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TMT LAW NEWSLETTER

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TELECOMMUNICATIONS:

1. The Department of Telecommunications recently launched trustedtelecom.gov.in.

[The Department of Telecommunications \(“DoT”\) has launched trustedtelecom.gov.in](https://trustedtelecom.gov.in), a portal for telecom companies to implement the National Security Directive on Telecommunication Sector. Consequently, with effect from June 15, 2021, the Telecom Service Providers (“TSPs”) are mandatorily required to connect their networks only to those new devices which are designated as ‘Trusted Products’ from ‘Trusted Sources’.

Trusted Products are products whose critical components and the products themselves are sourced from Trusted Sources. Pursuant to the change, the TSPs will be provided access to log into the Trusted Telecom Portal and indicate the telecom products and the vendor from whom they intend to procure the products. The DoT further mandates that the details of these vendors, the products, their critical components and their sources will then have to be populated into the portal by the TSPs and respective vendors who will also be provided access to the portal. Then an assessment will be made of the vendors and the sources of the components to determine Trusted Sources and Trusted products which are then intimated to the vendor concerned and the applicant TSPs to make their procurements.

Moreover, this move will not mandate replacement of the existing equipment already inducted in the networks of the TSPs nor will affect ongoing Annual Maintenance Contracts or updates to existing equipment already inducted in the network as on date of effect of the Directive. Additionally, the National Cyber Security Coordinator is the designated authority for the determination of inclusion of a vendor as a Trusted Source, of a Telecom product as a Trusted Product and the methodology for the said inclusion.

2. The Department of Telecommunications, on June 22, 2021, put out a set of draft guidelines for registration process of M2M service providers & WPAN/WLAN connectivity provider for M2M services.

Recently, DoT issued [Draft Guidelines for Registration Process of M2M Service Providers & WPAN/WLAN Connectivity Provider for M2M Services](#) (“Draft Guidelines”), in order to streamline the registration procedure.

The Draft Guidelines envisage three categories of registration. The Draft Guidelines lay down the registration procedure and terms & conditions for two categories, namely, M2M Service Provider (“M2MSP”), WPAN/WLAN Connectivity Provider as well as recognize the UL (M2M) authorization, for which separate detailed guidelines will be released by DoT.

The aforementioned categories are defined in the following manner, by the Draft Guidelines;

- M2MSP (registered as company/LLP/Partnership firm/organization/legal person) provides M2M services to third parties using telecom resources. However, any organization which intends to provide M2M services for its own use (captive use) and not for commercial purpose, shall not be covered under the scope.
- WPAN/WLAN Connectivity Provider is defined as an Indian company, registered under the Indian Companies Act, 2013 or an LLP (Limited Liability Partnership) registered under LLP Act, 2008 or a partnership firm or an organization registered under Shops and Establishment Act or a Legal Person which uses WPAN/WLAN technologies for providing M2M connectivity for commercial purposes, operating in unlicensed spectrum. *However, any organization which intends to use WPAN/WLAN for M2M connectivity for captive, non-commercial use, shall not be covered under this definition.*
- Connectivity provider using LPWAN technologies operating in unlicensed spectrum shall be covered under licensing through a new authorization under UL namely UL (M2M). In case these licensees i.e UL(M2M) intends to provide M2M Services or WPAN/WLAN Connectivity for M2M Services to third parties, it

also needs to register as an applicant.

Key features of the Draft Guidelines are;

- Draft Guidelines define Machine to Machine Services ("M2M Services") as the services offered through a connected network of objects/devices, with identifiers, in which Machine to Machine communication is possible with predefined backend platform(s) either directly or through some gateway. M2M services involve communication of end device/object with predefined backend platform(s) either directly or through some gateway. Examples of M2M services include fleet management, supply chain management, agriculture automation, smart utilities including power, water, gas etc.
- M2MSP is authorized to use WPAN/WLAN technologies in unlicensed spectrum/frequency exempt band to provide M2M services. In case of use of WPAN/WLAN technologies in unlicensed spectrum/frequency exempt band, the network must mandatorily connect to licensed telecom operators' network for backhaul connectivity.
- It is mandated that any instructions regarding permanent international roaming issued by the government shall be binding on M2MSP.

