

June 2024



Draft Guidelines for the Prevention and Regulation of Unsolicited and Unwarranted Business Communication, 2024

Background

On June 20, 2024, the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) released the draft Guidelines for the Prevention and Regulation of Unsolicited and Unwarranted Business Communication, 2024 **for public comments till July 21, 2024** (“Draft Guidelines”).

The Draft Guidelines, issued under the Consumer Protection Act, 2019 (“CPA”), are aimed at protecting consumers from unfair trade practices and violations of their consumer rights. Specifically, the guidelines intend to protect consumers from unsolicited and unwarranted business communication in the form of voice calls, SMS, and instant messaging applications, including through social media platforms.

Highlights of the Draft Guidelines

Applicability

The Draft Guidelines apply to all ‘persons’ and ‘establishments’:

- that make or cause to make the business communication (“**Maker**”);
- that engage the Maker of such business communication’;
- that would be the intended beneficiary from the ‘business communication’; and
- in whose name the business communication was made by the Maker.

The Draft Guidelines define ‘business communication’ as any communication, excluding personal communication, relating to goods, transactions, or services, through voice calls, SMS and instant messaging applications, including through social media platforms. Consequently, it is pertinent to note that, in addition to SMS and voice calls, over-the-top messages in relation to goods, transactions, or services are also covered under the definition of ‘business communication.’ (“**Business Communication**”).

The term ‘person’ is defined under the CPA to include individuals, companies, association of persons, firms and co-operative societies. Further, the term ‘establishment’ is defined under the CPA to include an advertising agency, commission agent, manufacturing, trading, and other commercial agencies that carry on any trade, business, or profession.

Prohibitions

All ‘persons’ and ‘establishments’ that are covered under the ambit of the Draft Guidelines are prohibited from engaging in unsolicited and unwarranted Business Communication. These ‘persons’ and ‘establishments’ will be considered to be engaging in unsolicited and unwarranted Business Communication if they initiate a Business Communication:

- through a number series other than the one prescribed by the Telecom Regulatory Authority of India or the Department of Telecommunications;
- through an SMS header not registered with telecom service providers;
- despite request or instruction from a consumer to opt out of such communication by registering in the Do Not Disturb Registry, managed by telecom service providers;
- without clearly identifying the calling entity and purpose of the call;
- without obtaining the explicit and specific consent of the consumer, in digital form, to receive such communication for a particular beneficiary/brand and their respective products;
- without giving a clear, simple, free, and effective option to opt-out, as well as confirmation of opt-out if the consumer chooses to opt-out;
- through an unauthorized employee or agent; or
- in contravention of the “Telecom Commercial Communications Customer Preference Regulations 2018” and any other directions issued under any law from time to time.

In this Issue

Background

Highlights of the Draft Guidelines

- Applicability
- Prohibitions
- Draft Guidelines not in derogation of other laws
- Penalties



While clauses (a) to (c) above only apply to unsolicited and unwarranted Business Communication made through telecom resources, the remaining clauses apply to unsolicited and unwarranted Business Communications made through telecom resources or social media platforms and their applications.

Draft Guidelines not in derogation of other laws

The Draft Guidelines expressly state that they will be in addition to, and not in derogation of, any other laws regulating unsolicited and unwarranted Business Communication in India. Accordingly, the Telecom Commercial Communications Customer Preference Regulations 2018 will continue to apply.

Penalties

The Draft Guidelines state that the provisions of the CPA will apply in case of any non-compliance.

Consequently, contravention of the Draft Guidelines may lead to scrutiny by the Central Consumer Protection Authority (“CCPA”), or a consumer complaint. Consequences may include a direction to: (i) discontinue practices that are harmful or prejudicial to consumers’ interests; or (ii) compensate the consumer for any loss suffered by them. Additionally, if the CCPA is satisfied after investigation that the person or establishment engaged in unsolicited and unwarranted Business Communication amounting to a misleading advertisement, it may also impose a penalty which may extend up to INR 10,00,000.

In this Issue

Background

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Please get in touch with the SAM Co. attorney you regularly work with if you would like to discuss any aspect of the Draft Guidelines in more detail

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