

TELECOM REGULATION IN NEPAL

OVERVIEW OF TELECOM ASSET MANAGEMENT RULES, 2079
(2022) FOR TELECOM OPERATORS WITH NON-EXISTENT
OPERATION LICENCE

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TELECOM ASSET MANAGEMENT RULES, 2079 (2022)

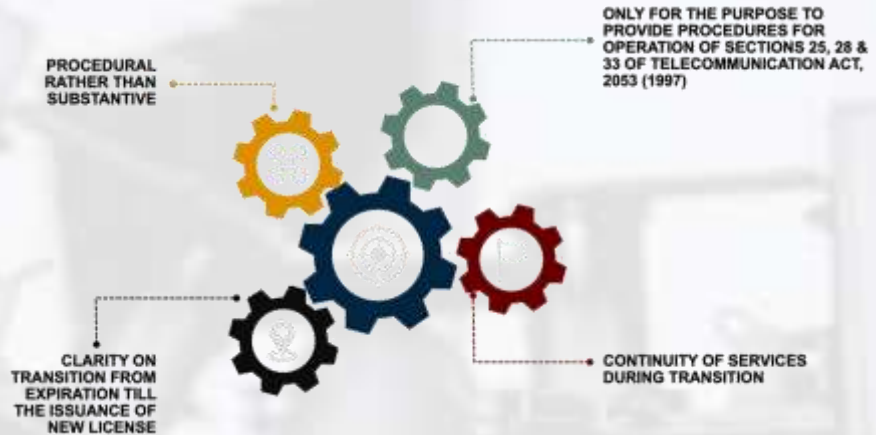
1. INTRODUCTION

- 1.1. **Section 33** of the prevalent **Telecommunication Act, 2053 (1997)** (the "**Telecom Act**"), states that the ownership of the land, building, plant, equipment, and other structures related to the Telecommunication service developed with **more than fifty per cent** of its investment by a foreign person or corporate body will be transferred under the ownership of Government of Nepal (the "**GoN**") after the expiry of the period of the License.
- 1.2. However, until on 5 December 2022, the procedure on how was to be done was nonexistent. It was then the Government of Nepal enacted Rules regarding **Asset Management of Telecommunications Service Providers with Non-Existent Licences, 2079 (2022)** (**vide Nepal Gazette Part 72, Number 47, Chapter 3**) (the "**Rules**").
- 1.3. Through this the government has thereby vested itself with procedures and the prerogative in relation with telecom regulation to expropriate the tangible and intangible assets held by telecommunication service providers.
- 1.4. In this insight, we delve into the overview of the telecom regulation to clearly understand its implications.

2. KEY FEATURES

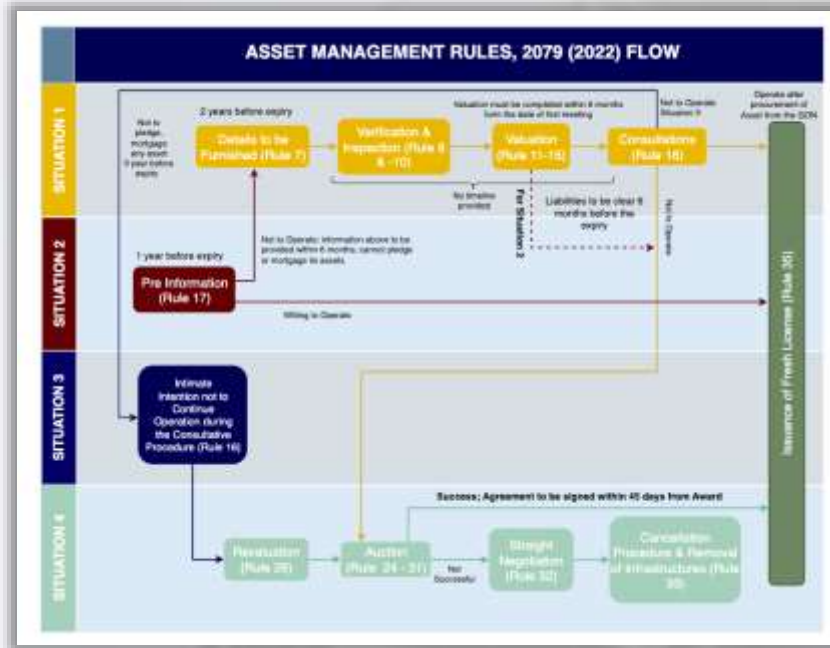
Our key observations of the Rules are as follows:

