

## REGULATORY CHALLENGES OF PROJECT IMPLEMENTATION – INDIA CASE STUDY

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**Abstract:** Governments worldwide impose regulations and approval regimes to control the development of submarine cable projects. Network operators, system suppliers and maintenance authorities work in accordance with these requirements and factor them into project implementation plans. However this exercise becomes very difficult in situations where either regulatory requirements are ambiguous or there is a variableness/inconsistency as to how they will be interpreted and enforced. This paper uses the experience of a number of projects implemented in India over recent years as a case study to illustrate the impact that regulatory frameworks can have on system implementation.

### INTRODUCTION

Governments worldwide impose regulations and approval regimes to control the development of submarine cable projects. These are designed to ensure the project development pays due regard to the interests of stakeholders on issues including national security, the exploitation of natural resources and protection of the natural environment. Furthermore within the sovereign territory of a state, governments are entitled to raise fiscal revenue from the development, implementation and use of a submarine cable through fees for seabed occupancy and taxation on sales of the equipment and services necessary for construction.

Network operators, system suppliers and maintenance authorities work in accordance with the regulatory regime of those countries whose territory their projects traverse, and factor the implications of such regulations into their project plans. However this exercise

becomes very difficult in situations where either regulatory requirements are ambiguous or there is a variableness/inconsistency as to how they will be interpreted and enforced.

This paper uses the experience of a number of projects implemented in India over recent years as a case study to illustrate the impact that regulatory frameworks can have on system implementation and maintenance. Key areas of focus include the processes for granting permissions to install a system, the requirements for obtaining clearances for vessels and personnel to work in India, and the process for importing equipment and materials. It will show how the complexities of planning against the possibility of unanticipated requirements or undefined approval timescales can affect project delivery.

The regulatory regime for establishing a submarine cable network can be broadly classified into three areas:

- i) Permissions from the national telecommunications regulator to establish a network. In some jurisdictions it is sufficient to hold a network operating licence, in others specific authorization is needed for each new system to be landed.
- ii) “Permissions in Principle” from local and national authorities for the new system, normally considered on the basis of the planned route of the system either before or after survey data has been acquired and the route finalized. In the classical case, the resulting permit takes the form of a permission for the cable to occupy a defined route on the seabed for a given period, normally equal to the projected lifetime of the system.
- iii) “Operational Permits” that pertain to the physical activity of both surveying the route and deploying the cable. These are normally applied for on the basis of the resources both human and physical needed to carry out the required operations.

The permissions required to implement a submarine cable in India can be divided into the above categories, and in this paper we will use them as a basis for discussion. The primary permit in the first category is the “Cable Station Landing Licence” issued by the Ministry of Communications &IT/Department of Telecoms to the Network Operator. The focus of this paper is however on the “Permits in Principle” and “Operational Permits” required to install a new system, and these are described below.

### **PERMITS IN PRINCIPLE.**

The key Permits in Principle necessary to install a system with a landing point inside India are as follows:

- 1) Consent from the relevant Local Authority that the establishment of the proposed Cable Landing Station and cable route are consistent with their local Development Plan.
- 2) Approval from State Coastal Zone Management Authority, Department of Environment. This process spans both the pre-survey and post survey phases of the project. The focus of the activity is the impact on the environment of the project within the Coastal Regulation Zone, which extends 500m landwards from the high tide line.
- 3) Approval from the Ministry of Environment and Forests, granted on the basis of the recommendation from the Coastal Zone Management Authority.
- 4) Agreement of the Maritime Board for the concerned State or Union Territory of India within which the project is located. This agreement includes provisions for the network operator to pay annual fees for the occupancy of the seabed.

### **OPERATIONAL PERMITS**

The key operational permits required to undertake either survey or installation operations in India with foreign flagged vessels are as follows:

- 1) A “Specified Period Licence” from the Director General of Shipping, permitting a foreign vessel undertake operations in India. As part of the approval process for this permit the India National Ship Owners Association will be asked to give approval
- 2) No Objection Certificate from the Ministry of Defence for the operation
- 3) Security Clearance from the Ministry of Home Affairs (MOHA) for all foreign nationals on board the vessel. The applications are submitted by the Network Operator to the Ministry of Communications, who in turn forward them to the MOHA for approval.
- 4) Importation of the vessel into India. In similarity to a minority of other countries, India will not accept that a foreign cable ship can operate in its Territorial Waters in the same manner that a foreign cargo ship may transit or call at a local port. Instead the cable ship itself must be treated as a good to be imported, and then re-exported at the end of the operation. A company holding a valid Indian Import Export Code must act as the Importer of Record.
- 5) Naval Security Clearance from the Flag Officer Defence Advisory Group prior to any operation in the India EEZ. This is granted following an inspection of the vessel in port prior to operations, and measures including sealing of the vessel VSAT communications system and a

check that all crew have the MOHA clearance. At the end of the operations the vessel must undergo a further inspection before leaving India.

