

TELECOMMUNICATIONS LAWS OF THE WORLD

United Arab Emirates vs Kuwait



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UNITED ARAB EMIRATES



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OVERVIEW OF LEGAL LANDSCAPE

The United Arab Emirates ("UAE") is a regional business hub and, increasingly, a technology hub, for international telecommunications and ICT providers interested in the UAE and the wider Gulf region.

Many international telco operators have established branches either 'onshore' in the UAE, or in one of its purpose built 'free zones', such as Dubai Internet City or Dubai Media City. However, such branches are limited in what they can do, particularly within the UAE. For example, they cannot offer public telecommunications services in the UAE, as the UAE is effectively a closed market, limited by a policy of duopoly regarding infrastructure based services. At the time of providing this update there is one MVNO service provider currently offering services in the UAE through one of the existing network based operators. In order for international operators to provide services to entities in the UAE they will need to do so through contractual arrangements with one or both of the UAE's licensed operators in order to provide 'last mile' services in to the UAE.

KUWAIT



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OVERVIEW OF LEGAL LANDSCAPE

The regulation of the telecommunications and information technology sector in Kuwait is currently in a state of transition.

The Ministry of Communications (MOC), which currently regulates the sector, also runs the fixed line network in Kuwait. Despite until recently there being no clear framework for liberalisation in Kuwait, the MOC has allowed the establishment of three mobile operators and a number of ISPs.

However, after many years of speculation, on 8 May 2014 the Kuwaiti Government issued Law No. 37 of 2014 on Telecommunications and Information Technology Regulatory Commission ('Telecoms Law').

The Telecoms Law will establish an independent Telecommunications and Information Technology Commission ('Commission') with broad powers to 'regulate, supervise and oversee' the telecommunications and information technology sector. At the time of writing this handbook the Commission is being formed, and is expected to be operational during the course of 2015.

Although the Telecoms Law is now in force, article 14 of the Telecoms Law stipulates that 'the Commission shall take the place of the Ministry of Communication and any other organization... [to the extent mandated by the Telecom Law] six months after the Commission's Executive Regulations having been issued.'

Article 89(b) of the Telecoms Laws notes that until such time as Executive Regulations have been issued, any existing regulations issued according to applicable law, or any laws that have been repealed pursuant to the Telecoms Law, will continue to apply to the extent they are not inconsistent with the Telecoms Law.

On 13 July 2015 the Council of Ministers issued the Executive Regulations ('Executive Regulation'), however the Commission is not yet formally operational. A board of directors has been established pursuant to Decree No.

259 of 2014 on Forming the Board of Directors of the Telecommunications and Information Technology Commission. To date, the Kuwait Ministry of Communications continues to undertake work that would otherwise fall within the purview of the Commission pursuant to the new Telecom Law and its Executive Regulations.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The United Arab Emirates has a Federal Telecommunication Law.

The Telecommunications Law:

- Establishes a regulatory authority, now called the Telecommunications and Digital Government Authority (“**TDRA**”)
- Requires that a company hold a telecommunications licence in order to provide public telecommunications services and operate public telecommunications networks
- Makes the provision of unlicensed services punishable by fine or imprisonment

Arabic language prevails, although the TDRA's website publishes an English translation of the Telecommunications Law and Regulations.

The UAE currently has a policy of a duopoly market for public telecommunications services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Apart from the Telecoms Law and Executive Regulations, other major Kuwaiti laws and Ministerial Resolutions which appear to still currently affect the telecommunications sector include:

