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ABOUT

Welcome to DLA Piper’s Global Telecoms Law handbook.

Our team offers a global full-service business legal capability focusing on the telecommunications sector, founded on deep commercial, transactional and regulatory knowledge. We have telecoms regulatory advisers located in key jurisdictions around the world and have experience advising on business-critical regulatory matters globally.

Telecommunications infrastructure is at the heart of any global business in the modern age. From data security and data resilience requirements, through cloud connectivity issues, to low latency and time-based stamping in trading transactions, robust, reliable and resilient networks are critical.

Today, telecommunications operators are increasingly seeking to expand customer-specific and value-added services (such as combining connectivity with application services) to retain relevancy and protect against margin erosion. At the same time, the growth of OTT (over the top) applications raises novel regulatory questions because service providers, many of whom have no infrastructure and often no physical presence at all in a country, can nevertheless use licensed operators’ infrastructure in that country to provide services.

We hope that the Global Telecoms Law handbook provides a useful resource for companies wherever they do business.
KEY CONTACTS

Americas

Michael Senkowski
Partner
T +1202.799.4103
Michael.Senkowski@dlapiper.com

Nancy Victory
Partner
T +1202.799.4216
nancy.victory@dlapiper.com

Asia Pacific

Scott Thiel
Partner
T +852 2103 0519
scott.thiel@dlapiper.com

Europe and Africa

Mike Conradi
Partner
T +44 (0)207 796 6603
mike.conradi@dlapiper.com

Middle East

Paul Allen
Partner, Head of Intellectual Property and Technology
T +971 4 438 6100
paul.allen@dlapiper.com

Eamon Holley
Partner
T +971 4 438 6100
eamon.holley@dlapiper.com
AUSTRALIA

Last modified 2 December 2019

OVERVIEW OF LEGAL LANDSCAPE

The Australian telecommunications regulatory landscape and regulatory perimeter is broad and complex.

The primary telecommunications legislation, the 1997 Telecommunications Act, removed barriers to participation and added to earlier legislation which was intended to permit facilities-based competition. The 1997 Telecommunications Act implemented an access regime applicable only to the telecommunications industry and also provided prohibitions against anti-competitive conduct.

The telecoms industry is heavily-regulated and has seen additional complexity arising through a governmental decision to support the construction of a National Broadband Network (NBN) and the incorporation of a wholesale only company to supply broadband services (NBN Co). This has resulted in significant regulatory changes (in particular, to shield NBN Co from certain types of competition). The current government has announced changes to the NBN, in particular potentially removing cross-subsidies between urban and rural areas which were intended to provide for a single, Australia-wide access price, as well as adjustments to its facility-based competition principle (which saw other operators connect fiber-to-the-building (FTTB) infrastructure to high-density, higher use buildings such as apartment blocks).

Future change in the regulatory regime is anticipated in areas of data protection and privacy, data interception and metadata retention and access for law enforcement and NBN services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

As noted above, the Telecommunications Act 1997 is the key legislation which regulates, amongst other things, telecommunications carriers in Australia.

It is supported by a range of other legislation, instruments and codes including the Telecommunications (Consumer Protection and Service Standards) Act 1999, which provides for the establishment of the universal service obligation with respect to standard telephone services in Australia, the ability of the Australian Communications and Media Authority (ACMA) to set performance standards and obligations on carriers, and the requirement for carriage service providers to enter the Telecommunications Industry Ombudsman scheme.

Specific NBN Co Laws, Regulations and Policies

The regulatory framework for the NBN was established through the National Broadband Network Companies Act 2011 and the Telecommunications Legislation Amendment (National Broadband Network Measures -Access Arrangements) Act 2011 which added to the existing generic telecommunications regulatory framework. In addition:

- **Non-discrimination obligations**: The Australian Competition and Consumer Commission (ACCC) must publish guidance on NBN Co’s non-discrimination obligations.

- **ACCC explanatory material on the Part XIC non-discrimination provisions**: Under the legislation, NBN Co can
choose to publish a standard form of access agreement and/or give a special access undertaking to the ACCC in relation to its terms and conditions for the supply of wholesale services. Where an access agreement differs from the standard form of access agreement, NBN Co must provide a statement of the differences to the ACCC.

- **Special Access Undertaking (SAU):** In December 2013, the ACCC accepted an SAU lodged by NBN Co, in accordance with section 152CBA of Part XIC of the Competition and Consumer Act. The SAU specifies basic terms and conditions under which NBN Co will provide its wholesale services.

- **Authorised conduct:** The NBN Access Act introduced Division 16 into Part XIB of the Competition and Consumer Act, which authorises, for the purposes of the Act, certain conduct by NBN Co that is reasonably necessary for it to achieve uniform national wholesale pricing. This conduct relates to refusal to interconnect other than at listed points of interconnection, the bundling of services and cross-subsidising in charging for services. However, current Government policy on the issue of uniform pricing may result in differential charging between urban, rural and remote locations.

- **Parts 7 and 8 of the Telecommunications Act:** The NBN Access Act also introduced Parts 7 and 8 into the Telecommunications Act. These new Parts apply to fixed-line local access networks, or parts of such networks, that are built, upgraded, altered or extended after 1 January 2011 so that they are capable of providing a carriage service where the download transmission speed is normally more than 25 megabits per second to residential or small business owners.

### REGULATORY BODIES OR AUTHORITIES

**The Australian Competition and Consumer Commission’s** main responsibilities include:

- The promotion of competition within the Australian telecommunications industry and to ensure that consumers’ interests are protected
- Overseeing the telecommunications access regime provisions for controlling anti-competitive conduct and price control arrangements
- Focussing on access determinations to bottleneck services

**The Australian Communications and Media Authority’s** main responsibilities include:

- Forming part of the Department of Broadband, Communications and Media Authority
- As a converged telecommunications regulator, overseeing the broadcasting, internet, radio communications and telecommunications industries
- Regulating technical and non-competition aspects of the industry, licensing telecommunications carriers, regulating fixed-line and mobile telecommunications, developing codes of practice for the industry and monitoring compliance, monitoring the performance of carriage service providers, setting and enforcing industry and technical standards and monitoring industry performance numbering, advising consumers on their rights and safeguards and managing the delivery of services to people with communication impairment

**The Telecommunications Industry Ombudsman’s** main responsibilities include:

- The provision of a fast, free and fair dispute resolution service for small businesses and residential consumers who have a complaint about their telephone or internet service
- Being an independent body that complies with the Commonwealth’s Benchmarks for Industry-Based Customer Dispute Resolution Services here

**The Communications Alliance’s** main responsibilities include:

- Being an industry body for the telecommunications industry
- Promoting the growth of the telecommunications industry and the protection of consumer interests by fostering the
highest standards of business ethics and behaviour through industry self-governance that uses practical, self-imposed solutions that are developed co-operative processes

The Communications Compliance’s main responsibilities include being an independent monitoring body that oversees conduct of the Telecommunications Consumer Protections Code Compliance Framework, providing guidance on how to comply with the code and providing an overview of industry compliance. It should be noted that the Communications Compliance does not actually enforce compliance (ACMA is, in most cases, the key enforcement body).

The Attorney General’s Department’s main responsibilities include administering the Telecommunications (Interception and Access) Act 1979 and the Surveillances Devices Act 2004. However, the department does not investigate crimes (relevant police enforcement agencies investigate and potentially prosecute).

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

Installing Facilities

The Telecommunications Act 1997 restricts carriers in their installation of telecommunications facilities. Primarily only low-impact facilities, which are designed to be unobtrusive and to be installed in line with the legislation, are permitted. Superfast network obligations also arise under the same legislation which limit the installation of superfast networks (in connection with the rollout of the NBN).

Approval of telecommunications facilities is the responsibility of the local government authority in the area.

Service Providers

Service providers including Carriage Service Providers (CSP), that use, but do not own, a telecommunications network unit to provide carriage services to the public (including Internet Service Providers and Internet Access Providers, as they fall within the category of a CSP), and content service providers that supply content services to the public must comply with obligations imposed by the telecommunications access regime, in addition to the following regulations:

- The Telecommunications Act 1997
- The Telecommunications (Consumer Protection and Service Standards) Act 1999
- The Competition and Consumer Act 2010
- The Telecommunications Consumer Protections Code

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

In addition to the registration of a business name with the Australian Securities and Investments Commission, the following registration and licensing requirements must be adhered to:

- **Telecommunications licence**: Except in limited circumstances, the owner of a network unit (cable or wireless) used to supply carriage services to the public must hold a Carrier Licence.

- **Content Service Providers**: If the company uses, or proposes to use, any point-to-point carriage service to supply an online service to any other person that is not an officer of the company or a related body corporate then the company is a Content Service Provider under the Telecommunications Act 1997. A Content Service Provider is a general classification of industry participants supplying content services to the public. There is no licence required, however the company will need to comply with the content rules determined by ACMA.

- **Installation Services**: If the company provides installation services for customers that involve customer cabling then they must register with ACMA and comply with the Telecommunications Cabling Provider Rules 2000 issued by ACMA.
Radiocommunications Equipment: A CSP that operates radiocommunications equipment for the purpose of supplying carriage or content services may need to be licensed under the Radio Communications Act 1992. If a radio transmitter or receiver is required to provide services, the company will require a Spectrum or Apparatus Licence.

There may also be local council planning regulations relating to the location of certain infrastructure (base stations, transmitters etc). The nature of these regulations differ between different council areas.

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

No domicile requirements apply for carrier licences, provided that the applicant is a ‘constitutional corporation’.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

**Domestic inter-carrier roaming**

Domestic inter-carrier roaming is not a declared service (although it has been the subject of a regulatory enquiry to determine whether it should be) and is regulated through commercial agreements reached between the relevant carriers.

**International roaming**

This is governed by the Telecommunications (International Mobile Roaming) Industry Standard 2013.

The Standard focused on four key consumer protection measures:

- A notification via SMS to be sent to all consumers on arrival overseas, warning them that significantly higher charges for using roaming services may apply
- Enabling customers to stop international roaming at any time and with little cost, including from an overseas location
- A notification to be sent via SMS to customers of service providers giving them pricing information for using a range of roaming services. These services include any that would normally be free in the domestic market, such as receiving a call on a mobile device
- Spend management tools, including notifications in AUD 100 increments for data usage and notifications at 50, 85 and 100% of included value, if a customer has purchased an included value travel package from their International Roaming Mobile (IMR) service provider

**International roaming - New Zealand**

Trans-Tasman mobile roaming (TTMR) services are those IMR services that enable Australians to use their mobile device in New Zealand, and vice versa. Australia and New Zealand will work together to address the high cost to businesses and consumers of using TTMR services. The foundation of this is the ‘Closer Economic Relations’ treaty arrangement between Australia and New Zealand.

The Australian Government has prepared draft legislation that would, if enacted, enable the ACCC to, where necessary, take coordinated regulatory action with the New Zealand competition regulator, the New Zealand Commerce Commission.

Prior to imposing any price-control arrangements or access obligations, the ACCC would be required to conduct an enquiry involving public consultation, in order to determine whether regulatory action is necessary. However, if prices for TTMR services continue to converge with domestic prices, the necessity for the ACCC to impose price regulation using the measures will diminish.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

Differences between provision of services to businesses and provision of services to consumers
Subject to contractual commitments agreed between the service provider and the end customer, and as set out below, there are no significant differences in terms of the regulatory treatment of end users of telecommunications services from a general level.

**Requirements for provision of services to consumers:**

- This is principally governed by the Telecommunications Consumer Protections Code.
- Consumers and small businesses can complain to the Telecommunications Industry Ombudsman. Resolutions by the ombudsman are legally binding to the value of AUD 50,000.
- If a service is ‘declared’ by the ACCC, standard access obligations then apply.

The Unfair Contract Law provisions of the Australian Consumer Law will likely apply to any standard form contract agreed between a service provider and an individual end user.

**REGULATORY TAXES AND FEES**

Telecommunications carriers who earn AUD 25 million or more in any eligible revenue period are required to pay annual levies and charges including the telecommunications industry levy, and the annual Carrier Licence charge. These are calculated based on their eligible revenue for the previous financial year.

**Application for a Carrier Licence:**

- The current fee for an application for a Carrier Licence is AUD 2,076. This fee covers the cost of processing the application.
- The annual licence fee for a carrier is calculated at a rate of AUD 1.18 per AUD 1,000 of eligible revenue (based on gross sales revenue of the carrier and any related entities).

**Installation services**

All individuals performing cabling work, except ‘plug and play’ cabling of customer equipment (which is not in a wall or ceiling cavity) must be a registered cabler for open cabling work.

**Importation of goods for the provision of telecommunication services**

Goods imported into Australia with a value above AUD 1000, including commercial quantities, must be cleared by submitting a completed import declaration form and paying duty, GST, and other taxes and charges that apply. The duty rates payable will depend on the tariff classification, the value of the goods in the exporting country and where the goods were manufactured. The Customs Tariff Act 1995 provides the tariff classifications, duty rates, interpretive rates and information on preference schemes, and other concessions and exemptions that may apply.

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

**Civil Penalties**

See what penalty amounts should be included here.

**Infringement Notices**

Under the Telecommunications Act 1997, ACMA can, instead of instituting court proceedings, give infringement notices for alleged contraventions of certain civil penalty provisions relating to telecommunications. If the penalty under the infringement notice is paid within the specified time frame (or other period agreed to by ACMA) then civil penalty proceedings cannot be initiated and the matter is disposed of without admission of guilt or a conviction. If the penalty is not paid then court action may be taken for civil penalties in relation to the alleged contravention.
Privacy Laws

Greater powers have been introduced for the Information Commissioner to deal with breach of Australia’s privacy laws.

Breach of Telecommunications Consumer Protections Code

ACMA enforces the code and it can take the following steps:

- Agree with the telecommunications provider on steps it will take to remedy the breach or improve compliance
- Give a formal warning
- Give a Direction to Comply with code provisions

Telecommunications Industry Ombudsman:

- Is authorised to investigate complaints by residential and small business users of telecommunications and internet services
- Can enforce resolution of complaints of up to AUD 50,000, and make recommendations for complaints of up to AUD 100,000

KEY CONTACTS

Sinead Lynch
Senior Legal Counsel
DLA Piper Australia
T +61292868296
sinead.lynch@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

In Austria, the field of telecommunications is strongly influenced by European requirements. The European legal framework was implemented through the Telecommunications Act (Telekommunikationsgesetz - TKG 2003). With this Act, regulation has developed from sector-specific regulation towards a more general competition law approach. In the TKG 2003, the regulatory authorities have been assigned new tasks, such as, for example, a number of authorisations to issue ordinances. Regulation and monitoring of the Austrian telecommunications market is undertaken by the Telekom-Control-Commission (TKK) and the Regulatory Authority for Broadcasting and Telecommunications (RTR).

The purpose of the TKG 2003 is to promote competition in the field of electronic communications in order to provide reliable, low-cost, high-quality and innovative communications services.

The key features of the TKG 2003 are:

- According to the principle of general authorisation any person is entitled to provide communications networks and services. The intended provision, its modifications and its termination have to be notified to the regulatory authority.

- Due to universal service obligations, a minimum set of public services has to be provided to all users at an affordable price regardless of their place of residence or work.

- The regulatory authority is obligated to enforce all the objectives of the TKG 2003 as they are laid out in Article 1 TKG 2003, especially in respect of the regulation of competition.

- The Federal Minister of Transport, Innovation and Technology administers the frequency spectrum as well as the Austrian rights of use and orbital positions of satellites. He is obligated to take appropriate measures to ensure efficient and interference-free use.

The regulatory authority is responsible for providing efficient structuring and administration of the communications parameters in their entirety.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

All laws and ordinances mentioned below can be found here.

- Telecommunications Act 2003
- E-Commerce Act (E-Commerce-Gesetz - ECG)
- The Act on Radio and Telephone Systems and Telecom Terminal Equipment (Bundesgesetz über Funkanlagen und Telekommunikationssendeinrichtungen - FTEG)
• KommAustria Act (*KommAustria-Gesetz* - KOG)

• Telephone Rates Act (*Fernmeldegebührenge setz*)

• Digital Signature Act (*Signaturgesetz* - SigG)

• Data Protection Act 2000 (*Datenschutzgesetz* - DSG)

• Competition Act (*Bundesgesetz gegen den unlauteren Wettbewerb* - UWG)

• Law on Alternative Dispute Resolution in Consumer Affairs (Bundesgesetz, mit dem ein *Bundesgesetz über alternative Streitbeilegung in Verbraucherangelegenheiten* erlassen wird)

**Ordinances of RTR-GmbH:**

• Ordinance on Notification on Data to the Central Information Point for Infrastructure Data (*ZIS Einmeldung von Daten an die Zentrale Informationsstelle für Infrastrukturdaten* - ZIS-EinmeldeV)

• The Communication Parameters, Fees and Value-Added Services Ordinance (*Kommunikationsparameter-, Entgelt- und Mehrwertdiensteverordnung* - KEM-V)

• Itemised Billing Ordinance (*Einzelentgeltnachweisverordnung* - EEN-V)

• Ordinance on Communications Parameter (*Kommunikationsparameter*)

• Cost Control Ordinance (*Kostenbeschränkungsverordnung*)

• Information Requirement Ordinance (*Mitteilungsverordnung* - MitV)

• Number Porting Ordinance 2012 (*Nummernübertragungsverordnung 2012* - NUV 2012)

• Telecommunications Markets Ordinance (*Telekomunikationsmärkteverordnung* - TKMVO)

• Telecommunications Reference Rate Ordinance (*Telekom-Richtsatzverordnung* - TRV)

**Ordinances of the Austrian Ministry of Transport, Innovation and Technology, the Austrian Ministry of Science, Research and Economy:**

• Ordinance on use of frequencies (*Frequenznutzungsverordnung 2013* - FNV 2013)


• Telecommunications Fee Ordinance (*Telekommunikationsgebührenverordnung* - TKGV)

• Ordinance on Statistical Enquiries (*Kommunikations-Erhebungs-Verordnung* - KEV)

• Universal Services Ordinance (*Universaldienstverordnung* – UDV)

• Ordinance on Surveillance of Telecommunications (*Überwachungsverordnung* – ÜVO)

• Identification Ordinance (*Identifikationsverordnung* - IVO)

**REGULATORY BODIES OR AUTHORITIES**
Austrian Regulatory Authority for Broadcasting and Telecommunications

The Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) carries out government duties as a legal entity owned and controlled by the Austrian federal government. It also provides telecommunications-related operational support for the Telekom-Control Commission.

In providing operational support for the Telekom-Control-Commission, RTR is mainly responsible for the fields of site sharing, approvals of general terms and conditions of business, electronic signatures, frequency assignment procedures and competition regulation. Additional activities at RTR include alternative dispute resolution, the administration of the Austrian Digitisation Fund and Television Fund, dispute settlement for retail customers, and the administration of communications parameters (e.g. numbering). RTR’s objectives and duties are defined in Sec 115 TKG 2003, which stipulates that RTR must perform all duties conferred upon the regulatory authority by the TKG 2003 and by any ordinances issued under that act, unless the Telekom-Control-Commission is responsible for such duties pursuant to Art. 117.

As for its government duties, RTR mainly performs tasks related to the administration of communications parameters (allocation of telephone numbers by official decision) under Sec 65 of the TKG 2003.

Moreover, RTR was also granted the power to issue various types of ordinances in the TKG 2003 (see list of ordinances Laws and regulations). RTR additionally has the power to issue:

- Ordinances with regard to service quality under Sec 17 Par. 3 TKG 2003
- Subscriber notifications pursuant to Sec 25 Par. 3 TKG
- Special information obligations pursuant to Sec 25b TKG 2003

Telekom-Control-Commission (TKK)

The Telekom-Control-Commission (TKK) is a panel authority with the powers of a court (Sec 116 TKG 2003). Under Art. 116 TKG 2003, RTR is responsible for managing operations for the TKK. In their activities on behalf of the TKK, RTR’s staff members are bound by the instructions of the TKK’s chairperson or the TKK member designated in the authority’s rules of procedure.

Under Art. 20 Par. 2 of the Federal Constitutional Act, members of the TKK are not bound by any instructions in the performance of their official duties. Appeals against TKK decisions can be submitted to the Federal Administrative Court. Further appeals against decisions by the Federal Administrative Court may be submitted to the Austrian Administrative Court and the Austrian Constitutional Court.

The authority’s duties are defined in Art. 117 TKG 2003, under which RTR is required, among other things, to:

- Issue procedural decisions on security reviews in order to calculate the financial compensation to be paid from and into the Universal Service Fund
- Identify the relevant markets subject to sector-specific regulation
- Determine whether one or more undertakings have significant market power or effective competition prevails on those markets
- Determine whether specific obligations are to be withdrawn, maintained, amended or imposed
- Issue approvals of general terms and conditions as well as rates/charges
- Assign frequencies for which a provision is made in the frequency usage plan
- Issue decisions on the transfer of frequencies
- Handle changes in frequency licences and revocations
- Issue decisions on the right to operate communications networks or provide communications services
- Issue decisions regarding injunctions
- Identify infringements and the skimming of excessive gains
- Submit petitions to the Cartel Court

RTR-GmbH and TKK operate from the same address (Mariahilfer Straße 77-79, 1060 Wien) and share a website.
Telecommunications Offices

These are used by the regulatory authority for supervision of all communication services; four offices with a regional area of responsibility exist.

