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MANDATORY TESTING AND CERTIFICATION OF TELECOM EQUIPMENT: REGULATORY OVERLAPS PAVE WAY FOR EXEMPTIONS

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Introduction

On 24 May 2022, the Telecommunications Engineering Centre (**TEC**) has exempted certain categories of telegraph from 'mandatory testing and certification of telecommunications equipment' (**MTCTE**) requirements set out under the Indian Telegraph Rules 1951 (as amended) (**Telegraph Rules**) due to overlapping certification requirements applicable to certain electronic equipment.

In terms of the Telegraph Rules, the responsibility to comply with the MTCTE requirements vests on Original Equipment Manufacturers (**OEM**) or importers / foreign OEMs before the sale or import of such telecom equipment in India. In the absence of MTCTE, the sale of such telegraph is prohibited.

As the exempted equipment / telegraph pertains to popular and widely used categories of telecom equipment, this exemption notification (**Exemption Notification**) will be particularly relevant to note for OEMs and importers of such telecom equipment.

Background

As a background, any 'telegraph' (which has been afforded a rather wide definition under the Indian Telegraph Act, 1885) capable of being used with any telegraph established, maintained or worked pursuant to a telecom license granted by the Department of Telecommunications (**DoT**) is required to undergo prior mandatory testing and certification in respect of the parameters determined by the relevant telegraph authority, i.e., the TEC.

Further to the Electronics and Information Technology (Requirement for Compulsory Registration) Order, 2012 (**CRO Order**), the Ministry of Electronics and Information Technology (**MEITY**) has prescribed certain standards for various electronic equipments. Pursuant to this framework, MEITY also carries out compulsory registration of specified goods (which *inter alia* includes laptops, PoS machines and other electronic equipments). The CRO Order has also been updated by the Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2021. Some new categories of electronic equipment have been added such as smart watches, mobile phones, smart card readers, smart speakers, etc.

This resulted in some regulatory overlap as TEC had also prescribed certain requirements for mandatory testing and certification of *inter alia* smart camera, smart watch, smart electricity meters, tracking devices, IoT gateways, Point of Sale (**POS**) devices, etc. under the MTCTE regime.

These overlapping certification requirements, amongst other things, resulted in increased compliance burdens and costs for entities in this sector. In view of this, a press release was issued on 30 April 2022 regarding the regulatory overlap with mandatory testing procedures. Acknowledging the representations made by the industry and the compliance costs, the press release noted that DoT (in consultation with MEITY) has decided to exempt certain telecom equipment, which led to issuance of the present Exemption Notification.

Notably, the Telegraph Rules acknowledge that certain telegraph (e.g., telegraph imported for the purpose of research and development in India, etc. or any other categories of telegraph) may be exempted from the MTCTE requirements by an order of TEC.

In exercise of this power, TEC officially issued the Exemption Notification on 24 May 2022 exempting the following categories of telegraph from the MTCTE requirements: (1) mobile user equipment/mobile handset; (2) server; (3) smart watch; (4) smart camera; and (5) PoS devices.

Compliance under the MTCTE regime

To facilitate the MTCTE, the TEC has set up an online portal with details of *inter alia* essential requirements and security requirements for the MTCTE process in respect of certain types of telegraph / telecom equipment. TEC issues various testing or ER parameters in respect of various telegraph / telecom equipment from time to time with *inter alia* the objective of ensuring that the equipment meets relevant national and international standards, does not degrade performance of existing network to which it is connected, etc. Additionally, the telecom licensees / telecom service providers (**TSP**) are expressly prohibited from using any telegraph in their network which does not have the required certification.

Comment

The interplay of the legal and regulatory framework pertaining to the information technology sector and telecom sector is more important than ever with the advent of smart devices and Internet of Things (**IoT**) services. Although the Exemption Notification aids in addressing the regulatory overlap, it is unclear whether it is entirely sufficient as some categories of IoT devices remain within the domain of TEC and some with MEITY.

In the future, it will be important to harmonize these regulatory frameworks as smart devices are likely to find a boost in India with the emergence of 5G. Nonetheless, the present Exemption Notification comes as a relief to relevant stakeholders such as OEMs and will hopefully result in a simplified regulatory regime to promote ease of doing business in this sector.

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