- Royal Decree No. 8 of 1959 concerning the Use of Telecommunications Devices
- Law No. 2 of 1961 issuing the Commercial Code
- Royal Decree No. 77 of 1986 on the Powers of the Ministry of Communications
- Law No. 18 of 1986 on the Approval of the Arab Telecommunications Union Convention
- Royal Decree No. 108 of 1990 Appointing Additional Powers to the Ministry of Communication
- Law No. 14 of 1996 on the Approval of the Constitution and Convention of the Arab Telecommunications Union and the Associated Protocols
- Law No. 26 of 1996 on the Establishment of Companies for Telecommunications Services, and its amendments
- Ministerial Resolution No. 273 of 1996 Establishing a Committee to Oversee the Implementation and Enforcement of Law No. 26 of 1996
- Decree No. 266 of 2006 on the Establishment of the Central Agency for Information Technology
- Decree No. 136 of 2008 Affiliating the Central Agency for Information Technology with the Ministry of Communications
- Law No. 37 of 2014 on Telecommunications and Information Technology Regulatory Commission

English language translations of the above laws are generally not publically available, however these can be obtained by DLA Piper upon request.

Key features of the new Telecoms Law include:

- A licence must be issued by the Commission before a public telecommunication network may be established or a public telecommunication service may be provided
- The Commission's board will establish the terms and conditions and controls of granting licences, with a form of class licence and licences for international telecommunications being contemplated by the Telecoms Law
- Exact fees required to obtain a licence to establish and operate a public telecommunications services will be set out by directives to be issued by the Commission
- The Commission has the power to set quality standards as well as take appropriate action to ensure compliance with these standards. No such standards have yet been issued by the Commission
- The Commission may require a licensee, at the licensee's own expense, to provide and install equipment, devices and programs to prevent the transmission of 'breaching material', links, and websites and which may collect data and information passing through these devices
- All licensees are required to provide the Commission with an annual report setting out the technical, administrative and financial aspects of their business

REGULATORY BODIES OR AUTHORITIES

The Telecommunications and Digital Government Regulatory Authority ("**TDRA**") regulates the telecommunications sector in the UAE.

One of the TDRA's main prerogatives is to foster sustainable competition in the UAE's telecommunications sector. The UAE's TDRA is also involved in cyber security, and hosts the UAE's Computer Emergency Response Team, as well as managing an ICT development fund.

REGULATORY BODIES OR AUTHORITIES

Before the enactment of the Telecoms Law, the Ministry of Communication was the primary regulator of the telecommunications sector.

Under the Telecoms Law this responsibility will be passed to the newly-formed Commission six months after the Commission's Executive Regulations have been issued. Though a collection of Commission officials have since been announced, and the Executive Regulation was issued in July 2015, at the time of publication of this handbook the Commission does not yet appear to be operational.

Telecommunications and Information Technology Commission

Yet to be confirmed - please refer to the [Overview](#) section for further information.

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The UAE's Telecommunications Law defines 'Telecommunications Services' as:

'...the service of transmitting, broadcasting, switching or receiving by means of a Telecommunications Network of any of the following:

- Wired and wireless telecommunications
- Voice, music and other sounds
- Visual images
- Signals used in radio and TV broadcasting
- Signals used to operate or control any machinery or apparatus
- The installation, maintenance, adjustment, repair, replacement, moving or removal of apparatus which is or will be connected to a Public Telecommunications Network
- The construction maintenance and operation of networks for telegraph, telephone, telex, leased circuits, domestic and international data networks, Internet and Wireless Transmission
- Any other Telecommunications Services approved by the Board'

Entities that wish to provide Telecommunications Services in the UAE should be established in the UAE. However, apart from certain specific licenses that have been issued, and certain exceptions allowing the provision of certain limited "over the top" services (see our comments on VoIP in [Key sanctions and penalties](#)), the UAE government has a policy of duopoly for the provision of public telecommunications services, which means that in practice it is not possible to obtain such licenses.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The Telecoms Law broadly divides telecommunication activities into:

- Public telecommunication service
- Public telecommunication networks
- Private telecommunication services
- Private telecommunication networks

Telecommunication services are defined as: 'The service, totally or partially, comprising sending or receiving and transmitting of information onto the Telecommunication Networks using any of the national or international networks including the Internet'.

