

TELECOMMUNICATIONS LAWS OF THE WORLD

China vs Brazil



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CHINA



Last modified 21 November 2022

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 in-country.

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, and revised on 6 June 2019) 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.

BRAZIL



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OVERVIEW OF LEGAL LANDSCAPE

Telecommunications is a regulated activity in Brazil.

The practice of telecom activities in the country requires the prior attainment of specific authorisations before the Brazilian Telecommunications Agency (*Agência Nacional de Telecomunicações - ANATEL*), which is linked to the Brazilian Ministry of Communications. The type of authorisation and the related requirements vary according to the intended telecom activity.

As a regulatory agency, ANATEL is responsible for the regulation, inspection and granting of authorisations required for the performance of telecom activities in Brazil. ANATEL also has the power to apply administrative sanctions in the case of violations to the provisions of the telecom regulation.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecom activities in Brazil is the General Telecommunications Law (Federal Law No. 9,472 of 1997, as amended - LGT).

The LGT was enacted in 1997 as a consequence of the denationalisation of telecom activities in Brazil. It provides the key definitions relating to telecom activities and establishes the basis for the organisation of telecom sector.

ANATEL's Regulatory Framework

ANATEL's regulatory framework involves a high number of regulatory acts (including regulations, instructions and opinions) which apply to several aspects of telecom activities. Such regulation has been going through amendments to reflect technology developments and streamline the telecom regulatory environment.

The Administrative Provisions on Foreign-Invested Telecommunications Enterprises (the “Administrative Provisions”), first issued by the State Council on 11 December 2001 (and subsequently revised on 10 September 2008, 6 February 2016 and 29 March 2022) specify the scope and requirements for a foreign-invested telecom enterprise.

ANATEL regulates the following aspects relating to the telecom sector, among others:

- ANATEL's organisation, objectives and functioning;
- Telecom strategic planning, the general telecom regulation plan and inspection/administrative proceedings;
- Fixed telecom service (or STFC) (related to the communication between two fixed points/either local or long distance);
- Mobile telecom service (or SMP) (related to mobile communications services);
- Multimedia communications service (or SCM) (related to the provision of capacity to transmit, emit and receive multimedia information to subscribers within a determined private area);
- Limited use telecom services (private telecom services utilised by the user itself or by private groups, and related to certain activities such as aerospace research, meteorology services, etc);
- Radio communications (related to communications via radio);
- Satellite (related to satellite exploration);
- TV subscription (related to paid TV services);
- Radio diffusion (related to open TV and radio);
- Inter-connection (related to telecom network interconnection);
- Telecom product certification (related to requirements and procedures for the certification of telecom equipment);
- Radiofrequency (related to, among other things, procedures and authorisations for the uses of radiofrequency); and
- Rights and obligations of telecom market players (providers, users, equipment manufacturers, etc).

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

The Ministry of Industry and Information Technology

Address: No. 113 West of Chang An Street, Beijing, 100804, China

Website: www.miit.gov.cn

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.

REGULATORY BODIES OR AUTHORITIES

Agência Nacional de Telecomunicações

Address: SAUS Quadra 6 Bloco H, Ala Norte, Brasília, Brazil, Zip Code 70070-940

Website: Anatel

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

Telecom Services Legal Definition

The LGT defines telecom services as the "set of activities that enables the telecommunications offering" ("**Telecom Services**").

The term telecommunications is defined as "the transmittal, production or reception, by wire, radio electricity, optical means or any other electromagnetic process, of symbols, characters, signals, writings, images, sounds or information of any nature".

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

The LGT also establishes the activities that do not consist in Telecom Services, which includes:

- The provision of satellite capacity;
- Activities related to the registration and qualification of users and equipment for the access to Telecom Services; and
- The value-added service, defined as “the activity that adds to its corresponding telecommunications service (and to which it holds no similarity), new utilities related to access, storage, presentation, handling and retrieving of information”.

Classification of Telecom Services

Telecom services/activities may be classified by several aspects, including:

- Broadness (collective or restricted interest);
- Legal regime (public or private); and
- Authorisation modality (concession, permission or *stricto sensu* authorisation). Similarly, there are several types of telecom services/activities modalities. Each one of such modalities is regulated by ANATEL.

Telecom Activities Regulated by ANATEL

ANATEL regulation applies to the activities described in ANATEL's Regulatory Framework above.

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

The provision of Telecom Services in Brazil requires prior authorisation from ANATEL.

The type of authorisation (i.e., concession, permission or *stricto sensu* authorisation) and the related requirements vary according to each Telecom Service modality.

ANATEL's prior authorisation is also required for:

- Use of radiofrequency; and
- Telecom equipment certification.