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

The provision of a public communications network or service, as well as its modifications and its termination, is regulated and shall be notified to the regulatory authority prior to the start of operation, modification or termination.

Under Austrian law, a ‘public communications network’ means a communications network used wholly or mainly for the provision of publicly available communications services, whereas a ‘telecommunications service’ means a communications service with the exception of radio and television broadcasting.

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

Communication providers have general authorisation to operate in Austria and do not require a licence, permit, consent etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

Nonetheless Austria does require a notification to RTR prior to the start of operation, for any modification or for termination of the services.

The notification has to be in writing and provide details of the provider, the legal structure of the undertaking, a short description of the network or service and the anticipated date of the start of operation, modification or termination of the service (Sec 15 TKG 2003).

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

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in Austria prior to or during the provision of services.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Every operator of a public communications network shall be under the obligation to make an offer for interconnection to other operators on request. All parties involved shall strive to achieve the objective of enabling and improving communication of the users of different public communications networks.

The regulatory authority may require an undertaking with significant market power to publish a reference offer. The undertaking shall provide in the reference offer sufficiently unbundled subservices, with a breakdown of the relevant offerings into components according to market needs, and state the associated terms and conditions (including prices). Such reference offers shall be submitted to the regulatory authority. Agreements on network access are to be submitted to the regulatory authority upon its request.

Interconnection shall comprise of at least the following services:

- provision of the required switching of data of the respective connection or, in case of packet-oriented services, of the routing data to the interconnecting operator

- delivery of the connections or data packages to the user of the interconnected operator, and
provision of the data required for interconnection payments to the interconnection operator in an appropriate manner.

If link-up via lines is required for interconnection, the installation costs as well as the current expenses of the interconnected line shall be appropriately distributed between both operators.

If no agreement is reached between an operator of a public communications network or service specifically with significant market power and another operator of a public communications network or service, or an undertaking which specifically benefits from access obligations within six weeks of receipt of the application (despite negotiations), either party involved may have recourse to the regulatory authority. The regulatory authority may fix tariffs.

Roaming is based on the EU Roaming Directive.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The TKG 2003 contains a number of consumer specific provisions, but does not include a definition of the term ‘consumer’ itself. Rather, it refers to the meaning of consumer in the Austrian Consumer Protection Law (Konsumentenschutzgesetz - KSchG).

According to the KSchG a consumer is anyone for which the deal in question is not part of his business.

For consumers, the TKG 2003 states that contracts for communications services between operators and consumers may not exceed an initial minimum contract duration of 24 months. Additionally, every subscriber must have the option of concluding a contract of no more than 12 months’ minimum duration for each communications service (Sec 25d (1)).

Generally, with regard to consumers, all consumer law provisions apply in full.

**REGULATORY TAXES AND FEES**

A radio operator is required to pay a notification fee for the commencement of operating a radio system (Sec 82 TKG 2003). For other notifications, authorisations and approvals granted under the TKG 2003, fees also have to be paid.

For notifications, the assignment of frequency usage rights and other administrative activities, one-off fees have to be paid. For the use of frequencies, periodic fees which are defined in the Telecommunications Fee Ordinance, have to be paid.

According to Sec. 34 of the KommAustria Act, all operators/providers of public communications services are generally subject to financing contribution requirements. The annual fee is imposed for the financing of the regulatory authority, which is financed partially from the federal budget and partially from the contributions of the communication services and networks operators.

The operators’ contributions are calculated on the basis of the net turnover for all services provided in Austria.

A turnover threshold is set at EUR 300 (calculated fee, not turnover) as adapted for inflation; contributions which are below this threshold are not payable.

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

If a person who is or was involved in operators’ activities, discloses, without authorisation, the fact or the contents of the telecommunications traffic of specific persons to an unauthorised person or gives such person the opportunity to perceive facts himself that are subject to the obligation to maintain secrecy, or if a person falsifies, incorrectly relates, modifies, suppresses or incorrectly conveys a communication or withholds it from the intended recipient without authorisation, this constitutes a violation of user rights.

These persons are sanctioned by the court with a prison sentence of up to three months or a fine up to 180 times the daily rate (Art. 108 TKG 2003).

Further to the above-mentioned criminal penalty, the TKG 2003 provides administrative fines for various breaches of specific provisions of the TKG 2003, as provided by Art. 109 TKG 2003. The fines are divided into several classes, and can amount to up
to EUR 4,000, EUR 8,000, EUR 37,000 or EUR 58,000, depending on the seriousness of the offence.

Cartel law sanctions, unfair competition law sanctions as well as data protection infringement sanctions may be imposed.

**KEY CONTACTS**

**Sabine Fehringer**  
Partner  
DLA Piper Weiss-Tessbach Rechtsanwälte GmbH  
T +43 1 531 78 1460  
sabine.fehringer@dlapiper.com
BAHRAIN

OVERVIEW OF LEGAL LANDSCAPE

Bahrain is one of the smaller markets in the Gulf region, with a population of about 1.2 million residents. However its proximity to Saudi Arabia (to which it is connected by a bridge) means that traditionally it has a large volume of roaming traffic.

Despite its small market size Bahrain has possibly the most advanced, and liberalised, regulatory regime in the region.

It currently consists of three mobile operators, two fixed wireless operators, a number of ISPs and a number of fixed line operators, the largest of which is the incumbent Batelco.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Legislative Decree No. 48 of 2002 Promulgating the Telecommunications Law (‘Telecoms Law’) is the primary legislation governing the telecommunications sector in Bahrain. It established the Telecoms Regulatory Authority (TRA) and empowers it to regulate the telecommunications and information technology sector. The Telecoms Law also stipulates that the appropriate Government Minister must, in consultation with the TRA and on a three-yearly basis, issue a National Telecommunications Plan to be approved by a resolution to be promulgated by the Council of Ministers. The most recent National Telecommunications Plan was published in 2012.

In addition to the above, the TRA has issued various Regulations and documents which provide further guidance on facets of the telecommunications sector in Bahrain. A complete list of these is available on the TRA website. These include the following:

- Position Papers on VoIP 2004 & 2007
- Guidance Paper on TRA Treatment of Confidential and Non-Confidential Information 2007
- The Guidelines for Telecommunications Infrastructure Deployment 2008
- Bulk Messaging Regulation 2011
- Local Loop Unbundling Order 2011
- Number Portability Process Specifications 2011
- Consumer Protection Guidelines 2011
- Wholesale Inbound Telecommunications Services Regulation 2012
- Dispute Resolution Guidelines 2014
- Guideline for Fines Relating to Articles 35 and 65 of the Telecommunications Law 2014
Future Ex-Ante Market Regulation and Other Regulatory Measures to Foster a Dynamic Sector Development 2014 (Draft Report)

REGULATORY BODIES OR AUTHORITIES

Telecommunications Regulatory Authority

Address: 5th Floor, Building No. 852 Road No. 3618 Seef 436, Manama, Kingdom of Bahrain, PO Box 10353

Website: http://www.tra.org.bh/en

The regulation of the telecommunications and information technology sector in Bahrain falls under the ambit of the Telecommunications Regulatory Authority (TRA). The TRA was established in 2002 as a ‘financially and administratively independent juridical entity’ with the power to, inter alia:

- Issue regulations, orders and determinations relating to the telecommunications sector
- Approve applications for and issue Telecommunications Licences and Frequency Licences
- Monitor and investigate compliance with relevant laws, regulations and licence terms

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

The Telecoms Law stipulates that a licence is required in order to operate:

- A fixed or mobile telecommunications service available to the public
- Any network permitting the conveyance of messages, sound, visual images or signals between defined termination points by wire, radio, optical or other electro-magnetic means using a frequency designated for telecommunications use in the National Frequency Plan
- Provide a telecommunications service

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

Licences are generally granted for a period of 15 years and renewable for a further 10 years.

Licences that require the use of some form of resource, such as land, spectrum or numbers are issued as Individual Licences. Licences that do not require the use of these resources are issued as Class Licences.

Individual Licences may only be granted on the recommendation of the General Director of the TRA following ratification by the TRA’s Board of Directors. Unless compelling reasons exist, all Individual Licences are issued with standard terms. Any entity that directly or indirectly acquires a stake of 5% or more in an Individual licensee must inform the TRA within seven days of the acquisition.

The TRA issues the following types of Individual Licences:

- Mobile Telecommunications Services Licence (Note: No further licences of this type are currently available)
- Paging Services Licence
- Public Access Mobile Radio Services Licence
- International Telecommunications Facilities Licence
International Telecommunications Services Licence

National Fixed Services Licence

National Fixed Wireless Services Licence (Note: No further licences of this type are currently available)

Internet Exchange Licence

The TRA issues the following types of Class Licences:

- Internet Services Licence
- Value Added Services Licence

A list of companies currently holding Bahraini telecommunications licences can be found here.

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

A licensee must be incorporated in Bahrain or have a registered branch office in Bahrain.

Subject to certain exceptions, substantially all of the infrastructure and personnel associated with the provision of the telecommunications service must be located within Bahrain.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

The Telecoms Law provides licensees with a right to interconnect. Licensees must seek to negotiate, in good faith, requests for interconnection at any technically feasible point. Any party may refer a dispute regarding interconnection or access to the TRA for resolution if no agreement is reached within one month of the commencement of negotiations between the parties.

The Telecoms Law also stipulates that a licensee adjudged by the TRA to have a dominant position in a particular telecommunications market must (within three months of such determination and every six months thereafter) publicise a TRA approved Reference Interconnection Offer (RIO). The terms and conditions of such a RIO must be ‘fair, reasonable and non-discriminatory’, and the tariffs outlined therein must be based on forward-looking incremental costs or benchmarked against tariffs in comparable telecommunications markets. Interconnection must be provided to any other operator, if requested, on the terms and conditions set out in the most recent RIO.

Licenced operators are also barred from ‘materially preventing, restricting or distorting competition’ by either:

- Abusing (collectively or independently) a dominant market position
- Entering into an agreement or understanding which materially prevents, restricts or distorts competition in the market
- Causing anti-competitive changes in market structure (in particular via anti-competitive mergers and acquisitions)

The TRA regularly evaluates the market through surveys and reviews, and recently commenced a Strategic Market Review in December 2014 entitled ‘Future Ex-Ante Market Regulation and Other Regulatory Measures to Foster a Dynamic Sector Development’. This review proposes the lifting of ex-ante regulation in all retail markets. Implementation is to be undertaken in a phased manner and is stated as being ‘subject to the [dominant] operator first meeting, in practical operational and market tested terms, prescribed terms and conditions for fit-for-purpose wholesale products (ie terms and conditions which allow [other licenced operators] to, whenever relevant:

- Replicate the retail products and services of the dominant operator in the relevant market(s)
- Have access to equivalent products as the wholesale provider has (eg broadband access and backhaul fibre for LTE operators)
At the time of drafting this handbook the Strategic Market Review process was on-going. A copy of the draft Strategic Market Review can be found here.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The Telecoms Law also stipulates that tariffs should be 'fair, reasonable and based upon forward looking costs' and charges the TRA with protecting subscribers and users in respect of:

- The tariffs charged for services
- Availability and provision of services
- Quality of services
- Protection of personal particulars and privacy of services

Citing these obligations, the TRA issued the Consumer Protection Guidelines in December 2011. These guidelines lay out minimum requirements for Standard Subscriber Agreements and require all licensed operators to provide users and subscribers with 'clear and comprehensive information about tariffs, terms and conditions for available products and services'. It also imposes, *inter alia*, the following requirements:

- Standard Subscriber Agreements and Codes of Practice which must be approved by the TRA
- All advertisements for services must include tariffs for premium rate and value-added service
- Bills provided by the operator must be clear, accurate and easily understandable
- Enquiries, complaints and problems must be dealt with fairly, promptly and courteously
- Operators must not discriminate between consumers

These obligations supplement the more general requirements laid out in Law No. 35 of 2012 Concerning Consumer Protection.

**REGULATORY TAXES AND FEES**

Application fees for the various available licences range from BD 1,000 (approx. USD 2,650) for class licences to BD 35,000 (approx. USD 92,850) for certain individual licences. Once an entity obtains a licence, it will be required to pay the prescribed licence fee to the TRA (usually set at 1% of the gross annual turnover attributable to the licensees activity).

There is no corporation tax in Bahrain. However, other fees may be payable, such as a contribution towards employees’ social security. This may differ depending on the composition of the company’s workforce. Such fees must be assessed and advised upon on a case by case basis.

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

The Telecoms Law states that any entity which contravenes the law shall be criminally liable for those actions, most notably, providing telecommunications services without a licence.

The TRA also has powers and responsibilities to ensure licensees’ compliance with licence conditions and the law. Under these provisions the TRA is empowered to take 'the measures it considers necessary to secure compliance by the licensee'. These measures include:

- Directions to refrain from doing certain actions
- An order to remedy, prevent or rectify a breach of the law or licence
• The imposition of an appropriate fine

• A warning that the licence may be revoked if the licensee fails to comply with the above

The TRA has issued guidelines which outline the process for determining the size of the fine to be imposed for anti-competitive behaviour and breach of licence conditions. In line with the Telecoms Law, these guidelines cap any such fine at 10% of the entity’s annual revenue.

Before issuing an order, the TRA should inform the licensee of the details of the impending order and give it the opportunity to respond within a specified period. Once an order has been issued the licensee in question must comply with its requirements within the stipulated period or face the possible revocation of its licence. However, a licensee is entitled to appeal any decision or order that has been issued in its name. This can be done directly to the TRA or through a statutory arbitration process. Bahrain is unique amongst the GCC states, in that its Telecoms Law has a statutory arbitration process designed to allow operators to challenge TRA decisions.

KEY CONTACTS

Paul Allen
Partner, Head of Intellectual Property and Technology
DLA Piper Middle East LLP
T +971 4 438 6100
paul.allen@dlapiper.com

Eamon Holley
Partner
DLA Piper Middle East LLP
T +971 4 438 6100
eamon.holley@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

The Belgian Institute for Postal Services and Telecommunications (BIPT) is the regulator of the electronic communications market.

Subject to some exceptions (e.g. concerning the use of spectrum), communication providers are generally authorised to operate in Belgium and do not require a licence, permit, consent, etc. However, providers of public electronic communications networks or of publicly available communications services (operators) need to inform the BIPT of their activities, as well as of changes to their activities (including the transfer and/or termination thereof).

This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing telecommunications in Belgium is the Act of 13 June 2005 on electronic communications (the ‘Telecommunications Act’) which implements (amongst others, such as Directives 2006/24 and 2009/136) the following European Directives:

- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities
- Directive 2002/20/EC on the authorisation of electronic communications networks and services
- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
- Directive 2002/22/EC on universal service and user rights
- Directive 2002/58 on privacy and electronic communications
- Directive 2002/77/EC on competition in the markets for electronic communications networks and services

Several other laws may also be relevant with respect to the provision of communication services and the operation of communication networks:

- The Code of Criminal Procedure, which governs the interception of communications.
REGULATORY BODIES OR AUTHORITIES

The BIPT is a federal institution which performs several tasks. As the regulator of the electronic communications market it, inter alia, has the task of promoting competition, contributing to the development of the internal market and protecting the users’ interests.

Belgian Institute for Postal Services and Telecommunications:

Address: Ellipse Building, Bd. Du Roi Albert II, 35, 1030 Brussels

Telephone: 02 226 88 88

Website: http://www.bi.pt.be/

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

The Electronic Communications Act regulates both the activities of electronic communications networks and providers of electronic communication services. A further subdivision is made between public and private providers.

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

No licence, permit, consent, etc. is required for communication providers to operate in Belgium, therefore communication operators have a general authorisation to operate in Belgium as required by the European Authorisation Directive. However, the Act on electronic communication sets forth an obligation for operators to notify the BIPT before starting to operate in Belgium.

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

From a telecoms regulatory perspective, a telecommunications provider is not required to be domiciled in Belgium prior to or during the provision of services. Generally, only the notification to the BIPT should be complied with, which can also be done by an operator established abroad.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecommunications Act requires all providers of public electronic communications networks to negotiate in good faith, interconnection with other operators with a view to providing electronic communications services to the public.

Interconnection agreements have to be submitted to the BIPT.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

With regard to the provision of services (e.g. rules on information obligations) the Telecommunications Act does not make a clear distinction between business-to-business and business-to-consumer relations.

Most of these rules apply to ‘subscribers’ i.e. individuals and legal persons who use electronic communications services after having concluded a contract with an operator. Sometimes a specific provision is included in order to protect consumers (e.g. relating to the maximum initial duration of the contract).

Some specific consumer/end-user information obligations are imposed on operators concerning the access to their network and services, the use thereof, prices and potential costs in case of contract termination. A standard information file also need to be made for the consumers/end-users and should be sent to the BIPT. Consumers also have the right to change their subscription formula with their current operator at least once a year without any charge.
In addition to specific telecom rules, provisions of general consumer law also apply, such as rules concerning unfair terms or the rules concerning the tacit extension of services contracts.

**REGULATORY TAXES AND FEES**

Operators have to pay a registration fee and annual administrative fees. Amounts can be found [here](#).

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

In case of a breach of the Telecommunications Act, criminal fines of up to EUR 400,000 can be imposed.

Administrative fines of up to 5% of the turnover for the telecommunication activities of the last accounting year, with a maximum of EUR 1,000,000.

Higher fines are possible in some specific cases involving fraudulent intention, for example.

**KEY CONTACTS**

- **Patrick Van Eecke**
  - Partner
  - DLA Piper UK LLP
  - T +32 (0) 2 500 16 30
  - patrick.vanecke@dlapiper.com

- **Antoon Dierick**
  - Senior Associate
  - DLA Piper UK LLP
  - T +32 (0) 2 500 16 43
  - antoon.dierick@dlapiper.com
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 by the competent regulatory agency (please see below). The type of authorisation and the related requirements vary according to the type of telecom activity that is being performed.

The governmental agency responsible for regulating the telecommunications sector is the Brazilian Telecommunications Agency (Agência Nacional de Telecomunicações - ANATEL), which is linked to the Brazilian Ministry of Communications.

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 contraventions of telecom laws and regulations.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecoms 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 telecoms and establishes the basis for the organisation of telecom activities, as well as creating ANATEL, the regulatory agency.

ANATEL’s Regulatory Framework

ANATEL’s regulatory framework is complex and involves a high number of regulatory acts (including regulations, instructions and opinions) which may apply to several aspects of telecom activities. Free translations of the key laws and regulations relating to the telecom sector can be found here. Please note that ANATEL regulations are constantly being amended and updated by the agency.

ANATEL provides regulation regarding the following main topics:

- 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)

Rights and obligations of telecom market players (providers, users, equipment manufacturers, etc)

REGULATORY BODIES OR AUTHORITIES

Agência Nacional de Telecomunicações

Address: SAUS Quadra 6 Suites C, E, F and H, 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’.

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’.

The LGT also establishes what does not come within the definition of telecom services. Among the activities that do not constitute telecom services (and, therefore, are not subject to ANATEL intervention) are:

- The provision of satellite capacity
- Activities related to the registration and qualification of users and equipment for the access to telecom services
- 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

There are several types of legal classifications relating to telecom services/activities, including:

- Broadness (collective or restricted interest)
- Legal regime (public or private)
- 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 regulates, amongst other things, those activities specified in Laws and Regulations above. Regulation applies to telecom services providers, telecom services users, telecom equipment suppliers and manufacturers, among others.

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

Generally speaking, the provision of telecom services in Brazil (as defined in Regulated activities) requires prior authorisation from ANATEL.

The type of authorisation (ie 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
- Telecom equipment certification

In addition to the above, ANATEL is also responsible for granting satellite exploitation rights (landing rights) to entities, 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 general rule, in order to provide telecom services in Brazil the entity must be incorporated, organised and domiciled in the country.

**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)
- Definition of related interconnection compensation/tariff

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

Telecom service users’ rights and contracting requirements are subject to regulation. Such regulation also defines the telecom service user (or consumer) 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 service 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 service provider
- A right to present claims against the telecom service provider before ANATEL and the consumer defence authorities
- A right to be indemnified for any damages cause by virtue of its users rights violation

**REGULATORY TAXES AND FEES**

Taxes and fees include the following:

**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)
- Tax on Social Integration Program (Programa de Integração Social - PIS) and Tax for Social Security Financing (Contribuição para o Financiamento da Seguridade Social - COFINS o - CSLL)

**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 - FUNTEL)
- 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 to ANATEL telecom authorisations requests.

**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
• 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.

**KEY CONTACTS**

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<th>Fabiano Gallo</th>
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<tr>
<td>Senior Partner</td>
</tr>
<tr>
<td>Campos Mello Advogados</td>
</tr>
<tr>
<td>T + 55 11 3077 3574</td>
</tr>
<tr>
<td><a href="mailto:fabiano.gallo@cmalaw.com">fabiano.gallo@cmalaw.com</a></td>
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OVERVIEW OF LEGAL LANDSCAPE

In Burundi, any natural or legal entity, national or foreign, which wants to operate services of electronic communications has to file a licence application and has to conclude a concession agreement with the Government.

All the license application is filed with the ARCT and it is the latter who gives the technical opinion after study of the file. If the file is favorable, it is sent to the ARCT board of directors. The file is then sent to the office of the president by the ARCT and the government issues the license.

It is thereafter signed a concession agreement between the ARTC and the service provider.