Public telecommunication services (ie such services that are provided to 'users in general or a certain category of users in return for a certain fee'), and public telecommunication networks require a licence granted by the Commission.

Private telecommunication networks (ie 'telecommunications system operating for one person or a group of persons connected together with a link of common ownership for serving their own needs') can be established, managed or operated without the need for authorisation or a licence except for licences required for radio frequencies. However, private networks may only be interconnected with each other via public networks (which require licences).

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

A licence is required from the TDRA in order to provide public telecommunications services to and within the UAE.

Currently there are only two operators licensed to provide public telecommunications services to and within the UAE via telecommunications networks. There is currently one MVNO operator in the UAE, however the TDRA does not otherwise appear to be currently issuing further licences for public telecommunications services or networks.

A number of other licences have been issued to specific entities for specific purposes eg, for certain satellite services and PAMR services.

In March 2018 the TDRA published a Regulatory Policy regulating the provision of Internet of Things. This requires that IOT Service Providers should register with the TDRA.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

Only entities that are established pursuant to a decision issued by the TDRA Board may hold a licence to provide Public Telecommunications Services within the UAE.

A number of international telecoms operators have established branch offices within free zones in the UAE in order to market their international services within the UAE, or to act as bases for their regional operations.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The TDRA does have powers to issue ex ante regulations and conduct ex post investigations.

Under the Telecoms Law no public telecommunication networks or services, including international services or internet services, may be provided in Kuwait unless authorisation is obtained from the Commission.

It is not known whether the Commission has issued directives setting out the exact types of authorisations or licences needed for various activities and the requirements for such licences.

The Telecoms Law does allow for Private Telecommunications Networks, which are defined as telecom systems operating for one person or a group of persons connected together with a link of common ownership for serving their own needs. Private Telecommunications Networks can be established, managed or operated without the need for authorisation /license except for licences required for radio frequencies. However, private networks may only be interconnected with each other via public networks (which require licences). The Telecoms Law goes on to provide that no person who owns, operates or manages a private network may provide public services through that network.

DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

The Telecoms Law is silent on domicile restrictions or requirements for licensing.

A foreign entity seeking to establish a business in Kuwait (within the telecommunications sector or otherwise) would have to either appoint a local Kuwaiti agent or participate as a minority shareholder in a Kuwaiti company. Accordingly, in order for the foreign entity to base non-Kuwaiti employees in Kuwait the foreign entity will need to either use the local Kuwaiti agent to 'sponsor' these employees or alternatively set up a Kuwaiti entity (majority-owned by a Kuwaiti national - corporate or individual) to provide such local services.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecoms Law gives the Commission power to regulate Interconnection between Public Telecommunications Networks or the MOC or any other

The TDRA has conducted market reviews and has taken steps to issue ex ante regulation against the licensed operators.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TDRA actively regulates consumer protection and has recently issued a consolidated and updated Consumer Protection Regulation, which can be found [here](#).

REGULATORY TAXES AND FEES

government organisation (except for security agencies). The Commission shall facilitate and encourage the providers to interconnect, but may intermediate and arbitrate where parties fail to come to a solution in a reasonable period of time.

Chapter IV of the Executive Regulations specify interconnection rules and principles.

All interconnection agreements must be approved by the Commission in order to be valid.

The Telecoms Law and Executive Regulations contain provisions regarding a Dominant Provider's obligations to provide 'accessibility' to its network on fair, equitable and reasonable conditions to be specified by the Commission. The Commission has powers to define prices and conditions it considers acceptable and justifiable.

There are no specific provisions in the Telecoms Law and Executive Regulations regarding Roaming.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Telecoms Law and Executive Regulations do not differentiate between business and private customers. It merely refers to Users defined as: 'The 'person benefiting from the Private Telecommunications Service or the service which is intended to be used in purposes relating to the use of telecommunication operations.'

Neither the MOC nor the Commission have yet issued any guidance on legal/regulatory requirements or obligations that apply to consumer contracts, retail tariffs regulations, etc.

