

New and Stiffer Telecom Norms

Service Tax on Construction of Residential Complexes Challenged

Supreme Court Introduces Service of Notice by E-mail

LexCounsel, Law Offices

C-10, Gulmohar Park
New Delhi 110 049, INDIA.

Tel.: +91.11.4166.2861
Fax: +91.11.4166.2862

Recommended by:



New and Stiffer Telecom Norms

With a view to address national security concerns, the Department of Telecom has laid down stringent norms for telecom companies for sourcing equipment from foreign manufacturers. The norms are incorporated into the license agreements of all telecom companies with immediate effect.

The new norms have, to a great extent, put the onus on mobile operators to address most of the security related concerns regarding procurement of equipment. Penalties of 100% of the contract value can now be imposed on mobile phone operators if any spyware or malware is found in their imported equipment, besides the basic Rs. 50 Crore penalty.

The international telecom equipment makers also have to deposit source codes and detailed design of all products and services they sell in India into an escrow account in an encrypted form. This information can be accessed by security agencies and operators in cases of emergency. The Government can also blacklist the vendors if any spyware is found in their equipment.

In addition, it is prescribed that the entities that maintain and manage mobile networks in India on behalf of Indian telecom companies must only employ Indian engineers, and have accordingly been given a two-year time frame to comply with the requirement.

Service Tax on Construction of Residential Complexes Challenged

The Bombay High Court had admitted a writ petition challenging constitutional validity of service tax on construction services concerning residential complexes. The High Court has directed the Government to file its reply and in the meantime, not to take any coercive steps against the petitioners (Maharashtra Chamber of Housing Industry & Anr.) towards recovery of service tax concern the said service.

The challenge involves determination of an underlying question of constitutional power and authority of the Central Government to levy taxes on lands and buildings. There is a view that in terms of the Constitution of India, the State Governments, and not the Central Government, are empowered to levy taxes on lands and buildings. The levy challenged by the writ petition is however introduced and enforced by the Central Government.

The challenge, to a great extent, shares the questions of constitutional law as those raised by another set of petitioners before various High Courts of India while challenging levy of service tax on commercial rentals. Likewise, certain High Courts have already directed the Government not to take coercive steps to recover service tax on commercial rentals pending adjudication by them of the corresponding writ petitions.

Supreme Court Introduces Service of Notice by E-mail

While the Delhi High Court continues to operate two e-courts, the Supreme Court of India has permitted service of notice to the respondents by e-mail albeit for different reasons.

While the Delhi High Court's initiative is driven by "eco-friendly" reasons, the reason for the Supreme Court's initiative is to avoid "mounting arrears". "In Delhi itself, the input indicates that fifty per cent of the arrears in Courts, particularly in commercial cases is on account of delay in process serving", observed the Supreme Court.

The facility is presently extended to commercial litigation and to cases where the petitioners seek any urgent interim relief. The Supreme Court has accordingly directed the Cabinet Secretariat to provide centralized e-mail addresses of various ministries, departments, regulatory authorities and names of their nodal offices, if any, for the purposes of service to them by e-mail.