- DoT vide letter dated May 06, 2018, has issued the instructions permitting the use of e-SIMs with both single and multiple profile configurations with Over the Air subscription update facility as per prevailing global specifications and standards and M2MSP shall adhere to these instructions as amended from time to time.
- For all the devices sold in India which have embedded SIM inside the device, the packaging/ instructions/ supporting leaflet shall include instruction that *“This device is having embedded SIM inside. At the time of re-sale/ loss/ transfer of this device, change of ownership details shall be shared with respective M2M Service provider/ Telecom service provider”*.
- The Indian Telegraph (Amendment) Rules, 2017, provide that telecom equipment must undergo prior mandatory testing and certification. Accordingly, the equipment/ devices used in M2M services shall comply with these instructions as issued by DoT from time to time.
- An applicant shall ensure that M2M devices should use only genuine IMEIs & ESNs. Non-genuine, duplicate and fake IMEIs & ESNs should not be allowed in the M2M devices.

3. Department of Telecommunications, recently launched operational guidelines

for production linked incentive scheme.

[DoT recently launched guidelines for production linked incentive scheme](#) for promoting telecom & networking products manufacturing in India. The scheme was notified vide a notification released by DoT, on February 24, 2021 and the scheme has been in effect since April 01, 2021. The guidelines were brought about, after consultation with various stakeholders involved, to smoothen the execution of the production linked scheme and is open to both MSME and Non-MSME Companies including Domestic companies, having global marketing revenue of ₹250 crores per year as well as Global Companies, that with global marketing revenue more than ₹10,000 crores in the base year.

Investment made by successful applicants in India from April 01, 2021 onwards and up to Financial Year 2024-2025 shall be eligible, subject to the prescribed qualifying incremental annual thresholds. The support under the Scheme shall be provided for a period for the upcoming five years. The guidelines also prescribe what will be considered an investment and what would not be, as well as provide various mandates for calculating a company’s investment, in order to ascertain the eligibility of various applicants under the scheme. The guidelines envisage appointment of project management agency, by DoT, which will scrutinize the applications under the scheme, according to the prescribed

standards, and shall grant approvals to ten eligible applications each in MSME & Non-MSME categories. Moreover, out of the ten non-MSME categories, at least three applicants are mandated to be domestic companies.

4. TRAI issues supplementary consultation paper on ‘Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed.’

Telecom Regulatory Authority of India has [issued](#) a supplementary consultation paper on ‘Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed’ on May 19, 2021. TRAI received a reference dated March 12, 2021 from Department of Telecom seeking consolidated and updated recommendations in regard to proliferation of fixed-line broadband services in the country. DoT has raised certain new issues such as exemption of the license fee on the revenues earned from fixed line broadband keeping in view the current factual matrix and relevant issues, likelihood of misuse by the licensees through misappropriation of revenues due to the proposed exemption of the license fee on the revenues earned from fixed-line broadband services, and promoting proliferation of fixed-line broadband by providing direct benefit to consumers for usage of fixed-line broadband services which were neither consulted with the stakeholders in the consultation paper on ‘Delivering Broadband Quickly: What do we need to do?’ dated

April 17, 2015 nor in the consultation paper on ‘Roadmap to Promote Broadband Connectivity and Enhanced Broadband Speed’ dated August 20, 2020. Further, a separate section on use of street furniture for rollout of 5G networks has also been added for consultation purposes.

BROADCASTING:

5. The Advertising Standards Council of India releases the ‘Guidelines for Influencer Advertising in Digital Media’

The Advertising Standards Council of India (“ASCI”) on [May 27, 2021](#), released the ‘Guidelines for Influencer Advertising in Digital Media’ (“Guidelines”) with the objective to enable consumers to easily recognize promotional content on digital platforms. The prominent features of the Guidelines are as follows:

- The Guidelines are applicable to commercial messages or advertisements published on or after June 14, 2021, by the social media influencers across platforms including but not limited to the internet, video on demand, mobile, non-standard television, etc.
- All advertisements published by social media influencers or their representatives is required to compulsorily carry a disclosure label that clearly identifies it as an advertisement. Disclosures are required only if there is a material connection between the advertiser and the

influencer and such material connection can be both in cash and kind.