The roles and responsibilities of ARCT are provided in Decree N°100/182 of September 30th, 1997 establishing the Agency for the Regulation and Control of Telecommunications, whilst the reorganisation and functions of ARCT are provided in Decree N°100/112 of April 5th, 2012.

ARCT regulates all electronic communications services including fixed line telecoms, mobiles, as well as the airwaves over which wireless devices operate.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The main laws and regulations applicable to the telecom sector in Burundi are the following:

- Decree-Law N° 1/011 of September 4th 1997, which sets a framework for the telecommunications sector
- Decree N°100/182 of September 30th 1997, which establishes ARCT
- Ministerial Order N° 520/730/540/231 of April 9th 1999, which determines the conditions for operating in the telecommunications sector
- Decree N° 100/47 of November 15th 2010, which puts ARCT under the supervision of the President of the Republic of Burundi
- Decree N° 100/97 of April 18th 2014, which determines the conditions for operating in the electronic communications sector
- Decree N° 100/112 of April 5th 2012, which explains the reorganisation and functioning of ARCT

REGULATORY BODIES OR AUTHORITIES

The Agence de Régulation et de Contrôle des Télécommunications is under the supervision of the Presidency of the Republic of Burundi.
The main mission of ARCT is to ensure the control and the regulation of the telecommunications sector and to enforce these regulations. In this context, ARCT is notably in charge of:

- Creating the conditions for fair and loyal competition and ensuring its preservation
- Contributing to the elaboration of the legal and statutory framework for a harmonious development of the sector
- Ensuring follow-up of the development of the new information technologies and the communication and implementation of the measures susceptible to stimulate and facilitate investment
- Leading and implementing procedures of attributions of licences
- Making sure that the tariff frame’s modalities apply to telecommunication services
- Reviewing the actions and practices of the operators to make sure they do not prevent, restrict or falsify competition in the telecommunications market
- Monitoring the obligations that the operators are required to uphold and providing the sanctions for any breach of them, as well as breaches of anti-competitive practices
- Assigning radio frequencies appropriately and supervising their conditions of use
- Ensuring that interconnection agreements are in line with and respect the technical standards, quality requirements, security conditions and confidentiality of the conversations or the transmitted data
- Estimating the costs of the service and the universal access
- Managing the service funds and the universal access
- Reviewing user protection
- Creating and making available a static data hub for information and communication technology

**Agence de Régulation et de Contrôle des Télécommunications**

Address: A.R.C.T, Avenue de France n°14, B.P 6702 Bujumbura Burundi

Telephone: +257 22 21 02 76

E-Mail: info@arct.gov.bi

Website: A.R.C.T

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

Electronic communications networks and services are subject to legal and regulatory requirements under the law of Burundi.

Telecom laws and regulations apply to both network operators and providers of telephone, radio and internet services in Burundi.

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

Licences/authorisations from ARCT are required for network operators and service providers of:

- Stationary and mobile radio networks for private use (non-commercial);
• Networks or services open to the public (Commercial);
• Satellite communications;
• Sound and television broadcasting station;
• Exploitation of numbering resources;
• Terminal approval certificate (validity 5 years);
• Certificate of conformity of the networks;
• Certificate of approval (validity 5 years)

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

There is no requirement under Burundi telecom laws to have an entity or permanent establishment in Burundi prior to launching the relevant activities.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection is subject to an agreement between the concerned parties. The agreement shall determine the administrative, technical and commercial conditions of the interconnection. The agreement shall be submitted to ARCT for prior approval.

There are many mandatory matters to be addressed in the interconnection agreement such as: tariffs and invoicing systems, technical and operational matters, etc.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

No such difference exists under applicable telecom laws in Burundi.

REGULATORY TAXES AND FEES

The basic taxes and fees that are due by network operators and electronic communications service providers are as follows:

• Licence fee: the applicable amount depends on the services and network coverage (fixed amount). As for the GSM operations, the licence fee is fixed at USD 10 million
• Annual royalty: generally 2% of the annual turnover of the electronic communication operator
• Termination tax for incoming international traffic: USD 0.16 per minute
• Specific tax on national traffic for mobile communication: BIF 52 per minute
• Tax ad valorem on GSM electronic communications: 12%
• VAT: 18%

It should be noted that the rates depend on each service rendered and that the above list is not exhaustive.

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

Any instruction given by the ARCT or its technical representative must be carried out by the operator within the time specified by
the same instruction.

If the operator does not comply with the instruction or violates any of the provisions of this present decree, he is liable to a fine of 1% of his annual turnover from the previous year.

In case of recurrence or if after this pecuniary sanction the operator does not remedy the situation, the ARCT can:

- Suspend the license or authorization for a period of three to six months;
- Reduce the resources allocated to it;
- Reduce the duration of the license or authorization;
- Revoke the license definitively

KEY CONTACTS

Willy Rubeya
Managing Partner, Rubeya & Co Advocates
Rubeya & Co-Advocates
T +257 79 92 13 60
infos@rubeya.bi
OVERVIEW OF LEGAL LANDSCAPE

Subject to certain activities (including the use of spectrum, and the provision of international services), telecommunication providers in Canada (‘carriers’) can generally operate without a licence or other form of authorisation. However, they must register with the Canadian Radio-television and Telecommunications Commission (the “CRTC”).

Additionally, carriers are subject to rules restricting foreign ownership and control, as outlined under the Establishment section. These restrictions are derived from telecommunication policy objectives to promote the ownership and control of Canadian carriers by Canadians.

The majority of legislative authority for modern telecommunication activity in Canada is with the Federal Government. A mix of federal acts, notably the Telecommunications Act and the Radiocommunication Act, govern telecommunication activities under federal jurisdiction. The CRTC acts as the main telecommunications regulator, while the Minister of Innovation, Science and Economic Development (formerly the Minister of Industry) plays a regulatory role with respect to radio spectrum.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary federal legislation governing telecommunications in Canada is the Telecommunications Act, which came into force on October 25, 1993. The Act repealed and replaced telecommunication-related provisions formerly present in the Railway Act, while also repealing and replacing federal acts such as the National Telecommunications Power and Procedures Act, and the Telegraphs Act.

The Telecommunications Act outlines the regulatory scheme for telecommunication carriers falling under the jurisdiction of the federal government, and sets out the powers of the CRTC in administering the Act. The CRTC itself is established under the Canadian Radio-television and Telecommunications Commission Act.

Key features of the Telecommunications Act are:

- The objectives of the Canadian telecommunications policy include the promotion of economic efficiency, market competitiveness, public accessibility to high quality services, Canadian ownership and control, innovation, privacy protection, and the social requirements of users. In exercising its powers under the Act, the CRTC must act with a view of implementing these objectives.

- Although carriers have general authority to operate without licences (except with respect to certain activities, including the use of spectrum and the provision of international services), they are subject to basic regulatory requirements relating to rates, resale, roaming and interconnection between carriers. Additionally, the CRTC may impose conditions on carriers offering telecommunications services.

- The CRTC’s mandate includes the power to enquire and make determinations with respect to permitted or prohibited telecommunication activities. Moreover the CRTC may issue guidelines or make regulations for carrying out the purposes...
and provisions of the Act. Decisions of the CRTC may be appealed to the Federal Court of Appeal with leave of that court.

In addition to the Telecommunications Act, the following federal legislation (and subordinate legislation sitting beneath) may also impact the provision of communication services and the operation of communication networks:

- The *Radiocommunication Act* 1985, which sets out the regulatory framework for radio spectrum licences and management. The Minister of Innovation, Science and Economic Development (formerly the Minister of Industry) is responsible for regulation under the Act. The Ministry’s policies on spectrum management can be found [here](http://www.ic.gc.ca/eic/site/icgc.nsf/eng/home).

- The *Broadcasting Act* 1991, which sets out the regulatory framework for broadcasting in Canada, including the transmission of programs received by the public. The CRTC is responsible for regulation under the Act.

- The *Competition Act* 1985

- The *Personal Information Protection and Electronic Documents Act* 2000, which governs the rules for collection, use and disclosure of personal information by telecommunication service providers within federal jurisdiction.

At the provincial level, legislation exists relating to local matters not specifically under federal jurisdiction. Examples include legislation addressing telephone rates and services as applied locally, and legislation enabling the creation of telephone companies by municipalities.

**REGULATORY BODIES OR AUTHORITIES**

**Canadian Radio-television and Telecommunications Commission**
Les Terrasses de la Chaudière Central Building
1 Promenade du Portage
Gatineau, Quebec J8X 4B1

**Innovation, Science and Economic Development Canada**
C.D. Howe Building
235 Queen Street
Ottawa, Ontario K1A 0H5

**Commission for Complaints for Telecommunication Services**
P.O. Box 56067 - Minto Place RO
Ottawa, ON
K1R 7Z1
[https://www.ccts-cprst.ca/](https://www.ccts-cprst.ca/)

  - An independent consumer agency that resolves complaints from individuals and small business retail customers.

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

All carriers involved in the ownership or operation of transmission facilities used to provide telecommunication services are subject to regulation under the Telecommunications Act.

A transmission facility is defined as: “any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence (signs, signals, writing, images, sounds, or intelligence of any nature) between network termination points”.

Telecommunication services include those provided by means of a transmission facility, or any other facility or apparatus that is used or capable of being used for similar purposes.
Carriers that do not own or operate a facility may not be subject to regulation under the Act. For example, resellers that merely use facilities to provide services to the public are not subject to regulation under the Act. However, non-facilities-based providers must register with the CRTC and must meet certain regulatory obligations pursuant to various CRTC regulatory policies. Furthermore, providers of transit that neither originates nor terminates in Canada may not be subject to regulation under the Act.

Additionally, certain carriers are explicitly exempt from the Act. These include entities that own or operate telecommunication switches only, and entities that engage exclusively in the provision of data processing services.

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

Carriers that are subject to regulation under the Telecommunications Act generally do not require a licence to operate, however, certain activities require special licences from the CRTC. These activities include international telecommunication services, and the construction and operation of international submarine cables. Additionally, resellers must register with the CRTC, and broadcasting licences are issued by the CRTC under the Broadcasting Act.

Carriers that use radio to offer telecommunication services require separate licences from the Minister of Innovation, Science and Economic Development (formerly the Minister of Industry) under the Radiocommunication Act. Radio-based activities include, but are not limited to, the use of microwave facilities, cellular telephone systems, and the operation of satellites and satellite earth stations.

Telecommunications Service Providers in Canada must register on one of the CRTC’s registration lists as a Basic International Telecommunications (BITS) Licensee (to carry telecommunications traffic between Canada and another country), a Facilities-Based Provider (to own or operate a transmission facility used by that provider or another provider to offer telecommunications services to the public for compensation), or a Non-Facilities-Based Provider (to offer basic telecommunications services to the public including services provided by exempt transmission apparatus). An entity may register on more than one list provided it meets the obligations associated with each list.

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

Generally speaking, telecommunication providers must be Canadian-owned and controlled entities incorporated, organised or continued under the laws of Canada or a province which owns or operates transmission facilities (other than submarine cables, satellite earth stations and satellites).

Under the Telecommunications Act, an entity is Canadian-owned and controlled if:

- In the case of a corporation, not less than 80% of the members of the board of directors are individual Canadians
- Canadians beneficially own, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80% of the entity’s voting interests
- The entity is not otherwise controlled by persons that are not Canadians

‘Canadian’ is a defined term that includes corporations of which Canadian shareholders (either individuals or other entities fitting specified criteria) beneficially own and control not less than 66.66% of the issued and outstanding voting shares, and which are not otherwise controlled by non-Canadians. In effect, non-Canadians may own up to 33.33% of the voting shares of the parent of the carrier as well as 20% of the voting shares of the carrier itself.

Entities that hold less than 10% of the Canadian market for telecom services (based on revenue) however, are specifically exempt from Canadian ownership and control requirements under the Act.

Canada’s right to impose the above foreign ownership restrictions is consistent with Canada’s Schedule of Specific Commitments to the WTO Agreement on trade in basic telecommunication services.
EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecommunications Act provides that agreements and arrangements relating to the interworking of systems between carriers, and the apportionment of rates or revenues are subject to the approval of the CRTC. The CRTC has express authority to approve arrangements, withhold the approval of arrangements, and amend arrangement agreements.

Where interconnection cannot be achieved by the mutual consent of carriers, the CRTC has the authority to order a carrier to connect its telecommunication facilities to any other telecommunication facility, and to establish terms and conditions that it deems just and expedient. Where carriers cannot agree on a joint rate, the CRTC may fix the rate and provide for terms of apportionment among carriers. The CRTC has used these powers to promote the competitive supply of telecommunication services in Canada.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CRTC plays a prominent role in consumer protection in the telecommunications field. Key undertakings by the CRTC include the promotion and enforcement of:

- Unsolicited Telecommunication Rules, such as those associated with telemarketing and the national ‘do not call list’
- Canada’s anti-spam legislation (CASL)
- The Wireless Code, published by the CRTC [here](#), which outlines the rights and responsibilities of consumers of wireless services, and applies to all wireless contracts

The Competition Act contains both civil and criminal provisions related to misleading advertising and provides an important tool for consumer protection in the telecommunications field. The Competition Bureau may investigate and bring actions directly against telecommunications providers under the Act. The Act also provides for a private right of action for losses or damage suffered by any person as a result of conduct contrary to certain provisions of the Act, including the criminal conspiracy, bid-rigging and criminal misleading advertising provisions. This is significant in Canada, where very few statutes provide a right to bring a private action. This private right of action has been used by large telecommunication providers to attack each other’s advertisements as being misleading, and may also be used by consumers, particularly in a class proceeding.

REGULATORY TAXES AND FEES

Under the Telecommunications Act, carriers are subject to fees every calendar year if two conditions are satisfied: the carrier was in operation on April 1 of the year, and the carrier had at least CAD 10 million in revenue from Canadian telecommunications services for its fiscal year ending in the preceding calendar year. Alternatively, if the carrier is one of a group of related telecommunication service providers, the conditions apply to the group on aggregate.

The carriers mentioned above are subject to three applicable fees: the ‘annual fee’, the ‘supplementary fee’, and the ‘annual adjustment’. Fee amounts are carrier-specific (based on the carrier’s revenue in relation to the industry as a whole) and are calculated as a proportion of the yearly cost of the regulatory scheme.

Fees for spectrum licences issued under the Radiocommunication Act are outlined in the Radiocommunication Regulations. Fees are based on the type of station licensed, the type of service used, and in certain cases the amount of radio frequency spectrum required or assigned, and the location of the operations.

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

The CRTC has authority to inspect and investigate compliance or non-compliance of the regulatory scheme. Violations of the Telecommunications Act, by an act or omission contrary to a provision or a decision made pursuant to the Act, may trigger civil liability, administrative monetary penalties, or offences punishable on summary conviction. The applicable enforcement measure will depend on the nature of the activity. Prosecution of offences punishable on summary conviction may only be commenced with the consent of the CRTC.
The limitation periods for the enforcement of violations vary between two years from the day on which the act or omission occurred, to three years from the day on which the subject-matter of the proceedings became known to the CRTC.

The CRTC and the Minister of Innovation, Science and Economic Development may also suspend or revoke licences if they are satisfied that the licence holder has contravened the applicable acts, regulations, or terms of authorisation. Prior to suspension or revocation, the licence holder must first be given written notice and a reasonable opportunity to make representations to the relevant party.

**KEY CONTACTS**

Chris Bennett  
Partner, Intellectual Property and Technology Law  
DLA Piper (Canada) LLP  
T +1 604.643.6308  
chris.bennett@dlapiper.com
CHILE

OVERVIEW OF LEGAL LANDSCAPE

Telecommunication services are primarily regulated under the General Telecommunication Law (Law N° 18,168 of 1982, “LGT”) and other decrees that establish specific provisions regarding several matters.

To provide telecom activities in Chile, companies must seek government concessions and permits. Authorization varies with the telecom activity that will be performed.

The Undersecretariat of Telecommunications, under the authority of the Ministry of Transport and Telecommunications, is the government agency in charge of overseeing the telecom market.

From a regulatory standpoint, the Ministry of Transport and Telecommunication proposes and implements national policies that promote the development of the telecom sector in Chile.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecoms in Chile is the General Telecommunication Law (hereinafter, “LGT”).

Regulatory Framework

The regulatory framework includes different telecom activities, including:

- Telecommunication services
- Public voice services
- Broadcasting services
- Radio communication
- Price regulations
- Requirements for obtaining, installing, operating and exploiting the concession of telecommunications services
- Conditions for installing antennas, radiating systems and towers
- Network operations in emergency situations
- Funds for developing telecom services

REGULATORY BODIES OR AUTHORITIES

The main regulatory bodies:

- The Ministry of Transport and Telecommunication is in charge of elaborating and coordinating different plans, policies, and regulations that further develop the country’s telecom sector, and ensure broad access to telecom services.
The Undersecretariat of Telecommunications is a technical body in charge of overseeing the proper functioning of the telecom market.
Address: Amunategui #139, Santiago.
Telephone number: +56224213000.
Website: https://www.mtt.gob.cl

The National Television Council is a public organism that ensures the proper functioning of television services operating within the national territory. This entity is allowed to inspect the content of TV channel broadcasts.
Address: Mar del Plata # 2147, Providencia, Santiago.
Telephone number: +56225922700
Website: https://www.cntv.cl

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 those services provided by telecommunication providers according to Law N° 18,168 of 1982, regardless of the technology used in their provision, and in compliance with applicable legal authorizations.

The LGT defines the following telecom services:

- Public Voice Services. These public services regulate voice exchanges, including local telephone or mobile public services and other similar public services.
- Long-Distance Telephone Service. This telecommunication service involves long-distance communications that providers offer to users based on an intermediate concession services.
- Internet Access Service. This telecommunication service allows users to access content, information, applications and other services on the Internet.
- Pay Television Service. This telecommunication service allows users to access channel packages and additional television services, through a payment varies according to the type of agreement.
- Public Services of the Same Type. These technically compatible public services interoperate to allow subscribers and/or users of different public services to communicate which each other, inside and outside of the national territory, according to the regulations issued by the Undersecretariat of Telecommunications; and Complementary Services, which are provided by concessionaries of public telecommunication services or third parties, through the connection of equipment to public networks.

Classification of Telecom Services

Article 3° of the LGT classifies telecommunication services as follows:

- Telecommunication Services of Free Reception or Broadcasting, whose transmissions are free and directed to the general public. These services involve sound, television and other types of emissions.
- Public Telecommunication Services, designed to satisfy the telecommunication needs of the community in general. These services must be designed to enable interconnection with other public telecommunication services.
• **Limited Telecommunication Services**, which aim to satisfy through prior agreement the specific telecommunication needs of companies, entities and persons.
• **Radio Amateur Service**, whose purpose is to promote radio communications and technical and scientific experimentation, undertaken in a personal capacity and for non-lucrative purposes.
• **Intermediated Telecommunication Services**, provided by third parties through facilities and networks, are designed to satisfy the need of telecommunication concessionaires and permit holders, as well as provide international long-distance telephone services to the community at large.

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

• The LGT establishes that the use of radio frequencies, conveyed through telecom concessions, permits and temporary licenses by the State, is free and equal.
• A concession granted by Supreme Decree is necessary for the installation, operation and exploitation of the following telecom services: (a) public services; (b) intermediate services supplying telecom services through installations and networks, and (c) sound broadcasting.
• On the other hand, for the installation, operation and exploitation of limited telecom services, it is necessary to obtain a permit from the Undersecretariat of Telecommunication.
• In addition, a concession granted by the National Television Council is required for the supply of free television broadcasting services. Limited television services also require a permit from this same Council.

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

Only legal persons legally registered and residing in Chile can hold the aforementioned telecom service concessions.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

The LGT establishes the general provisions relating to the interconnection of telecom service networks.

Roaming Service is expressly regulated by Decree N° 18 of 2014, which establishes the information obligations that roaming service providers must comply with in order to avoid violating service user rights.

A public bidding for 5G services has been announced by the authority and is planned for the last months of 2019.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

Decree N° 18 of 2014 (Telecommunication Services Regulation) promotes transparency in the telecommunication market and protects consumer rights by establishing the obligations with which services providers must comply.

The aforementioned Decree also establishes the following:

• Internet Service. The providers must inform consumers about the speed of the service, its quality, and other traffic management measures, among others.
• Pay Television. The providers must compensate consumers if channels in their packages are eliminated after user contracts have been finalized.
• Mobile Communication:
  - Pre-paid users can recover their unspent mobile phone balance during a given period of validity. Providers can only disable a pre-paid number if more than 180 days have passed since the balance was last charged.
  - Post-paid users can retain their telephone number for up to 2 years after they interrupt their contract with their provider.
• Roaming Service must be disabled by default, and enabled solely at the express request of the user. Any time that roaming is turned on the user must be notified via message. In addition, roaming service providers must activate a cost control mechanism to avoid indebting its users.

Finally, regarding the package services, providers must specify the price for each separate service. The sale of bundle services is forbidden.

REGULATORY TAXES AND FEES

Main Taxes Levied On Telecom Companies (applicable rates vary with the chosen tax regime)

The main tax is a Corporate Tax of 25% (attributed regime) or 27% (distributed regime).

Main Taxes and Fees Levied Over Telecom Activities

VAT 19% rate.

