

TMT LAW NEWSLETTER

October, November, December – 2021

Telecommunications

1. FOREIGN DIRECT INVESTMENT IN TELECOM SECTOR ALLOWED UP TO 100%, UNDER AUTOMATIC ROUTE

The Department of Promotion of Industry and Internal Trade ("DPIIT") [vide](#) Press Note 4 of 2021 ("Press Note") allowed 100% foreign direct investment ("FDI") in the telecom sector in India through automatic route. The erstwhile legal position was, that FDI in telecom sector was allowed till 49% through automatic route, and for obtaining FDI beyond that limit, approval from Government of India ("GoI"), was required.

However, the Press Note, also stresses on the point that if FDI, falls in the scope of para 3.1.1 of the FDI Policy, 2020 (which talks about investment from a country that shares land borders with India, or where the beneficial owner of an investment into India is situated in or is a citizen of any such country), then the government approval would be required.

It is to be noted that, this change was brought about as a consequence of few major reforms in the telecom sector, announced by the GoI in the month of September 2021. It is a welcome change, and it can potentially open many doors for future investments in the telecom sector, thus boosting investment opportunities in the telecom sector by many folds.

2. DEPARTMENT OF TELECOMMUNICATIONS AMENDS THE SCOPE OF ADJUSTED GROSS REVENUE IN UNIFIED LICENSE AGREEMENT

The Department of Telecommunications ("DoT") [vide](#) circular dated October 25, 2021, amended the scope of the Unified

License ("UL") Agreement ("UL Agreement"). The purpose of this amendment is to exclude non-telecom revenue on prospective basis from the definition of adjusted gross revenue ("AGR"). More significantly, DoT introduced a new concept called applicable gross revenue ("APGR"), which is deducted from the gross revenue ("GR") for the purpose of arriving at AGR.

The position prior to the amendment, was that to arrive at a value for AGR, the items like Public Switched Telephone Network ("PSTN") related call charges paid to other entities or service providers, roaming revenues passed on to other entities or service providers, and any Goods and Services Tax ("GST") paid to the GoI; needed to be excluded from the ambit of GR.

Even though the concept and scope of GR remains the same post amendment as well, the process of calculating AGR has changed significantly. Now, AGR is to be calculated after excluding PSTN related call charges paid to other entities or service providers, roaming revenues passed on to other entities or service providers, and any GST paid to the GoI; from the ambit of **ApGR, NOT from the value of GR.**

As mentioned earlier, the concept of ApGR is a new concept introduced by the amendment, and it excludes some more items from its purview. To calculate ApGR now, the following items needed to be excluded from the GR;

- Revenue from operations other than telecom activities/operations
- Revenue from activities under a license/permission issued by Ministry of Information and Broadcasting ("MIB")

- Receipts from the USO fund
- Income from dividend
- Income from interest
- Capital gains on account of sale of fixed assets and securities
- Income from property rent
- Insurance claims
- Bad debts recovered
- Excess provisions written back

All the above-mentioned items are sources of non-telecom related revenue, that earlier TSPs used to pay license fee on, and the same was upheld by the Supreme Court of India in, *Union of India vs. Association of unified telecom providers of India*, 2019.

This amendment comes into effect retrospectively, from October 01, 2021 and will be applicable to the dues which arise from the operations of the licensee after the said date. The amendment promises to unburden the TSPs from their upcoming monetary obligation to pay license fee and spectrum usage charge, significantly.

3. DOT INTRODUCED NEW AUTHORISATION SERVICES OF AUDIO CONFERENCING/ AUDIOTEX/ VOICE MAIL SERVICES IN THE UNIFIED LICENSE GUIDELINES AND AGREEMENT

The DoT [vide](#) notification dated December 12, 2021, introduced new authorization services of audio conferencing/ audiotext/ voice mail services under the UL Agreements. The scope of the authorization includes all the service providers who are providing audio text services on a commercial basis to other entity/ entities. However, government / private organizations offering public utility services or private organizations offering services to the customers, by using audiotext services or services

through IVRS (providing information on an automatic basis, booking or complaint services, etc.) are not required to obtain such license for the provision of the services.

The revised policy guidelines, permit audio conferencing unit to be connected to both PSTN/Mobile and IP network as per Telecommunication Engineering Committee ("TEC") standards, and dial out facility will be allowed even if using resources of more than one access service provider subject to license conditions. It is to be noted that previously, the standalone licenses for voice mail service/audio text/ unified messaging service were issued by the DoT as per the guidelines for issue of licence for voice mail/ audiotext/ unified messaging service dated July 16, 2001.

