OVERVIEW OF LEGAL LANDSCAPE

The Russian Federation joined the WTO in 2012 and made commitments regarding telecommunications, including the implementation of the WTO Basic Telecommunications Reference Paper.

The main aspects of the Russian telecommunication regulatory regime are currently regulated by the Federal Law ‘On Telecommunications’ No. 126-FZ dated 7 July 2003 (‘Law on Telecommunications’). In general, the regulation of telecommunication services in Russia is not always sufficiently detailed and contains many general provisions with little explanation on how they should apply to certain specific situations. There are also few judicial rulings in respect of the provision of telecommunications services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Law on Telecommunications establishes general principles and rules which apply to telecommunications legislation in Russia. There are also a number of regulations adopted in furtherance of the Law on Telecommunications, eg by the Government of the Russian Federation and the Ministry of Communications.

Such regulations cover, inter alia, the following:

- Licensing requirements
- Rules for the provision of specific telecommunication services
- Rules for the operation of telecommunication networks

In addition, other ancillary considerations affecting the provision of telecommunications services in Russia are regulated by other laws including:


REGULATORY BODIES OR AUTHORITIES

The main regulator for the telecoms sector is the Federal Service for Supervision of Communications, Information Technology and Mass Media of the Russian Federation (Roskomnadzor). Roskomnadzor carries out:

- Permitting and licensing activities
- Supervision of telecommunications, information technologies and mass communications which are under the control of the Ministry of Communications and Mass Media

Contacts
The following state regulatory bodies / authorities also have roles in the regulation:

- The Federal Agency of Communications (‘Rossvyaz’) and
- The Federal Antimonopoly Service (FAS)

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

In a nutshell, telecommunication services provided by a Russian party in Russia are subject to licensing. However, a licence is not required for infrastructure services or cloud services unless:

- They involve such specific activities, such as distribution, installation and/or maintenance of hardware/software bearing elements of encryption or other specific activities, as specified further below
- They include any listed licensable telecommunication services, even as a secondary function

If the services are provided in Russia (or may be attributed to Russia), a telecommunications licence is required, subject to the below.

Apart from the telecommunication licence requirements, Russian law requires obtaining state licences/permits for various activities taking place in Russia, including, for example:

- The development, manufacturing and/or distribution of hardware/software which contain elements of encryption and information systems / telecommunication networks which are protected with the use of such encryption
- The performing of works and the rendering of services in the area of encryption of information
- The technical maintenance of encryption items and information systems / telecommunication systems protected with the use of such encryption items
- The development and manufacturing of the means of protecting confidential information
- Activities aimed at the technical protection of confidential information
- The import/export of certain specific categories of products (such as encrypted items and radiofrequency equipment)

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

Certain types of activities are subject to mandatory licensing in Russia. Resolution No. 87 of the Russian Government on Titles of Telecommunication Services dated 18 February 2005 (‘Resolution’) outlines which types of telecommunications services require a licence. The Resolution currently lists 20 titles of licensable services. In particular, the following types of telecommunications activities are subject to licensing:

- Local telephone communications services except such services using payphones and means of collective access
- Intercity and international telephone communications services
- Telephone communications services in a dedicated communications network
- Intra-zone telephone communication services
- Local telephone communications services using payphones
- Local telephone communications services using the means of collective access
- Telegraphy communications services
- Personal radio paging communications services
• Mobile radio communications services in a public-use communications network
• Mobile radio communications services in a dedicated communications network
• Mobile radio telephone communications services
• Mobile satellite radio communications services
• Provision of communication channels
• Communications services in data-transfer, except for services in data communications for the purpose of voice information transfer
• Communications services in data transfer for the purpose of voice information transfer
• Telematics communications services
• Communications services for the purpose of cable broadcasting
• Communications services for the purpose of air broadcasting
• Communications services for the purpose of wired radio broadcasting
• Postal services

The listed titles are not clearly defined or exhaustively described in the Resolution or any other regulations. In practice, this sometimes makes it difficult to reach a clear conclusion on whether a certain business activity falls under any type of licensable service. Usually a Russian telecoms consultant is engaged for such purposes.