A municipal tax in municipalities where the company or any of its branches are located (rate 0.25% to 0.5% calculated the Tax Net Worth of the company)

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

General Telecommunication Law establishes key sanctions and penalties in the event of contravention, including:

• Fines of 5 UTM to 1000 UTM (USD 338.46 to USD 67,693);
• The suspension of service transmissions for up to 20 days; and/or
• The expiration of concessions and permits.

KEY CONTACTS

Felipe Bahamondez
Partner
T + 562 27982602
fbahamondez@dlapiper.cl
CHINA

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

The Ministry of Industry and Information Technology

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

Scott Thiel
Partner
DLA Piper Hong Kong
T +852 2103 0519
scott.thiel@dlapiper.com

Lauren Hurcombe
Senior Associate
T +852 2103 0814
lauren.hurcombe@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

Telecommunications in Colombia is a highly regulated industry as it is considered a public service under the State ownership. However, public or private corporations legally incorporated in Colombia could be entitled to provide telecommunications services after completing the telecommunication network operator and service provider registration. Other requisites or authorizations shall be previously issued depending on the services intended to provide.

Colombian telecommunications industry is regulated by Law 1341 of 2009, which establishes the general policies and regulation that every telecommunications company must comply regarding to user protection, competition principles and the quality and coverage of the service. However, Law 1978 of 2019 reinforced the Colombian Government public policy on telecommunications, by stimulating investment to overcome the digital gap and unifying the sector objectives.

The Communications Regulatory Commission (CRC) is the body appointed to the Information, Technology and Communications Ministry (ITC Ministry) responsible for regulating network and service provider markets. On the other hand, the ITC Ministry and the Superintendence if Industry and Commerce are the entities entitled to supervise the compliance of the regulation.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary telecommunications law in Colombia is Law 1341 of 2009, which defines the main principles, concepts and legal guidance of the information society environment and the information and communication technologies public policy.

On the other hand, Law 1978 of 2019, issued on July 28 of 2019, modified some provisions of Law 1341 of 2009 with the main objective to modernize and adequate the telecommunications regulation towards the global and national industry challenges.

Regulatory Framework

The regulatory framework for telecommunications in Colombia has a wide scope and includes different sectors and topics:

- **Sole Regulatory Decree of the ICT sector**: This decree includes legally binding dispositions regarding to (i) information technology policies and guidelines, (ii) user compensation system, (iii) ITC Ministry registration procedure, (iv) structure of the telecommunication sector, and (v) dissemination and participation of the CRC.
- **CRC Resolution 5050 of 2016**: This compilation resolution regulates the following issues: i) telecommunications user rights, obligations and protection measures, ii) access and interconnection of telecommunications services and, iii) efficiency criteria of telecommunications services.
- **Law 1680 of 2013**: By which people with visual disabilities or impairment are guaranteed access to information, communications, knowledge and information and communications technologies.
- **Law 1507 of 2012**: By which the distribution of powers between the State entities in the matter of television is
established. According to this normative body, television is a public service of competence of the Nation.

- **Law 1442 of 2011**: Law approving the agreement regarding postal payment services signed in Geneva on August 12 of 2008.
- **ICT Ministry Resolution 415 of 2010**: Broadcasting services regulation, which develops the scope, objectives, and principles of said public service, the conditions for its provision, the rights and obligations of providers, and rules for the concession of the service.
- **Law 1369 of 2009**: The law indicates the general regime for the provision of postal services and what is pertinent to the entities responsible for the regulation of these services, which are a public service under the terms of article 365 of the Political Constitution.
- **Law 1340 of 2009**: Antitrust regulation which applies to telecommunication services.
- **Law 527 of 1999**: Regulation of access and use of data messages, electronic commerce and digital signatures.
- **Law 335 of 1996**: Private television regulation.
- **Law 182 of 1995**: Public television service and policies regulation, by which is established that television is a public service subject to ownership, reservation, control and regulation of the State, whose provision will correspond, through concession, to the public entities referred to in this Law, or to individuals and organized communities, under the terms of article 365 of the Constitution.
- **Law 142 of 1994**: Colombian public services general regulation.
- **Law 80 of 1993**: Colombian public procurement regulation.

**REGULATORY BODIES OR AUTHORITIES**

**The main regulatory bodies:**

**ICT Ministry of Colombia**: Is the National Entity responsible for designing, adopting and promoting the policies, plans, programs and projects of the Information Technology and Communications sector. It also has some supervision powers and so it can fine for the infringement of the law.

Address: Edificio Murillo Toro Carrera 8a entre calles 12 y 13, Bogotá D.C.

Phone: + 57-01-344 34 60

Website: [www.mintic.gov.co](http://www.mintic.gov.co)

**Communications Regulation Commission**: This body is responsible of ordering and ensuring the good provision of the telecommunications services, including commercial public television.

Address: Calle 59 A bis No. 5-53, Piso 9, Bogotá D.C.

Phone: + 57-01-8000-919278

Website: [www.crcom.gov.co](http://www.crcom.gov.co)

**Superintendence of Industry and Commerce**: This body is responsible for supervising competition related matters and consumer protection matters of the telecommunication companies.

Address: Carrera 13 # 27-00

Phone: + 57-5870000

Website: [www.sic.gov.co](http://www.sic.gov.co)

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

**Telecom Services Legal Definition**
Law 1978 of 2019 defines telecommunications services as the resources, tools, equipment, software, applications, networks and media that allow the compilation, processing, storage, transmission of information such as: voice, data, text, video and images. In Colombia, Telecom service is defined also as the utility or benefit that results from the provision, use and application of the set of capabilities and facilities of telecommunications, aimed to satisfy the interests and needs of users and improving the quality of life of the population, according to the International Telecommunications Union (ITU) F500 Recommendation.

The foregoing service are aimed to be provided by legal persons, public or private, duly constituted in Colombia, with or without profit, in order to satisfy specific telecommunications needs to third parties, within the national or abroad territories.

Classification of Telecom Services

Law 1341 of 2009 classifies telecommunication services and networks in a single group. This group includes landline, mobile, data transmission, internet, mail and postal services, radio and television services.

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

- The Sole Regulatory Decree regulates the ICT Registry, which must be fulfilled by all the persons or entities who provide or will provide telecommunication networks or services. This registry is an online public instrument under the responsibility of the ICT Ministry and once registered any telecommunication company is authorized to provide services in Colombia, which is the general authorization rule.
- Decree 867 of 2010 and Law 1369 of 2009 regulates the Registry of Postal Operators. Registration and updating of information in this registry allow postal operators to operate legally.
- Law 1341, Resolution 2877 of 2011, Resolution 106 of 2013 and Resolution 917 of 2015 of the ICT Ministry regulate the satellite capacity provider registration. Through this registry the ICT Ministry authorizes the satellite capacity provider to offer, provide and / or use for itself or for third persons the satellite capacity in Colombia.
- According to the Law 1978, it is required a prior and explicit authorization issued by the ITC Ministry in order access and use the radioelectric spectrum. All the operators who have been authorized to use the radioelectric spectrum before the enforcement of the mentioned Law will be understood as authorized. The authorization will be valid for a period of 20 years.

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

Law 80 of 1993 establishes that the companies that provide telecommunication services must be duly incorporated in Colombia. However, the legal system does not provide for any type of explicit restriction for companies that are not domiciled in the national territory.

Nonetheless, is a service is offered in Colombia permanently, for tax purposes it is important to have a company incorporated and domiciled in Colombia.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

CRC Resolution 4424 of 2014 regulates roaming services in Colombia. This Resolution allows greater transparency and strengthens telecommunications services regulation regarding to telecommunications providers information obligations in relation to their clients and service users concerning International Roaming. The foregoing, in order to reinforce users’ expenses control and greater service efficiencies.

Colombia is an active participant and member of the Pacific Alliance along with Mexico, Chile and Ecuador. According to the commitments of the Alliance – a international agreements between the Governments of these countries in order to create joint economic development strategies –, it is intended to have lower Roaming tariffs to the extent of the participants territories.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Resolution 2066 of 2011 and 5111 of 2017 issued by the CRC establishes the user protection regime, including specific rights and
obligations of communications services users and providers.

According to Colombian Consumer Protection Regime and Telecommunications Legal Regime, the following are the most relevant issues any provider must consider in order to comply with the current regulation:

1. Consumer Information: In accordance with the provisions of the Superintendence of Industry and Commerce, Authority for consumer protection, the principle of information is the service provider obligation to deliver users during the offer of services, the conclusion of the contract and its execution, all the information associated with the conditions of provision of the services, rights, obligations and the rates in which the services are provided.

This information must be provided in a clear, transparent, truthful, sufficient, true, complete, timely, and not misleading manner, so that users make informed decisions regarding the service or services offered or required.

2. Minimum Term Clauses: The minimum term clauses are those contractual stipulations that are agreed only once at the beginning of the contract, in which the user undertakes not to terminate in advance and without just cause his contract for the provision of communications services.

The minimum permanence clauses are those contractual stipulations that are agreed only once at the beginning of the contract, in which the user undertakes not to terminate in advance and without just cause his contract for the provision of communications services.

In no case may the providers of communications services offer users or include in the contracts for the provision of mobile communications services, or in the contracts for the sale of mobile terminal equipment, minimum permanence clauses. In the last case, the minimum permanence clauses are prohibited as of July 1, 2014.

3. Number Portability: Number portability is the possibility that a user has of switching from one service provider to another mobile phone provider, while retaining their telephone number. All users of mobile services have the right to carry their number, when switching to another service provider, whether in prepaid or postpaid mode. The change can be made at any time and does not require authorization by the current provider to make it.

REGULATORY TAXES AND FEES

Main Taxes Levied Over Telecom Companies

Corporate Income Tax

Colombian companies are subject to corporate income tax of 33% on their worldwide income. Taxable basis will correspond to the gross income (ordinary and extraordinary) less costs and expenses authorized for tax purposes incurred in the income producing activity.

Corporate income tax rate will be gradually reduced as follows: (i) 2020: 32%; (ii) 2021: 31%; and (iii) as of 2022 to 30%.

Notwithstanding the above, the Colombian Tax Code sets a presumptive income system as an alternative method to determine corporate income tax, which is calculated annually at a 3.5% rate over taxpayer’s net worth in the immediately preceding year. For 2019 and 2020, presumptive income must correspond to 1.5% of the net assets determined as of December 31st of the previous year. As of 2021, presumptive income system will no longer apply.

Tax incentives

Special corporate income tax rates:

- 27% for taxpayers that performs new investments (i.e. telecommunication sector) in fixed assets equal or exceeding 30,000,000 tax value unit (COP $ 1,028,100,000,000 - US $ 326,460,097 approx.) over 5 years and creates more than 250 direct employments;
- 20% corporate income tax rate for telecommunication services providers that qualifies as Free Trade Zone Industrial Users.
- Under certain conditions, income from: (i) Television programming and transmission services; and (ii) Radio broadcasting
programming and transmission activities, could be exempted from corporate income tax for seven (7) years, obtained by companies carrying out. Entities carrying out these activities should be eligible by the Ministry of Culture.

Turnover tax / Industry and Commerce Tax (ICA)

The Industry and Commerce tax (ICA) is a local tax imposed on the gross revenue generated from industrial, commercial or service activities carried out in every corresponding municipality in which such services are provided.

Tax rates vary from 0.2% to 1.4% of the gross income depending on the tax code of the municipality where the activity is rendered. 100% of the Industry and Commerce tax paid during the relevant taxable year can be credited against corporate income tax liability.

Telecommunication activities are subject to industry, in order to determine the territoriality of the local tax the general rule is that income is understood to be perceived in the place where the provision of the service is executed, except for:

- TV and internet by subscription and fixed telephony is deemed to be performed in the subscriber’s municipality according to the place informed in the services agreement.
- Mobile telephony, mobile navigation and data service: As of January 1, 2018: the services are deemed to be rendered in the municipality where the main domicile of the user that registers at the time of the subscription of the agreement or in the update document. The income that cannot be assigned to a municipality should be distributed proportionally in the total of municipalities, according to their participation in the income.

Special contribution over telecommunications networks and services provision.

Entities subject to surveillance and regulation of the CRC must pay an annual contribution of 0.1% (For 2019 according to Resolution 5582 of 2018) on the gross income obtained in the year prior to that to which the contribution corresponds, for the provision of telecommunications networks and services (excluding terminals).

Main Taxes and Fees Levied Over Telecom Activities

VAT – Services:

Unless it is an exempted VAT activity, telecom activities are subject to a general VAT rate of 19%. The following telecommunication activities are exempted VAT operations:

- Internet access and connection services for residential users of strata 3.
- Internet access and connection services rendered from fixed networks to residential subscribers of strata 1 and 2 are VAT exempted operations. These services allow the paid VAT to be bimonthly reimbursed to the services provider.
- First 325 minutes of local telephone services rendered to users of 1, 2 and 3 strata, and the telephone services rendered from public telephones.
- Supply of web pages, servers (hosting) and cloud computing.
- Advertising services rendered by:

  1. Newspapers that had registered total sales for less than 180,000 tax value units (2019: COP $6,168,600,000) as of December 31 of the immediately preceding year.
  2. Radio stations that had registered total sales for less than 30,000 tax value units (2019: COP $1,028,100,000 as of December 31 of the immediately preceding year).
  3. Programmers of Regional television channels that had registered total sales for less than 60,000 tax value units (2019: COP $2,056,200,000 as of December 31 of the immediately preceding year).
  4. The advertisement on radio stations whose sales are less than 30,000 tax value units (2019: COP $1,028,100,000) as of December 31 of the immediately preceding year and programmers of regional television channels whose sales are less than 60,000 tax value unit (2019: COP $2,056,200,000) as of December 31 of the year immediately previous.

VAT – Sales and imports of goods:
Regarding Telecom activities, the following are goods excluded from VAT: (i) Personal computers: desktops and laptops whose value does not exceed 50 tax value unit (2019: COP $1,714,000); and (ii) Smart mobile devices (tablets and cell phones) whose value does not exceed 22 tax value unit (2019: COP $754,000).

**National consumption tax:**

- Mobile phone, data, internet and mobile navigation services are subject to a 4% national consumption tax. The taxable basis will be applied on the entire service value, without including VAT.
- For data, internet and mobile navigation services, the national consumption tax is applicable on the portion of the services the exceeds 1.5 tax value units (2019: COP $51,000).
- Unless exempted or excluded, additionally 19% VAT will apply on these services.

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

Law 1341 in article 64 establishes a series of behaviors that lead to sanctions. Some of the behaviors are:

- Not enrolling in the ICT registry.
- Use the radio spectrum without the corresponding permission.
- Failing to pay the consideration provided in the law.
- Refrain from presenting the required information to the authorities or presenting it inaccurately or incompletely.
- Failure to comply with the quality and efficiency parameters issued by the CRC.

Additionally, article 65 of Law 1341, establishes that whoever incurs in any of the conducts provided in article 64, will be sanctioned with reprimands, fines, suspension of the operation, expiration of the contract or cancellation of the license, authorization or permit.

**KEY CONTACTS**

**Maria Claudia Martinez Beltrán**  
Partner  
T +57 1 317 4720 x112  
mcmartinez@dlapipermb.com

**Simon Diaz Granados Guerra**  
Associate  
T +57 1 317 4720  
sadiaz@dlapipermb.com
OVERVIEW OF LEGAL LANDSCAPE

The philosophy behind Act n° 013-2002 of 16 October 2002 on Telecommunication in the Democratic Republic of Congo lies in a redefinition of the monopoly system by introducing and defining competition rules for the part of the market open to competition.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing telecoms in the DRC is Act n° 013-2002 of 16 October 2002. This Act sets out the framework to own, install and operate telecommunication installations in the DRC.

In addition to Act n° 013-2002, several decrees on telecoms have been enacted by the Post and Telecommunications Regulatory Authority (l’Autorité de régulation de la poste et des Télécommunications) and the Minister of Postal Services, Telecommunications and New Technologies of Information and Communication (le Ministre des Postes, Télécommunications et Nouvelles technologies de l’information et de la communication).

REGULATORY BODIES OR AUTHORITIES

The following bodies regulate telecoms in the DRC:

The Post and Telecommunications Regulatory Authority (ARPTC)

This Authority was created by the Act n°014-2002 of 16th October 2002 and consists of a board and an administration.

The main purposes of this authority are:

- Ensuring that telecoms providers comply with all laws, regulations and conventions related to postal services and telecommunications
- Managing all concession applications
- Issuing, suspending or revoking licences
- Receiving statements, establishing the specifications to be met in order to obtain licences, ensuring that telecoms providers comply with their obligations and determining the number of new operators which may obtain concession or a licence
- Defining the interconnectivity principles and setting the pricing for public services rendered by postal and telecommunications services

The ARPTC is located at the following address:
According to Articles 6 and 7 of Act n° 013-2002 of 16 October 2002, the Minister’s tasks include:

- Developing and proposing to the government the general policy to guide the development of telecommunications
- Deciding on the police and administrative regulations of telecoms and setting related taxes
- Ensuring that all networks that provide telecommunication services to the public are interconnected

The Office of the Minister is located in Kinshasa. To our knowledge, it does not have a website yet.

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

Pursuant to Article 18 of Act n° 013-2002 of 16 October 2002, telecommunication services comprise a wide range of activities, which include:

- The supplying of telephone services between fixed points and the supplying of the telex service
- The installation and operation of radio networks, including cellular networks, that aim to provide a public telecommunications service
- The installation of telecommunications networks open to the public using other means of transmission
- The installation of a standalone network whose endpoints are separated by more than 300 meters and whose links have a capacity equal to or greater than 2.1 megabits per second
- Value-added services including live data processing, data recording and database direct research, electronic data interchange, e-mail and voice mail

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

Pursuant to Article 17 of Act n° 013-2002 of 16 October 2002, there are three operating regimes applicable to telecommunication services and activities:

**The concession regime**

This regime concerns concessions granted to provide telecommunications services as public services and comprises solely of the following:

- The supplying of telephone services between fixed points and the supplying of the telex service
- The installation and operation of radio networks, including cellular networks, that aim to provide a public telecommunications service
- The installation of telecommunications networks open to the public using other means of transmission

An operating licence is granted to the legal entity that has obtained a concession.

**The authorisation regime**

The authorisation regime applies to telecommunications services other than those mentioned above, and that solely use Hertz
The declaration regime

This regime applies to telecommunications services other than those mentioned in the other two regimes. These include the following:

- The publication of a list of subscribers to public networks
- The installation or operation of a ground station for direct transmission

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

Pursuant to Article 19 of Act n° 013-2002 of 16 October 2002, a telecoms provider holding an operating licence must first be a limited liability company in the DRC. At least 30% of the share capital of this company must be held by Congolese natural persons or legal entities.

Moreover, in practice, the ARPTC requires that any person or entity wishing to provide telecommunications services must be registered in the Democratic Republic of Congo before launching such services.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

With regards to the interconnection (of networks), the ARPTC’s Decision n°016/ARPTC/CLG/2006 of 23 June 2006 on the definition of interconnectivity principles provides some freedom regarding interconnection matters.

The operator or telecommunications service provider wishing to establish an interconnection may make a request to that end, to the operator concerned.

Nevertheless, the interconnection agreement must be communicated to ARPTC for review after being signed by the parties. This formality may require the concerned operators to make amendments to the aforementioned agreement to comply with the regulation on telecommunications.

With regards to tariff regulations, the following laws apply:

- Decision n° 006/ARPTC/CLG/2015 of 27 February 2015 of the Post and Telecommunications Regulatory Authority’s Board relating to the definition of telecommunications services’ tariff principles in the DRC. This text only applies to voice services, defines and the tariff principles applicable to telecoms operators of public networks
- Decision n° 068/ARPTC/CLG/2013 of 25 September 2013 of the Post and Telecommunications Regulatory Authority’s Board, which sets out interconnection rates from 2013 to 2017
- Decision n° 007/ARPTC of 28 February 2011 of the Post and Telecommunications Regulatory Authority’s Board, which sets out interconnection rates

There is no legal framework with regards to roaming. It is noteworthy to mention the Ministerial Order cab/vpn/min/pntc/lnkg/vx/023/2012 of 8 March 2012 relating to the fight against telecommunication fraud in the DRC, which may have an impact on roaming issues.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

There is no specific legislation in the DRC regarding consumer protection.

Pursuant to the decision n° 006/ARPTC/CLG/2015 of 27 February 2015 relating to the definition of tariff principles for telecommunications services, telecommunications services rates are freely set by operators in compliance with cost-based principles.
In addition, they have to comply with the principles of transparency, objectivity and non-discrimination.

The Ministerial Order of 08 March 2012 relating to the fight against telecommunication fraud in the DRC is also noteworthy.

**REGULATORY TAXES AND FEES**

Operators are subject to an income tax of 35% specified in Act n° 69/009 of 10 February 1969 relating to income taxes, as amended and restated to date.

Operators are also required to pay various taxes and duties pursuant to the Interdepartmental Order of 5 July 2014 relating to the rates of duties, taxes and charges to be collected by the Ministry of Postal services, Telecommunications and New Technologies of Information and Communication.

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

The main sanctions and penalties are:

**Criminal sanctions**

Fines and/or imprisonment. Subject to the type of breach, the minimum and maximum fines listed in the law are comprised between 5,000 CDF and 100,000 CDF, whereas the imprisonment period is a minimum of 15 days and a maximum of 6 months.

**Suspension or withdrawal**

The concession authorisation or any other title granted by the Regulatory Authority with administrative recourse to the Minister may be suspended or withdrawn.