4. DOT NOTIFIES THE INDIAN TELEGRAPH RIGHT OF WAY (AMENDMENT) RULES, 2021

The DoT [vide](#) notification dated October 21, 2021, notified the amendment to the Indian Telegraph Right of Way Rules, 2016. The amendment effectively provided various exemptions for applications made for establishment of over-ground telegraph lines. Most notably, the mandatory documents, to be submitted in the process of application establishing over-ground telegraph infrastructure, as prescribed under Rule 9, of Indian Telegraph Right of Way Rules, 2016, will not be required in case of establishment of over-ground telegraph lines. However, documents related to route plan for establishment of over-ground telegraph line shall be required to be provided by the licensee with the application made for establishment of over-ground telegraph line.

The amendment is a welcome step, as it will make the application process for establishing over-ground telegraph hassle free.

5. DOT AMENDS THE CHANGE IN TIME PERIOD OF STORAGE OF CALL DETAIL RECORD/ EXCHANGE DETAIL RECORD/IP DETAIL RECORD

The DoT [vide](#) circular dated December 21, 2021, introduced an amendment in the UL Agreement for change in time period of storage of Call Detail Records ("CDR")/ Exchange Detail Records ("EDR") / IP Detail Record ("IPDR") and further extended the amendment to UL (Virtual Network Operators) on December 22, 2021. According to the amendment, the licensee is mandated to keep all commercial records/ CDR/ EDR/ IPDR with regard to the communications exchanged on the network, CDR/ IPDR with regard to internet telephony services and log-in/ log out details of all subscribers for services provided such as internet access, e-mail, internet telephony, IPTV etc. for a minimum period of two years instead of the previous 1 year. This move of DoT might increase the operational costs of the telecom companies but at the same time it might prove to be a beneficial step for the government and law enforcement agencies as the availability of data for longer period would help them in their investigations.

6. DOT ISSUES GUIDELINES FOR DIGITIZATION OF PAPER CUSTOMER APPLICATION FORMS

In accordance with the numerous telecom reforms recently announced by the GoI in the month of September 2021, DoT [vide](#) notification dated October 11, 2021 issued guidelines for digitization of paper

customer application forms ("CAFs"). The guidelines permit TSPs to digitally store scanned coloured copies of the paper-based CAF documents.

The guidelines prescribe that digitally scanned copies of the CAF documents must be maintained for all the active customers. In case of migrated/disconnected subscribers, digitally scanned copies of CAF documents shall be retained for a period of three years from the date of migration/ disconnection. For the purposes of this provision, migrated customers would mean customers who have ported to other TSPs using mobile number portability.

As a consequence of the guidelines coming into force, TSPs are now free from the obligation of storing paper CAFs in warehouses, as well as from the obligation of submitting themselves to procedures like warehouse audits. This in turn, also leads to less logistic burden, and wastage of paper.

7. DOT ISSUES REVISED GUIDELINES FOR REGISTRATION OF CATEGORY I INFRASTRUCTURE PROVIDERS

The DoT [vide](#) notification dated December 22, 2021, released revised guidelines for registration of Infrastructure Providers Category 1 ("IP-1"). The revised guidelines prescribe a revised checklist of documents that an applicant is required to submit as well as a changed application procedure. The revised guidelines additionally mandate that subject to the conditions as mentioned, foreign direct investment up to 100%, through automatic route will be allowed. Further, an IP-1 registered company shall be expected to make its own arrangement for right of way and shall

provide for use of infrastructure in a non-discriminatory manner.

8. DOT AMENDS THE COMMERCIAL VSAT CUG LICENSE AGREEMENT, THE UL AGREEMENT, THE CAPTIVE VSAT CUG LICENSE AGREEMENT AND THE INSAT-MSSR LICENSE AGREEMENT FOR RATIONALISATION OF BANK GUARANTEE, CHANGE IN INTEREST RATE, PENALTY, INTEREST ON PENALTY ON DELAYED PAYMENT OF LICENSE FEE OR ANY OTHER DUES

The DoT recently amended the [Commercial VSAT CUG License Agreement](#), the UL Agreement, the [Captive VSAT CUG License Agreement](#) and the [INSAT-MSSR License Agreement](#) for rationalisation of bank guarantee, change in interest rate, penalty, interest on penalty on delayed payment of license fee or any other dues.

The amendment dictates that for all the aforementioned licenses, any delay in payment of license fee, or any other dues payable under the license, beyond the stipulated period will attract interest at a rate of 2% above the one-year marginal cost lending rate, instead of 4% above the one-year marginal cost lending rate, as mandated earlier. Moreover, as a consequence of the amendment, the said interest will now be compounded on a yearly basis, instead of on a monthly basis according to the erstwhile position.