- Disclosures are required to be upfront and prominent so that it is not missed by an average consumer. Additionally, it is required to be in English or in the language of the advertisement. Furthermore, the Guidelines discuss in detail as to how the disclosure label is to be positioned on an advertisement when published through video/pictures, live stream or audio media.
- A virtual influencer is required to additionally disclose that they are not interacting with a real human being.
- The responsibility of making disclosures under the Guidelines is upon the influencers and the advertisers are responsible to ensure that the posted influencer advertisement is in line with the ASCI Code and its guidelines.
- It is an extremely encouraging and a much-welcomed move by ASCI as the Guidelines will promote transparency and benefit the consumers immensely.

6. The Ministry of Information & Broadcasting introduces the Cinematograph (Amendment) Bill, 2021.

The Ministry of Information and Broadcasting (“MIB”) [vide notification dated June 18, 2021](#), introduced the Cinematograph

(Amendment) Bill, 2021 with the objective to make the process of sanctioning of films for exhibition more effective and tackle the menace of film piracy.

The important changes proposed are as follows: -

- The central government, whenever it considers necessary to do so, can direct the chairman of the Central Board of Film Certification to re-examine the film on whether it is against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.
- No person shall be permitted to use any audio-visual recording device in a place to knowingly make or transmit or attempt to make or transmit or abet the making or transmission of a copy of a film or a part thereof. Further, any person in contravention of the same will be punishable with imprisonment not more than three years and with a fine which shall not be less than three lakh rupees but which may extend to 5% of the audited gross production cost or with both.
- The existing UA category is further sub divided into age-based categories i.e. U/A 7+, U/A 13+ and U/A 16+.

7. The Ministry of Information & Broadcasting notifies Cable Television Networks (Amendment) Rules, 2021.

The Ministry of Information & Broadcasting [vide notification dated June 17, 2021](#), amended the Cable Television Networks Rules, 1994, providing for a statutory mechanism for the citizens to raise complaints regarding the content of the programme of a channel. The Cable Television Networks (Amendment) Rules, 2021 provides for a 3-tier grievance redressal mechanism comprising of a self-regulation by broadcasters [level-I], self-regulation by the self-regulating bodies of the broadcasters [level-II] and oversight mechanism by an inter-departmental committee at the level of the central government [level-III].

An aggrieved person may file a complaint to the broadcaster which is required to be acknowledged within 24 hours and redressed within 15 days of the receipt of the complaint. The complainant may prefer an appeal to the self-regulating bodies set up by broadcasters if he is not satisfied with the decision of the broadcaster, which is required to be disposed-off within 60 days of receipt of the appeal. Further, if the complainant is not satisfied with the decision of the self-regulating body, within 15 days of such decision, may prefer an appeal to the central government for its consideration under the oversight mechanism.

Additionally, the broadcasters are required to make public disclosure of all grievances or complaints, manner of disposal of complaints, action taken, reply sent, the orders or directions received and action taken on such orders or directions and preserve the record of the content telecast for a minimum period of 90 days. The amendment provides for a strong institutional mechanism for addressing the concerns of the people and it also places the broadcasters and their self-regulating bodies accountable and responsible.

8. IMAI sets up Digital Publishers Content Grievance Council and appoints Justice Sikri as the chairman of Grievance Redressal Board

The Internet and Mobile Association of India (“**IAMAI**”) has set up a Digital Publishers Content Grievance Council (“**DPCGC**”) as a self-regulatory body for online curated content platforms in compliance with the recently notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules 2021**”). Currently, DPCGC has 14 publishers of online curated content as its members. Justice Sikri is appointed as the chairman of the Grievance Redressal Board (“**GRB**”) which is formed as a part of the DPCGC which aims to address content grievances of the DPCGC member’s video streaming services.

