

Telecom Hotline

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LIBERALIZED REGIME FOR BUSINESS OUTSOURCING SERVICES

- A wide variety of IT-enabled services earlier had to be registered as Other Service Providers (OSPs)
- Now the registration requirement has been done away with and the compliance obligations simplified
- The scope of the guidelines has been liberalized and will only apply to voice-based BPO services

The information technology industry in India got a huge fillip on November 5, 2020, when the Department of Telecommunications (“DoT”) issued the “New Guidelines for Other Service Providers (“OSPs”)”¹ (“**New Guidelines**”), superseding the earlier “Terms and Conditions – OSP Category”, as amended from time to time (“**Old Framework**”). Importantly, the New Guidelines liberalize the scope of the regulation by only regulating voice-based Business Process Outsourcing services (“**BPO**”), along with completely doing away with the registration requirements for OSPs.

The New Guidelines also appear to be in line with the aim of the National Digital Communication Policy, 2018, which intended to improve the terms and conditions for OSPs, including definitions, compliance requirements, and restrictions on interconnectivity.

BACKGROUND TO THE OLD FRAMEWORK

The Old Framework owed its genesis to the New Telecom Policy, 1999. At the time when it was introduced, the OSP registration appears to have been intended to primarily cover call centres / BPOs which required bulk telecommunication resources and were in the business of providing services to their customers. It was also seen as a means to facilitate services such as tele-banking, tele-medicine, e-commerce, tele-trading etc. which were at a stage of infancy in 1999. As per the terms and conditions formulated by the Telecom Commission in 2000, services like network operation centres, and vehicle tracking systems were also added to the list of OSP categories requiring registration and compliance. In 2008, the Old Framework was introduced.

Under the Old Framework, OSP registration was required by anyone providing ‘Applications Services’, which was defined to mean “*tele-banking, tele-medicine, tele-education, tele-trading, e-commerce, call center, network operation centre and other IT Enabled Services, by using Telecom Resources provided by Authorised Telecom Service Providers*.” The term “other IT Enabled Services” was not only broad but could include any service which is delivered through information technology, hence leading to widespread uncertainty as to what kind of entities had to register themselves as OSP and meet the compliance requirements. For instance, whether a vanilla e-commerce entity / electronic platform which provided IT services was covered was open to interpretation. Apart from the scope being broad, the OSP registration process was more akin to an approval, with significant back-and-forth expected with authorities, and local jurisdictional authorities often taking divergent views from each other. Additionally, the terms and conditions for OSP registration also imposed generally onerous compliance requirements, including bank guarantee requirements, network diagram requirements, and work from home conditions, all of which were subject to penal provisions. The entire scheme of registration and compliance was hence largely antithetical to the spirit of improving the ‘Ease of Doing Business’, which has been a focus area for the Government.

NEW GUIDELINES

Through the New Guidelines for OSP, the DoT has drastically liberalized the OSP regime. The reforms include the following:

- Removal of the registration requirement for OSPs;
- Removing non-voice based services entirely from the purview of the OSP framework;
- Removing the requirement of furnishing a bank guarantee;
- Removing the requirement for submitting a network diagram;
- Removing the restriction on interconnectivity between OSP centres belonging to different OSP companies;
- Relaxing provisions related to work from home.

Further, the New Guidelines *inter alia* allow:

- Collection, conversion, carriage and exchange’ of all telecom traffic over the Virtual Private Network (“**VPN**”) that interconnects different OSP centres;
- Interconnectivity between domestic OSP centres belonging to different companies; and also between the OSP centre and the remote agent of the OSP;
- Sharing of infrastructure between international and domestic OSPs;

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- OSP services can be provided by a partnership firm or an organization registered under the relevant Shops and Establishment Act or by a legal person providing voice-based BPO services. Earlier, the same was limited to a company or a limited liability partnership.

Further, though the New Guidelines allow the use of distributed architecture of Electronic Private Automatic Branch Exchange (“**EPABX**”), the OSP still needs to ensure that there is no bypass of International Long-Distance Operator and National Long-Distance Operator jurisdiction. The New Guidelines also retain the requirements in relation to storing Call Data Records (“**CDR**”), Usage Data Records and system logs for all voice traffic and require the OSPs to maintain this data for a period of one year. The OSP is also required to store and maintain the copy of CDR and system logs at any OSP centres in India.