Additionally, for Commercial VSAT-CUG license, the amendment significantly decreased the performance bank guarantee amount that a licensee is required to maintain across the tenure of the license, from ₹50 lakhs, to ₹10 lakhs, as well as the performance bank guarantee amount to be deposited for UL Agreement,

was decreased from ₹220 crores to ₹44 crores

Further, for UL Agreement, Commercial VSAT-CUG license, and Captive VSAT-CUG license, according to the erstwhile position, the financial bank guarantee to be offered by the licensee, at the time of signing the license agreement, was required to be equivalent to an estimated sum payable to about two quarters towards licensee fee and other dues payable, whereas as a consequence of the amendment, the amount of financial bank guarantee is now expected to be about 20% of the estimated sum payable to about two quarters towards licensee fee and other dues payable. For Captive VSAT-CUG license, the initial financial bank guarantee amount was also changed from ₹30 lakhs to ₹3 lakhs, as well as for INSAT-MSSR license, the amendment decreased the initial financial bank guarantee amount from ₹2 Lakhs to ₹40,000, and at the same time UL Agreement, the initial financial bank guarantee amount was decreased from ₹44 crores to ₹8.8 crores.

Lastly, the amendment also provides an exhaustive list of scenarios, in which the abovementioned rationalization of bank guarantees would not be applicable.

9. TELECOM REGULATORY AUTHORITY OF INDIA RELEASES CONSULTATION PAPER ON AUCTION OF SPECTRUM IN THE FREQUENCIES IDENTIFIED FOR INTERNATIONAL MOBILE TELECOMMUNICATIONS

The Telecom Regulatory Authority of India ("TRAI") [vide](#) press release dated November 30, 2021, released a consultation paper on 'Auction of Spectrum in the frequencies identified for International Mobile Telecommunications'

to primarily discuss the modalities for auction of 5G spectrum bands. These modalities include but are not limited to, the valuation methodologies and service rollout obligations to be adopted, and the payment terms, which are not merely related to pricing but the way payments are to be structured: (i) whether upfront payments, (ii) what would be the applicable moratorium period after upfront payments, and (iii) what would be the number of deferred payment instalments specifically in the 526-698 MHz, 700 MHz, 800 MHz, 900 MHz, 1800 MHz, 2100 MHz, 2300 MHz, 2500 MHz, 3300-3670 MHz and 24.25-28.5 GHz bands.

Separately, the TRAI had also solicited comments around facilitating 5G enabled private networks, as they are currently not allowed in India and on key operational issues such as, whether service providers should be permitted to give access to spectrum on lease and whether spectrum itself should be earmarked for private networks.

This consultation initiated by the telecom authority comes at an opportune moment, just as service providers and telecom companies are conducting trials and tests with the 5G spectrum in the 700MHz, 3.5GHz and 26GHz frequency bands, that were allotted to them in early 2021.

10. TRAI RELEASES A CONSULTATION PAPER ON THE EASE OF DOING BUSINESS IN THE TELECOM AND BROADCASTING SECTOR

The TRAI [vide](#) press release dated December 8, 2021, released a consultation paper on '*Ease of Doing Business in Telecom and the Broadcasting Sector*', with the policy intent of ensuring an increase in

the share of locally manufactured equipment/devices in the broadcasting distribution networks. Amongst other areas, the paper deep dives into issues such as whether manufacturers have adequate local manufacturing capacities as well as measures that need to be taken to improve competitiveness and on the reasons for the limited market share of local set-top-boxes. Further, TRAI has also sought views on whether the existing policy measures and fiscal initiatives adequately address the needs of the Indian television broadcast manufacturing sector. The paper also seeks to understand the cost disadvantages faced by Indian manufacturers compared to international competitors.

In context of the above, this consultative intervention made by the TRAI will go a long way as a functional component of the 'Make in India' and 'Digital India' initiative by the GoI. And, also in building domain knowledge about the regulatory gaps, loopholes and bottlenecks, as well as other external factors, which may be inhibiting the growth of local equipment manufacturing in the telecom and broadcasting sector.

11. TRAI RELEASES CONSULTATION PAPER ON LICENSING FRAMEWORK FOR ESTABLISHING SATELLITE EARTH STATION GATEWAY

The TRAI [vide](#) press release dated November 15, 2021, released a consultation paper on '*Licensing Framework for Establishing Satellite Earth Station Gateway*' which has been drafted pursuant to DoT's request to furnish recommendations on the licencing framework. As per the current licensing regime in the country, establishing an earth station is linked with the service

licence, and there is no specific licence for establishing an earth station by satellite operators to provide satellite-based resources to the service licensee.

