

## ERGO

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### NEW RULES FOR ADJUDICATION AND APPEAL UNDER THE TELECOM ACT

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On 18 July 2024, the Government of India, through the Department of Telecommunications (DoT), published the draft Telecommunications (Adjudication and Appeal) Rules (Draft Rules) in the Official Gazette.

The Draft Rules represent a significant development, as they delve into the dispute resolution and adjudication mechanisms under the Telecommunications Act, 2023 (Telecom Act). The newly proposed mechanisms redefine the adjudicatory framework by introducing new designations and incorporating the concept of voluntary undertakings. Following a similar pattern as other rules recently published pursuant to the Telecom Act, the Draft Rules have been published to inform all stakeholders likely to be impacted and will be considered for finalization after a 30-day period from the date of publication. During this period, objections or suggestions can be submitted to the DoT.

#### **Key features of the Draft Rules**

➤ **Appointment of Adjudicating Officer and Designated Appeals Committee**

The Draft Rules contemplate appointment of an Adjudicating Officer (AO) and members of Designated Appeals Committee (DAC) by the Central Government, by publication of an order in the Official Gazette. Furthermore, the Government is vested with the authority to appoint substitute officers if the AO or any DAC member vacates their office. The jurisdiction of both the AO and DAC will be notified by the Government from time to time.

➤ **Powers of the AO**

The Draft Rules endow the AO with the power to initiate inquiries *suo moto* in cases where there are reasonable grounds to believe that there has been a breach of terms and conditions of authorisation or assignment. Similarly, an inquiry can be instituted *suo motu* or upon a *prima facie* assessment of a complaint received relating to contraventions/ matters listed in the Third Schedule of the Telecom Act (which essentially covers contraventions like possession of radio equipment without authorisation, use of subscriber identity modules (SIM) in excess of the number notified, sending specified messages without complying with relevant provisions, etc.).

➤ **Procedure for inquiry/ complaints**

While acting *suo motu* or pursuant to a complaint, the AO is required to issue a show cause notice (along with details of the contravention and reference to relevant provisions of the Telecom Act) of not less than 15 calendar days to the person alleged to have committed the breach. The time period for the show cause notice would be computed from the date of its service. A notable aspect of the Draft Rules is that a complainant has to pay a fee of INR 5,000 (approximately USD 60) for filing complaints before the AO, which will aid in keeping vexatious complaints at bay. It will also be necessary to furnish requisite identity proof and supporting evidence of the contravention alleged in the complaint, failing which the complaint shall not be considered by the AO. Upon receipt of the written response, if it emerges that a hearing is warranted in the matter, the AO will

fix a date for appearance of the relevant parties. The appearance can be either personally or through an authorised representative. Thereafter, the AO shall pass an order by recording reasons for the same and close the inquiry or make recommendations to the Central Government. The AO is required to conclude all inquiries within 90 days, extendable up to 120 days.

➤ **Voluntary Undertaking**

The Draft Rules elaborate on the process of submission of voluntary undertakings by authorized entities or assignees, either *suo moto* or in response to a notice from the AO. This undertaking can be submitted either prior to or after initiation of the inquiry by the AO, and must detail the breach or contravention committed, along with the measures taken or proposed to mitigate it. Importantly, acceptance of a voluntary undertaking precludes further proceedings or actions, except in cases of non-compliance with the terms of the voluntary undertaking itself.

➤ **Penalty**

Penalties imposed by the AO on authorized entities or assignees will be supplementary to any liability for compensation or payment of fees or charges under the authorization. While levying the penalty, the AO is required to have regard to factors such as nature, gravity and duration of the contravention, number of affected persons, intentional or negligent character of the contravention, etc. and whether a voluntary undertaking has been submitted or not. All sums realised by way of penalties levied by the AO shall be credited to the Consolidated Fund of India. If not paid, such amounts can be recovered as arrears of land revenue.

➤ **Powers of the Designated Appeals Committee**

Any person aggrieved by an order of the AO may file an appeal with the DAC within 30 days of the issuance of such order, accompanied by a fee of INR 10,000 (approximately USD 120). The DAC, like the AO, is endowed with powers equivalent to those of a civil court. However, it is not mandated to follow the provisions of the Bharatiya Sakshya Adhinyam, 2023 or the Code of Civil Procedure, 1908. Proceedings before the DAC shall be considered judicial proceedings, with penalties for furnishing false information, including imprisonment and fines, in accordance with Section 229 of the Bhartiya Nyaya Sanhita, 2023.

Appeals against orders passed by the DAC shall lie before the Telecom Disputes Settlement and Appellate Tribunal.

➤ **Techo-legal and Digital Measures**

The Government possesses the authority to notify the digital implementation of the Draft Rules, facilitating the submission of complaints, appeals, voluntary undertakings, notices, and other pertinent documents. Additionally, these measures include conducting hearings through virtual modes. The establishment of a digital portal not only harmonizes with modern judicial practices but also significantly enhances the efficiency and fluidity of the adjudication and appeal processes. By embracing digital solutions, the regulatory framework is poised to become more accessible, transparent, and expedient.

## Comments

The issuance of various rules (including the Draft Rules), alongside Telecom Regulatory Authority of India's consultation paper on authorizations under the Telecom Act demonstrate the dexterity of the Government towards implementation of the Telecom Act. The Draft Rules beckon a significant overhaul of the dispute resolution framework under the extant regime, with the introduction of AO and DAC appointed by the Central Government, time-bound procedures, voluntary undertaking, etc. with an aim to streamline the overall adjudicatory process. If the Draft Rules are implemented in the envisaged manner, it will certainly aid in reposing confidence within all stakeholders (particularly foreign investors).

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