In terms of general Kuwaiti law, Law No. 39 of 2014 on Consumers Protection requires service providers to 'clearly define the details, charges, characterises and attributes of the Service it provides'. This law further provides for the establishment of a National Committee on Consumers Protection (NCCP). As the content of customer contracts and Terms and Conditions regarding products and services falls within the NCCP's mandate of 'drafting general policies of Consumers protection', it is possible that such policies may be issued in the future. However, as at the date of publication of this handbook, no applicable NCCP policies have been published.

REGULATORY TAXES AND FEES

Licensees are required to pay licence fees and royalties.

Certain corporate taxes do apply to 'on shore' entities in the UAE. Many free zones do not charge taxation for a specific period of time. Each company and individual should assess their tax obligations on a case-by-case basis.

On 1 January 2018 the UAE introduced a 5% Value Added Tax to goods and services in the UAE.

At the date of the publication of this handbook, neither the MOC nor the Commission have published any details on licence fees or taxes that are or may be in the future applicable.

Although it is often considered a 'tax free' jurisdiction, Kuwait has a number of taxes that apply to corporations. With respect to taxes generally, foreign companies which carry on business or trade in Kuwait are taxable.

Further fees are payable to government ministries depending upon the activities being performed by a company.

Foreign companies which carry out business in Kuwait either through an agent or joint venture or as a minority shareholder in a locally registered shareholding company are taxed on their share of the profit plus any amounts received with regard to interest, royalties, commissions, technical services, management fees etc.

Detailed advice can be provided upon request, taking into account your individual circumstances.

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

Provision of illegal public telecommunications services, including the provision of IOT Services without being adequately certified by the TDRA, and possibly the provision of VoIP services, can carry a risk of criminal prosecution, resulting in fines and imprisonment.

The UAE's licensed operators may also take steps to block access to certain services they consider to be in breach of the Telecommunications Laws.

The TDRA has taken issue in the past with certain OTT services that were not susceptible to lawful interception. However, since the Covid pandemic, the TDRA has relaxed its position on the provision of VoIP in the UAE to a degree, and has published a list of those service providers who may provide limited VoIP services [here](#).

KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

According to the Telecoms Law any person who establishes, operates, or runs a Public Telecommunication Network with the aim of providing Public Telecommunication Services in violation of the provisions of the Telecoms Law (for example, without a licence), is liable to a punishment of imprisonment of up to three years or a monetary fine ranging from KWD 50,000 to KWD 500,000, or both.

Similarly, any person who establishes, operates, or runs a Private Telecommunication Network in violation of the provisions of the Telecoms Law (for example, without an appropriate frequency licence, if that is required for the private network), is liable to a punishment of imprisonment of up to 1 year or a monetary fine ranging from KWD 5,000 to KWD 500,000, or both.

There are a range of other offences outlined in the Telecoms Law.

The Commission is given discretion by the Telecoms Law to take any of the following actions 'inasmuch as matches with the size of the violation':

- Warning the violator to eliminate the violation within thirty days of the warning
- Suspension of the associated licence for a period of three months
- Ordering the violation to be remedied at the expense of the violator
- Reducing the authorised services (at a maximum rate of one service per one violation)
- Reducing the licence term granted (to half the term at most)
- Collection of monetary fines (not exceeding KWD 1,000,000 per violation)
- Taking equipment, devices and tools into custody until the dispute is settled
- Cancellation of associated licences

The Telecoms Law also provides that: 'The fine shall be doubled in case of repetition of the offence, or the violator pays double the amount of damage incurred, whichever is greater'. However, any interested party may request the Commission revisit any decision within one month of the decision being handed down if any new information becomes available. A decision on such a request must be made within 30 working days of the request being submitted and the party in question is entitled to be informed of that decision one week after it has been made.

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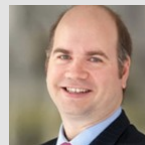
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