

## Social Media Management Directive 2080 (2023 A.D.)

### Introduction

On November 27, 2023, the Government of Nepal (“GON”) published the Social Media Management Directive 2080 (2023 A.D.) (“Directive”) in the Nepal Gazette and came into effect immediately. The Directive, which was formulated under the Electronic Transaction Act 2063 (2008 A.D.), aims to regulate and manage the use of social media as well as social media platforms.

Key provisions of the Directive are summarized below:

### Definitions

The Directive defines following key terms:

- **Social Media:** Networks, including groups, blogs, Apps, etc., which provide services of interactive communication between individuals or entities and publication of user-created contents through the facilities and methods provided by social media platforms via electronic communications, including computers, Internet, etc.
- **Social Media Platform:** Internet or information technology-based systems which provide services of interactive communication between individuals or entities and publication of user-created contents, including platforms, such as, Facebook, TikTok, Twitter, Viber, Pinterest, WhatsApp, Messenger, Instagram, YouTube, LinkedIn, WeChat, etc.

### Enrollment Requirements

The Directive mandates that an entity, which wishes to operate social media platform, must be enrolled with the Ministry of Communication and Information Technology (“Ministry”). Those social media platform operators, who are

operating prior to the enactment of the Directive, must be enrolled with the Ministry within three months from the date of enforcement of the Directive, i.e., by February 22, 2024 as per Nepali calendar. The Ministry, if it deems proper, may issue a notice of enrolment to operators of social media platforms.

An exemption to the enrollment requirement is provided to those social media platforms, which are solely dedicated towards educating citizens and social empowerment. Nonetheless, the Directive does not provide much clarification on the issue what factors will be taken into consideration by the Ministry to provide exemption to social media platforms.

The Ministry has been granted with the authority to suspend the operation of those social media platforms which fail to enroll with the Ministry.

The Ministry has also been granted with the authority to give instructions to operators of social media platforms and the point of contact of such operators in connection with the management of social media platforms.

### Updating the Enrollment

Operators of social media platforms, which are enrolled with the Ministry, must update their details in every three years by submitting a written application. Upon receiving the updated details, the Ministry shall update the records of operators of social media platforms.

### Classification of Social Media Platforms

Social media platforms are classified in following two categories based on the number of users:

1. **Small Social Media Platform:** A social media platform which has less than 100,000 users.

2. **Large Social Media Platform:** A social media platform which has more than 100,000 users.

### Prohibited Activities

The Directive also imposes certain responsibilities upon social media users. Social media users are prohibited from engaging in certain types of activities which are follows:

- to create a fake ID, page or group;
- to create or share content through a fake ID, page or group, or to share other’s content, or to comment on or to argue about other’s content;
- to share expressions, including words, audio, visuals or photographs that propagate hatred; disrupt social harmony and undermine tolerance by targeting a person, group, caste, tribe, sex, religion, age, race, class, profession, community, marital status, family status, physical and mental condition, origin, sexual minority, language or other group or class protected by law, or to publish or broadcast trolls related to such topics;
- to spread hatred targeting a person, group, caste, tribe, sex, religion, age, race, class, profession, community, marital status, family status, physical and mental condition, origin, sexual minority, other group language and other group or class protected by law;
- to promote activities prohibited by prevailing laws, such as child labor, human trafficking, polygamy, child marriage, caste-based discrimination, etc.;
- to make derogatory expressions, including words, visuals, photographs, trolls, with the intention to insult others, or to defame others, or to engage in hate speech;
- to publish or broadcast manipulated photographs of a person through technologies such as animation, montage or similar technologies using digital means;
- to transmit, publish or broadcast photos or videos of a private individual without obtaining consent from him or her;
- to publish, broadcast or comment in support of obscene words, images, audio, videos, or animations;
- to promote activities that are prohibited by prevailing laws, such as content which is harmful to children, child sexual exploitation, sexual abuse, human trafficking etc.;
- to publish or broadcast false or deceptive information, misinformation or distorted information;
- to engage in cyber bullying;
- to promote drug abuse and its transactions;
- to engage in gambling or promote gambling;
- to publish or broadcast content related to terrorism;
- to disrupt individual privacy;
- to hack the identity or information of other person through social media;
- to engage in activities such as phishing, impersonation through social media;
- to post or share gruesome photos or videos;
- to advertise or engage in the transaction of goods prohibited by prevailing laws; or
- to duplicate or share activities that is prohibited by prevalent laws.