The establishment of DPCGC and GRB is a significant step towards setting up an independent grievance redressal mechanism in conformity with IT Rules 2021. The GRB will be responsible in ensuring the compliance to the code of ethics by DPCGC council members. It will also provide guidance to members of the council on the code of ethics and address the consumer grievances.

DATA PROTECTION

9. The Delhi High Court issues omnibus directions for the removal of offending or illegal content from the worldwide-web.

The Delhi High Court in its judgment in [‘X’ v. Union of India & Ors.](#) delivered on April 20, 2021, issued directions for courts to follow while dealing with the cases related to the removal of offending or illegal content from the worldwide-web. The court also stated that these directions will operate in conjunction and be read together with the appropriate regulations issued under the Information Technology Act, 2000 including the (Intermediary Guidelines and Digital Media Ethics Code) [Rules](#), 2021 (“**Intermediary Rules, 2021**”).

These directions include but are not limited to:

- The website or online platform on which the offending content is hosted is required to remove such content within **24 hours** of receipt of the court order. And, the order of the court may be

passed on ‘grievance’ as contemplated in Rule 2(1)(j) of the Intermediary Rules, 2021.

- A direction to the search engine(s) should also be issued by the court as the court may deem fit, to make the offending content non-searchable by ‘de-indexing’ and de-referencing the offending content in their listed search results as well as across web-pages, sub-pages or sub-directories.
- Websites/online platforms/search engine(s), to undertake to employ proactive monitoring by using automated tools, to determine and remove or disable access to any content which is ‘*exactly identical*’ to the offending content that is the subject matter of the court order, as envisaged in Rule 4(1)(d) of the 2021 Rules.

Additionally, it also laid down as to whom the directions must be issued to and what steps are required to be taken by the law enforcement agencies to implement such directions issued by a court. The court also reiterated that a failure on the part of the intermediary to observe its obligations *per* the directions of the court, will render the intermediary forfeiting the exemption from liability and thereby, will lose the safe harbour protection guaranteed to it under Section 79 of the Information Technology Act, 2000.

This decision of the Delhi High Court, is welcome and required, especially at a time when a lot of illegal content including child pornography is finding its way onto websites that are hosted on servers outside India. It will indeed go a long way in ensuring a safer and a healthier internet ecosystem.

DIGITAL MAPPING:

10. The Department of Science and Technology released the Draft National Geospatial Policy 2021.

The Department of Science and Technology has released the [Draft National Geospatial Policy 2021](#), after the Department of Science and Technology had published Guidelines for acquiring and producing Geospatial Data, Products, Solutions and Services, in February 2021.

The Policy aims at empowering citizens and enterprises to create, access and use of geospatial data and information for addressing developmental needs of the country while also safeguarding its security interests. Further, it provides for augmenting the geospatial ecosystem in the country, as well as globally, by encouraging geospatial knowledge generation, skill sets and expertise, strengthening of geospatial infrastructure, use of Geospatial Data, Products, Solutions and Services ("GDPSS") and advancement of geospatial entrepreneurship for socio-economic development of the nation.

Key features of the policy are as follows:

- **Registration of land surveyors:** Policy recognizes that there is no mechanism in the country to certify skill set required for surveying and that the country needs a mechanism to maintain the quality of survey professionals. Therefore, a law will be legislated for registration of land surveyors.
- **National Topographic Database:** Survey of India ("Sol") shall prepare a High Resolution National Topographic Database for the entire country and update it from time to time under the supervision of the Geospatial Data Promotion and Development Committee ("GDPDC"). Database so prepared/updated shall be made available for general and specific use by citizens, businesses, academia, research, NGOs and Government.
- **Requirement for establishing nationwide Global Navigation Satellite Systems:** Policy mentions that there is an urgent requirement to establish nationwide Global Navigation Satellite Systems and Continuously Operating Reference Stations ("CORS") infrastructure network. It will fulfil the need for instantaneous and reliable access to position and timing information that will enable a variety of scientific, civil,

defense and commercial applications across the Indian landscape.