The licensing framework would facilitate setting up of in-country satellite gateways by global non-geostationary satellite system operators (**NGSOs**), or low-earth orbit ("**LEO**") satellite service providers. An earth station gateway would, typically, control an LEO satellite constellation and also facilitate bandwidth connectivity between a satellite and the end-user of broadband-from-space services in India. The current licensing framework for satellite services has limitations with respect to proposed satellite gateway operations, as there are no provisions regarding usage of gateway by service provider established by a satellite constellation operator. Under the new framework, the licensee who establishes gateway should be able to deliver its services to other licensees, which in turn would render services to the end-users.

The new framework would facilitate the augmentation of broadband services in remote, hilly, and inaccessible regions. It is also the only medium through which communication can be established in disaster zones when normal communication gets affected. This would facilitate the creation of multiple gateways, in turn would render services to the end-users.

Internet of Things

12. TEC RELEASES REPORT ON CODE OF PRACTICE FOR SECURING CONSUMER INTERNET OF THINGS

On October 12, 2021 the TEC under DoT, Ministry of Communications and

Information Technology released a report on [Code of Practice \("Code"\) for Securing Consumer Internet of Things \("IoT"\)](#) which provides baseline requirements for the implementation of TRAI's recommendations on "Spectrum, Roaming and QoS related requirements in Machine-to-Machine Communications".

The Code among other things provides that the default passwords of the IoT devices should either be unique or require the user to set the passwords that are not resettable to universal default password. In order to manage vulnerabilities, the IoT stakeholders are required to provide a dedicated public point of contact to report security issues. Further, the Code requires to securely store sensitive security parameters such as credentials (e.g.: user name, passwords etc.), device entity, certificates etc. and use encryption technology in transition of all security-sensitive data. Furthermore, the Code advises to ensure software integrity, employ cryptography techniques to secure personal data, make systems resilient to outages and make installation and maintenance of devices easy for the users.

The Code is applicable to consumer IoT products that are connected to the internet and / or home network and associated services. It provides a much-needed guidance to the IoT stakeholders including device manufacturers, service providers, mobile application developers etc. on minimizing and handling the risks of malicious attacks on the device or the networks.

Fintech

13. RESERVE BANK OF INDIA NOTIFIES SCALE BASED REGULATION FOR NON-BANKING FINANCIAL COMPANIES

The Reserve Bank of India ("RBI") [vide](#) notification dated October 22, 2021, has revised regulatory framework ("Guidelines") applicable to all non-banking financial companies ("NBFCs"). The Guidelines introduces a risk-based approach for monitoring and classification of NBFCs from the present framework of all size fit approach. These Guidelines shall be effective from October 1, 2022.

The present framework classifies NBFCs broadly into three categories i.e. (i) terms of liabilities, (ii) size of the NBFCs, and (iii) kind of activity conducted by the NBFC.

- Terms of liabilities into Deposit accepting NBFCs (NBFC-D) and Non-Deposit accepting NBFC (NBFC-ND);
- Non-deposit accepting NBFCs are further classified by their size into systemically important and other non-deposit holding companies (NBFC-NDSI and NBFC-ND);
- NBFCs are classified on the basis of activity they conduct i.e., as Asset Finance Companies, Investment Company, Loan Companies, Investment Infrastructure Finance Companies (IFCs), Systematically Important Core Investment Company (NBFC – CIC – ND – SI), Infrastructure Debt Fund (NBFC – IDF) and Micro Finance Institutions (NBFC – MFIs), NBFC factors, Mortgage Guarantee Companies and NBFC- Non-Operative Financial Holding Company.

The key highlights of the Guidelines are as follows:

- The regulatory structure for NBFC's has been categorized into four layers based on their size, activity, and perceived riskiness: NBFC - Base Layer (NBFC-BL), NBFC - Middle Layer (NBFC-ML) and NBFC - Upper Layer (NBFC-UL). The Top Layer is ideally expected to be empty and will be known as NBFC - Top Layer (NBFC-TL).
 - The NBFC-BL shall include NBFCs with asset size up to Rs 1000 crores including NBFCs P2P and NBFC Account Aggregators.
 - The NBFC-ML shall include NBFCs with asset size over Rs 1,000 crores and housing finance companies, core investment companies, infrastructure finance companies.
 - The NBFC-UL shall comprise of those NBFCs which are specifically identified by the RBI as warranting enhanced regulatory requirement based on a set of parameters and scoring methodology as provided in the Guidelines.
 - The asset size for NBFC-TL has not been detailed by RBI. It will be populated by RBI upon a substantial increase in the potential systemic risk from specific NBFCs in the upper layer.
- The Non-Performing Asset (NPA) classification shall be linked with overdue period of more than 90 days for all categories of NBFCs.

