



19 Anand Lok,
Lower Ground Floor,
New Delhi – 110049

160, Ravi Colony,
Trimulgherry,
Hyderabad – 500015

November 27, 2020

Uma Chauhan
E-Governance Group
Ministry of Electronics and Information Technology
Government of India

Re: Draft Data Centre Policy

Dear Ms. Uma Chauhan,

ALG India Law Offices LLP (“ALG”) submits these comments in response to the invitation for feedback on the Draft Data Centre Policy prepared by the E-Governance Group, Ministry of Electronics and Information Technology (MeitY), which was published in November 2020.

ALG represents several domestic and foreign companies having an interest in data governance. In the course of advising its clients, ALG has had the occasion to consider and reflect on the current legal landscape in India pertaining to data governance in general, and the aforementioned draft in particular.

Our key comments and suggestions, discussed in detail in the enclosed Note, are summarized below –

1. There should be clarity on the particular organization which will be entrusted with ensuring compliance with data protection laws.
2. There should be adequate representation from the Central Government, State Governments and experts from the industry in the constitution of the Inter-Ministerial Empowered Committee (IMEC), Data Centre Facilitation Units (DFCUs) and the Data Centre Industry Council (DCIC).
3. There should be clarity on measures purported to be adopted by MeitY for framing security standards.
4. Data Centres should be kept outside the purview of the Essential Services Maintenance Act, 1968.
5. There should be clarity on how India will manage the high demand of power owing to creation of large-scale data centres.

We appreciate the considerable effort that has gone into preparation of the Draft. We recognize the time pressures and challenges under which the committee is working, particularly in light of the COVID-19 pandemic. We thank you for your time and consideration of these comments. Respectfully submitted,

ALG India Law Offices LLP

Through

Gaurav Bhalla, Partner

Sri Lekha, Associate



19 Anand Lok,
Lower Ground Floor,
New Delhi – 110049

160, Ravi Colony,
Trimulgherry,
Hyderabad – 500015

NOTE CONTAINING ALG'S COMMENTS AND SUGGESTIONS ON THE DRAFT DATA CENTRE POLICY

1. There should be clarity on the particular organization which will be entrusted with ensuring compliance with data protection laws.

1.1. ALG's Observations

1.1.1. The draft policy in Point 5.5 mentions that an Inter-Ministerial Empowered Committee (IMEC) will be set up which will be the key decision-making body to facilitate the implementation of various measures under this policy. Further, the draft policy in Point 5.5.2 mentions that Data Centre Facilitation Units (DFCUs) will be established to provide services to interested Data Centre Parks/Data Centre and would also monitor the implementation of the policy framework.

1.1.2. The policy does not clarify the organization which will be responsible for addressing the data protection and privacy concerns with respect to the large amount of data stored in such data centres.

1.2. ALG's Recommendations

1.2.1. The policy should clearly specify that the responsibility and function of the IMEC and the DFCUs are solely restricted to facilitating and implementing the objectives of this draft policy. It should further specify that all issues pertaining to data privacy will fall under the domain of the Data Protection Authority envisaged to be formed under the Personal Data Protection Bill, 2019. This would ensure that the roles and responsibilities of each organization is clearly demarcated and there is no overlap leading to confusion in exercise of power.

2. There should be adequate representation from the Central Government, State Governments and experts from the industry in the constitution of the Inter-Ministerial Empowered Committee (IMEC), Data Centre Facilitation Units (DFCUs) and the Data Centre Industry Council (DCIC).

2.1. ALG's Observations

2.1.1. Point 5.5.1 of the draft policy provides for formation of an Inter-Ministerial Empowered Committee (IMEC) under the Chairmanship of Secretary, MeitY, with participation from various Central Ministries and State Governments. As per the draft policy, this Committee would be the key decision-making body to facilitate the implementation of various measures under the framework of the policy. It further adds that ToR and constitution of the IMEC shall be notified by MeitY.

2.1.2. Further, Point 5.5.2 of the draft policy provides for formation of Data Centre Facilitation Units (DFCUs) under the Ministry of Electronics and Information Technology (MeitY). The primary responsibilities entrusted to the DFCUs are to: (i) provide harmonized services to interested Data Centre Parks, Data Centre developers on matters related to setting up of Data Centres; (ii) function as the nodal agency to drive and support the decisions taken by the Inter-Ministerial Empowered Committee (IMEC); (iii) monitor the implementation of policy framework; and (iv) would be responsible for evolving Centre-State coordination mechanism(s) to ensure policy objectives are met.