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 for most of the service categories. Certain categories of VATS allow foreign ownership of more than 50%, e.g., E-commerce service under the online data processing and transaction processing services (B21). However, in practice, this is much more restrictive than the rules would suggest.

It is also noteworthy that the revised Administrative Provisions have lifted certain requirements for foreign investors in terms of prior telecoms experience. For example, it no longer requires foreign investors to have “a record of good performance and operating experience in basic telecommunications business”. Moreover, the revised Administrative Provisions also simplify the administrative procedures to set up a foreign-invested telecoms operator. That being said, we anticipate that it may take some time for these changes to be rolled out in practice.

In addition to the above, ANATEL is also responsible for granting satellite exploitation rights (landing rights), as well as for regulating the satellite use for transportation of telecom signals.

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

As a rule, in order to provide Telecom Services in Brazil the entity must be incorporated, organised and domiciled in the country. Foreign participation in or control of those entities is allowed.

In fact, telecommunications sector counts with foreign capital presence since the privatization of the Telebras system back in 1998. However, before 2021, it was necessary for non-domiciled persons to incorporate a local holding in the country to directly hold the Brazilian telecommunications company shareholding control.

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.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection is regulated by the LGT and by ANATEL.

Interconnection regulation includes:

- Requirements for the execution of interconnection agreements among the telecom providers (which must be approved by ANATEL); and
- Definition of related interconnection compensation/tariff.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Telecom Services users' rights and contracting requirements are subject to Anatel regulation. For such purposes, Telecom Services user (or consumer) is considered as any legal entity or individual which uses telecom services.

Telecom service users' basic rights include the following:

- Access to Telecom Services in the Brazilian territory that satisfy a certain standard in terms of quality and consistency;
- Freedom of choice regarding the Telecom Services provider;
- Non-discrimination regarding conditions for Telecom Services access and fruition;
- Access to adequate information regarding the Telecom Services rendering conditions, tariffs

/prices and services suspension;

- The inviolability and secrecy of communication (subject to an exception for specific cases, as provided for by law);
- A right to request the non-disclosure of its user access code;
- Non-suspension of services rendered under the public regime (as the STFC), except in specific cases (eg debt directly derived from the services utilisation and breach of contractual obligations);
- Personal data privacy;
- A right to have complaints duly answered by the Telecom Services provider;
- A right to present claims against the Telecom Services provider before ANATEL and the consumer defence authorities; and
- A right to be indemnified for any damages caused by virtue of its users' rights violation.

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%.

REGULATORY TAXES AND FEES

Main Taxes Levied Over Telecom Companies (applicable rates vary depending on the chosen tax regime)

- Corporate Income Tax - (*Imposto de Renda da Pessoa Jurídica - IRPJ*);
- Social Contribution on Net Profits (*Contribuição Social Sobre o Lucro Líquido – CSLL*); and
- Tax on Social Integration Program (*Programa de Integração Social - PIS*) and Tax for Social Security Financing (*Contribuição para o Financiamento da Seguridade Social - COFINS*).

Main Taxes and Fees Levied Over Telecom Activities

- Value-Added Tax on Sales and Services (*Imposto sobre a Circulação de Mercadorias e Serviços de Transporte Interestadual e Intermunicipal e de Comunicação - ICMS*), which is a State Tax;

- Fund for Universal Access to Telecommunications Services (*Fundo de Universalização dos Serviços de Telecomunicações - FUST*);
- Fund for Telecommunications Technological Development (*Fundo para o Desenvolvimento Tecnológico das Telecomunicações - FUNTTEL*); and
- Telecommunications Inspection Fund (*Fundo de Fiscalização das Telecomunicações - FISTEL*) - The main FISTEL revenue sources are: Installation Inspection Fee (*Taxa de Fiscalização de Instalação - TFI*) and Functioning Inspection Fee (*Taxa de Fiscalização de Funcionamento - TFF*).

Also, administrative fees are applied by ANATEL to telecom authorisations requests.

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

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

Administrative sanctions in the case of breaches /contraventions of telecom laws and regulations include the following:

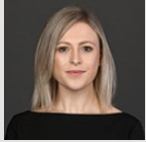
- Warnings;
- Fines;
- Temporary suspension of the authorisation granted by ANATEL regarding the telecom activity;
- Extinction of the authorisation granted by ANATEL regarding the telecom activity; and
- Temporary banning from participating in public bids.

ANATEL is responsible for the investigation of the breaches/contraventions and imposition of sanctions. The imposition of sanctions depends on a prior administrative proceeding in which the infracting party has a right of defence. Administrative sanctions are applied in addition to any civil and criminal sanctions.

The LGT defines the unlawful development of telecom activities as a crime.

authorities (or if any fines are levied these are seldom disclosed publicly).

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