14. RBI FRAMEWORK FOR FACILITATING SMALL VALUE DIGITAL PAYMENTS IN OFFLINE MODE

RBI [vide](#) notification dated January 3, 2021, notified the Framework for Facilitating Small Value Digital Payments in Offline Mode ("**Framework**") with an upper limit of Rs. 200. RBI has permitted authorized Payment System Operators (PSOs) and Payment System Participants (PSPs) – acquirers and issuers (banks and non-banks) – desirous to provide/enable payment solutions that facilitate small value digital payments in offline mode.

The Framework would facilitate digital payment transactions among customers and businesses, located in remote locations without internet connectivity. This would help in achieving financial inclusion and digital transformation.

15. RBI ANNOUNCES FOURTH SANDBOX COHORT ON PREVENTION AND MITIGATION OF FINANCIAL FRAUDS

RBI [vide](#) press release dated October 8, 2021, announced the fourth cohort under the regulatory sandbox framework for 'Prevention and Mitigation of Financial Frauds'. The cohort is being rolled out with an objective for reducing the lag between the occurrence and detection of frauds, strengthening the fraud technology and the fraud governance structure, and minimizing response time to frauds, through the use of technology.

16. UNIQUE IDENTIFICATION AUTHORITY OF INDIA NOTIFIES AADHAAR (AUTHENTICATION AND OFFLINE VERIFICATION) REGULATIONS, 2021

The Unique Identification Authority of India ("**UIDAI**") [vide](#) gazette notification

dated November 8, 2021, notified the Aadhaar (Authentication and Offline Verification) Regulations, 2021 ("**Aadhar Regulations 2021**"), in furtherance of the Aadhaar (Authentication) Regulations, 2016. Amongst other things, under the Aadhar Regulations 2021, UIDAI provides two types of authentication facilities i.e., yes/no and e-KYC authentication facility and other types of offline verification facilities such as QR code, paperless offline e-KYC, e-Aadhaar and offline paper based while also allowing Aadhaar number holders to revoke consent given to any verification agency for storing their e-KYC data at any time. Further, these newly notified facilities enable Offline Verification Seeking Entities ("**OVSEs**") to conduct offline verification as long as they comply with fulfil additional obligations that are contained in the Aadhar Regulations 2021.

These obligations include that OVSEs (i) must use an individual's Aadhaar data in a limited manner and only for the purpose for which the consent was given; (ii) delete the data if the person revokes her consent; (iii) communicate the success and failure of the offline KYC to the individual Aadhar number holder. Although, this is a significant step in ensuring wider accessibility for Aadhaar based authentication/verification, certain issues such as the mechanism for sharing of the QR code or e-Aadhaar by the Aadhaar number holder is not defined and additional layers of verification of the customers' identity may have to be introduced.

17. RBI RELEASES WORKING GROUP REPORT ON DIGITAL LENDING

The Working Group ("**WG**") set up by RBI in January 2021 [published](#) the report on Digital Lending including Lending through

Online Platforms and Mobile Apps addressing issues around digital lending on November 18, 2021. The recommendations and suggestions made by the WG are aimed at balancing the benefits of digital innovation with consumer interest. They also seek to protect the integrity of the digital lending system from unregulated or unauthorised entities carrying out lending business and prevent the digital lending ecosystem from causing disruption to existing players.

Data Protection

18. REPORT OF THE JOINT PARLIAMENTARY COMMITTEE ON THE PERSONAL DATA PROTECTION BILL, 2019 TABLED IN PARLIAMENT

Nearly 2 years since the Personal Data Protection Bill, 2019 ("**PDP Bill**") was first introduced in the Lok Sabha and subsequently referred to the Joint Parliamentary Committee ("**JPC**") for its examination and recommendations, the final report of the [JPC on the PDP Bill](#) was tabled in both houses of the Indian Parliament on December 16, 2021. Amongst other substantive recommendations that are likely to impact the entire data protection ecosystem, the JPC report which reviewed the PDP Bill contains a new version of the data protection law titled 'the Data Protection Bill, 2021'. The Data Protection Bill, 2021 significantly departs from the PDP Bill on key areas such as data localisation and cross border transfer of data, reporting of data breaches, compliances for significant data fiduciaries. Further, this change in the name of the draft law from the 'Personal Data Protection Bill' to the Data Protection Bill, 2021 reflects an expansion in the scope of the law to also regulate 'non-personal data'.