One consequence of the operational permitting regime is that it is in practice impossible for a cable system to pass through the India EEZ without the sponsorship of a company holding an Indian telecoms operator licence. This follows from the requirement for all the crew to hold MOHA clearance, which can only be obtained by an entity holding an Indian telecoms licence. The inconsistency between this regulatory framework and the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) has been discussed by previous authors [1], [2]

### UNCERTAINTY IN PERMIT ACQUISITION TIME

While complex permitting regimes can require considerable management effort to negotiate, with realistic planning their impact on project implementation can be mitigated provided that the process is transparent and the required timeframes well understood. However in situations where the timescale for permit approval (or rejection) is undefined then it can become extremely difficult to effectively plan project implementation. The impacts from permit delays can include installation assets placed on standby, inefficient project installation sequences and delays to overall system availability.

The following table shows for each of the main permit categories both the “normal” permit acquisition lead time that might be expected from examining the published regulations and consulting experienced agents, and examples of the actual lead

times that have been incurred on projects known to the authors.

Permit	"Normal Acquisition Time"	Examples of extended permitting durations
Development Plan Remarks	2 months	In line
CZMA/CRZ process	4 months (pre survey)	In line
Ministry of Environment	3 months	8 months
Maritime Board Agreement	4 months	21 months

Permit	Expected Durations	Extended Durations Experienced
Ministry of Defence	2 months	12 months (application abandoned)
MOHA Security Clearance	3 months	6 months
Customs Clearance for Importation/Exportation of Cable Ship	1-2 weeks	5 weeks

As can be seen from the above tables there have been significant deviations from the expected timeframes to obtain permits. In the case of defence/national security clearances it is normally impossible to obtain any official information on the status of an application once it has been submitted. Indeed in at least one case while an application was not actually rejected or refused it became expedient to withdraw the first submission and submit alternative documents to secure the required permissions.

Customs clearance for vessel importation and exportation is a highly sensitive issue for any operator of marine installation assets as by necessity the vessel and crew are held on standby in port while customs authorities complete their assessment. There have been a number of instances of vessels being delayed in ports due to

uncertainty in the minds of officials whether Customs Duties and Service Tax should be applied to cable laid outside the 12Nm Territorial Waters limit but within the 200Nm Exclusive Economic Zone.

The uncertainties in approval time can develop into a vicious circle in the cases where the personnel details of all crew on board a vessel have to be submitted well in advance of the planned operation. Without any certainty when the permission will be issued and hence the operation able to proceed, it becomes necessary to submit applications to cover multiple crew rotations. Thus for a vessel which normally carries 70 crew the application file can include several hundred individuals. This in turn increases the burden on the authorities processing the applications.

### MITIGATION STRATEGIES

It is incumbent on project sponsors and teams to consider what steps can be taken to facilitate the passage of a project through the regulatory regime. Normal measures include making due diligence enquiries during project definition, appointing experienced permitting management teams and taking due account of the concerns of other stakeholders during project implementation. Over and above these steps, when operating in a country that is highly sensitive to foreign nationals and assets working on infrastructure projects, it is recommended that consideration is given to using local resources wherever possible. Sometimes this can take the form of a purely local resource, such as an Indian flagged survey vessel. An alternative strategy is to take a local vessel platform and augment it with imported equipment for instance for shore end operations. Consideration can also be given to altering the demarcation line between a pre-laid shore end installation spread and the main lay operation such that

the main lay operation does not enter the 12Nm Territorial Waters Limit. Also, it would be worthwhile to consider shipping 0-12 Nm sub-sea cable separately as normal cargo and get them laid through an Indian flagged vessel. In this way the need to import the main-lay vessel “temporarily” is circumvented and the complex procedure of temporary import and re-export is rendered redundant. Furthermore when foreign vessels do have to be imported, it is the authors’ recommendation that the minimum quantity of cargo and equipment is carried on board to ease the process of customs clearance. Finally, as a general rule, it is always advisable to submit the documentation pertaining to any of the above permits in accordance with the prescribed formats and requirements by the concerned agency.

### CONCLUSIONS

The balance between the duty of the state to regulate economic activity and the freedom of enterprises to advance their initiatives is a complex one. Previous authors [3] have commented on the tendency for “jurisdictional creep” to occur as successive pieces of legislation impose further environmental or security assessment requirements on submarine cable projects, sometimes without adequate evidence that such measures are necessary. While complex permitting regimes may be justifiable, where complexity is accompanied by a lack of transparency or certainty regarding the outcome and timescales for decision making by regulatory authorities then project implementation becomes very challenging indeed.

### 1. REFERENCES

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