**Administrative penalties**

The Ministerial Order of 8 March 2012 relating to the fight against telecommunications fraud in the DRC contains further sanctions, such as those available under the applicable criminal and telecom law such as criminal sanctions, suspension or withdrawal of the concession authorisation or any other title granted, or administrative penalties. The Ministerial Order indicates that administrative sanctions within its scope are comprised between 10 and 100 million CDF and a daily penalty payment between 1000 and 1 million CDF.

It is worth noting that pursuant to Article 68 of Act n° 013-2002 of 16 October 2002, as a principle, breaches in telecommunication matters may be resolved by way of settlement.

In other words, the operator in breach may negotiate with the ARPTC and pay a settlement fine, the rates of which are reviewed periodically by the Minister of Postal Services, Telecommunications and New Technologies of Information and Communication (see Interdepartmental Order of 5 July 2014 relating to the rates of duties, taxes and charges to be collected by the Ministry of Postal services, Telecommunications and New Technologies of Information and Communication).

As an illustration, please find a chart of such settlement fines below.

<table>
<thead>
<tr>
<th>Operative event</th>
<th>Rates (CDF)</th>
</tr>
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<tbody>
<tr>
<td>Unauthorised possession, installation and operation</td>
<td>100 to 150% of the deed cost</td>
</tr>
<tr>
<td>Non-payment of the tax related to the possession of an operating licence</td>
<td>10 to 20% of the amount</td>
</tr>
<tr>
<td>Non-payment of the probate tax</td>
<td>100 to 200% of the probate cost</td>
</tr>
<tr>
<td>Absence to declare (turnover, point of receipt, number of subscribers, etc.)</td>
<td>50 to 100% of the amount eluded</td>
</tr>
<tr>
<td>False statement (turnover, point of receipt, number of subscribers, etc.)</td>
<td>50 to 100% of the amount eluded</td>
</tr>
<tr>
<td>Late filling of the statement concerning the turnover, point of receipt, number of subscribers, etc.</td>
<td>47,170.00 per day of delay</td>
</tr>
</tbody>
</table>

**KEY CONTACTS**

<table>
<thead>
<tr>
<th>Serge Nawej</th>
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<tr>
<td>Lawyer</td>
</tr>
<tr>
<td>T +32 2 500 1689</td>
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OVERVIEW OF LEGAL LANDSCAPE

Subject to a handful of discrete exemptions (notably concerning the use of spectrum or numbering resources), electronic communications operators have general authorisation to operate in France and do not require a licence, permit, consent, etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

Nevertheless, unlike some other Member States, France requires electronic communications operators to file a prior declaration with the telecoms regulator - the Autorité de Régulation des Communications Electroniques et des Postes or Authority of Electronic communications and Posts (ARCEP).

The roles and responsibilities of ARCEP are codified in the Code on Posts and Electronic Communications (CPEC). ARCEP regulates all electronic communications services including fixed line telecoms, mobiles, plus the airwaves over which wireless devices operate, and postal services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The main primary legislation governing telecommunications in France is Law No. 2004-669 of July 9, 2004 on electronic communications and audio-visual communication services, as further amended and supplemented by:

- Order No. 2011-1012 of August 24, 2011, on electronic communications
- Decree No. 2012-436 of March 30, 2012
- Decree No. 2012-488 of April 13, 2012

These laws and regulations implement the following European Directives:

- Directive 2002/19/EC on access to and interconnection of electronic networks and associated facilities as amended in 2009
- Directive 2002/22/EC on universal service and user rights as amended in 2009

All primary legislation governing the telecommunications sector in France is codified into the CPEC. The ARCEP also regularly enacts decisions or recommendations on more specific regulatory matters, such as frequency planning, value added services regulations, tariffs regulation, etc.

In addition, the following legislation (as well as the subordinate legislation and regulations sitting underneath) may also impact the provision of electronic communications services and the operation of electronic communications networks:
• Law No. 2016-1321 of October 7, 2016 for a Digital Republic
• Law n°2015-990 of August 6, 2015 for growth, activity and equal economic opportunities
• Law No. 2008-776 of August 4, 2008, on the modernisation of the economy
• Law No. 2008-3 of January 3, 2008, on the development of competition in favour of consumers
• Law No. 2004-575 of June 21, 2004, on the confidence in digital economy
• Law No. 78-17 of January 6, 1978, on data processing, data files and individual liberties

The key targets and features of the primary legislation applicable to telecommunications, as codified in the CPEC, are the following:

• Measures aimed at ensuring fair competition between operators and an efficient regulation of the electronic communications sector, notably via the specific missions and rights granted to ARCEP and warranties to ensure its independence
• Regulating the management and allocation of radio frequencies and telephone numbers (including premium rate telephone services) to operators
• Protecting consumers and personal data, including for example, requirements to provide specific information to consumers, to provide notice in case of security breach, and to protect the content of their communications from unauthorised disclosure
• Empowering ARCEP to hear disputes between electronic communications operators (although referral to ARCEP does not preclude the bringing of court proceedings)

REGULATORY BODIES OR AUTHORITIES

Autorité de Régulation des Communications Electroniques et des Postes - ARCEP

Address: 7, Square Max Hymans, 75 730 Paris Cedex 15
www.arcep.fr

ARCEP is an independent authority that has jurisdiction over all electronic communications services and all electronic communications operators as defined under the CPEC.

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

There are two types of electronic communications operators for the purposes of the CPEC: operators of electronic communications networks (ECN) and operators of electronic communication services (ECS).

An 'electronic communication network' is defined under the CPEC as a system based on transmission installation for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description.

An 'electronic communications service' means a service entirely consisting in, or having as its principal feature, the conveyance (including the sending, transmission or receipt) by means of an electronic communications network of signals (except in so far as it is a content service). The above illustrates the breadth of regulated activities. Even if a service is provided over the use of another network (or through an agreement with another electronic communications operator), the entity providing that service is subject to the same regulations and so is considered an operator of an ECS.

ECN and ECS operators are both regulated under the CPEC, and are subject to ARCEP’s regulation and control. Before 2004, ECNs and ECS operators were subject to two different legal regimes under the CPEC. However, since 2004, both types of operators are submitted to the same legal regime.

ARCEP also regulates the allocation of radio frequency blocks and telephone numbers in France.

OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES
Electronic communications operators have general authorisation to operate in France and do not require a licence, permit, consent, etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

Nevertheless, unlike some other Member States, France does require electronic communications operators to file a prior declaration with the telecoms regulator, ARCEP. Electronic communications operators must file a preliminary declaration with ARCEP before the effective launch of their activities in France.

The information to be provided in the declaration notably includes the following:

- Nature of the activity
- Category of targeted clients
- Geographical coverage
- Type of electronic communications services provided
- Network infrastructures

The information provided in the declaration must be kept up-to-date by the operator through the sending of an amended declaration, if necessary.

Non-compliance with this obligation is punishable by criminal sanctions.

In addition, any operator wishing to operate a mobile communications network and/or to provide mobile communications services using scarce resources (ie radio frequencies or numbering) shall be granted with an authorisation from the ARCEP.

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

From a telecoms regulatory perspective, there are no requirements for an electronic communications operator to be domiciled in France. Advice should however be sought from a tax perspective.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

A specific agreement providing for the technical and financial conditions applicable to the interconnection or the national roaming services, must be entered into between the two operators at issue and disclosed to ARCEP upon request.

In certain circumstances, and notably to foster competition between operators, ARCEP may impose technical and/or financial conditions for the interconnection or roaming, in an objective, transparent and non-discriminatory way.

With regards to interconnection:

- The CPEC requires all public electronic communications network operators (irrespective of ownership of the network) to provide interconnection services to other public electronic communication network operators (including operators established in another EU Member State). A request for interconnection cannot be rejected if it is justified considering the needs of the requesting operator and the capacities of the hosting operators to satisfy such needs.

- Where ARCEP has found that one operator has a ‘significant influence’ on a relevant market, such operator will be bound by additional obligations with respect to interconnection, including notably the obligation to publish an interconnection offer, in compliance with ARCEP’s specific regulations and guidance.

- Interconnection agreements must include several mandatory provisions and notably details on the measures taken by both operators to ensure the security and integrity of the networks, services interoperability and data protection.

- ARCEP regulates the wholesale rates for termination of phone calls from other networks. All operators are currently
required to provide call termination on fair and reasonable terms, conditions and charges.

ARCEP also has jurisdiction over any disputes between operators in relation to interconnection or roaming.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The CPEC contains a number of consumer specific provisions. A ‘consumer’ is defined as someone who uses or requests a service for non-business use.

Specific obligations relating to consumers include:

- The requirement to include certain mandatory terms in consumer contracts
- Conditions relating to term and termination
- The requirement to make certain information available to the customer, including a description of the services offered and the standard tariffs
- Availability of number portability
- Restrictions on sales and marketing activities

In addition to specific telecoms regulations and codes, provisions of general consumer law also apply such as rules concerning unfair consumer terms.

**REGULATORY TAXES AND FEES**

The following basic taxes and fees are payable by electronic communications operators:

**Tax on services**

Electronic communications operators must pay to the tax authorities an annual tax of 1.3% of all turnover earned from their electronic communications activities in France which is over EUR 5 million (taxes, interconnection and access fees excluded).

**Tax for the funding of the universal service**

Electronic communications operators must pay an annual tax for the funding of the universal service, which will be calculated pro-rata to their annual turnover (taxes, interconnection and access fees, and radio/TV broadcasting services fees excluded, and roaming-out fees included).

In case the annual turnover of the operator is under EUR 100 million for a given year, an exemption may apply. In other cases, the amount of the tax due is decided by ARCEP on a case-by-case basis.

**Tax on the use of scarce resources**

Any operator which has been granted with scarce resources, whether spectrum or numbering, shall pay a specific annual fee.

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

Among its legal obligations, ARCEP is notably in charge of ensuring that electronic communications operators fully comply with their respective obligations pursuant to the CPEC and other applicable regulations.

Where ARCEP identifies a breach, it may, upon its discretion or following a claim, send a prior notice to any non-compliant operators and require them to take the necessary steps to rectify the breach. If the operator does not remedy the breach within the specified time, ARCEP may:
• Suspend the rights of the operator in relation to its activities (for a maximum duration of three years), or
• Levy a fine which will be proportionate to the seriousness of the breach and to the benefits drawn from such breach by the operator (within the limits of 3% of its net annual revenue/rate increased to 5% in the event of a new breach of the same obligation, or EUR 150,000 in the event its previous annual revenue cannot be assessed, increased to €375,000 in the event of a new breach of the same obligation)

ARCEP may also require entities to provide certain information relating to ARCEP’s regulations or to their networks and/or services.

KEY CONTACTS

Mathilde Hallé
Associate
DLA Piper France LLP
T +33 (0)1 40 15 24 41
mathilde.halle@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

In order to promote functioning competition and to ensure a nationwide efficient infrastructure, the telecommunications market in Germany is subject to sovereign regulation mechanisms.

Whilst telecommunications providers had to obtain a licence in the past, the provision of telecommunications is not dependent on the granting of a licence anymore. It is therefore sufficient, in practice, to issue a written notification to the competent regulatory authority.

Applicable national and European legislation aims at opening the telecommunications markets and creating equal competition conditions. The German Telecommunications Act (Telekommunikationsgesetz - TKG) provides the competent Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway (Bundesnetzagentur - BNetzA) with ample regulatory instruments to foster effective competition.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Provisions relating to the regulation of telecommunications are found in various other regulations, as well as the TKG. These include:

- Telecommunications Surveillance Regulation (Telekommunikations-Überwachungsverordnung - TKÜV)
- Frequency Fee Regulation (Frequenzgebührenverordnung - FGebV)
- Frequency Usage Contribution Regulation (Frequenznutzungsbeitragsverordnung - FBeitrV)
- Frequency Protection Contribution Regulation (Frequenzschutzbeitragsverordnung - FSBeitrV)
- Telecommunications Number Charges Regulation (Telekommunikations-Nummerngebührenverordnung - TNGebV)
- TKG EMVG FuAG Transfer Regulation (TKG-EMVG-FuAG-Übertragungsverordnung - TKEMVFuAÜbertrV)
- Telecommunications Numbering Regulation (Telekommunikationsnummerierungsverordnung - TNV)
- Telecommunications Emergency Call Regulation (Telekommunikations-Notrufverordnung - TNotruFV)
- Telecommunications Transparency Regulation (Telekommunikations-Transparenzverordnung - TKTTransparenzV)

The key features of the TKG are:

- Any person operating a public telecommunications network on a profit-oriented basis or providing a publicly available telecommunications service on a profit-oriented basis shall notify the BNetzA without undue delay of their intention to
provide, or of their ceasing to provide the activity and/or any changes in their undertaking (cf. Section 6 (1) TKG)

- The BNetzA has the power to put in place market regulation measures regarding markets which lack effective competition and to impose measures on undertakings having significant market power (cf. Part 2 TKG)

- Specific customer protection provisions - eg pertaining to price transparency, abuse of phone numbers (cf. Part 3 TKG)

- Regulation of broadcasting to some extent - eg interoperability of television sets (cf. Part 4 of the TKG)

- The granting of frequencies, numbers and rights of way (cf. Part 5 TKG)

- Universal services, which are defined as a minimum set of publicly available services of specified quality to which every end-user, irrespective of his place of residence or work, shall have access to at an affordable price and whose provision to the public as a basic service has become indispensable (cf. Part 6 of the TKG)

- Provisions pertaining to telecommunications secrecy, data protection and public security. In particular, it regulates that end-users must be enabled to suppress their telephone number (such suppression being excluded in cases of emergency calls) (cf. Part 7 of the TKG)

- Provisions pertaining to the organisation and powers of the BNetzA (cf. Part 8 of the TKG). In cases of serious or repeated breaches of legal obligations, the BNetzA may, as a measure of last resort, prohibit the undertaking to act in its capacity of a telecommunications network operator or service provider (cf. Section 126 (3) TKG)

REGULATORY BODIES OR AUTHORITIES

Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen

Address: Tulpenfeld 4, 53113 Bonn, Germany, P.O. Box 80 01, 53105 Bonn, Germany

Telephone: +49 228 14-0

Website: www.bundesnetzagentur.de/EN

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

The TKG distinguishes between providers of telecommunications networks and providers of telecommunications services. These categories are then further sub-divided into public and private providers.

A 'telecommunications network' is defined in the TKG as transmission systems and, where applicable, the switching and routing of equipment and other resources in their entirety which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems (to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed) (cf. Section 3 No. 27 TKG).

A 'telecommunications service' is defined as a service normally provided for remuneration consisting in, or having as its principal feature, the conveyance of signals by means of telecommunications networks, and includes transmission services in networks used for broadcasting (cf. Section 3 No. 24 TKG).

Manufacturers, distributors, owners and importers of certain transmitters and other telecommunications equipment can also be subject to statutory obligations under the TKG (cf. Section 90 (1) TKG).

Furthermore, the BNetzA has regulatory powers in connection with the allocation (including the withdrawal) of numbers (cf. Section 67 TKG).
OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

As a matter of principle, the provision of telecommunications services does not require a licence. That being said, any person operating a public telecommunications network on a profit-oriented basis or providing a publicly available telecommunications service on a profit-oriented basis is required to notify the BNetzA without undue delay of their intention to provide, or of their ceasing to provide, services and of any changes in his undertaking. Such notification requires a written form (cf. Section 6 (1) TKG).

A notification does not suffice, however, where applicable provisions require an express authorisation for carrying out other commercial activities.

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

From a telecommunications law perspective, there is no requirement for a provider of telecommunications services to be domiciled in Germany prior to, or during, the provision of services. However, some provisions require the provision of an address for service in Germany of an authorised agent (for example Section 45p (1) No. 2 TKG). Advice should always be sought from a tax perspective.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Every public telecommunications network operator is required, upon request, to make an interconnection offer to other public telecommunications network operators in order to secure user communication, the provision of telecommunications services and service interoperability throughout the European Union (cf. Section 16 TKG).

The BNetzA has the power to impose obligations, upon request, on public telecommunications network operators that control access to end-users and do not have significant market power to interconnect to their networks with those of other public telecommunications network operators (cf. Section 18 (1) TKG).

In order to promote sustainable competition in the retail market, the BNetzA can require public telecommunications network operators controlling access to end-users not to treat other public telecommunications network operators differently without objectively justifiable reasons (cf. Section 18 (2) TKG).

Furthermore, the BNetzA has the power to require public telecommunications network operators with significant market power to create the necessary prerequisites for the interoperability of end-to-end communication, including the provision of facilities for intelligent network services and roaming (enabling the use of other operators’ mobile networks outside the coverage area of the requesting mobile operator, for the requesting operator’s end-users) (cf. Section 21 (2) No. 4 TKG).

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TKG contains numerous provisions pertaining to customer protection which cannot, for the most part, be excluded. These provisions do not exclusively refer to the term ‘customer’ but also to ‘consumers’, ‘end-consumers’, ‘end-users’, ‘subscribers’ and ‘invoice recipients’.

‘User’ means a natural person using a telecommunications service for private or business purposes, without necessarily having subscribed to that service (Section 3 No. 14 TKG).

‘End-user’ is defined as a legal entity or a natural person that is not operating a public telecommunications network or providing a publicly available telecommunications service (Section 3 No. 8 TKG).

‘Subscriber’ means a natural person or a legal entity that is party to a contract with a provider of telecommunications services for the supply of such services (Section 3 No. 20 TKG).

Specific obligations relating to customer protection include:
• The requirement to include certain minimum terms in contracts with consumers and other end-users (Section 43a TKG)
• The initial minimum contract term of a contract with a consumer may not exceed 24 months (Section 43b TKG)
• The obligation to provide to subscribers itemised billing upon request free of charge (Section 45e TKG)
• The obligation to take into account the interests of disabled end-users (Section 45 TKG)
• The availability of number portability to all subscribers (Section 46 TKG)

REGULATORY TAXES AND FEES

On the basis of the TKG, the following regulations pertaining to costs of procedures at the BNetzA have been adopted:

• FGebV, which relates to fees in connection with spectrum assignment
• TNGebV, which relates to fees in connection with the allocation of numbers
• TKGebV, which relates to various fees in connection with:
  ○ Dialing programs via value added service numbers
  ○ The administration of satellite systems
  ○ The assignment of rights of way

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

The TKG provides for various measures which are at the BNetzA’s disposal to enforce the applicable telecommunications regulations. These measures include formal information requests, investigations, seizures and the prohibition of business operations.

Breaches of the TKG can also trigger penalties. In general, the TKG distinguishes between Penal Provisions (Strafvorschriften) (cf. Section 148 TKG) and Administrative Fines Provisions (Bußgeldvorschriften) (cf. Section 149 TKG). The penalties range from fines between EUR 10,000 to EUR 500,000 (eg for the unauthorised use of a frequency). Other violations can trigger criminal liability which can lead to fines or imprisonment of up to two years (eg for illegal eavesdropping). In addition, pursuant to Section 206 German Criminal Code (Strafgesetzbuch - StGB), violations of telecommunications secrecy can be punished with a fine or imprisonment of up to five years.
OVERVIEW OF LEGAL LANDSCAPE

The telecommunications industry in Hong Kong is regulated by the Communications Authority (CA). The CA was established in 2012 as the unified regulator of the telecommunications and broadcasting sectors. The Office of the Communications Authority (OFCA) is the executive arm and secretariat of the CA and it supports the CA in administering and enforcing the relevant laws in relation to the provision of telecommunications services.

In general, there are no foreign ownership restrictions or limits on the number of operators, but telecommunications operators should be aware of the different licensing requirements for the provision of services in Hong Kong.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The duties and powers of the CA and the OFCA are stated in the Communications Authority Ordinance (Cap. 616) and the Telecommunications Ordinance (Cap. 106) respectively.

The primary legislation governing telecommunications in Hong Kong is the Telecommunications Ordinance (Cap. 106) (and its subordinate regulations and orders).

In addition to the Telecommunications Ordinance, the following legislation may also impact the provision of communication services and the operation of communication networks:

- The Broadcasting Ordinance (Cap. 562)
- The Personal Data (Privacy) Ordinance (Cap. 486)
- The Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391)
- The Unsolicited Electronic Messages Ordinance (Cap. 593)

The key features of the Telecommunications Ordinance are:

- Licensing requirements for telecommunications services providers
- Competition provisions that aim to prevent anti-competitive conduct
- Regulation of mergers and acquisitions that may restrict competition in the telecommunications market

REGULATORY BODIES OR AUTHORITIES

Communications Authority (CA)
TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The CA regulates the provision of various telecommunications services, including but not limited to local fixed carrier services, fixed broadband services, IP telephony services, external telecommunications services, various international value-added network services, external telecommunications facilities and mobile network services. All related operators and service operators are subject to the relevant legal and regulatory requirements.