- **National Data Registry:** In order to facilitate efficient provision of quality Geospatial Data, Products, Services and Solutions to the stakeholders, GDPDC will operate a National Data Registry ("NDR"). NDR will be a commonly accessible set of registers/ catalogue of data sets and services, metadata, feature definitions, application schemes, code lists and persistent identifiers for streamlining provision of data supply chains for governance, businesses, and communities.
- **National Spatial Data Infrastructure:** The Government of India established the National Spatial Data Infrastructure ("NSDI") for the purposes of acquiring, processing, storing, distribution and improving utilization of spatial data. National Data Spatial Committee ("NSDC") will be rechristened as GDPDC and reconstituted with representation in tune with changing times. It shall perform the duties and functions of existing NSDC and those laid under this policy apart from other matters referred to it by the Government of India.
- **National Skill Development Agency:** The geospatial industry will directly connect with the National Skill Development Agency ("NSDA") for the

National Skills Qualifications Framework ("NSQF") as a starting point. This system will be gradually developed to a stage where a separate Geospatial Sector Skill Council will be created.

E-COMMERCE

11. Ministry of Consumer Affairs, Food, and Public Distribution, vide a Gazette notification issued on May 17, 2021 notified the Consumer Protection (E-Commerce) (Amendment) Rules, 2021.

The Department of Consumer Affairs on June 21, 2021, proposed amendments to the [Consumer Protection \(E-commerce\) Rules, 2020](#) ("Draft E-commerce Rules").

The key changes are as follows:

- **Change in the definition of E-Commerce entity:** The Draft E-Commerce Rules prescribe change in the definition of "e-commerce entity". "E-commerce entity" is proposed to be defined as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, *including any entity engaged by such person for the purpose of fulfilment of orders placed by a user on its platform and any 'related party' as defined under Section 2(76) of the Companies Act, 2013, but does not include a seller offering his goods or services for sale on a*

marketplace e-commerce entity.

- **Cross selling:** Cross-selling is defined herein as the sale of goods/ services that are related, adjacent or complimentary to a purchase made by a customer, with an intent to maximise the revenue of the e-commerce entity. It is further mandated that if an e-commerce entity which is engaged in cross-selling of goods or services is required to provide disclosures on its platform regarding the name of the entity providing data for cross-selling & data of such entity used for cross-selling.
- **Mis-Selling:** Mis-selling is defined as the sale of goods/ services by deliberate misrepresentation of information about such goods or services. E-commerce entities are prohibited from indulging in mis-selling.
- **Concept of related parties and associate entities:** Also, the Draft E-commerce Rules have introduced the concept of related parties and associated entities and obliges the e-commerce entities to make sure that their related parties and associated entities are not enlisted as sellers on their platform.
- **Mandate for e-commerce entities to register with Department of Promotion of Industry and Internal Trade (“DPIIT”):** Further, the

amendment mandates the E-commerce entities intending to operate in India, to register itself with the DPIIT within such period as prescribed by DPIIT for allotment of a registration number.

- **Concept of fall-back liability:** Most significantly, the Draft E-commerce Rules propose insertion of Rule 6(9) which subjects marketplace e-commerce entity to a fall-back liability if a seller registered with such entity, fails to deliver the goods or services ordered by a consumer due to negligent actions of the seller in fulfilling duties and liabilities in the manner as prescribed by the marketplace e-commerce entity which causes loss to the consumer
- **Prohibition of flash-sales:** Rule 5(16) have been proposed to be inserted which prohibits e-commerce entities from organizing any flash sale of goods or services on its platform.
- **Obligation to establish grievance redressal mechanism:** An E-commerce entity is required to establish an adequate grievance redressal mechanism and appoint Chief compliance officer, a Nodal contact person and a resident grievance officer whose name and contact details will be prominently published on the platform.
- **Disclosure requirements:** Lastly, the E-Commerce Entity

is required to ensure that sponsored listing of products and services are distinctly identified with clear and prominent disclosure as well as should not display or promote any misleading advertisement whether in the course of business on its platform or otherwise.

