

Cloud Kitchens in India: Concept, Compliances, Concerns

written by KSANDK | August 12, 2022



Cloud Kitchens In India

There were times when the only way to enjoy dining with your loved ones was to go to a restaurant. However, with technological innovation, the world has come to our doorstep. In recent years, the food service and restaurant industry have gained a larger consumer base, especially after the pandemic. It's safer, more comfortable and more convenient to eat at home than outside. This increased demand to eat at home is largely why the concept of cloud kitchens has picked up pace globally and in India.

That said, setting up a cloud kitchen is not an easy task; there are technical and legal aspects that one needs to keep in mind before starting. This article covers what a cloud kitchen is, basic legal checkpoints to adhere to before incorporating a cloud kitchen in India and recent concerns that have arisen around them.

The Concept Of Cloud Kitchens

Cloud kitchens are commercial facilities designed to offer food specifically for delivery. They take orders for food through an app or website. These kitchens have no physical presence but have gained a strong foothold in the industry due to food delivery apps like Swiggy or Zomato. According to a report by RedSeer Management Consulting, cloud kitchens are set to grow in value by USD 2 billion within the next few years [1].

They're also cost-effective. Digitising the dining experience means one requires less capital, less infrastructure, limited manpower and fewer overhead and operational costs, which is a bonus since such a large chunk of profits in hospitality usually goes towards paying the staff or rent. But are they classified as restaurants? Yes, since according to the Goods and Service Tax (GST) council's circular, cloud kitchens provide the same services as restaurants and hence fall under the definition of a 'restaurant'.

Legal Compliance Checklist For Your Cloud Kitchen

Cloud kitchen compliances are pretty static. The licenses required to start one are similar to is required to start a catering business in India. Although cloud kitchens do not have any physical presence, the standard of food quality and hygiene must naturally be top-notch. Customers cannot verify the same for themselves, therefore, completing all the legal requirements is necessary to avoid any future lawsuits and conflicts for the business.

- **FSSAI certificate:** Food Safety and Standard Authority of India (FSSAI) is the primary organization that regulates the restaurant-food service industry in India. The organization issues the license mandatory for a food-related business whose term can vary from 1 to 5 years. The certificate has a 14-digit registration number and the fee for such registration is not more than INR 100. These licenses can be renewed once expired. Ideally, you should register yourself as a Small Food Business Operator (FBO) if your turnover rate is less than 12 lakhs. If more than 12 lakhs, it is mandatory to acquire the license. Documents required for registration are government identity proof, kitchen layout plan, a no objection certificate (NOC), etc. An FSSAI certificate is a well-known mark of quality and increases the credibility of your kitchen.
- **Trade and health licenses:** A trade or health trade license is necessary for ensuring that the standards of health and safety are being maintained by a business owner. Licenses can be obtained from local municipal corporations of the respective areas after submitting the documents. They can be applied for via the online website of the municipal corporation. It is necessary for every person doing business in India. The validity of such a license is a year and the cost of registration is INR 5000 [2].
- **GST registration number:** The government of India has made GST registration mandatory for businesses in India [3]. Every business has to file taxes for which a GST number is required; it is issued against your brand. It can be submitted weekly, quarterly or annually. In food and hospitality, the minimum GST charged is 5%. According to the GST composition model, cloud kitchen businesses would also be required to charge 5% GST with no input tax credit (ITC). If they do wish to claim ITC however, they can charge 18% GST.
- **Fire and safety license:** This license is not mandatory for food businesses but it is advisable to get it to avoid future troubles. They are a mark that the kitchen follows all the safety guidelines. It can issue by the state's fire department on submission of required documents.
- **Shop Establishment Act:** Even if cloud kitchens do not have a physical presence, the same needs to be registered under the respective state's Shop Establishment Act. Registration should be done within 30 days from the initiation of the business and licenses are given based on the city. It is valid for 5 years.
- **Trademark registration:** Since there is no physical place for customers to visit, the brand of your restaurant is the most distinctive mark of recognition it has. Business owners need to get trademark registration done to protect their brand from any infringement. The brands can make trademark registration applications to the registrar by proving details of their brand logo, wordmark et.

Legal Concerns Regarding Cloud Kitchens in India

Due to technological advancements in recent years, the food service industries have undergone drastic developments. New business models have opened up fresh opportunities in the food service sector, such as the rise of food delivery apps, online dine-in reservations and more. However, there are

also new legal concerns regarding the reduction of fair competition and the effects of the new FDI policy because of the cloud kitchens.

- Lack of fair competition: Food aggregators now perform several roles in the food service sector. Primarily, they work as an intermediary between the consumer and the seller. This leads to a lack of neutrality as market trends and outcomes are influenced by dominating food aggregators. Food aggregators that act as major market participants have widespread platforms where they can access and analyse large tracts of data related to sales, quantities, search rankings, reviews, and demand patterns. The result is they can shape the demands or structure of the market based on the information analytics of such data. This leads to entities manipulating or influencing the food sector in terms of competition, growth, and investments – giving rise to unfair monopolies and an absence of fair competition.
- New FDI policy: Recent changes to the Foreign Direct Investment (FDI) policy by the government have caused fresh restrictions to come into place for online businesses that sell goods on the platform in which they have equity participation. The FDI policy oversees two kinds of business models: the marketplace model and the inventory model. In the marketplace model, an e-commerce enterprise can act as a technology facilitator between consumers and sellers, but under the inventory model, such a restriction is absent. It's also useful to note that 100% FDI is permissible under the marketplace model. Several food aggregators are backed by FD, allowing them to operate under the marketplace model. But a large number of investments by food aggregators into the formation of cloud kitchens is reducing the distinction between these two models as per FDI policy since it clearly states that marketplace participants cannot provide differing levels of services to sellers on similar platforms.

The National Restaurants Association of India (NRAI) has criticised the conduct of the food aggregators in the marketplace model, asserting the use of discriminatory practices by such entities and how they offer preferential treatment (rankings, discounts, reviews) to cloud kitchens invested in/owned by the latter. In 2020, following the NRAI's FDI criticism, the Department for Promotion of Industry and Internal Trade (DPIIT) commenced talks with the relevant stakeholders. It is still unclear whether the DPIIT will advocate for stricter FDI restrictions or rely on laws tailored to technology-driven businesses.

Endnote

Starting a cloud kitchen may seem easier than a regular restaurant but you still have to consider licensing, remodeling costs, regulatory approvals, monitoring of food and health safety standards, sterilization procedures, and inspection operations. While cloud kitchens are set to rise in numbers as technology advances, running them might become further challenging in the coming years as legislation catches up; for instance, an association with or vested interest by a food aggregator in their own cloud kitchen does breach the declared aim of FDI, which is to provide merchants access to a free market while maintaining platform neutrality. It still remains to be seen if cloud kitchens will continue to fly under the legislative radar as of now or otherwise.

[1] The cloud kitchen to see 5x growth in GMV to USD \$2-3B by 2025

[2] <https://online.ndmc.gov.in/hl/>

[3] <https://www.gst.gov.in/>