



Automotive sector

Key considerations for the
proposed online sales model

July 2020

We are seeing a shift in the auto sector business model due to the COVID-19 crisis, with businesses proposing to take their products directly to consumers through online portals...

FDI policy restrictions on B2C e-commerce pose a challenge for online business models, especially where:

1. distributors operate on the platform of an original equipment manufacturer (OEM)
2. online sales to customers comprise not only products which are manufactured in India but also imported products
3. aftersales services also need to be supported through the online platform.

Depending on the distribution model of the company, an appropriate online platform needs to be put together keeping in mind:

- FDI policy
- exchange control regulations
- Income-tax Act
- GST
- transfer pricing
- Information Technology Act/data privacy
- Consumer Protection Act
- sectoral regulations
- proposed national e-commerce policy.



Compliance with relevant aspects of the FDI policy needs to be kept in mind while assessing such an online sales model...



Manufacture and sell

- Sale of products (both on B2B and B2C basis) manufactured by the entity
- 100% FDI allowed under the automatic route, including in contract manufacturing
- Sales on both B2B and B2C basis permitted
- Sale through online or brick and mortar permitted



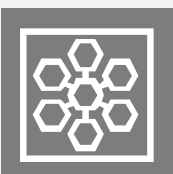
Wholesale trading

- Sale of products procured locally/imported products to another Indian entity (i.e. on B2B basis)
- 100% FDI permitted under the automatic route
- Sale to group companies $\leq 25\%$ of the wholesale turnover
- B2B e-commerce permitted



Single-brand retail trading

- Sale of imported products to end consumers (i.e. on B2C basis)
- 100% FDI permitted under the automatic route, subject to conditions
- Products sold should be single brand only
- 30% sourcing if FDI $> 51\%$
- Retail through brick and mortar and e-commerce permitted



E-commerce – inventory model

- Online sale of products procured locally/imported products or services to customer
- Inventory owned by the e-commerce entity
- FDI prohibited



E-commerce – marketplace model

- Providing an IT platform to facilitate sale of goods/services
- 100% FDI permitted under the automatic route, subject to conditions
- Restriction on inventory ownership and control
- Sale price cannot be influenced by such a marketplace entity
- Companies having equity participation from marketplace/ group companies – prohibited sellers
- Capping on vendor purchases from marketplace/group company – 25%

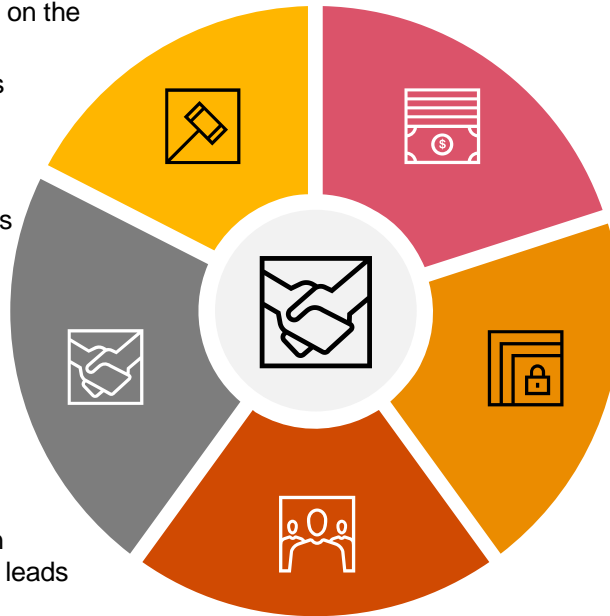
Key considerations for the online sales model

Regulatory challenges

- 100% of dealers' inventory procured from an OEM cannot be sold on the OEM platform
- Pricing control on distributors may not be permitted in the marketplace model
- Exclusivity arrangement between an OEM and dealers
- Requirement for fair play between an OEM and dealers
- Marketplace cannot be a payment aggregator; separate entity required

Business perspective

- Integration of lead generation through portal and sharing of leads with dealer network
- Opportunities for strategic support to distressed partners – financing, investment, etc.
- Customer experience
- Development of integrated digital channels to enhance visibility of demand and customer needs



Consumer protection norms

- Validation of online information/marketing collateral
- Training to dealer network to ensure robust compliance

Tax considerations

- E-commerce operator to deduct tax on sale of goods/provision of services
- Impact of tax collected at source
- Transfer pricing – challenges with respect to handling big data
- Taxability of arrangements between an OEM and dealers
- Treatment of discounts, incentives and subsidies (including price adjustment and subvention to dealer)
- Identifying nature of tax payable in case of inter-state movements

Data protection

- Access to customer data – compliance with proposed data privacy norms

There may be a need for government/regulator engagement to obtain clarifications...



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Contact us



Kavan Mukhtyar
Partner and Leader, Automotive
kavan.mukhtyar@pwc.com



Akash Gupta
Regulatory expert
akash.gupta@pwc.com

pwc.in

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