2.1.3. Point 5.5.3 of the draft policy also provides for formation of an independent Data Centre Industry Council (DCIC) which would act as an interface between the sector and the Government. The draft policy elaborates that this council will work to represent the sector's viewpoint and engage with MeitY regarding matters concerning the growth of the Data Centre sector in India.

2.1.4. Barring the provision providing for participation from various Central Ministries and State Governments in the IMEC, the draft policy does not elaborate on the specific constitution of these bodies.

2.2. ALG's Recommendations

2.2.1. The policy should provide elaborate details about the constitution of the IMEC, DFCUs and the DCIC. It should elaborate on the number of members, the process as well as the criterion for selection. Particularly, in addition to representation from the Central government, there should also be sufficient representation from the State governments as well as experts from the industry.

3. There should be clarity on measures purported to be adopted by MeitY for framing data security standards.

3.1. ALG's Observations

3.1.1. The Draft Policy under Point 5.4.4.1 reads as "*MeitY shall publish and mandate minimum standards for Data Centres / Data Centre Parks in the areas of build, IT, non-IT and security.*"

3.1.2. The draft policy, however, does not elaborate on the method and measures purported to be taken in formulating these security standards.

3.2. ALG's Recommendations

3.2.1. Data security in the ever-growing digital world being of paramount concern, it is

19 Anand Lok,
Lower Ground Floor,
New Delhi – 110049

160, Ravi Colony,
Trimulgherry,
Hyderabad – 500015

imperative that a sturdy framework for regulation of security related issues be laid down. Accordingly, it is suggested that a detailed procedure be prepared and published, which should include deliberations with experts from the industry for framing of appropriate standards of data security in respect of data stored in these Data Centres.

4. Data Centres should be kept outside the purview of the Essential Services Maintenance Act, 1968.

4.1. ALG's Observations

4.1.1. The draft policy under Point 5.2.3 provides for inclusion of Data Centres to be placed under the Essential Services Maintenance Act, 1968. Further, the draft policy goes on to state that *“Continuous functioning of Data Centres is critical for continued delivery of services and to maintain the normalcy of day to day activities. Inclusion of Data Centre under the ESMA will enable seamless continuity of services even during times of calamities or crisis.”*

4.2. ALG's Recommendations

4.2.1. There does not seem to be adequate reasoning for inclusion of Data Centres under the Essential Services Maintenance Act, 1968. The draft policy already envisages to provide this sector with uninterrupted power supply and other necessary infrastructure which should be sufficient for functioning of Data Centres.

4.2.2. The Essential Services Maintenance Act, 1968 has also come under criticism for curtailment of the employees' right to strike as well as providing for arrest without warrant. Considering the lack of sufficient clarity and reasoning on this subject in the draft policy, it is recommended that Data Centres be kept outside the purview of the Essential Services Maintenance Act, 1968.

5. There should be clarity on how India will manage the high demand of power owing to creation of large-scale data centres.

5.1. ALG's Observations

5.1.1. The power requirements in India have largely been quite low in comparison to the domestic demands (including that of the industrial sector and consumers). The draft policy does not elaborate on the current gross demand of power and the expected demand of power after creation of these data centres.

5.1.2. In Point 1.6 of the draft policy, it is mentioned that *“Currently, as per various estimates, India has around 375 MW installed power capacity for Data Centre and as per projections, this may grow to three time (sic) by 2025.”* The draft policy does not mention the source of this



19 Anand Lok,
Lower Ground Floor,
New Delhi – 110049

160, Ravi Colony,
Trimulgherry,
Hyderabad – 500015

statement and fails to explain how the government plans to increase the installed power capacity for data centres by three times.

5.1.3. Further the draft policy in Point 5.2.1.2 also mentions that one of the key focus areas of the policy will be to “*Facilitate Data Centre parks to setup own power generation units to ensure quality of power*”. It is unclear whether the benefits and incentives offered under this draft policy will only extend to setting up and operation of data centres or will also extend to any ancillary activity undertaken by such data centres such as the setting-up of power generation units, etc.

5.2. ALG’s Recommendations

5.2.1. There should be clarification on how the government will meet the power requirements of these data centres especially when the domestic power requirements are not being met. This is pertinent since the availability of round the clock power supply will be an important criterion to be considered by any domestic or international organization before making any investment in this sector.

5.2.2. The policy should also clarify whether any incentives and/or facilities will be provided by the government to the companies for any ancillary activities such as setting of power generation units.

X-----X