SUMMARY OF CHANGES

We have summarized the key changes *vis-à-vis* the Old Framework in the table below:

Particulars	Old Framework	New Guidelines
Registration for OSP Centre	Registration required.	No registration certificate required.
Exemption of non-voice based BPOs from the definition of OSPs	Simply defined OSPs as a company providing “application services”, thereby bringing all types of IT-enabled services (including non-voice based BPOs) within its purview.	Specifies that only voice based BPOs are covered under this framework. The definition of “application services” has been completely removed.
Interconnectivity for International OSPs	Permitted interconnection between two or more International OSP of the same company or group companies with intimation to the registering authority within 15 days of the interconnection.	There is general permission for interconnectivity among international OSPs.
Work-From-Home / Work-From-Anywhere	Interconnection between the OSP centre and the remote / extended agent (staff) was permitted through VPN having pre-defined static IP and physical address locations i.e. interconnectivity between the home of agent of the OSP. The agent may be the agent and the OSP centre through VPN.	Permits interconnection between the OSP centre and the remote agent and there is no requirement to provide pre-defined static IP and physical address locations for the remote / extended agent of the OSP. The agent may be anywhere in India. However, the OSP will be responsible for any toll bypass.
Security Deposit for Work from Home	Required security deposit of Indian Rupees One Crore (approx. USD 134,000) for each registered location of OSP centre with an agreement to meet certain obligations.	No security deposit required.
Traffic collection and exchange over VPN	Allowed through authorized telecom service providers’ secured VPN having pre-defined locations. No call flow between PSTN lines and leased lines allowed.	Interconnectivity allowed for “collection, conversion, carriage and exchange of the PSTN ² /PLMN ³ /SDN ⁴ traffic over the VPN network (NPLC ⁵ , MPLS ⁶ VPN) interconnecting the different OSP centres is permissible.
Voice traffic flow	Not allowed between Domestic and International OSP centres.	Permits an International OSP to carry aggregated switched voice traffic from their point of presence in a foreign country to their OSP centre in India via leased line/MPLS (Multi-Protocol Label Switching) VPN.
Bank Guarantee	Required bank guarantee of Indian Rupees Fifty Lakh (approx. USD 67,000) or One Crore, (approx. USD 134,000) depending on the option chosen, as safety deposit for registration.	No bank guarantee required.
Foreign EPABX for international OSP	The domestic OSP centre and international OSP centre will have non-sharing separate and independent EPABX but may have a common operator position.	In case of an international OSP, a foreign-based EPABX can be used subject to compliance with applicable Indian laws including data privacy laws. However, the OSP has to store the copy of the CDR and system logs at any of its OSP centres in India.
Sharing of EPABX between International and Domestic OSP centres	Logical partitioning was required for sharing common EPABX between international and domestic OSP centres and PSTN lines for office use, along with a bank guarantee and	No restriction on sharing of common EPABX and PSTN lines for office use and no requirement to share any certificate or deposit bank guarantee. OSPs still need to ensure that no

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business

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Old Framework	New Guidelines
<p>certificates from vendors to show that the software is capable of logically bifurcating the common infrastructure.</p>	<p>bypass of telecom service providers' networks is caused.</p>

KEY AMBIGUITIES

While the New Guidelines significantly overhaul the Old Framework, bringing in much-needed liberalization, there are certain ambiguities that arise out of the New Guidelines:

- The New Guidelines specify voice-based BPO services are regulated, but no definition has been provided to clarify what constitutes a “voice-based BPO service”. Whether voice-based includes Internet-based voice services may be a key question;
- More clarity would be useful on the extent to which interconnectivity among different classes of OSPs (domestic and international) would be permitted outside a company group;
- There is no specificity as to how existing OSPs should transition to the new regime e.g., surrender of registrations and return of bank guarantee.

CONCLUSION

The New Guidelines result in much-awaited liberalization, which especially becomes relevant in these times of remote working and increased online activity. It is commendable on the part of the DoT to not only waive the registration requirements but also simplify the regulatory framework for the OSP industry. The open-ended definitions of the Old Framework, coupled with onerous obligations, casted a looming cloud over the BPO and technology industry in the country.

The ambiguities pointed out above ideally need to be clarified by the DoT to bring even greater certainty to the regime. Nevertheless, the New Guidelines are a progressive step in the right direction as they simplify business operations for the outsourcing industry and reduce uncertainty for technology companies. This lead can be followed in other emerging areas of technology law and policy as well.

– **Puja Saha, Jaideep Reddy & Huzefa Tavawalla**

You can direct your queries or comments to the authors

¹ Available here: https://dot.gov.in/sites/default/files/2020_11_05%20OSP%20CS.pdf?download=1; Last Accessed: November 11, 2020

² Public Switched Telecom Network

³ Public Land Mobile Network

⁴ Integrated Services Digital Network

⁵ National Private Leased Circuit

⁶ Multiprotocol Label Switching

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