As mentioned above, apart from the telecommunication licence requirements, Russian law also requires obtaining state licences/permits for certain other types of activities.

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

If telecoms activity requires a telecommunications licence, the licence can be issued to Russian legal entities or entrepreneurs residing in Russia only. Foreign companies may not directly apply for a telecommunications licence (i.e. non-domiciled entities are required to have Russian subsidiaries).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The main applicable principle is that prices for telecommunications services of operators having a significant share of a relevant market, and agreements between such operators, are subject to a specific regulatory regime (the legislation of the Russian Federation on natural monopolies). The Russian Government establishes a list of telecoms services which are subject to state regulation regarding tariffs. Certain regulation is also provided by Roskomnadzor, which establishes maximum tariffs for generally available telecoms services.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The provision of services to consumers may require certain additional obligations in accordance with Russian consumer protection law. The law establishes the rights of consumers to:

• The acquisition of services of proper quality and which meet certain health and safety requirements and property
• Receipt of information about services and about their manufacturers (e.g., providers/sellers)

In general, telecommunication service providers must provide free information services to its customers, which generally include the following:

• Information on the rendered services (such as telematics and transfer of data)
• Information on the tariffs and the territory where the telecommunication services are rendered
• Information regarding the customer’s account balance
• Acceptance by the carrier of information of any technical issues with the services
• Information on how to set up the user equipment
• Russian language requirements

There are also specific rules on the provision of different types of telecoms services established by the Russian Government,
which telecoms operators must comply with.

Another aspect is collecting certain personal data (ie personally identifiable information such as names, addresses, phone numbers and credit card numbers) from Russian customers. Depending on the types of data collected, it may be necessary to comply with certain personal data regulations. Furthermore, if any of these data belong to Russian citizens, then, as a general rule, it would be necessary to have a local Russian database where these data would need to be primarily stored and processed. Any transfers to foreign servers would be possible only after the recording of these data in a local Russian database.

**REGULATORY TAXES AND FEES**

Subject to certain exceptions, telecommunication service providers are generally obliged to pay, in particular, value added tax (VAT), corporate income tax and corporate property tax.

**Value added tax (VAT)**

VAT is calculated at the standard rate of 20% for the telecommunication services provided in the territory of the Russian Federation.

Also, international communication services provided to foreign customers (recipients) are non-VATable for Russian VAT purposes.

**Corporate income tax**

Corporate income tax is calculated as the difference between the amount of revenue received and the costs incurred (with certain limitations) at the rate of 20%.

**Corporate property tax**

The tax is applied to movable and immovable property of companies, ie involved in the provision of telecommunication services. The rates of corporate property tax depend on the particular region of Russia and usually do not exceed 2.2%.

**Tax agent for employees**

Companies must withhold personal income tax from income paid to employees at the rate of 13%.

**Social contributions**

Companies are to pay social contributions to the Pension Fund, Social Fund and Federal Fund of Compulsory Medical Insurance, which is calculated as the multiplication of all income paid by the company to the employee (such as salary and bonuses) at the rate of 15.1% - 30% (depending on amount of income paid to the particular employee per calendar year).

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

Sanctions and penalties may vary depending on the type and sphere of a breach/contravention, as to incompliance with telecommunications laws, absence of a license, violation in the sphere of personal data processing, etc. Russian law provides for administrative, criminal and civil liabilities for different breaches. In certain cases, Roskomnadzor may also block non-compliant Internet-based services/websites.

Where the relevant authority identifies a breach, it will either notify the relevant provider and require it to take necessary steps to rectify the breach, or start relevant administrative proceedings. Customers may also instigate civil proceedings. In addition, in the most serious of cases, certain criminal sanctions may be imposed.

The relevant authority has the power to issue enforcement notices to cease persistent misuse of a network or service. It may also require entities to provide certain information relating to the relevant authority’s regulation or networks and services.
KEY CONTACTS

Michael Malloy
Counsel
DLA Piper Rus Limited
T +7 495 221 4175
michael.malloy@dlapiper.com

Pavel Arievich
Legal Director
DLA Piper Rus Limited
T +7 495 221 4472
pavel.arievich@dlapiper.com
Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2017 DLA Piper. All rights reserved.