JPC undertook extensive consultations for more than year before drawing up its final report and the Data Protection Bill, 2021 in its final form. Nonetheless, the JPC itself was accompanied by a number of dissent notes submitted by members touching on serious questions of federalism, exemptions given to government, defined age of consent etc., therefore, the final draft legislation before it becomes a law is likely to see further changes in the forthcoming monsoon session of the Parliament.

19. TRAI RELEASES CONSULTATION PAPER ON THE REGULATORY FRAMEWORK FOR PROMOTING DATA ECONOMY THROUGH ESTABLISHMENT OF DATA CENTRES, CONTENT DELIVERY NETWORKS, AND INTERCONNECT EXCHANGES IN INDIA

The TRAI [vide](#) notification dated December 16, 2021, issued a Consultation Paper on '*The Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India*'. The consultation paper intends to seek the inputs of stakeholders on promoting the establishment of (i) data centre , (ii) content delivery networks ("**CDNs**"), and the (iii) internet exchange points ("**IXPs**") in the country and discusses in detail the challenges in the establishment of data centres, CDNs, and IXPs, respectively and goes on to deliberate on issues related to 'Data Privacy, Security and Ownership' with reference to the past recommendations of TRAI of July 2018, as well as the Personal Data Protection Bill (PDP) of 2019.

The consultation paper raises issues including economic /financial /infrastructure/other challenges being

faced for setting up a data centre business in the country, draft broad guidelines to be issued for data centre buildings, standard-based certification framework for the data centres, disaster recovery standard in respect of data centres, measures required for providing alternative fiber access (like dark fiber) to the data centre operators etc. The convergence of 5G, IoT and AI would fulfil the needs for ultra-reliable, low-latency, and high-throughput communications. Further, with the right policy initiatives from the Govt, having distributed edge computing infrastructure, massive data storage facilities, and a robust, and efficient internet exchange point infrastructure will give a much-needed push to the data economy in India.

Healthtech

20. NATIONAL HEALTH AUTHORITY RELEASES CONSULTATION PAPER ON HEALTH DATA RETENTION POLICY

The National Health Authority (“NHA”) [vide](#) notification dated November 23, 2021, released a consultation paper on Health Data Retention Policy (“HDRP”) which is proposed to be a significant link facilitating the entire Health Data Management policy, with respect to archiving of health data. The proposed HDRP is envisioned to retain, protect, and safeguard medical health records for the stakeholder of the health ecosystem participating in the Ayushman Bharat Digital Mission (“ABDM”) environment.

The key objective of the consultation paper is to get the feedback from the concerned stakeholders on the functional, legal, and technical aspects of data retention of medical health records to ensure the integrity and security of the medical health records stored in any form. Further, the

scope of the consultation paper is restricted to the proposed HDRP of the ABDM. It describes NHA’s existing approach related to data retention, and how a health data retention policy for ABDM stakeholders will help the healthcare ecosystem.

The HDRP is an instrumental policy which if implemented properly may provide better health care system by creating a robust digital health record system.

Blockchain

21. MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY RELEASES NATIONAL STRATEGY ON BLOCKCHAIN

The Ministry of Electronics and Information Technology (“MeitY”) on December 3, 2021 published a revised version of the [National Strategy on Blockchain](#) (“NSB”). This publication by MeitY follows nearly 9 months after the draft document was circulated in the public domain, and came at a time when the Union Finance Ministry is engaged in extensive consultation towards formulating a bill that will regulate the trading of cryptocurrency i.e., a digital tradeable currency that runs on block chain technology.

Amongst other salient points raised by the NSB, it proposes the formation of a National Blockchain Framework (“NBF”) wherein different sectoral domains such as health, agriculture, education etc., can be distributed on a common block chain infrastructure. Accordingly, it recommends that the NBF be based on an overall multi-institutional collaborative approach between industry-academia-government housed in two institutional structures that will be established, namely, the Blockchain

Advisory Council and the Steering Committee. Further, the NBF is to be supported by various other government institutions such as National e-Governance Division ("NeGD") and the National Information Centre ("NIC") in the integration of national-level services including Digilocker and e-Sign with blockchain.

While the MeitY has prepared a comprehensive document, and said that it will collaborate with other ministries in order to oversee the implementation of this strategy, the intent seems to be for the NSB to serve as a guideline for the industry and other ministries. However, it would have been better had the NSB been more focused in terms of timelines for adoption or implementation of specific platforms, and may have instilled more confidence in investors and companies if it was clearer on such points.