Many key amendments introduced by the Draft E-Commerce Rules, remain a point of contention, and centre of much debate, among the academic circles, and stakeholders. Comments were sought by the public on the content of the rules, and the final shape of the Draft E-Commerce Rules, is something we need to wait and watch out for.

AADHAAR

12. The Unique Identification Authority of India released the draft Aadhaar (Authentication and Offline Verification) Regulations, 2021.

The Unique Identification Authority of India ('UIDAI'), on the May 20, 2021 [released](#) the Aadhaar (Authentication and Offline Verification) Regulations, 2021. These regulations amongst other changes, propose to allow those with an Aadhaar number to permanently lock their biometrics and introduce a mechanism for offline Aadhaar number verifications through QR code.

Further, it also introduces a concept of paperless offline, offline paper based verification, and using a system called Aadhaar Number Capture Service Token, which is an encrypted Aadhaar number generated for an Aadhaar number for completion of an authentication transaction. Additionally, it defines an Offline Verification Seeking Entity or OVSE as one that wants to undertake offline verification of an Aadhaar number holder. And, also empowers the Aadhaar number holder to revoke consent given to an OVSE for storing his/her offline Aadhaar data.

Although, these are still draft regulations, the UIDAI has taken an important step in the right direction by allowing paper and offline verification as one of the sharper criticisms of the Aadhaar project was that it excluded those without digital infrastructure.

HEALTH-TECH

13. The National Health Authority under the Ministry of Health and Family Welfare, published a consultation paper on the Health Facility Registry.

The National Health Authority under the Ministry of Health and Family Welfare on June 22, 2021, published [consultation paper on the Healthcare Facility Registry](#) ("HFR").

HFR is proposed to be the single complete and up-to-date repository for medical facilities in the country and will serve as the

primary source of information for all other databases and listings including of all healthcare professionals involving doctors, emergency care, nurses, midwives and community health professionals. The HFR aims to facilitate the exchange of standardized data in public and private healthcare facilities across all healthcare systems. Each healthcare facility in the country including but not limited to hospitals, clinics, diagnostic centers, pharmacies will have a single record and a unique identification, spanning all medical systems and covering both public and private health facilities.

Further, the National Digital Health Blueprint plans to make some of the information contained in the registry open source with the consent of the health institutions. This information will be made available through open APIs and National Digital Health Mission sandboxes where stakeholders can integrate and test their solutions. The registry shall allow health facilities to access their profile and update it periodically with specialties/services they offer along with other attributes, as well as provide a secure common platform to the facilities to maintain all essential information.

FINTECH

14. The Reserve Bank of India issues clarification on virtual currencies.

The Reserve Bank of India (“RBI”) on May 31, 2021 issued a **clarification** advising banks and regulated entities to not make a reference to a **circular** that it had issued on April 6, 2018 imposing a prohibition on dealing with virtual currencies, including bitcoins. This, it clarified as the said circular was set aside, and declared invalid by a **judgment** of the Supreme Court of India on March 4, 2020.

However, it directed banks, as well as other entities, to continue to carry out customer due diligence processes in line with regulations governing standards for Know-Your-Customer, Anti-Money Laundering, Combating of Financing of Terrorism and obligations of regulated entities under the Prevention of Money Laundering Act, 2002 and the Foreign Exchange Management Act, 1999 for overseas remittances.

15. The Ministry of Information & Broadcasting releases advisory to Distribution Platform Operators to adopt DigiLocker for customer verification and other requirements.

The Ministry of Information & Broadcasting on April 7, 2021, issued an **advisory**, addressed to all the Distribution Platform Operators (DTH/ HITS/ IPTV/MSOs/LCOs) to adopt the DigiLocker facility made available by the Government of India, for customer verification.

This advisory comes three years after Rule 9A of the Information Technology (Preservation and

Retention of Information by Intermediaries Providing Digital Locker facility) Rules, 2016 were notified on February 8, 2017 and which grant the status of being at par with original documents to the documents in Digi Locker. This is a significant policy shift, as it is in line and appropriately integrated with the initiative of the Union Government to promote citizen centric service delivery through its Digital India Programme.

