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Analysing developments impacting business

UNRAVELLING THE NEW OSP GUIDELINES

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Introduction

On 5 November 2020, the Department of Telecommunications (DoT) released 'New Guidelines for Other Service Providers' (New OSP Guidelines). The New OSP Guidelines supersede the 'terms and conditions - Other Service Provider Category' dated 5 August 2008 along with all its amendments (Old OSP Guidelines). With the New OSP Guidelines, the DoT has made significant alterations to the preceding regime that are expected to have far-reaching benefits for the outsourcing industry in India.

Background

The regime relating to OSPs has been subject to much criticism over the past few years on account of its rigid and outdated provisions. The archaic nature of regulatory conditions had pushed the industry against the wall and curtailed its ability to deploy new age technologies to achieve efficiency and economies of scale.

Key takeaways

The key takeaways from the New OSP Guidelines are set out below:

1. Applicability: The ambiguous definition of 'Application Services' under the Old OSP Guidelines has been done away with. The new regime is applicable only to entities which provide voice-based Business Process Outsourcing (BPO) services. Therefore, it is now possible that BPOs providing non-voice/ data-based services may be excluded from the ambit of the New OSP Guidelines.
2. Exemption from registration: Even for voice-based BPOs, no registration certificate will be required. This means that such BPOs will not have to undergo the lengthy process of obtaining registration after submitting various supporting documents, including network diagrams that are approved by telecom service providers (TSP).
3. Same entity may have multiple OSP centres: As was the case earlier, an OSP centre is a location in India where infrastructure for an OSP is deployed. Therefore, same entity may have multiple OSP centres under the New OSP Guidelines as well.

4. Notable dispensations for OSPs: The following dispensations are only provided to OSPs under the New OSP Guidelines:
 - a. Interconnection of PSTN with VPN (over MPLS) is permitted: In case two or more OSP centres are connected through a virtual private network (VPN)/ leased circuit and PSTN/ PLMN traffic is collected at one of the OSP centres, then such traffic can be exchanged between other OSP centres using MPLS/ leased circuit.
 - b. Centralised internet connectivity: An entity having multiple OSP centres may obtain internet connection at a centralised location and such internet can be accessed by other OSP centres using leased line/ MPLS VPN. This is an important exemption as it will minimise costs ordinarily incurred in obtaining multiple internet connections at each OSP centre under the earlier regime. Further, permitting such internet traffic to be carried over leased line/ MPLS VPN will guarantee better service levels.
 - c. Interconnection between remote agent and OSP: It is permitted for an agent to remotely connect to the OSP centre as per the New OSP Guidelines (detailed observations are set out in paragraph 5 below).
5. New work from home requirements: The DoT has sought to encourage work from home (WFH) at an unprecedented scale. Going forward, WFH will also include 'work from anywhere' (WFA) in India, which means there is no requirement to provide pre-defined locations from where work will be carried out, if the agent is not at the OSP centre. As a major incentive, no bank guarantee or security deposit will be required for availing this facility. Importantly, the permitted mode of connectivity between the remote agent and the OSP centre has not been prescribed. However, the New OSP Guidelines set out that OSPs shall be responsible for any toll bypass related violation. This may lead to an inference that there is no prescribed method (e.g. TSP provisioned VPN/ secured VPN) for such connectivity and therefore, it has been made technology neutral.
6. Cloud-based contact centre service providers and Foreign EPABX: The New OSP Guidelines do not expressly clarify whether use of cloud-based contact centre service providers (CCSP) for OSPs will be permitted or not. It only clarifies that International OSPs are permitted to use foreign based EPABX, subject to compliance with Indian laws (including data privacy laws). However, copies of call detail records (CDR) and system logs must be stored at any of the OSP centres in India. It may be possible that the DoT may issue subsequent clarifications on usage of CCSPs by OSP centres.
7. Sharing of EPABX: In contrast to the previous regime, the New OSP Guidelines do not lay down any requirements with regard to seeking specific approval of DoT and submission of bank guarantee for sharing of EPABX. The approval required implementation of logical partitioning of EPABX for use between International OSP, Domestic OSP and general office purposes. This is a major dispensation, considering that the requirements of submitting vendor certificates, partition tables and other documents were extremely cumbersome.

Comment

The DoT must be congratulated for its endeavour to simplify the OSP regime. Firstly, the applicability of the OSP regulatory framework has been streamlined to include voice-based BPOs only. Importantly, with an eye on the current pandemic situation, the Government has allowed the WFH or WFA facility which is likely to prove to be a boon for the sector as well as the economy as a whole.

Having said that, all that glitters is not gold and upon a closer look, there appear to be several areas which may need to be clarified going forward. To begin with, the DoT should provide clarity on whether existing registrations issued to OSPs need to be surrendered or whether they will be deemed automatically cancelled under the New OSP Guidelines. Further, the process for refund of bank guarantees submitted by entities under the old regime remains unclear. Moreover, while the New OSP Guidelines aim to provide special dispensation to OSPs, there is no clarity on how this dispensation can be claimed or enforced in absence of a registration. Therefore, it appears that it will be left to self-assessment by relevant entities.

Clarity on important issues such as how to differentiate between voice and data based OSP centres and use of closed user group (CUG) for OSP functions is missing. In a major setback, the New OSP Guidelines are also silent on issues such as use of cloud based hosted contact centres, permitted connectivity between OSPs and remote agents in case of work from outside of the OSP centre, etc.

It will have to be seen if these loopholes are addressed by the DoT in due course by issuance of clarifications and amendments. For the time being, the New OSP Guidelines are bound to provide food for thought.

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