

## ERGO

*Analysing developments impacting business*

### GOVERNMENT ENACTS SELECTED PROVISIONS OF THE TELECOMMUNICATIONS ACT, 2023

26 June 2024

On 21 June 2024, the Ministry of Communications, through the Department of Telecommunications (DoT), issued a notification to enforce certain provisions of the highly anticipated Telecommunications Act, 2023 (Act). These provisions are set to take effect from 26 June 2024. The Act marks a significant overhaul of India's telecommunications regulatory framework.

#### **Key Highlights:**

##### **1. Scope of the Act:**

The Act introduces a departure from the previous framework under the Indian Telegraph Act, 1885 (ITA) and the Wireless Telegraphy Act, 1933 where licenses were granted for establishing, maintaining and owning a 'telegraph.' The Act now separately defines 'telecommunication', 'telecommunication service' and 'telecommunication network', paving the way for granting 'authorisations.' Although the sections governing grant of authorisation are not yet in force, the scope of the Act is expected to expand significantly.

##### **2. Extra-territorial Applicability:**

The Act extends its applicability to offenses committed outside India if they involve telecommunication services, networks, or equipment located in India. This aligns with the extra-territorial provisions of the Information Technology Act, 2000.

##### **3. Right of Way Framework:**

Addressing a major challenge in the expansion of telecommunication networks, the Act streamlines the Right of Way (RoW) framework. Authorised entities (i.e., entities that have obtained authorisation from DoT) can now seek RoW permissions for public and private properties. RoW must be granted in a non-exclusive and non-discriminatory manner. Additionally, telecommunication networks installed on properties are not considered part of the property for tax or levy purposes, protecting them from coercive actions such as sealing or arbitrary shutdowns.

##### **4. Powers of DoT:**

The Act allows DoT to temporarily take possession of telecommunication services or networks in cases of public emergency or safety. Provisions related to interception remain similar to those under the ITA, but now it is expressly stated that intercepted

messages must be disclosed to the government in an intelligible format, purportedly supporting decryption requirements. The Act also grants DoT the authority to set standards for telecommunication network protection, including equipment, identifiers, manufacturing, import, encryption and data processing in telecommunications.

## 5. **Protection of Users:**

New provisions under the Act enhance user protection, deviating from the ITA. Authorised entities can introduce measures to prevent unwarranted promotional messages, including consent mechanisms and reporting options for violations. These measures align with the Telecom Regulatory Authority of India's regulations (viz., The Telecom Commercial Communications Customer Preference Regulations, 2018) on the subject. Separately, there will be an online grievance registration mechanism that will be offered by authorised entities and DoT may also establish or approve online dispute resolution system. Users are also required to provide accurate information during Know Your Customer procedures.

## 6. **Digital Bharat Nidhi and Regulatory Sandboxes:**

The Universal Service Obligation Fund is renamed as Digital Bharat Nidhi (DBN) under the Act. DBN's scope now includes supporting research and development in telecommunication services, technologies, products, and pilot projects. The Act also allows for the creation of regulatory sandboxes to encourage technological development. Rules governing their operation are expected soon.

## 7. **Offences:**

The Act adopts a stricter approach to offenses compared to the previous framework. Penalties have been significantly increased to deter violations. E.g. establishing a telecommunication network without authorisation can now result in up to three years of imprisonment, a fine of up to INR 2 crore (approximately USD 240,000), or both. All prescribed offenses under the Act are non-bailable and cognisable.

## **Comments**

As the general elections conclude, India is poised to see the enactment of various tech related laws and regulations. The Telecommunications Act, 2023 is the first to be notified by the Government, marking an important development as it replaces century-old colonial laws. Key provisions such as relaxations in the RoW regime, revised offenses and penalties and enhanced user protections represent significant deviations from the previous framework under the ITA. However, rules and orders under the old regime will remain in force until replaced by new rules under the Act. The DoT is implementing the Act in phases, making it interesting to observe how the implementation and relevant rules take effect.

- *Harsh Walia (Partner) & Vanshika Lal (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)