

TELECOMMUNICATIONS LAWS OF THE WORLD

China



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CHINA



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OVERVIEW OF LEGAL LANDSCAPE

The telecoms sector in the People's Republic of China (PRC or China) is heavily regulated.

The provision of telecommunications services in the PRC is subject to a complex licensing regime depending on the type(s) of telecoms services offered. Any entity or individual who has not obtained the relevant telecoms operating licence is prohibited from providing such telecoms services.

Importantly, the categorisation of services which fall within the scope of the licensing regime is particularly wide and covers traditional telecommunication service offerings, as well as extending to other types of technologies and services provided via the Internet.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The PRC Telecommunications Regulations (the “Telecoms Regulations”), first issued by the State Council on 25 September 2000 (and subsequently revised on 29 July 2014 and 6 February 2016), covers licensing, fee collection, interconnectivity, operation and regulation of telecoms services in the Prc.

The Classified Catalogue of Telecommunications Services (the “Telecoms Catalogue”) (effective from 1 March 2016) sets out the specifics and sub-categories of services that are regulated under the telecoms licensing regime. The licensing requirements and application process differ depending on the type(s) of licences required.

The Administrative Measures for the Licensing of Telecommunication Business (effective from 1 September 2017) further sets out the eligibility criteria for applying a telecoms licence.

REGULATORY BODIES OR AUTHORITIES

The Ministry of Industry and Information Technology (MIIT) is the primary telecoms regulatory body in China. The main responsibilities of MIIT in respect of the telecoms industry include:

- Formulating plans, policies, laws, regulations, and technical criteria for the information and telecoms industry
- Managing public information and the telecoms network, in addition to the Internet
- Supervising the telecoms and information services market
- Coordinating with other government departments to formulate policies and standards for telecoms service fees
- Allocating and managing radio frequency spectrum resources
- Overseeing the security of the telecoms network

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

Telecoms business activities in China are divided into Basic Telecom Services (“BTS”) and Value-added Telecom Services (“VATS”). The Telecoms Catalogue sets out the relevant regulated services that fall within the different categories of BTS and VATS.

BTS refers to the business of providing public network infrastructure, public data transmission and basic voice communications services. VATS refers to the telecoms and information services provided through public network infrastructure.

Each of BTS and VATS is further divided into a Category 1 and a Category 2 under the Telecoms Catalogue. Category 1 services (whether BTS or VATS) are more heavily regulated than Category 2 services, the reason being Category 1 services generally have more national economic or social impacts.

It is worth noting that where a reseller purchases cellular mobile communications services from a BTS provider (who owns a mobile network), and repackages such services under its own brand and sells such services to end users, such activity will be captured by the VATS licensing regime. In other words, such reseller will require a VATS licence.

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

In general, an entity must obtain a telecoms operation licence in order to engage in telecoms business activities. The holder of a telecoms licence is only permitted to carry out the activities specified in the licence.

VATS licences are further subdivided into single province licences and cross-provincial licences. Single province licences are issued by the relevant local authorities to service providers that are only providing regulated services within a single province, municipality or autonomous region. Cross-provincial licences, on the other hand, cover the provision of nationwide regulated services, and are issued by the MIIT.

A BTS licence is valid for either five or ten years (depending on the type of telecom service involved) and a VATS licence is valid for five years.

Telecoms operators must also meet the minimum registered capital requirements in order to be granted licences. For BTS operators, the minimum registered capital is RMB 100 million for single province providers and RMB 1 billion for nationwide providers. For VATS operators, the minimum registered capital is RMB 1 million for single province providers and RMB 10 million for nationwide providers.

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

An entity is required to have a permanent establishment in China prior to commencing the provision of telecoms services. Foreign investors may only operate limited types of telecoms services in China.

Generally speaking, foreign investment is subject to shareholding restrictions. Foreign ownership limits for BTS is 49% for BTS and 50% for VATS. However, in practice, this is much more restrictive than the rules would suggest.

Nevertheless, some Hong Kong and Macau investors, although technically treated as foreign investors by Chinese authorities, have been granted a VATS licence due to their special eligibility granted under the Closer Economic Partnership Agreements entered into between China and Hong Kong / Macau.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Under the Telecoms Regulations, interconnection of telecoms networks should be effected on the basis of the principles of technical feasibility, economic sense, fairness, impartiality and mutual complementation.

Leading telecoms service operators, which refer to operators that control vital telecoms infrastructure, have a relatively large share of the telecoms market and can materially influence the market entry of other telecoms business operators, may not refuse interconnection requests from other telecoms business operators and operators of dedicated networks.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Telecoms Regulations do not differentiate between the provision of services to businesses and consumers.

Where the services are provided to consumers, providers should be mindful that the PRC Law on the Protection of Consumer Rights and Interests will also apply. For example, business operators are required to disclose all information related to the services to consumers, and consumers have the right to privacy and to have their personal information protected when receiving a service.

REGULATORY TAXES AND FEES

Application for a BTS or VATS licence is free of charge.

The telecommunications industry is subject to Value Added Tax. The tax rate for BTS is 9% and 6% for VATS. The telecommunications industry, like most other industries, is also subject to administrative charges, namely an education fee of 3% and a local education surcharge of 2%.

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

In the first quarter of each year, telecoms licence holders must submit their annual operation information to the MIIT and/or the relevant local authorities through an online platform. The telecom authorities will then perform a random inspection on selected telecoms operators.

The telecom authorities maintain a list “poorly performed” and “dishonest” companies and such list is made available to the public. Telecom operators with less serious violations will go on the “poorly performed” list, and might attract administrative penalties.

Telecom operators with more serious violations will be listed as “dishonest”. By way of an example, operating regulated telecoms services without licences or providing regulated services beyond the permitted scope will be considered as serious violations. Sanctions include revocation of telecoms licences, shutdown of business and blacklisted by the authorities for (at least) three years. The biggest risk of all is shutdown of services, which may also bring significant contractual liabilities to such telecom operator.

Other forms of sanctions include rectification orders, warnings, fines, confiscation of illegal gains or criminal liabilities. While the authorities have the ability to levy fines against organisations who are operating without a licence, this method is not commonly used by the China authorities (or if any fines are levied these are seldom disclosed publicly).

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