### Social Media Management Unit

The Directive requires the Ministry to establish a Social Media Management Unit (“Unit”) to address the grievances of social media users as well as to oversee the effective compliance of the Directive. The Unit has been granted with wide powers, among others, as follow:

- to hear a grievance which hasn’t been addressed by operators of social media platforms or their point of contact; and
- to instruct the point of contact of operators of social media platforms to remove the published contents which are classified as prohibited activities in the Directive.

Though the Unit has been granted with the authority to hear grievances from social media users, it lacks the authority to investigate in matters related to criminal prosecution for which it must refer the matters to a proper authority.

## Grievance Redressal and Point of Contact

The Directive prescribes that operators of social media platforms must maintain a point of contact in Nepal. Foreign operators of social media platforms, which haven't yet, establish an office in Nepal must either establish an office or appoint a point of contact in Nepal within three months from the date of enforcement of the Directive to handle grievances related to the use of social media.

Further, the point of contact for Large Social Media Platforms must also include:

- a local grievance handling officer; and
- a self-regulation monitoring officer.

Any changes to the address of the point of contact or the grievance handling officer must be notified to the Unit.

## Duties of the Point of Contact

The Directive prescribes certain duties of the point of contact of social media platforms, which include:

- to determine the content which contravenes the Directive;
- to disable restrictive contents and notify to the Unit and other relevant parties; and
- to issue periodical press releases specifying the proper use of the platform.

## Duties of Social Media Operators

The Directive specifies certain duties of operators of social media platforms, which include, among others:

- to develop algorithms designed to mitigate the publication and broadcast of information, advertisements and content that violate prevailing laws;
- to remove inappropriate content from the platform upon receipt of grievances from any person or order from the Unit;
- to adopt security standards to ensure data security and privacy;
- to adhere to the internationally recognized Santa Clara Principles on Transparency and Accountability in Content Moderation; and

- to conduct transactions through the banking channel.

## Duties of Social Media Users

The Directive imposes prohibition upon social media users from publishing contents which undermine sovereignty, territorial integrity, national security, unity, relation between federal units, and spread hatred in religious and communal matters. Social media users are also prohibited from sharing, liking, reposting, live broadcasting, tagging, mentioning, subscribing and commenting on any prohibited contents.

## Comments and Conclusion

The GON has enacted the Directive with the primary purpose of regulating major social media platforms such as Facebook, TikTok, Twitter, Viber, WhatsApp, Messenger, Instagram, YouTube, LinkedIn, WeChat, etc. amid the ongoing debate in the society. The GON initially attempted to regulate social media platforms through legislation – Information Technology Bill (“Bill”), which was tabled at the Parliament previously. However, the Bill failed to obtain the Parliament approval. There had been wider criticism of the GON and the Bill from various groups of the society alleging that the GON’s actual intent in introducing the Bill was to curtail freedom of expression, a right guaranteed by the Constitution, of its opponents as well as of those who intend to bring changes in the political system using social media platforms at its will. Now, the GON has enforced some provisions of the Bill through the Directive using a fast track method.

With respect to enrollment requirement, this can be taken as a positive move from privacy and data protection perspectives as some other jurisdictions have also implemented similar requirements for operators of major social media platforms. Similarly, the GON through tax regulations has already made provisions requiring those operators of social media platforms, which generate income from Nepal, to register themselves with the tax authorities.

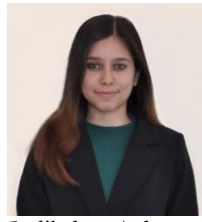
However, at the backdrop of banning the popular social media platform – TikTok recently in Nepal and granting wide power to the Ministry and the Unit by the Directive including to instruct social media platforms, it is yet to be seen whether the GON uses the Directive as a tool to curtail the constitutional right of freedom of expression at its will.

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