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

Depending on the scope of services, telecommunications operators may require the following licence(s) from the CA:

- Carrier Licences (CL) for the provision and maintenance of facility-based public telecommunications services or infrastructure, including establish telecommunications networks, circuits, and equipment, fixed external services, fixed internal services, and/or mobile services

- Service-based Operator (SBO) Licences for the provision of ancillary services related to telecoms services over networks owned by CL holders. These are divided into 4 main categories depending on the types of services delivered, and the terms and obligations which apply vary per category:
  - Class 1 services – local voice telephony services (that have all the attributes of the conventional telephone services and are subject to the similar licence obligations applicable to carrier licence holders)
  - Class 2 services – local voice telephony services (that do not have all the attributes of the conventional telephone services and are subject to minimal licensing conditions)
  - Class 3 services – including but not limited to external telecommunications services, international value-added network services (including internet access services), mobile virtual network operator services, public radio communications relay services, teleconferencing services and private payphone services
  - Services other than Class 1, Class 2 or Class 3 Services

- Class Licences (CLOTS) which are generally applicable to services provided by resellers of telecoms services operated by CL, SBO Licences or other CLOTS holders. Typically these resellers purchase wholesale services then rebrand and/or repackage such services for resale under the resellers’ own brands.
  - Currently resellers are automatically considered class-licensed and must comply with the relevant CLOTS conditions (i.e. registration is not required).
  - Starting from 26 October 2019, resellers (with a customer base of 10,000 subscriptions or more) will be required to register with the CA regardless of the types of services offered. As part of the registration requirement, organizations will need to provide details to the CA including, but not limited to, contact details, description of the services being offered, as well as provide the names of all licensed telecoms operator(s) with whom such organization has entered into an agreement for the provision of telecoms services under the CLOTS. Existing CLOTS holders will have until 26 January 2020 to comply with the new registration requirement.

- Public Radiocommunications Service Licences;
- Localised Wireless Broadband Service Licences
- Wireless Internet of Things Licences
DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN
TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

A licence may be granted to or held only by a company formed and registered in Hong Kong. For companies incorporated outside of Hong Kong, the CA may consider their applications, provided that they have registered under the Companies Ordinance (Cap. 622) as a non-Hong Kong company.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The CA may make a determination on the request of a party to the interconnection or, in the absence of a request, if it considers it is in the interest of the public to do so.

CL and SBO licence holders that provide local voice telephony services are required to provide any customer in any one network access to any other customer in any interconnecting network.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Telecommunication laws and regulations generally do not distinguish between the provision of services to businesses and to consumers. However, general consumer law also applies, including the Trade Descriptions Ordinance concerning unfair trade practices. Telecommunications service providers regulated as licensees under the Telecommunications Ordinance may be subject to the enforcement of the fair trading sections by the CA.

CLOTS licensing conditions (as well as the new registration regime) have been specifically implemented for the protection of consumer interests, in particular resellers re required to provide the following specific information to facilitate consumers to make an informed purchasing decision:

- name of the CLOTS licensee;
- customer service hotline number(s);
- access code(s) or number(s) (including any access password) used for obtaining the services, where applicable;
- instructions on how to access the services;
- price(s) of the services; and
- duration(s) and/or validity period(s) of the services

REGULATORY TAXES AND FEES

Different licence fees are payable on the issue and on renewal of licences. Occasionally, the CA will determine and publish the licence fee for a particular licence.

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

There are a number of sanctions and penalties stipulated under the Telecommunications Ordinance. Two of the key offences are listed as follows:

A person who, without the appropriate licence, is found to have committed any of the following, will be liable to fines of up to HKD 100,000 and imprisonment for up to 5 years:

- Establishes or maintains any means of telecommunications
- Offers in the course of business a telecommunications service
- Possesses or uses any apparatus for radiocommunications or any apparatus of any kind that generates and emits radio waves notwithstanding that the apparatus is not intended for radiocommunications
- Deals in the course of trade or business in apparatus or material for radiocommunications or in any component part of
any such apparatus or in apparatus of any kind that generates and emits radio waves whether or not the apparatus is intended, or capable of being used, for radiocommunications

- Demonstrates, with a view to sell in the course of trade or business, any apparatus or material for radiocommunications

It is an offence punishable by a fine of HKD 25,000 and imprisonment for 12 months if a person, without the appropriate permit granted by the CA, imports into or exports from Hong Kong any radiocommunications transmitting apparatus, unless he is the holder of a licence authorising him to deal in the course of trade or business in such apparatus.

If a licence holder breaches any licence condition issued by the CA or the Telecommunications Ordinance, they can be subject to a fine of up to HKD 200,000 upon first breach, HKD 500,000 upon second breach and HKD 1,000,000 upon any subsequent breach.

**KEY CONTACTS**

Scott Thiel  
Partner  
DLA Piper Hong Kong  
T +852 2103 0519  
scott.thiel@dlapiper.com

Lauren Hurcombe  
Senior Associate  
T +852 2103 0814  
lauren.hurcombe@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

The licensing of electronic communications services is harmonised with the relevant EU Directives. Accordingly, in line with the Authorisation Directive, anyone (natural or legal persons) may provide electronic communications services. Providers of electronic communications services shall only notify the National Media and Infocommunications Authority ("Authority") for the purposes of registering their intention to provide electronic communications services, indicating the proposed date of commencement. The provision of electronic communications services is not subject to prior approval by the Authority. After the notification is sent, the service provider may begin to provide the electronic communications services. However, the use of radio frequencies and identifiers is subject to individual licences.

The task of the Authority is to ensure the undisturbed operation of the media and the markets for electronic communications. The Authority is also responsible for the protection of the interests of consumers and users. Furthermore, it is also entrusted with establishing and maintaining fair conditions for an effective competitive environment, as well as with supervising the compliant behaviour of service providers.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES


Act 185 of 2010 on Media Services and on the Mass Media and Act 74 of 2007 on broadcasting and digital switchover also contain several provisions regarding the rights of the Authority, which are relevant for the telecoms sector as well.

The President of the Authority is authorised to make Decrees (laws) in various subjects such as:

- the national frequency allocation;
- the rules of the auction and tenders published for obtaining entitlement to frequency use rights;
- the regulations for the use of frequency bands;
- the qualifications required for authorisations to prepare the technical plans necessary, in certain cases, for spectrum assignment;
- the obligation of data protection and confidentiality of electronic communications service providers, their employees, members or agents, detailed rules of data management, special conditions of secrecy, management of traffic and billing data, conditions for the indication of identifiers and call forwarding, and the essential obligations of electronic
communications service providers relating to network security; and

- the detailed regulations concerning the execution, amendment and termination of subscriber contracts, the conditions for the restriction of services, the detailed rules relating to individual subscriber contracts and the standard contract conditions of service providers, including the detailed regulations relating to directory inquiry services and directories, and to related obligations of service providers etc.

The Authority also maintains, for example, a register of media services, and electronic communications service providers, along with their services and general contracting terms.

**REGULATORY BODIES OR AUTHORITIES**

The National Media and Infocommunications Authority is an independent authority with supervisory and regulatory capacity, meaning that the President of the Authority is entitled to make Decrees regulating the electronic communications services.

Address of the Authority:
1015 Budapest,
Ostrom u. 23-25.

http://english.nmhh.hu/

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

The following regulated activities are subject to registration (i.e. a notification to the Authority is required):

- the operation of electronic communications networks; and
- the provision of services through an electronic communications network.

According to the Electronic Communications Act, "electronic communications network" shall mean transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals between specific termination points by wire, radio, optical or other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.

"Electronic communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance, and where applicable, the switching or routing of signals on electronic communications networks, including internet exchange services and public internet exchange services, but excluding services providing, or exercising editorial control over, content transmitted using electronic communications networks and electronic communications services; furthermore, it does not include 'information society services', as defined in specific other legislation, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.

The following regulated activities are subject to a permit from the Authority:

- the use of radio frequencies (frequency allocation and radio permit) and identifiers; and
- construction works on electronic communications structures.

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

Providers of electronic communications services have general authorisation to operate in Hungary and do not require a licence,
permit, consent etc. This concept of general authorisation is derived from the Authorisation Directive which has been implemented in Hungary. A prior notification is required to the Authority of the intention to provide electronic communications services, indicating the proposed date of commencement. After the notification is sent, the provider may start providing electronic communications services.

However, the use of radio frequencies and identifiers, and also the construction of electronic communications structures, do require a permit from the Authority.

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

From a telecoms regulatory perspective, there are no requirements for a provider of electronic communications services to be domiciled in Hungary prior to or during the provision of services.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Both ex-ante and ex-post regulations exist.

In respect of significant market power service providers, the Authority - *inter alia* - may impose the following obligations:

- transparency;
- non-discrimination in respect of interconnection and access providing;
- accounting separation;
- access and interconnection;
- collocation and infrastructure sharing; and
- functional separation.

In addition, the Authority has the power to impose access, interconnection, collocation and infrastructure sharing obligations in the absence of significant market power in order to promote efficiency and sustainable competition and to encourage and foster investments, and to maximise consumer benefits. In this respect, the Authority may also impose the obligation of non-discrimination in relation to interconnection and access.

Network agreements between operators must be submitted to the Authority for information purposes.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The Electronic Communication Act protects consumers’ interests in their relations with other parties in the electronic telecommunication market. A ‘consumer’ is defined as any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her business or profession.

The Authority cooperates with the general Consumer Protection Authority in telecommunication cases affecting consumers. In the event of a violation of certain provisions of the Electronic Communication Act (e.g. regarding customer service, invoice complaint procedure, content of the invoice etc.) the general Consumer Protection Authority is the competent authority.

In the case of subscriber contracts with consumers, the Electronic Communication Act only sets out as a specific rule that any clause of an individual subscriber contract stating that it contains the subscriber’s entire understanding with respect to the general terms and conditions, shall be null and void.

In addition to the above mentioned rule, however, general consumer protection laws also apply (such as rules concerning distant contracts and unfair commercial practices).

The Electronic Communication Act and the Decree 2/2015. (III.30.) NMHH on the detailed rules of subscription agreements for
electronic telecommunication services both contain strict mandatory provisions that should be included or which are applicable to subscription agreements. These include, among others, rules on the conclusion, modification, term and termination of the subscription agreement, quality of services, availability of number portability, information and notification obligations etc. Decree 2/2015 expressly sets out that the provisions of the Decree shall prevail over the Government Decree on the detailed rules of contracts between businesses and consumers. Accordingly, the general consumer protection rules in respect of consumers shall only apply if the Decree does not regulate otherwise.

In respect of business subscribers with more than 50 employees and a yearly net turnover of EUR 10 million, it is possible to deviate from the statutory rules, and in the case of other businesses it is also possible to deviate from certain statutory rules in respect of subscriber contracts. It is always possible to deviate from the statutory rules to the benefit of the subscriber.

**REGULATORY TAXES AND FEES**

- An administrative service charge is payable for certain procedures of the Authority.
- An administrative fee is payable after the use and reservation of frequencies.
- All providers of electronic communications services must also pay a monitoring charge currently set at 0.212% of the net turnover of their previous business year. For universal electronic communication service providers, the charge is 0.2%.
- Telecommunication tax: A special telecommunication tax is payable for providers of public telephone services. The basis of the tax is the duration of telephone calls and the number of sent messages of the service provider’s subscriber. The rate of the tax is HUF 2 for every minute commenced in a call, HUF 2 for every message sent in the case of private individual subscribers and HUF 3 for businesses.

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

The Authority may impose the following sanctions in the case of breach/ contravention of telecommunication laws:

- establishing the violation of law and notifying the relevant provider to cease and desist from the unlawful activity;
- imposing a fine, and in the case of repeated breaches, a fine may be imposed on the executive officer of the relevant provider;
- the Authority may terminate with immediate effect the agreement concluded by and between the relevant provider and the Authority;
- the Authority may oblige the relevant provider to publish the decision establishing the breach on its website or in the press;
- in the event of material and repeated breaches, the Authority may suspend the relevant provider’s right to carry out electronic telecommunication services or the permission to use radio frequency for 10 to 90 days; and
- in the most serious cases the Authority may prohibit the electronic telecommunication activities and withdraw the permission to use radio frequency.

In the event that the payment of a fee is two months late, the Authority will send a request for payment within 15 days. Should the relevant provider fail to comply with this, the Authority may withdraw the permissions.

In addition, the Authority may impose preliminary injunctions in order to prevent imminent threats affecting life, health, environment, etc. Likewise, the Authority may prohibit the provision of services, the use of radio frequencies, and the application of certain contractual clauses and fees.

In the event of unauthorised radio frequency use, the Authority may, as an administrative measure, seal and transfer the tools used for the unauthorised activity.
The Authority is also entitled to impose fines in connection with the construction of electronic telecommunication buildings.

**KEY CONTACTS**

Zoltan Kozma  
Senior Associate  
T Senior Associate  
zoltan.kozma@dlapiper.com
INDIA

OVERVIEW OF LEGAL LANDSCAPE

India is a heavily regulated telecoms market with telecoms service providers being required to obtain a licence in order to provide services. Foreign investment caps have recently been removed and 100% foreign ownership is permitted.

A foreign investment approval has to be obtained for foreign investment above 49%. There are two restrictions in the broadcasting sector – only 49% foreign investment is permitted in terrestrial FM. Further, only 49% foreign investment is permitted in the uplinking of news and current affairs television channels.

There are three restrictions in the broadcasting sector – (a) only 49% foreign investment is permitted in terrestrial FM; (b) only 49% foreign investment is permitted in the uplinking of news and current affairs television channels; and (c) only 26% foreign investment is permitted in the uploading/streaming of news & current affairs through digital media.

There are also restrictions on participation of foreign nationals in the management of telecoms companies. Restrictions on virtual providers and resale of services have recently been lifted. Use of voice over IP and internet telephony is also restricted. There are regulations related to the need to ensure security in networks of telecoms providers.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Indian telecom law is based on the Indian Telegraph Act, 1885 which gives the government the power to regulate the use of telegraphs in India. Based on this statute, the government has issued regulations for various types of licenses – universal access, national long distance, international long distance, internet services, virtual network operators, etc. In addition, Indian Wireless Telegraph Act, 1933 contains certain regulation relating to wireless telegraphy.

The Telecom Regulatory Authority of India (TRAI) has been set up under the Telecom Regulatory Authority of India Act, 1997. Some regulations are also issued by the TRAI including, for example, ‘do not call’ regulations and interconnection rules.

The Information Technology Act, 2000 has indirect application to some telecom and internet related issues, particularly surveillance rights of the Government. The Cable Television Networks (Regulation) Act, 1995 regulates cable television.

REGULATORY BODIES OR AUTHORITIES

The Department of Telecommunications (DoT) - which is a ministry of the Government of India - is the licensing authority. It sets out the regulations permitting the grant of licences to telecom service providers. It also issues notifications from time to time on telecom laws.

The TRAI is empowered to issue regulations in certain areas and provide recommendations to the DoT in other areas. It is a somewhat unique arrangement where two regulators are involved in the regulation of telecoms.

The TRAI is an independent body and not controlled by the Government, except that the Government appoints its officers.
are certain divisions of the DoT that manage specific functions such as the Wireless Planning and Co-ordination (WPC) wing which is involved in spectrum management.

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

The following are the key categories of telecom services for which licences are required:

- Universal access licence – a jumbo licence that covers various other licences such as access services and national and international long distance service
- Cellular mobile services
- National long distance
- International long distance
- Internet services
- Satellite mobile services
- Infrastructure providers
- Audiotex licence (essentially for conferencing services)
- Other service providers (essentially for call centres)
- Virtual network operators for most of the above licences
- Telemarketer registration

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

All of the regulated services require licences from the DoT. The 'Other Service Provider' category (see Regulated activities) is a registration rather than a telecom licence. The same is the case with telemarketers who have to register with the TRAI.

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

All telecom services have to be provided by Indian incorporated entities. Such services cannot be provided by foreign domiciled entities. International bandwidth can be sold and billed to customers at the foreign end of such connectivity but selling without a licence to customers at the domestic end is likely to violate applicable law.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Both interconnection and roaming are regulated by the TRAI. The regulations cover arrangements among service providers for the payment of interconnection usage charges throughout the territory of India. The regulations cover tariffs for all telecommunication services and also impose a ceiling on the roaming charges that may be charged by a service provider. Further, the regulations impose a reporting requirement with regards to the tariff fixed by a service provider. The service provider is also required to report to the authority the interconnection charges and revenue sharing arrangements agreed mutually among the service providers.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

By and large, there are no differences in regulations for services provided to businesses as opposed to services provided to retail customers. Some regulations do require that aspects of such regulations be specifically mentioned in customer contracts. As mentioned in the Interconnection/roaming section, tariff regulations do apply in respect of the tariffs that can be charged to consumers.

**REGULATORY TAXES AND FEES**

Most telecom service providers have to pay a license fee, which is 8% of their “adjusted gross revenue”. This does not include spectrum fees which are payable separately based on auctions conducted. This does not apply to Other Service Providers and
Telemarketers. Goods and Services tax is generally applicable on telecom services at a rate of 18%.

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

The penalty for operating a telegraph without permission is a fine of up to INR 500. In the case of wireless telegraph, it is imprisonment of up to 3 years or a fine of INR 1000 or both. For breach of a licence condition, the penalty is a fine of INR 1000; and a further fine of INR 500 for every week of continuation of the violation.

As these penalties are fairly low, penalties for breach of telecom licences are based more on damages mentioned in licence agreements with telecom providers. For example, a universal access or national long distance telecom operator would be liable for damages of up to INR 500 million.

Further, telecom providers are required to provide bank guarantees. On violation of licence conditions, the bank guarantees can be invoked by the DoT.

KEY CONTACTS

Kochhar & Co.
www.kochhar.com/

Stephen Mathias
Partner
Kochhar & Co.
T +91 80 40308000
stephen.mathias@bgl.kochhar.com

Naqeeb Ahmed Kazia
Associate
Kochhar & Co.
T +91 80 40308000
naqeeb.ahmed@bgl.kochhar.com
ITALY

OVERVIEW OF LEGAL LANDSCAPE

Pursuant to art. 3 of the Code of Electronic Communications, the provision of electronic communications networks and services - which is of primary general interest - is free. Communication providers need a general authorisation to operate in Italy, although they do not require an explicit measure in the form of an administrative decision.

This concept of general authorisation is derived from the European Authorisation Directive, which has been implemented in EU Member States.

The provision of electronic communications networks and services in Italy is subject to a general authorisation whose effects are produced on the basis of a simple communication in the form of a notification to the Ministry of the Economic Development, rather than to the NRA.

The granting of specific rights is only limited in cases related to the use of insufficient resources (radio frequencies and numbers).

AGCom (Autorità per le garanzie nelle comunicazioni) is the Italian Communications Authority. It is an independent authority established under law 249/1997. AGCOM retains both regulatory and supervisory functions (alongside the Ministry of the Economic Development) in the areas of telecommunications, media, publishing and postal services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecoms sector in Italy is D.lgs. No. 259/2003, the Electronic Communications Code (‘Codice delle Comunicazioni Elettroniche’, ‘CCE’), approved on 1 August 2003. The Electronic Communications Code implements the following European Directives:

- Directive 2002/19/EC on access to and interconnection of electronic networks and associated facilities, and
- Directive 2002/22/EC on universal service and user rights

In addition to the CCE, the following legislation regulates specific areas related to the provision of communication services and the operation of communication networks:

- Law No. 249/1997, establishing the Italian Communication Authority (AGCom)
• D.lgs. No. 206/2005 (the Consumer Code)

• Detailed rules contained in AGCom Resolutions, including:
  o Annex A to Resolution 179/03/CSP, general directive on telecommunications services quality and charters
  o Annex A to Resolution 203/18/CONS, rules for the settlement of disputes between electronic communications operators and final users
  o Resolution 449/16/CONS, rules for the settlement of disputes between operators
  o Annex A to Resolution 194/12/CONS, rules on enforcement (sanctions) procedures, and
  o Annex A to Resolution 8/15/CIR, national Numbering Plan and implementation rules and subsequent integration and amendments

REGULATORY BODIES OR AUTHORITIES

Ministero dello Sviluppo Economico
Via Molise 2, 00187 Roma
Tel. (+39) 06.4705.1
http://www.sviluppoeconomico.gov.it/index.php/it/
urp@mise.gov.it

Autorità per le garanzie nelle telecomunicazioni
Naples Headquarters
Centro Direzionale, Isola B5 - 80143 Napoli
Tel. (+39) 0817507111
Fax. (+39) 0817507616

Rome Headquarters
Via Isonzo 21/b, 00198 Roma
Tel. (+39) 0669644111
Fax. (+39) 0669644926
https://www.agcom.it/
info@agcom.it

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

Electronic communication providers may be classified as providers of electronic communication networks and providers of electronic communication services. There is an additional distinction between public and private use providers. Pursuant to the definitions included in the Framework Directive (and fully transposed in the CCE):

• 'Electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed
'Electronic communications service' means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.

Art. 2 CCE specifies that the following areas fall under the scope of CCE provisions:

- Electronic communication networks and services for public use, including radio and television broadcasting networks and cable television networks
- Electronic communications activities for private use
- Protection of electronic communications subsea installations
- Radio spectrum service

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

Pursuant to art. 25, par. 3 CCE, the provision of electronic communications networks or services is subject to a general authorisation, whose effects are produced by means of a simple communication to the Ministry of Economic Development. Such communication shall include the statement that the company will begin to provide electronic communications networks or services, as well as other additional information, though limited to those strictly necessary in order to enable the Ministry to keep an updated list of electronic communications networks and services providers. The communication represents a ‘declaration of start of the activities’. Nevertheless, it is herein important to point out that - since the transmission of the communication - the company is immediately allowed to start its activity, without having to wait for any formal consent on part of the competent authority. Within sixty days from the transmission of the communication, the Ministry will verify the existence of the prescribed requirements and prohibit the continuation of the activity where such requirements are lacking.

