TELECOMMUNICATIONS LAWS OF THE WORLD
India
OVERVIEW OF LEGAL LANDSCAPE

India is a heavily regulated telecoms market with telecoms service providers being required to obtain a licence in order to provide services. Foreign investment caps have recently been removed and 100% foreign ownership is permitted.

A foreign investment approval has to be obtained for foreign investment above 49%. There are two restrictions in the broadcasting sector – only 49% foreign investment is permitted in terrestrial FM. Further, only 49% foreign investment is permitted in the uplinking of news and current affairs television channels.

There are three restrictions in the broadcasting sector – (a) only 49% foreign investment is permitted in terrestrial FM; (b) only 49% foreign investment is permitted in the uplinking of news and current affairs television channels; and (c) only 26% foreign investment is permitted in the uploading/streaming of news & current affairs through digital media.

There are also restrictions on participation of foreign nationals in the management of telecoms companies. Restrictions on virtual providers and resale of services have recently been lifted. Use of voice over IP and internet telephony is also restricted. There are regulations related to the need to ensure security in networks of telecoms providers.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Indian telecom law is based on the Indian Telegraph Act, 1885 which gives the government the power to regulate the use of telegraphs in India. Based on this statute, the government has issued regulations for various types of licenses – universal access, national long distance, international long distance, internet services, virtual network operators, etc. In addition, Indian Wireless Telegraph Act, 1933 contains certain regulation relating to wireless telegraphy.

The Telecom Regulatory Authority of India (TRAI) has been set up under the Telecom Regulatory Authority of India Act, 1997. Some regulations are also issued by the TRAI including, for example, ‘do not call’ regulations and interconnection rules.

The Information Technology Act, 2000 has indirect application to some telecom and internet related issues, particularly surveillance rights of the Government. The Cable Television Networks (Regulation) Act, 1995 regulates cable television.

REGULATORY BODIES OR AUTHORITIES

The Department of Telecommunications (DoT) - which is a ministry of the Government of India - is the licensing authority. It sets out the regulations permitting the grant of licences to telecom service providers. It also issues notifications from time to time on telecom laws.

The TRAI is empowered to issue regulations in certain areas and provide recommendations to the DoT in other areas. It is a somewhat unique arrangement where two regulators are involved in the regulation of telecoms.

The TRAI is an independent body and not controlled by the Government, except that the Government appoints its officers.
are certain divisions of the DoT that manage specific functions such as the Wireless Planning and Co-ordination (WPC) wing which is involved in spectrum management.

**TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS**

The following are the key categories of telecom services for which licences are required:

- Universal access licence – a jumbo licence that covers various other licences such as access services and national and international long distance service
- Cellular mobile services
- National long distance
- International long distance
- Internet services
- Satellite mobile services
- Infrastructure providers
- Audiotex licence (essentially for conferencing services)
- Other service providers (essentially for call centres)
- Virtual network operators for most of the above licences
- Telemarketer registration

**OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES**

All of the regulated services require licences from the DoT. The 'Other Service Provider' category is a registration rather than a telecom licence. The same is the case with telemarketers who have to register with the TRAI.

**DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**

All telecom services have to be provided by Indian incorporated entities. Such services cannot be provided by foreign domiciled entities. International bandwidth can be sold and billed to customers at the foreign end of such connectivity but selling without a licence to customers at the domestic end is likely to violate applicable law.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Both interconnection and roaming are regulated by the TRAI. The regulations cover arrangements among service providers for the payment of interconnection usage charges throughout the territory of India. The regulations cover tariffs for all telecommunication services and also impose a ceiling on the roaming charges that may be charged by a service provider. Further, the regulations impose a reporting requirement with regards to the tariff fixed by a service provider. The service provider is also required to report to the authority the interconnection charges and revenue sharing arrangements agreed mutually among the service providers.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

By and large, there are no differences in regulations for services provided to businesses as opposed to services provided to retail customers. Some regulations do require that aspects of such regulations be specifically mentioned in customer contracts. As mentioned in the Interconnection/roaming section, tariff regulations do apply in respect of the tariffs that can be charged to consumers.

**REGULATORY TAXES AND FEES**

Most telecom service providers have to pay a license fee, which is 8% of their “adjusted gross revenue”. This does not include spectrum fees which are payable separately based on auctions conducted. This does not apply to Other Service Providers and
Telemarketers. Goods and Services tax is generally applicable on telecom services at a rate of 18%.

**KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS**

The penalty for operating a telegraph without permission is a fine of up to INR 500. In the case of wireless telegraph, it is imprisonment of up to 3 years or a fine of INR 1000 or both. For breach of a licence condition, the penalty is a fine of INR 1000; and a further fine of INR 500 for every week of continuation of the violation.

As these penalties are fairly low, penalties for breach of telecom licences are based more on damages mentioned in licence agreements with telecom providers. For example, a universal access or national long distance telecom operator would be liable for damages of up to INR 500 million.

Further, telecom providers are required to provide bank guarantees. On violation of licence conditions, the bank guarantees can be invoked by the DoT.

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