16. The Reserve Bank of India makes it mandatory for PPI issuers to grant interoperability for full KYC holders.

The Reserve Bank of India *vide* a [notification](#) issued on the May 19, 2021 made it mandatory for Pre-Paid Instrument Issuers ('PPI') to give the holders of full Know-Your-Customer ('KYC') PPIs interoperability through authorized card networks by March 31, 2022. In addition, the RBI also issued a series of regulatory changes for the digital payment ecosystem in India, and these include but are not limited:

- PPIs for Mass Transit Systems will remain exempted from interoperability while Gift PPI issuers have the option of interoperability;
- The maximum amount outstanding in respect of full-KYC PPIs has been increased from ₹1 lakh to ₹2 lakhs;
- The feature of cash withdrawal will be permitted in respect of full-KYC PPIs issued by non-PPI issuers as well, with the maximum limit of ₹2,000 per transaction and an overall

limit of ₹10,000 per month per PPI. Further, all cash withdrawal transactions performed using a card/wallet, shall be authenticated by an additional factor authentication;

- PPI issuers are obligated to put in place suitable cooling period for cash withdrawal upon opening the PPIs or loading/re-loading of fund into PPIs to mitigate the risk of fraudulent use of PPIs;
- Any PPI issuer offering the facility of cash withdrawal has to put in place a proper customer redressal mechanism. And, complaints in this regard will fall under the ambit of the respective ombudsman schemes and instructions on limiting liability of customers issued from time to time.

The RBI's policy initiative to introduce interoperability in a phased manner, is surely bound to give a fillip to digital payments and promote greater inclusion by providing easy access to payment products such as UPI to those segments outside the financial ecosystem.

17. The Reserve Bank of India issues amendment to the Know-Your-Customer Master Direction, 2016

Reserve Bank of India on May 10, 2021 issued a [notification](#) amending the [Master Direction](#) on Know Your Customer ("KYC") dated February 25, 2016, with the stated aim of

further leveraging the Video-based Customer Identification Process ('V-CIP') and simplifying the process of periodic updating of KYC.

Through this amendment, it brought in a series of significant changes, that include but are not limited to:

- A regulated entity ('RE') should have complied with the RBI guidelines on minimum baseline cyber security and resilience framework for banks.
- In video KYC process, an authorised official of the RE has to complete customer identification by obtaining and verifying personal identification information through an audio-visual interaction as required for due diligence. The process should be undertaken live using a secured network.
- Introduction of more customer-friendly options, including the use of digital channels for the purpose of periodic updating of KYC details of customers.
- Conversion of limited KYC accounts opened on the basis of Aadhaar e-KYC authentication in non-face-to-face mode to fully KYC-compliant accounts.
- Enabling the use of KYC Identifier of Centralised KYC Registry ('CKYCR') for V-CIP and submission of electronic documents (including identity documents issued through DigiLocker) as identity proof.

The RBI recognising the need to introduce robust digitally accepted KYC mechanisms, has made this regulatory intervention, and V-CIP as a concept will help businesses not only prevent financial fraud, but reduce paperwork in a cost-effective manner.

18. The Reserve Bank of India issues a clarification on the Payment Aggregator and Payment Gateway Guidelines, 2020

The Reserve Bank of India on the March 31, 2021 issued a [circular](#) ('Circular') extended the deadline for non-bank payment aggregators to comply with the Payment Aggregator and Payment Gateway Guidelines ("PA/PG Guidelines") by six months, i.e., till December 31, 2021. This was done to enable the payment system providers and participants to put in place workable solutions, such as tokenisation, within the framework set out in the RBI [circular](#) dated March 17, 2020 on "Guidelines on Regulation of Payment Aggregators and Payment Gateways" and the [circular](#) dated January 08, 2019 on "Tokenisation - Card transactions". The remaining provisions of the former circular remain unchanged. This clarification was significant inasmuch as it addressed ambiguities of various aspects pertaining to the PA Guidelines.