The general authorisation is required for the provision of all electronic communications networks and services in Italy. Such authorisation shall be obtained both for public and for private networks and services. However, a series of derogations (including the exceptions related to the use of spectrum) are prescribed for private networks and services, which might involve a differentiated authorisation system.

The scope for the application of the general authorisation is strictly connected to the concept of ‘electronic communication network’ and ‘electronic communication service’ as defined in art. (2)(1)(c) and (d) of the Framework Directive, ie an authorisation is not required for those operators providing for the content transmitted using electronic communications networks and services, rather than the conveyance of signals.

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

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in Italy prior to or during the provision of services. Advice should however be sought from a tax perspective.

Art. 25 CCE clarifies that the provision of electronic communications networks or services is free (under art. 3 CCE), except for those specific restrictions introduced by regulations and administrative provisions prescribing a particular regime for non-EU or non-EEA companies, or which are justified by general interest objectives.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Subject to certain exceptions, pre-existing individual licences and general authorisations on networks and telecommunications services for public use shall remain valid until their natural expiration.
The operators may negotiate, among themselves, agreements on technical and commercial conditions for the access and the interconnection. AGCom has the duty to ensure that there are no restrictions that may prevent interconnection and access agreements.

The operators authorised to provide electronic communications networks and services have the right and – when requested by other operators holding an authorisation – an obligation to negotiate among each other the interconnection for the provision of electronic communications services, in order to ensure the interoperability of services throughout the European Union. The operators shall offer the access and interconnection to other operators in compliance with the terms and conditions consistent with the obligations imposed by AGCom.

In exceptional circumstances, the Authority may impose on operators holding significant market power obligations to offer access and interconnection.

An operator established in another EU Member State requesting for access or interconnection in Italy does not need to be authorised to operate in Italy where it does not provide services or networks there.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

A set of specific provisions aimed at safeguarding consumers’ rights has been included both in the Consumer Code, laying down the general discipline, and in the CCE.

Art. 70 CCE provides for a list of compulsory information that should be included in contracts concluded with consumers or other final users, in particular:

- Any restriction on the provision of emergency services
- Information on any other conditions limiting access to or use of services and applications
- The minimum levels of quality of the service offered
- The assurance services offered and the customer assistance provided, as well as the way to contact such services
- The inclusion of personal data in a directory and the categories of data stored
- Details on prices and tariffs, as well as the way according to which up-to-date information on all applicable tariffs, maintenance costs and payment systems may be obtained
- The duration of the contract, the conditions for renewal and termination of the single services and of the contract (including benefits from promotional terms and the charges due on termination of the contract, such as any cost recovery with respect to the equipment furnished)
- Any compensation which applies in case the level of quality of the service provided by the contract is not reached
- Information on dispute resolution

REGULATORY TAXES AND FEES

According to Annex 10 to the CCE, companies holding a general authorisation for the installation and provision of public communications networks - including those based on the use of radio frequencies - and companies holding a general authorisation for offering telephone services to the public (subject to some exception) are required to pay an annual contribution, also in the first year.

The effective amount of the contribution varies depending on the geographic area covered by the network or service. The different amounts are listed in Annex 10 to the CCE.

According to Annex 25 to the CCE, in order to gain a general authorisation for private use electronic communications networks and services, contributions shall be paid:

1. For the preliminary activities of the procedure, and
2. For the subsequent supervision, including checks and controls on the effective provision of the services and their related conditions
The contributions under point 2. are in the form of annual contributions and may not be divided.

The effective amount of such contributions varies depending on the different network or service provided. The different amounts are listed in Annex 25 to the CCE.

Additional fees may be charged with respect to specific categories of networks or services provided.

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

If the Ministry ascertains the failure by a company to comply with one or more conditions prescribed in order to gain the general authorisation - or relating to the granting of rights to use radio frequencies and numbers - it may file an injunction to cease the breach and restore the previous situation to the company. If within the prescribed period the company does not remedy the infringement, the Ministry may levy a fine or impose other strict measures.

Pursuant to articles 98 and 102 CCE, in case of installation and provision of electronic communications networks or services in the absence of a general authorisation, the Ministry may impose a fine from EUR 15,000 to EUR 2,500,000 for public use networks or services and from EUR 300 to EUR 3,000 for private use ones, to be determined in reasonable relation to the gravity of the offence.

Additional charges may be levied in case of breach of provisions on spectrum allocation.

**KEY CONTACTS**

Alessandro Boso Caretta  
Partner  
DLA Piper Studio Legale Tributario Associato  
T +39 06 68 880 502  
alessandro.bosocaretta@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

The telecommunications industry is heavily regulated in Japan and the regulatory landscape is broad and complex. There are several laws and regulations governing telecommunications which overlap. Generally speaking, a business operator intending to operate a telecommunications business in Japan must obtain a licence or submit a notification/registration to operate such a business.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Japan currently does not have a unified law or an overarching regulation governing telecommunications activities.

The primary legislation governing telecommunications in Japan is the Telecommunications Business Act (Act No. 86 of December 25, 1984) (the “Act”). Other key laws and regulations that apply to telecommunications include:

Telecommunications Business

- The Act;
- Cabinet Order for Enforcement of the Telecommunications Business Act (Cabinet Order No. 75 of 1985);
- Regulations for Enforcement of the Telecommunications Business Act (Ministerial Ordinance of MPT No. 25 of 1985); and

Wire Telecommunications

- Wire Telecommunications Act (Act No. 96 of 1953);
- Act for Enforcement of the Wire Telecommunications Act and the Telecommunications Business Act (Act No. 98 of 1953);
- Cabinet Order for Enforcement of the Wire Telecommunications Act (Cabinet Order No. 130 of 1953); and
- Rules for Enforcement of the Wire Telecommunications Act (Ministerial Ordinance of MPT No. 36 of 1953).

Radio

- Radio Act (Act No. 131 of 1950);
- Cabinet Order for Enforcement of the Radio Act (Cabinet Order No. 245 of 2001); and
Broadcast

- The Broadcast Act (Act No.132 of May 2, 1950);
- Cabinet Order for Enforcement of the Broadcast Act (Cabinet Order No. 163 of May 25, 1950); and

REGULATORY BODIES OR AUTHORITIES

Ministry of Internal Affairs and Communications (“MIC”)

Address: 1-2 Kasumigaseki 2-chome, Chiyoda-ku, Tokyo, Japan


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

Telecommunications Business

The Act regulates individuals and entities undertaking “Telecommunications Business”. The Act defines “Telecommunications Business” as follows:

“Telecommunications Business” means the business of providing “Telecommunications Services” (intermediating communications of others through the use of telecommunications facilities, or any other acts of providing telecommunications facilities for the use of communications by others) in order to meet the demands of others.

This definition does not require the individual or entity providing the services to establish their own telecommunications facilities (network). Therefore, even if a service is provided over another provider’s network, the individual or entity providing that service is subject to the same regulations.

Wire Telecommunications

The Wire Telecommunications Act regulates individuals or entities that install and own wire telecommunications facilities in Japan.

Radio

The Radio Act regulates individuals and entities that install and own radiation-emitting facilities in Japan.

Broadcast

The Broadcast Act regulates individuals and entities undertaking a broadcast-related business in Japan.

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

Telecommunications Business

Under the Act, individuals or entities operating a Telecommunications Business in Japan must either apply for registration with the MIC, or, in other cases, provide a notification to MIC of their operation of a Telecommunications Business. Whether a registration or notification is necessary depends on the scope and scale of the Telecommunications Business to be undertaken. Only entities owning (or in certain cases obtaining usage rights almost synonymous with ownership) large-scale telecommunications circuit facilities must register with the MIC.

Wire Telecommunications
Under the Wire Telecommunications Act, an individual or entity must send a notification to the MIC two weeks prior to the installation of wire telecommunications facilities.

Radio

It is a primary requirement under the Radio Act that an individual or entity installing radiation-emitting facilities in Japan must obtain a licence from the MIC (with some exceptions).

Broadcast

It is the primary requirement of the Broadcast Act that an individual or entity operating a Broadcasting business in Japan must either obtain a licence from MIC if operating a basic broadcasting business (broadcasting using radio waves of frequencies allocated either exclusively or preferentially to radio stations broadcasting pursuant to the Radio Act), or in certain situations, register with the MIC.

As a restriction on foreign investment, investment in a Japanese broadcast operator by a foreign individual or entity may require notification to the Ministry of Finance through the Bank of Japan within six months prior to the investment. The Ministry of Finance may recommend or order a termination or modification of the investment.

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

**General requirements**

In order to undertake continuous business activities in Japan, an entity must either appoint and register a representative residing in Japan or alternatively maintain a legal presence in Japan. This presence often takes the form of either a branch office of a foreign entity (with a representative holding a Japanese address) or a subsidiary entity in the form of a godo kaisha or kabushiki kaisha. This applies in all industries and is not dependent on whether telecommunications authorisation is required.

Generally speaking, a foreign telecommunications business operator is required to establish a branch office which operates telecommunications business in Japan, at a minimum. If legally required (as discussed below), a foreign telecommunications business operator is required to establish a subsidiary to operate specific telecommunications businesses in Japan.

The specific requirements for each telecommunications activity are as follows:

**Telecommunications Business**

The Act does not expressly require the business operator to have a permanent establishment in Japan in order to apply for registration or notification.

**Wire Telecommunications**

The Wire Telecommunications Act does not expressly require the business operator to have a permanent establishment in Japan in order to install wire telecommunications facilities in Japan.

**Radio**

The Wire Radio Act does not expressly require the business operator to have a permanent establishment in Japan in order to install radiation-emitting facilities in Japan.

**Broadcast**

The Broadcast Act requires basic broadcasting business operators to establish a business entity in Japan in order to obtain a licence (this would not apply if the business operator is only subject to registration). Additionally, the operation of basic broadcasting businesses in Japan is subject to certain restrictions on foreign investment under the Broadcast Act.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**
Under the Act, Telecommunications Business operators are required to agree to network interconnection with other operators when requested, unless the operator has a legitimate reason to refuse this, for pre-defined reasons specified under the Act.

Those Telecommunications Business operators that possess a large market share of the Telecommunication Business market are subject to detailed regulations (including the obligation to obtain approval from MIC or agreement to interconnection). However, in principle, roaming and interconnection services are not regulated under the Act, and are typically determined by agreement amongst operators.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

Some special regulations apply to the provision of Telecommunications Services in relation to consumer protection. The key regulations provide that:

(i) a Telecommunications Business operator must explain the terms of the services (including the associated service fees) to customers before agreeing to the contract;

(ii) a Telecommunication Business operator must without delay prepare and deliver agreements to customers after agreeing to the contract; and

(iii) customers may terminate the agreement within eight days of receiving the contract for any reason.

**REGULATORY TAXES AND FEES**

Telecommunication Business

Telecommunication Business Operators must pay a registration fee of JPY 150,000.

Wire Telecommunications

N/A

Radio

Business Operators must pay a registration fee ranging between JPY 30,000 to JPY 150,000.

Broadcast

Broadcast Operators must pay a registration fee of JPY 90,000.

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

The following fines (with equivalent limitations) applicable to a natural person will also apply to the legal entity if its representative/employee violates any of the relevant requirements under Japanese law.

Telecommunications Business

Operating a Telecommunications Business without the required registration will result in a fine of up to JPY 2,000,000 and/or imprisonment of up to three years. Operating a Telecommunications Business without submitting the required notification will result in a fine of up to JPY 500,000 or imprisonment of up to six months.

Wire Telecommunications

Installing a wire telecommunications facility without prior notification to the MIC will result in a fine of up to JPY 100,000.

Radio
Installing radiation-emitting facilities without obtaining the required licence will result in a fine of up to JPY 1,000,000 or imprisonment of up to one year.

**Broadcast**

The MIC may order a business operator to cease their broadcasting business upon breach of the Broadcast Act. Non-compliance with the cessation order or operation of a broadcasting business without the necessary licence will result in a fine of up to JPY 500,000 or imprisonment of up to six months.

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**KEY CONTACTS**

**Tomomi Fujikouge**  
Senior Associate  
T +81 3 4550 2817  
tomomi.fujikouge@dlapiper.com

**Naoto Kosuge**  
Associate  
T +81 3 4550 2823  
naoto.kosuge@dlapiper.com
KENYA

OVERVIEW OF LEGAL LANDSCAPE

All telecommunication service providers are required to obtain a licence from the Communications Authority of Kenya (CA).

The roles and responsibilities of the CA are codified in the Kenya Information and Communications Act (CAP 411A, Laws of Kenya) (“KICA”) together with various regulations and Policy Statements that are issued by the CA from time to time. The CA regulates the information and communication sector which broadly includes broadcasting, cyber security, electronic commerce, multimedia, telecommunications, courier, and postal services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecommunications sector in Kenya is the KICA. The KICA came into force on 1 October, 1998 and has undergone numerous amendments.

The CA, facilitates the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and e-commerce.

In addition, there are currently about 20 pieces of subsidiary legislation that have been enacted under the KICA since 2003. These include:

The Kenya Information and Communications (Dispute Resolution) Regulations, 2010

These Regulations empower the CA to determine any dispute arising between licensees, a consumer and a licensee, or where one or both parties is aggrieved by the conduct of the other and the parties have failed to reach an amicable resolution after due effort has been made.

The Kenya Information and Communications (Tariff) Regulations, 2010

These Regulations provide a framework for the determination of tariffs and tariff structures by:

1. ensuring that licensees maintain financial integrity and attract capital;
2. protecting the interests of investors, consumers and other stakeholders
3. providing market incentives for licensees to operate efficiently; and
4. promoting fair competition.

The Kenya Information and Communications (Compliance, Monitoring, Inspections and Enforcement) Regulations, 2010

These regulate the procedures for the enforcement and monitoring of compliance with regulations on radio communication, broadcasting, postal and courier services and telecommunication services.

The Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations, 2010

The main purpose of these Regulations is to provide a regulatory framework to promote fair competition and equal treatment in the communications sector and to protect against the abuse of market power or other anti-competitive practices within the communications sector. They also seek to:

1. Provide for the standards and procedures to be applied by the CA in determining whether particular conduct is anti-competitive.
2. Clarify the agreements, conduct or practices that the CA considers to be anti-competitive, and prohibited under the KICA.
3. Provide for the standards and processes that the CA shall apply when determining whether a telecommunication service provider is dominant in a given market.

The Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010

These Regulations apply to all interconnect licensees and interconnecting licensees, including the form and content of interconnection agreements, access and facilities. This is discussed in more detail in Interconnection and Roaming.

The Kenya Information and Communications (Consumer Protection) Regulations, 2010

These Regulations set out the rights and obligations that consumers are entitled to, as well as the safeguards that the licensed telecommunication service providers should put in place in order to protect consumer rights.

The Kenya Information and Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2010
These Regulations set out the procedures for the application and approval of equipment.

**The Kenya Information and Communications (Universal Access and Service) Regulations, 2010**

These Regulations provide a regulatory framework for the design and implementation of universal access and service provision, as well as a framework for the administration of the Universal Service Fund in Kenya.

**The Kenya Information and Communications (Licensing and Quality of Service) Regulations, 2010**

These Regulations enumerate the licensing and the quality of services by communication service providers.

**The Kenya Information and Communications (Electronic Certification and Domain Name administration) Regulations, 2010**

These regulate the licensing of electronic certification services and set out the responsibilities of certified service providers.

**The Kenya Information and Communications (Numbering) Regulations, 2010**

The object and purpose of these Regulations is to provide a regulatory framework for the control, planning, administration and management of the numbering and addressing of network services, national plan and applications services.

**The Kenya Information and Communications (Registration of SIM-Cards) Regulations, 2015**

These regulations are made pursuant to Section 27D of the KICA. These new regulations revoked the Kenya Information and Communications (Registration of Subscribers of Telecommunications Services) Regulations, 2012. The object of these Regulations is to provide a process for the registration of existing and new subscribers of telecommunication services provided by telecommunication licensees in Kenya.

**The Kenya Information and Communications (Postal and Courier Services) Regulations, 2010**

These regulations provide for a regulatory framework for the licensing of postal services providers and to set out their responsibilities.
The Kenya Information and Communications (Broadcasting) Regulations, 2009

These regulations provide a framework for broadcasting services in Kenya.

The Kenya Information and Communications (Radio Communications and Frequency Spectrum) Regulations, 2010

The purpose of these Regulations is to:-

1. promote and support the orderly development and efficient operation of radio communication systems and services to meet the country’s socio-economic, security and cultural needs;
2. ensure proper planning, utilization and management of the spectrum resource in accordance with the KICA, Government of Kenya Policy objectives, and international agreements;
3. promote the efficient use of frequency spectrum resource through the adoption of latest technical advances and efficient spectrum allocation and management technology based on operational requirements and technical viability; and
4. ensure the equitable and fair allocation and assignment of spectrum to benefit the maximum number of users.

The Kenya Information and Communications (Universal Access and Service) Regulations, 2010

These Regulations provide a framework for the design and implementation of universal access and service provision and for the administration of the Universal Service Fund in Kenya.

Policy guidelines are issued from time to time under the prerogative of the Cabinet Secretary who is currently responsible for Information Communication and Technology.

In March 2006, the Government released the Information and Communications Technology Sector Policy Guidelines (the ‘ICT Policy’). This ICT Policy is based on internationally accepted standards and best practices, particularly the Common Market for Eastern and Southern Africa (COMESA) Model adopted by the COMESA Council of Ministers in March 2003. It seeks to facilitate sustained economic growth and poverty reduction, promote social justice and equity, mainstream gender in national development, empower the youth and disadvantaged groups, stimulate investment and innovation in ICT and achieve universal access. It has specific policy objectives on information technology, broadcasting, telecommunications, postal services, radio frequency spectrum, universal access and institutional framework for policy implementation.

The 2006 ICT Policy was reviewed in June 2016 to align it with the New Constitutional dispensation in Kenya and Vision 2030.

The CA, where necessary, also issues guidelines for the ICT sector on the implementation of specific regulatory issues. The guidelines are usually issued after extensive deliberations with all industry players and other parties that have a stake in the issue in question. These guidelines include:
Guidelines for Supply, Installation and Maintenance of Internal Communication Infrastructure, 2012

The scope of these guidelines is that in a liberalised ICT environment, the CA expects fair competition to prevail among all network operators, vendors and contractors in the manufacturing, marketing, supply, installation and maintenance of telecommunications wiring, terminal equipment and accessories.

Guidelines for the Implementation and Provision of Voice over Internet Protocol (VoIP) Services

These guidelines define VoIP and provide for the technical implementation of VoIP and the obligations to infrastructure and application service providers.

Procedures and Guidelines for the Provision of Mobile Number Probability Services in Kenya

These procedures and guidelines were issued pursuant to, and form part of the Operator Licence Condition on 'Numbering and Number Portability'. They relate to those aspects of the Mobile Number Portability ordering process that:

- Involve exchanges between the operators via the Central Reference Database.
- Involve actions by one operator that have to be relied upon by another operator including but not limited to subscriber order validation process.

Lastly, the Code of Practice is a form of industry self-regulation (encouraging industry self-regulation). The CA has, in collaboration with stakeholders, developed a code of practice for the deployment of communications infrastructure, and is in the process of developing mechanisms for enforcing it.

Code of Practice for the Deployment of Communications Infrastructure in Kenya

The purpose of this Code is to deal with communication infrastructure and equipment with a particular emphasis on:

- Ensuring that in considering requests for various authorisations that are required for the installation of communication equipment, the various regulators and operators adopt a consistent approach;

- Setting up a framework to address legislative gaps that may exist in the applicable laws until they are otherwise addressed through appropriate review(s);
• Assuring the public that all precautions have been taken to ensure that operators and their agents and the health and safety of the public, operators and their agents are safeguarded with regard to communications installations;

• Spelling out the principles that will guide operators in the rollout of infrastructure;

• Addressing areas of concern to all regulators, operators and the general public;

• Assisting operators and other stakeholders to comply with the legal requirements governing the deployment of communications infrastructure;

• Setting out the minimum procedural requirements to be followed by operators in the rollout of their communications infrastructure;

• Spelling out the enforcement mechanism where there is non-compliance by an operator;

• Promoting good industry practices in the communications sector;

• Addressing reasonable consumer concerns and to build/win consumer confidence that the operators are sensitive to, as well as committing to address concerns that the consumers may have regarding the rollout of infrastructure.

National Cyber Security Management Framework

KICA mandates CA to develop a national cyber security management framework. In light of this, the government established the National Kenya Computer Incident Response Team – Coordination Centre (KE-CIRT/CC), which is responsible for the national coordination of cyber security as Kenya’s national point of contact on cyber security matters.

KE-CIRT/CC acts as an interface between local and international ICT services providers whose platforms are used to perpetrate cybercrimes, and the Judicial Law and Order Sector which investigates and prosecutes cybercrimes.

