

Legal Issues
in
The Draft Data Centre Policy, 2020
&
Recommendations made by ALG in its Firm Submissions in response thereto

Background

- ❖ Size of the digital economy in India estimated to grow from USD 200 billion in 2017-18 to a staggering USD 1 trillion by 2025
- ❖ More than 1 billion mobile phones and more than 700 million internet subscribers in India
- ❖ Need for Data Centre infrastructure within the boundaries of the country further necessitated by the data localization provisions of proposed Data Protection Act
- 2 ❖ Potential for investments of the order of USD 4.9 billion by 2025
- ❖ India has around 375 MW installed power capacity for Data Centre and as per projections, this may grow to three times by 2025

- ❖ The Draft Policy identifies the following impediments to the growth of Data Centre sector-
 - a) lack of infrastructure
 - b) complex clearance processes
 - c) time consuming approvals
 - d) high cost of power
 - e) lack of published standards
 - f) absence of specialised building norms for building the Data Centres
 - g) submarine cable network connectivity limited to few states
 - h) high cost of capital and operational expenditure, etc.
- ❖ This policy aims to offset these challenges in order to accelerate the current pace of growth and propel India in becoming a global Data Centre hub

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Vision, Mission And Objectives

VISION	MISSION	OBJECTIVES
Making India a global Data Centre hub	Ensure sustainable and trusted Data Centre capacity	<p>Drive necessary interventions for enabling ease of doing business</p> <p>Promote capacity building in the sector through association with various skilling / human resource development programs</p>
Promote investment in the sector	Strengthen India's position as one of the most favourable countries for Data Centres	<p>Promote sector competitiveness through various fiscal and non-fiscal incentives</p> <p>Standardize development of data centres</p>
Propel digital economy growth	Encourage domestic and foreign investments	Provide impetus to indigenous manufacturing of IT and non-IT equipment
Enable provisioning of trusted hosting infrastructure	Promote R&D for manufacturing and development of Data Centre related products/services	Facilitate access to uninterrupted and cost-effective power
Facilitate state of the art service delivery to citizens.	Promote domestic manufacturing to increase domestic value addition and reduce dependence on imported equipment	<p>Measures to bring in necessary improvement in network backhaul</p> <p>Meet the data security needs by promoting investments in trusted (safe and secure) data centres in India</p>

Growth Strategies: I. Enable Ease of Doing Business

- ❖ Aim: favourable climate for domestic and Foreign Direct Investments in the Data Centre sector, and incentivizing the growth of a robust and sustainable Data Centre sector in the country
- ❖ The Policy suggests the following reforms-
 - a) Providing infrastructure status to the Data Centre sector
 - b) Simplify clearances for setting up Data Centres in India
 - c) Setting up of pre-provisioned Data Centre parks
 - d) Formulation of schemes by respective governments
 - e) Formulation of Data Centre Incentivization Scheme (DCIS) for promotion of Data Centre parks/
Data Centres

II. Enable Favourable Ecosystem for Operation of Data Centres

- ❖ Aim: long-term growth of the Data Centre sector in the country
- ❖ The policy suggests the following reforms -
 - Availability of uninterrupted, clean and cost-effective electricity for Data Centres
 - Facilitate robust and cost-effective connectivity backhaul by MeitY collaboration with DoT
 - Data centres to be declared as “essential service” under the ‘Essential Services Maintenance Act, 1968 (ESMA)’ –
 - i. Justification in the draft - Continuous functioning of Data Centres critical to continued services and normalcy of day-to-day activities
 - ii. Purpose of the ESMA - provide for maintenance of certain essential services and the normal life of the community
 - iii. Concerns with the ESMA-
 - Sections 3 and 4: Prohibition of strikes by employees and penalty for illegal strikes
 - Section 7: Power to arrest without warrant

II. Enable Favourable Ecosystem for Operation of Data Centres (Contd.)

- Recognize Data Centres as a separate category under National Building Code-
 - i. Need for creation of a separate category code for Data Centres in the National Building Code of India (NBC 2016)
 - ii. Interim Measure- MeitY collaboration with authorized Central Government bodies for drafting broad guidelines to be issued for Data Centre buildings
 - iii. Publishing of a separate building code under NBC along with the aforementioned guidelines
- Setting up of Data Centre Economic Zones (DCEZ)-
 - i. DCEZ - concentrated and specialized Data Zones, with the most conducive non-IT and IT infrastructure, connectivity, power and regulatory environment
 - ii. GoI Proposal- set-up of at least four DCEZ as part of Central Sector Scheme proposed (to be implemented by inviting proposals from the States)
 - iii. Aim- Create an eco-system of Hyperscale Data Centres, Cloud Service Providers, IT companies, R&D units and other allied industries

III. Promote Indigenous Technology Development, Research and Capacity Building

❖ Promote Local Manufacturing

- Encourage joint ventures between the foreign investors and domestic companies
- Promote R&D in Data Centre
- Promote Adoption of Established Global Standards - Minimum standards for Data Centres /Data Centre Parks in the areas of build, IT, non-IT and security to be published by MeitY
- MeitY to promote global adoption of services from state-of-the-art Data Centre infrastructure available in India, through various inter-governmental initiatives / MoU

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III. Promote Indigenous Technology Development, Research and Capacity Building (Contd.)

- Capacity Building and Human Resource Development
 - i. Collaborate with Ministry of Skills Development and Entrepreneurship (MSDE) and leading academic institutes to impart large scale trainings to workforce
 - ii. Promote skill development and upgradation initiatives aimed at addressing the skill gap of trained manpower
 - iii. Provide assistance for these programs through Skill Development Mission at National and State Level
 - iv. Design programs for continuous capacity building amongst government officials and personnel

IV. Institutional Mechanism for Policy governance

- ❖ Creation of Inter-Ministerial Empowered Committee (IMEC)
- ❖ Institutionalizing of Data Centre Facilitation Units (DCFU)
- ❖ Setting up of Data Centre Industry Council (DCIC)

ALG's Comments & Recommendations

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

ALG's Recommendation – *“It should 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.*

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)**
- The draft policy provides for formation of – (i) IMEC, a decision-making body, (ii) DFCUs under IMEC to oversee implementation of various measures and initiatives; and (iii) DCIC, an interface between Data Centre Sector and the Government.
 - 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.

ALG’s Recommendation – *“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.

- The Report very briefly and generally discussed the liability arising out of breach
- The draft policy states *“MeitY shall publish and mandate minimum standards for Data Centres / Data Centre Parks in the areas of build, IT, non-IT and security.”*
- The draft policy, however, does not elaborate on the method and measures purported to be taken in formulating these security standards.

ALG’s Recommendation - *“...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 ('the Act')

- The draft policy (under Point 5.2.3) provides for inclusion of data centres to be placed under the Act.
- There does not seem to be adequate reasoning for inclusion of Data Centres under the Act.
- Uninterrupted power supply and other provisions as per the draft policy should be sufficient for efficient functioning of Data Centres.
- The Act has come under constant criticism for various reasons.

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ALG's Recommendation – *“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.

- 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.
- The draft policy mentions that 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 statement and fails to explain how the government plans to increase the installed power capacity for Data Centres by three times.

ALG’s Recommendation – *“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.”*

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Thank You!

Questions?

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