.
©Ince