

Pharma & Healthcare Update

September 20, 2019

PROHIBITION OF E-CIGARETTES: END OF ENDS?

The President of India has promulgated an ordinance on Prohibition of Electronic Cigarettes (production, manufacture, import, export, transport, sale, distribution, storage and advertisement) Ordinance, 2019 after the same was approved by the Union Cabinet (“**Ordinance**”).¹ On the other hand, the categorisation of Electronic Nicotine Delivery Systems (“**ENDS**”) as ‘drugs’ under the Drugs and Cosmetics Act, 1940 (“**D&C Act**”) remains an issue yet to be decided upon by various High Courts in India.

From a legal standpoint, ENDS find themselves in a regulatory limbo worldwide. Regulation varies across countries and even states, ranging from no regulation at all to blanket bans. In India, the regulatory status of ENDS has been in question since 2015, with regulators having taken opposing stands on the topic over time. An order by the High Court of Delhi² in March 2019, staying a communication (“**Communication**”) issued by the Director General of Health Services (“**DGHS**”) ³ and a circular issued by Central Board of Indirect Taxes and Customs (“**Circular**”) ⁴, banning ENDS, had previously brought the issue to the forefront.

Please find a detailed analysis on ENDS [here](#).

— Riya Chopra, Darren Punnen, Vyapak Desai & Dr.Milind Antani

You can direct your queries or comments to the authors

¹ Available at: < <http://egazette.nic.in/WriteReadData/2019/212582.pdf>.> last accessed on September 19, 2019.

² M/S Focus Brands Trading (India) Private Limited v. Directorate General of Health Services and Ors: W.P.(C) 2688/2019, Order dated 18.03.2019.

³ Communication of the Director General of Health Services dated February 22, 2019.

⁴ Central Board of Indirect Taxes and Customs, Circular dated November 27, 2019 available at < [http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2018/Circular-46-2018 Customs.pdf](http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-circulars/cs-circulars-2018/Circular-46-2018%20Customs.pdf) > last accessed September 18, 2019.

⁵ Minutes of the 56th Meeting of Drugs Consultative Committee (June 2019), p.3.; See also, AL Johnson et al., *Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the Path Study* (2013-2014), *Am J Prev Med.*, 53(2), p. 139-151.

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