E-commerce

22. MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION NOTIFIES CONSUMER PROTECTION (DIRECT SELLING) RULES, 2021

The Ministry of Consumer Affairs, Food and Public Distribution [vide](#) gazette notification dated December 28, 2021, notified Consumer Protection (Direct Selling) Rules, 2021 ("**Direct Selling Rules**"). The Direct Selling Rules have been notified to regulate various direct selling models, direct selling entities, as well as to curb any unfair trade practice in direct selling to consumers. Direct Selling has been defined under Consumer Protection Act, 2019, as '*marketing, distribution and sale of goods or provision of services through a network of*

sellers, other than through a permanent retail location'.

The Direct Selling Rules, elaborate on various cardinal aspects of the process of direct selling, like, the types of records that a direct selling entity should maintain, obligations of direct selling entities as well as obligations of direct sellers, with respect to the good and services offered by them, the payment methods deployed, terms of any guarantee or warranty offered, return & cancellation facilities offered, any representations made to the consumers, in the process of direct selling etc. Most prominently, the direct selling entities are mandated to maintain a website, as envisaged under the direct selling rules, as well as establish an appropriate grievance redressal mechanism. The direct selling entities are also mandated to enter into a written contract, with direct sellers, as well as verify the authenticity of personal information, submitted by the direct sellers.

Moreover, the Direct Selling Rules envisage that the respective state governments shall set up a mechanism to monitor or supervise the activities of direct sellers and direct selling entities.

Most notably, the Direct Selling Rules prohibit direct selling entities and direct sellers from marketing or promoting enrolment in a pyramid scheme or a money circulation scheme, to their consumers, in the grab of a direct selling business.

Media, Broadcasting & Entertainment

23. MEITY RELEASES FREQUENTLY ASKED QUESTIONS DOCUMENT ON THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND

DIGITAL MEDIA ETHICS CODE) RULES, 2021

The MeitY on November 1, 2021 issued a [document](#) called 'Frequently Asked Questions ("FAQs") on the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**Intermediary Rules, 2021**")'. This official publication provides a number of key clarifications related to the Intermediary Rules, 2021 and some of the key ones are as follows:

- For an intermediary to qualify as a social media intermediary, *the enabling of online interactions by way of by either facilitating social networking via specific features like follow/subscribe, or offering an opportunity to interact with unknown persons, or ability of enabling virality of content* should be its primary or sole purpose.
- Accordingly, an entity, which has some other primary purpose, but only incidentally enables online interactions as defined above or an entity enabling commercial or business-oriented transactions, providing access to internet or search engine services etc., will not qualify as a social media intermediary.
- Rule 4(1) of the Intermediary Rules, 2021, mandates a significant social media intermediary ("**SSMI**") to appoint to Chief Compliance Officer, a Nodal Contact Person and a Resident Grievance Officer. With regard to the same, the Ministry has now clarified that, keeping in view of the functional requirements of the Nodal Contact Person and the Resident Grievance Officer, it is desirable that a SSMI appoints separate persons for the two

roles. And, given the nature of requests might vary in view of different compliance timelines, it expects an intermediary to provide separate contact details for grievances submitted by users and the requests/orders made by the government or authorized government agencies, since the nature of requests might vary in view of different compliance timelines.

- Rule 4(6) of the Intermediary Rules, 2021 requires an intermediary, to the extent reasonable, to provide complainant with reasons for any action taken or not taken. The MeitY has provided a clarification on what would qualify as 'reasonable' in the context of these rules and what would count as a frivolous complaint and how the same is to be treated. Accordingly, it has stated that the objective of this rule, is to allow aggrieved users to understand how their complaint is being dealt with by the Resident Grievance Officer of the intermediary, and promote a two-way communication between the aggrieved users and the intermediary. And, therefore, intermediary is expected to provide reasonable explanation to the aggrieved user. However, in the case of a frivolous complaint, the nature of the complaint can be cited as the reason for any action not taken.

Indeed, this FAQ on the Intermediary Rules, 2021 is a welcome step towards ensuring greater clarity in the enforcement and compliance of the Intermediary Rules, 2021 itself. However, the most important question that remains to be answered is their legal validity or enforceability which it

is in conflict or at variance with the Intermediary Rules, 2021.

24. MIB RELEASES GUIDELINES FOR SHARING OF INFRASTRUCTURE BY MULTI SYSTEM OPERATORS

The MIB [vide](#) order dated December 29, 2021 released Guidelines for sharing of infrastructure by Multi System Operators ("MSO") post acceptance of TRAI recommendations on '*Sharing of Infrastructure in Television Broadcasting Distribution Sector*' dated March 29, 2017 by the competent authority.