Some of the key points are as follows:

- For bank Payment Aggregators ('PAs'), guidelines must be complied with by September 30, 2020, and no authorisation is required. Conversely, non-

bank PAs are to submit application for authorisation by June 30, 2021, after which instructions will come into force. As to the applicability, RBI resolved that the Guidelines are applicable to e-commerce marketplaces undertaking direct payment aggregation. E-commerce marketplaces which avail PA services, shall be considered merchants. Additionally, RBI clarified that Guidelines are not applicable to ‘Delivery vs. Payment’ transactions.

- Additionally, RBI shed light on authorisation, capital and net-worth related guidelines. For existing non-bank PAs, the Chartered Accountant (‘CA’) certificate of net-worth evidencing requirement of net-worth is ensured (as on March 31, 2021) shall be submitted to RBI when applying for authorisation.
- However, newly incorporated non-bank entities not having such audited statement shall submit a CA certificate of their net-worth and provisional balance sheet. Further, monitoring of the PA’s net-worth is not required by banks maintaining escrow accounts.
- With respect to the aspect of governance, it was required that Promoters and Promoter Groups conform to RBI’s criteria of being ‘fit and proper’. The standard for a ‘fit and proper’ Director of a PA company was further enlisted, and it was stated that RBI’s decision on such questions would be final.
- Additionally, it was clarified that KYC guidelines and Paragraph 6 of PA Guidelines (safeguards against money laundering (KYC/ AML/ CFT) provisions) extend to PAs maintaining account-based relationship with merchants. However, where the merchant already has a bank account for transaction settlement purposes, the entire process of KYC needn’t be carried out.
- It was also clarified that entities functioning as an Online Payment Gateway Service Provider (“OPGSP”) and undertaking cross-border transactions in terms of OPGSP guidelines shall comply with the [circular](#) on “Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers”.
- Adherence to the above circular is also made a requirement in case of an OPGSP entity functioning as PA or PG (“**Payment Gateways**”) for stipulated transactions. Further, RBI resolved that a PA needs to ensure infrastructural compliance of merchants to security standards. Additionally, provisions in respect of data storage and audits were also provided.
- It also clarified that for maintenance of escrow accounts, operations of PAs are deemed to be ‘designated payment systems’ under the

Payment and Settlement Systems Act, 2007 ('PSS Act')

after obtaining appropriate authorisation. Movement towards an escrow account may be initiated on an earlier date, though this alone shall not make them eligible for a "designated payment system" status under Section 23A of the PSS Act.

- Lastly, entities not attaining pre requisite net-worth as of March 31, 2021 shall wind up their PA business. And, that the earlier guidelines, namely 'Directions for opening and operation of Accounts and settlement of payments for electronic payment transactions involving intermediaries' stood repealed after June 30, 2021.

The RBI issued this clarification after several representations were made to it by industry bodies and financial technology companies on several issues. It is important to note this point, as it shows how the regulator is keen to listen and adapt according to industry requirements and concerns. And, will only help in safeguarding the growth of the digital payments and financial technology sector.

GAMING & ADVERTISEMENT

19. Uttar Pradesh Law Commission releases report on prevention of gambling along with The Uttar

Pradesh Prevention of Public Gambling Bill, 2021

The Uttar Pradesh State Law Commission ("Commission") released 18th report dated June 15, 2021, on prevention of gambling in Uttar Pradesh along with the Uttar Pradesh Prevention of Public Gambling Bill, 2021 ("Bill"). The Commission proposed a ban on online gambling in the state of Uttar Pradesh. The Bill defines "gambling or gaming" as game of chance by which a person intentionally exposes money or things of value to the risk or hazard of loss by chance and for which purpose such game of chance also includes playing a game of Matka, Satta or lucky board; online gaming for money or any other stakes; playing a game or entering into competition or contest for wining prizes in money or otherwise; wagering or betting except horse race. The Bill further provides for an exemption to *games of mere skill* wherever played. Further, it provides that if the game of chance and game of skill combined is carried on in a common gaming-house, it shall be deemed to be gambling. The games which are predominantly skill based but still has an element of chance in it are to be allowed in the state of Uttar Pradesh. Further, the Bill aims to make the law regarding gambling in public places more stringent.

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