- 2.1. **Emphasis on Procedure:** The Rules primarily focus on procedural aspects rather than substantive elements.
- 2.2. **Clarity in Transition:** It offers clarity regarding the transition period from the expiration of a licence until the issuance of a new one.
- 2.3. **Limited Scope:** The telecom regulation are limited to governing the procedures related to the operation of Sections 25, 28, and 33 of the Telecom Act.
- 2.4. **Service Continuity:** The Rules provide clarification on the maintenance of service continuity during the transition phase from licence expiration to the issuance of a new licence.



3. PROCEDURE FOR ISSUANCE OF NEW LICENCE

To distinctly understand the procedures prescribed under the Rules (except in case of revocation of telecom licence) we have formulated 4 typical situations and its procedures as per the Rules:



SITUATION 1: License of a Telecom Operator (with more than 50% Foreign Direct Investment (hereinafter "FDI") expires, and its assets are transferred to the GoN as per **Section 33** of the Telecom Act. The operator decides to regain/buy the Licence as per the valuation determined under Asset Management Rules.

SITUATION 2: Like Situation 1 above, the operator decides to regain the telecom licence when FDI in operator is diluted to less than 50%.

SITUATION 3: Telecom Operator (with more than 50% FDI) decides not to regain the licence at the valuation determined as per the Asset Management Rules.

SITUATION 4: Interested party decides to participate in the auction of Telecom Operators.

4. KEY FEATURES OF AUCTION & NEGOTIATION UNDER THE RULES

**MINIUMUM AUCTION BID**

If Asset of the operator in question is greater than Liability = **Value of Asset**
 If Liability of the operator in question is greater than Asset = **Value of Liability**

ELIGIBILITY CRITERIA

Both domestic and foreign bidders, with experience in operation of telecommunication services can participate etc. Further existing Licence holders can participate (Rule 34)

INSTALLMENT PAYMENT OF LIABILITIES

Govt. dues payable and due immediately, liabilities towards NTA could be paid through deferred instalment facilities (Rule 29) upon request

ADDITIONAL FACILITIES

Additional facilitations can be negotiated and frequency spectrum cap imposed not to be applicable (Rule 35)

CHOICE OF LICENSE FOR OPERATORS WITH EXISTING LICENSE

The operator can choose between the existing licence, new licence or the term of any of these licences

5. KEY ANALYSIS OF THE RULES

The
Good

- ✓ Clarity on re-issuance of licence
- ✓ Provides opportunity to telecom operators to renegotiate certain terms of agreements, concessions and facilities
- ✓ Provides opportunity to acquire licences of other telecom operators
- ✓ Control measures and restraint of NTA is defined during the transition

The
Bad

- Certain provisions are ambiguous
- Lack of step wise procedural clarity in terms of issuance of fresh licence when telecom operators decide to operate after the expiration of their licence
- No opportunity or very less control of the telecom operators in the prescribed valuation methods
- Timeframe for each milestones are unclear

The
Ugly

- X Minimum price for straight negotiation is unclear and not logical, if auction fails
- X Contradictory provisions within the Rules
- X Rule 17 (5) contradict the scenario of nationalisation when foreign holding is upto or less than 50%



KEY CONTACTS

If you have any questions or would like to know how this might affect your business, get in touch with these key contacts



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