The guidelines for sharing of infrastructure by MSO among other things provides that the sharing of infrastructure and head-end used for Cable TV services & transport streams transmitting signals of TV channels is permitted on voluntary basis. Further, it allows the sharing of common hardware for their short message service ("SMS") & conditional access system ("CAS") applications. The guidelines require the MSOs to be accountable for ensuring the integrity and security of the CAS and the SMS data pertaining to such distributor, maintain backup of transaction logs and data of the CAS and the SMS for the past two years, put in place necessary technical arrangements for detecting the specific pirate in the unlikely event of any such incidence, and satisfy the broadcaster's reasonable concerns at the time of initial audit itself, etc. With regard to the method of application to be made to MIB for sharing of infrastructure, detailed proposal mentioning the details about the infrastructure which is to be shared, manner of sharing such infrastructure and roles & responsibilities of each MSO needs to be submitted jointly by the MSOs to MIB.

The step of allowing infrastructure sharing among MSOs will be beneficial for the broadcasting industry as it will reduce the cost of distribution of TV broadcasting services to subscribers and would probably allow the efficient utilization of available infrastructure. Further, sharing of available infrastructure would further enhance distribution network capacities.

Drones

25. The Ministry of Civil Aviation notifies the National Unmanned Aircraft System Traffic Management Policy Framework

The Ministry of Civil Aviation [released](#) the National Unmanned Aircraft System Traffic Management ("UTM") Policy Framework on October 24, 2021. The objective of the UTM is to allow identified stakeholders to seamlessly communicate with each other. The UTM ecosystem is envisioned as an active collaboration between multiple stakeholders connected to each other through information sharing and data exchange standards. The UTM ecosystem in terms of its architecture is an extension of existing air traffic management services, however with a more automated and layered approach that allows seamless information flow and data exchange between stakeholders. The policy will provide industry-specific niche functionality and aggregate different types of information such as flight intents and real-time location of manned and unmanned aircraft for separating an unmanned aircraft from other manned and unmanned aircraft.

With a vision to make India a global hub of drones by 2030 under the Atmanirbhar Bharat Abhiyan, the central government has carried out a series of reforms in the drone sector. These include notifying the

liberalized Drone Rules, publishing the drone airspace map and introducing the PLI scheme to promote manufacturing of drones. With the rapid technological evolution of Unmanned Aircraft System ("UAS"), opening of new use cases, and recent policy reform, the number UAS operating in the Indian airspace is poised to increase rapidly.

Miscellaneous

26. NATIONAL INTERNET EXCHANGE OF INDIA MANDATES WRITTEN APPROVAL FROM CEO OF NIXI FOR BULK BOOKING OF .IN DOMAIN

The National Internet Exchange of India ("NIXI") [vide](#) notice dated December 27, 2021, mandated the approval of CEO of NIXI for bulk registration of .in domains. As per the notice, written approval of CEO, NIXI is required to be obtained in two cases i.e. (a) individual registrants registering for more than two domains (b) registered accredited company registering more than 100 domains. Further, in case the registrar fails to comply with the above-mentioned notice, NIXI may disallow/disconnect the domains booking under that category and may also initiate de-accreditation of such registrar. Furthermore, the notice provides that the said approval will be provided within 24 hours of submission of the request irrespective of weekly-off or holidays. NIXI does not provide the rationale for changing the process of obtaining bulk domain names and further there seems to be no transparency on the grounds of denial of the bulk domain registration application.

27. MINISTRY OF COMMUNICATIONS, DEPARTMENT OF POSTS RELEASES DRAFT APPROACH PAPER FOR CREATING DIGITAL ADDRESS CODE FOR EACH ADDRESS IN THE COUNTRY

The Department of Posts under the Ministry of Communications on October 18, 2021 has released a [Draft Approach Paper](#) for creating a Digital Address Code ("DAC") for each and every address in the entire country. This DAC will be an allocated permanent, unique 12-digit codes linked to precise geospatial coordinates of all addresses in the country, and can be used by government bodies and businesses to for the purpose of verification and delivery of services to users.

This policy measure of assigning a DAC to each individual address has significant potential to simplify business operations and processes as well as facilitate public bodies in its property taxation efforts and also enable better emergency and disaster management response. However, as it is with any centralised database, there will be serious privacy concerns associated with the DAC too and might even exacerbate potentialities of surveillance. Therefore, any movement made by the Department of Posts in terms of implementation of the DAC must take into account the elevated status of privacy as a fundamental right and the principles enunciated by the Supreme Court of India in *Justice K.S. Puttuswamy v. Union of India*.

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