The functions of KE-CIRT/CC include:

• implementation of national cyber security policies, laws and regulations;
• cyber security awareness and capacity building;
• early warning and technical advisories on cyber threats;
• technical co-ordination and response to cyber incidents in collaboration with various actors locally and internationally;
• research and development in cyber security; and
• promoting and facilitating the efficient management of critical Internet resources.
REGULATORY BODIES OR AUTHORITIES

The Communications Authority of Kenya

Physical Address: CCK building, along Waiyaki Way, Nairobi

Postal Address: P.O. Box 14448, Nairobi 00800

Tel: +254 (20) 4242000 / 2441081-4

Mobile: +254 703 042 000 / +254 730 172 000

Email: info@ca.go.ke

Website: http://ca.go.ke/

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

The types of communication service providers for the purposes of the KICA are:

Telecommunications

A telecommunication service is defined in the KICA as including:

1. 'A service consisting of the conveyance by means of a telecommunication system of anything falling within subparagraphs (1) to (5) in the definition of 'telecommunication system'.

2. A service consisting of the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system.

3. A directory information service, being a service consisting of the provision by means of a telecommunication system of directory information for the purposes of facilitating the use of a service falling within subparagraph (1) above and provided by means of that system.'

The CA has in place a Unified Licensing Framework (ULF), which is technology and service neutral. The ULF market is structured into three main licences:

- Network Facility Operator
- Application Service Provider
- Content Service Provider

Radio communication

Radio communication is defined as:

'Emitting or receiving over paths which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of a frequency not exceeding three million megahertz being energy which either:

- Is capable of being transmitted through a telecommunication system, or
- Is used in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence or, motion of any object or objects of any class.'
OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Any person wishing to establish or use any of the above services must first obtain the requisite licence from the CAK. An entity may be issued with multiple commercial licences, provided that it maintains separate accounts for each licence. Depending on the user of the licence, a telecommunications company may be issued with a licence under any of the following categories:

1. National Network Facilities Providers Licences:
   - Tier 1 licence: country wide exclusive utilisation
   - Tier 2 licence: regional exclusive utilisation
   - Tier 3 licence administrative district exclusive utilisation

2. International Network Facilities Providers Licences:
   - Submarine Cable Landing Licence
   - International Gateway Licence

3. Non-Infrastructure Based Service Providers Licences:
   - Applications Service Providers Licence
   - Content Service Providers Licence

4. Terminal Equipment Providers:
   - Telecommunications Terminal Equipment Contractors Licence
   - Telecommunications Technical Personnel Licence

5. Private Very Small Aperture Terminals (VSAT) Licence:
   - VSAT Operated through Foreign Hub Operators Licence

6. One Time Authorisation:
   - GMPCS Landing Right’s Authorisation
   - Business Processes Outsourcing Licence
   - DOT Ke Subdomain Name Registrar Service Providers Licence

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

An application for any such licence must meet the following minimum requirements:

- The entity should be registered in Kenya as a company, sole proprietor or partnership
- Have a duly registered office and permanent premises in Kenya
- Provide details of shareholders and directors
- Issue at least 20% of its shares to Kenyans on or before the end of three (3) years after receiving a licence
• Provide evidence of compliance with tax requirements

The above prerequisites to acquiring licences that will facilitate commencement of a telecommunication business automatically lock out non-domiciled establishments.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection

The Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010 (the 'Interconnection Regulations') applies to all interconnection licensees and interconnecting licensees, including the form and content of interconnection agreements, access and facilities.

An interconnecting licensee has a right to choose its interconnection licensee to route its data traffic and calls towards customers of another licensee. An interconnection licensee on the other hand has the right and, when requested by an interconnecting licensee, an obligation, to negotiate the interconnection of its telecommunications system, facilities and equipment with the telecommunications system, facilities and equipment of the interconnecting licensee, in order to provide end-to-end connectivity and interoperability of services to all customers.

Parties to an interconnection agreement are required to negotiate in good faith and reasonably endeavour to resolve disputes relating to the form and subject of an interconnection agreement that may arise. The terms and conditions for interconnection of telecommunications networks should be based on the agreement reached between the parties to an interconnection agreement. A negotiating party to an interconnection agreement should not:

• Intentionally mislead the other party

• Coerce the other party into making an agreement that it would not otherwise have made or intentionally delay or obstruct negotiations

The interconnection agreement should be filed with the CA for approval at least 14 days prior to the date of its implementation. The CA may request information from the parties that it considers necessary to evaluate the terms and conditions and the charges therein, and request that the agreement be modified in such manner as it may determine.

Roaming

The Kenya Communications Regulations, 2001 (the 'Communication Regulations') define the term 'roaming services' as 'a type of telecommunications or radio communications service that enables subscribers of one mobile cellular communications system to utilise the facilities of another mobile radio communications system with which the subscriber has no direct pre-existing service or contractual relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call.'

Mobile cellular telecommunications licensees may enter into agreements to provide roaming services on a reciprocal basis to every other licensee of mobile cellular service that requests such service.

An agreement to provide roaming services shall, upon request, require a licensee to provide mobile cellular telecommunications to all subscribers of another licensee of a mobile cellular telecommunications system, including such subscribers that are located within any portion of the licensee's authorised geographic service area where facilities have been constructed and the provision of a service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The Kenya Information and Communications (Consumer Protection) Regulations 2010 (the 'Consumer Protection Regulations') primarily caters to the rights and obligations of customers of telecommunication services.

Under these regulations, a customer has the right to:
• Receive clear and complete information about rates, terms and conditions for available and proposed products and services

• Be charged only for the products and services that they subscribe to

• Where possible, select a service provider and service of the customer’s choice

• Personal privacy and protection against unauthorised use of personal information

• Accurate and understandable bills for products and services authorised by the customer, and to prompt fair redress in the event of a dispute in the provision of the products and services

• Protection from unfair trade practices, including false and misleading advertising and anti-competitive behaviour by licensees

• Ensure that all its customers can access operator assistance services; and

• Equal opportunity and access for customers in the same or at, substantially, the same tariff to the same type and quality of service available or appropriate technologies required to serve specific customers

Licensees on the other hand have an obligation to, *inter alia*:

• Establish a customer care system within which customers can make inquiries and complaints concerning its services

• Establish mechanisms that enable parents and legal guardians to restrict children from accessing harmful content and information

• Provide a clear and understandable description of available services, rates, terms, conditions and charges for such services and publish the information within such periods as determined by the CA

• Not monitor, disclose or allow any person to monitor or disclose, the content of any information of any subscriber transmitted through the licensed systems by listening, tapping, storing, or using other kinds of interception or surveillance methods for communications and related data

• Permit calls to international and national emergency numbers which are free of charge

**REGULATORY TAXES AND FEES**

The licence fees are determined based on the market segment to be serviced. A mobile operator is required to pay a licence application fee when making an application for a licence as a telecommunications service provider under the terms of the KICA. Apart from the initial licence fee application, a telecoms operator should also pay the CA an annual operating fee, an access fee for frequency spectrum and an annual spectrum fee.

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

The KICA and its associated regulations have numerous provisions with obligations on licensees. Below are some of the key sanctions/penalties arising from a breach of the KICA provisions:

**Telecommunication**

• The KICA forbids the provision of telecommunication services without a licence. Contravention of this section leads to conviction; to a fine not exceeding One Million Kenyan Shillings (KES 1,000,000) (approximately USD 9636.85), or imprisonment for a term not exceeding five years, or both.

• Under the KICA, any contravention of the general regulations for telecommunication services is an offence whereby offenders shall be liable on conviction to a fine not exceeding Three Hundred Thousand Kenyan Shillings (KES 300,000)
Failure by a telecommunications operator to obtain customer information and store it confidentially attracts a liability on conviction to a fine not exceeding Five Million Shillings (KES 5,000,000) (approximately USD 48184.25).

Under the KICA, any person who dishonestly facilitates or obtains a service provided by a person authorised under this Act to provide telecommunication services, with intent to avoid payment of any charge applicable to the provision of that service, commits an offence and shall be liable on conviction to a fine not exceeding One Million Kenyan Shillings (KES 1,000,000) (approximately USD 9636.85), or imprisonment for a term not exceeding five years or to both.

Under the KICA, any person who uses a licensed telecommunication system improperly to send a grossly offensive message or one that causes needless anxiety to another person commits an offence and is liable upon conviction to a fine not exceeding Fifty Thousand Kenyan Shillings (KES 50,000) (approximately. USD 481.84), or to imprisonment for a term not exceeding three months or to both. Please note: This provision has been declared unconstitutional and invalid by the High Court of Kenya in a recent case of Geoffrey Andare v Attorney General & 2 others [2016] eKLR for unjustifiably violating Article 33 and 50 (2) (n) of the Constitution of Kenya.

Under the KICA, a person who intentionally modifies or interferes with the contents of a message sent by means of that system commits an offence and shall be liable on conviction to a fine not exceeding Three Hundred Thousand Kenyan Shillings (KES 300,000) (approximately USD 2891.06), or to imprisonment for a term not exceeding three years, or to both.

Under the KICA, interception and disclosure of messages is an offence and the offender shall be liable on conviction to a fine not exceeding Three Hundred Thousand Kenyan Shillings (KES 300,000) (approximately USD 2891.06), or imprisonment for a term not exceeding three years, or to both.

A person who unlawfully tampers with a telecommunication plant with the intent to prevent, obstruct or delay transmission of any message commits an offence and is liable, on conviction to a fine of not less than Five Million Kenyan Shillings (KES 5,000,000) (approximately USD 48184.25) or to imprisonment for a term not less than ten years or to both.

A person who severs licensed telecommunication equipment with intent to steal commits an offence and is liable, on conviction, to a fine of not less than Five Million Kenyan Shillings (KES 5,000,000) (approximately USD 48184.25) or to imprisonment for a term of not less than 10 years or to both.

A person who operates an unlicensed telecommunication system is liable on conviction to a fine not exceeding One Million Shillings, (KES 1,000,000) (approximately USD 9636.85) or to imprisonment for a term not exceeding five years, or to both.

Radio Communication

Any person who establishes or uses radio communication status or apparatus without a valid licence from the CA commits an offence and is on conviction liable to a fine not exceeding Five Million Kenyan Shillings (KES 5,000,000) (approximately USD 54,945.05) or to imprisonment for a term not exceeding three years, or to both.

A person who contravenes Radio Communication Regulations is liable on conviction to a fine not exceeding One Million Shillings, (KES 1,000,000) (approximately USD 9636.85) or to imprisonment for a term not exceeding five years, or to both.
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

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

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 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

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 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

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

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.

**KEY CONTACTS**

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paul Allen</td>
<td>Partner, Head of IP and Technology</td>
<td>T +971 4 438 6100  <a href="mailto:paul.allen@dlapiper.com">paul.allen@dlapiper.com</a></td>
</tr>
<tr>
<td>Eamon Holley</td>
<td>Partner</td>
<td>T +971 4 438 6100  <a href="mailto:eamon.holley@dlapiper.com">eamon.holley@dlapiper.com</a></td>
</tr>
<tr>
<td>Rami Zayat</td>
<td>Legal Consultant</td>
<td>T +965 2291 5811  <a href="mailto:rami.zayat@dlapiper.com">rami.zayat@dlapiper.com</a></td>
</tr>
</tbody>
</table>
MAURITIUS

OVERVIEW OF LEGAL LANDSCAPE

Any information and communications network or service provider needs a licence from the Information and Communication Technologies Authority (ICTA) to operate in Mauritius.

The ICTA has been set up under the Information and Communication Technologies Act of 2001 (ICT Act) and is the regulator of the ICT and postal sectors in Mauritius.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The main primary legislation governing telecommunications in Mauritius is the ICT Act as amended, which repealed the Telecommunications Act of 1998.

In addition to the ICT Act, the following legislations may also impact the provision of communication services and the operation of communication networks:

- Data Protection Act 2017
- Computer Misuse and Cybercrime Act 2002

There are a number of regulations, guidelines, directives, reports and policy papers which have been made and published by the ICTA.

REGULATORY BODIES OR AUTHORITIES

The regulatory body in charge of the sector in Mauritius is the ICTA.

The main objectives of the ICTA are:

- To create a level playing field for all operators in the interest of consumers in general
- To license and regulate information and communication services
- To ensure that information and communication services, including telecommunication services, are reasonably accessible at an affordable cost nationwide and are supplied as efficiently and economically as practicable and at a performance standard that reasonably meets the social, educational, industrial, commercial and other needs of Mauritius
- To encourage the optimum use of information and communication technologies in business, industry and the country at large, the introduction of new technology and the investment in infrastructure and service
- To promote the efficiency and international competitiveness of Mauritius in the information and communication sector
• To further the advancement of technology, research and development relating to information and communication technologies through modern and effective infrastructure, taking into account the convergence of information technology, media, telecommunications and consumer electronics

• To advise the Minister on all matters relating to information and communication technologies and on matters relating to the ICTA generally

The statutory functions of the ICTA with respect to the telecoms sector include the following:

• Implementation of Government policy relating to the information and communication industry

• Provide economic and technical monitoring of the information and communication industry in accordance with recognised international standard practices, protocols and having regard to the convergence of technology

• Promote and maintain effective competition, fair and efficient market conduct between entities engaged in the information and communication industry in Mauritius and ensure that this Act is implemented with due regard to the public interest and so as to prevent any unfair or anti-competitive practices by licensees

• Advise and assist in the formulation of national policies with respect to the regulation of the information and communication industry

• Act internationally as the national regulatory body of Mauritius in respect of information and communication technology matters

• Take steps to regulate or curtail the harmful and illegal content on the Internet and other information and communication services

• Entertain complaints from consumers in relation to any information and communication service in Mauritius and, where necessary, refer them to the appropriate authorities

• Allocate frequencies and manage, review and, where appropriate, re-organise the frequency spectrum

• Determine the numbering system to be used for every information and communication service including telecommunications services, and manage, review, and, where appropriate, re-organise the numbering system

• Set up a radio frequency management unit for the allocation, monitoring, control and regulation of radio frequencies and, with the approval of the Minister, participate in any regional monitoring system

• Control the importation of any equipment capable of being used to intercept a message

• Manage the Universal Service Fund

• Determine, whether as conditions of licences or otherwise, universal service obligations and requirements

• Authorise or regulate the registration, administration and management of domain names for Mauritius

• Be the ‘Controller’ (ie the Controller of Certification Authorities)

ICTA

Address: Level 12, The Celicourt, 6, Sir Celicourt Antelme Street, Port Louis, Mauritius

Telephone: (+230) 211 5333

E-Mail: icta@intnet.mu

Website: www.icta.mu
TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

An 'information and communication network' is defined in the ICT Act as a network for the transmission of messages and includes a telecommunication network, whilst an 'information and communication service' is defined as any service involving the use of information and communication technologies including telecommunication services.

Considering the above, a licence from the ICTA is required for the following activities (which is not an exhaustive list):

- To own and provide network infrastructure facilities to service providers and not to the public
- To provide networking services for national traffic, such as the provision of bandwidth to service providers and not to the public
- To provide networking services for international traffic of Internet service providers and Internet telephony service providers, such as the provision of bandwidth to Internet service providers and Internet telephony service providers and not to the public
- To establish and operate a Public Switched (fixed) Telephone Network (PSTN) and service to the public
- To establish and operate a Public Land Mobile Network (PLMN) and service to the public
- To establish and operate an International Long Distance (ILD) network and service to the public
- To provide Internet services to the public
- To use spectrum
- To sell, expose or offer for sale or hire a radio communication or telecommunication apparatus or device

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

A person cannot operate an information and communication network or service including telecommunication network or service without a licence from the ICTA.

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

The laws do not provide for any domicile restrictions preventing the operation of telecom activities by non-domiciled entities. However, the operator must be incorporated in Mauritius even if the entity operator is wholly owned by foreign shareholders.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Every network licensee or public operator must grant access to its network to others. A licensee may make a written application to a network licensee for access to its network with a copy of its own application submitted to the ICTA.

Either party to the proposed agreement may request the ICTA to assign a representative to attend, and assist in the negotiations.

Where the parties to a proposed interconnection agreement are unable to agree on the terms within 60 days from the date of an application, either party may request the ICTA to act as an arbitrator in the matter.

Each party to an interconnection agreement must supply to the ICTA:

- A copy of the agreement, and of any amendment to it, within 14 days of the execution of the agreement, or amendment, as the case may be
Such information relating to the interconnection agreement as the ICTA may require

It is to be noted that tariffs are not subject to the prior approval of the regulator. However, an operator cannot demand a person pay off a tariff unless such tariff has been submitted to the regulator.

If the operator has significant market power, the regulator may require the operator to provide such information as it considers necessary. Upon receipt of the additional information, the regulator determines whether to allow, disallow, amend or alter the tariff submitted.

If the ICTA disallows or amends a tariff or alteration, it must communicate, in writing, the reasons for its decision to the public operator.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

No such difference exists under applicable laws in Mauritius.

**REGULATORY TAXES AND FEES**

The licensing fees are specified in the Information and Communication Technologies (Licensing and Fees) Regulations 2003.

For example, the initial fee and annual fee payable by a Network Infrastructure Provider is MUR 100,000 and 50,000, respectively. For the provision of internet services, there is only an annual fee of MUR 50,000 which is payable. The fees payable for other telecommunication services are specified in the Information and Communication Technologies (Licensing and Fees) Regulations 2003.

It is to be noted that since 15 January 2012, a levy of 10 cents per message is payable by every operator on every message that is sent. A message that is not originally sent by the operator is not taken into account when calculating the total messages sent.

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

Any person who commits an offence under the ICT Act, will, on conviction, be liable to a fine not exceeding MUR 1,000,000 and to imprisonment for a term not exceeding five years.

Examples of offences created under the ICT Act include the following:

- Using an information and communication service, including telecommunication service for the transmission or reception of a message which is grossly offensive, or of an indecent, obscene or menacing character
- Using an information and communication service, including telecommunication service for the purpose of causing annoyance, inconvenience or needless anxiety to any person
- Establishing, maintaining or operating a network or service without a licence or in breach of the terms or conditions of a licence
- Without prior approval of the ICTA, importing any equipment capable of intercepting a message

Before a person is convicted of an offence, in addition to any penalty imposed above, the Court can order:

- The forfeiture of any installation or apparatus used in connection with the offence
- The cancellation of the licence held by the person convicted
- That the person convicted shall not be issued with a licence for such period as the Court thinks fit
- That a service provided to a person convicted of an offence shall be suspended for such period as the Court thinks fit
KEY CONTACTS

Arvin Halkhoree
Senior Associate - Barrister
Juristconsult Chambers
T +230 208 465 00 20
ahalkhoree@juristconsult.com
OVERVIEW OF LEGAL LANDSCAPE

Telecommunications is a regulated practice in Mexico.

In 2013, several provisions of the Mexican Constitution were amended in connection with a major telecommunications reform, which spirit was to enhance competition in the telecommunications and broadcasting sectors, since both markets had been historically highly concentrated and therefore the main amendments to the Constitution and subsequently, to the secondary legislation, were aimed to achieve said spirit.

The abovementioned reform created the Federal Institute of Telecommunications (Instituto Federal de Telecomunicaciones) (“IFT” by its acronym in Spanish), as a governmental agency with constitutional autonomy, responsible for regulating the telecommunications and broadcasting sectors.

The authority of the IFT was significantly increased compared to that of its predecessor (the Federal Telecommunications Commission (Comisión Federal de Telecomunicaciones)), and it was invested not only with all the required faculties as regulator of the sector, but also with authority to be the competition agency in the telecommunication and broadcasting sectors and hence, to enforce the provisions of the Mexican Antitrust Law in such sectors and to regulate in an asymmetrical manner the dominant firms in the relevant markets.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Primary Telecom Legislation

The primary legislation governing telecommunications is the Federal Telecommunications and Broadcasting Law (Ley Federal de Telecomunicaciones y Radiodifusión) (the “Law”).

Regulatory Framework

In order to fully implement the constitutional reform, significant amendments to the secondary legislation were required.

The legal framework applicable covers all activities related to telecommunication services offered and/or commercialized in the country.

The following link provides a complete list of all regulatory framework applicable:

REGULATORY BODIES OR AUTHORITIES

The IFT Plenary is formed by seven Commissioners, including its President. It is the governing body of the Institute.
Its main functions are to plan, formulate and conduct policies and programs and regulate the development of telecommunications and broadcasting activities in Mexico.

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

**Telecom Legal Definition**

Any emission, transmission or reception of signs, signals, data, writings, images, voice, sounds or information of any nature made by wire, radio, optical, physical or other electromagnetic means, excluding broadcasting.

**Classification of Telecom Services**

Telecom services are considered to be of public interest and provided by concessionaires to the public in general. They are classified based on their purpose, which may be commercial, public or social.

**Telecom Activities Regulated by IFT**

Additional activities derived from the above services may be agreed between concessionaires. These activities include, among other:

- Wholesale: access to individual elements, to network or services capacity, including interconnection services, used by concessionaires or marketers to provide telecom services to final users.
- Interconnection: provided among concessionaires of telecom services to carry out interconnection between their networks.
- Restricted Audio and TV: provided to subscribers through public telecom networks, upon entering certain agreement and the periodic payment of a prefixed amount.
- Visitor User: users from a public telecom network may generate or receive voice or data communications through the access of another concessionaire’s (of a public network for local mobile service) infrastructure without the need of any additional procedure.

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

IFT grants the right to provide all kind of public telecom services (or broadcasting), as well as to develop the telecom activities listed in article 170 of the Law.

**Concessions to provide public telecom services**

- Unique concession for commercial use[1]: confers to its holder the right to provide in a convergent manner, all kind of public telecommunication and broadcasting services.
- Concession for radio spectrum or orbital resources: to use and exploit frequency bands. All concessions to use and exploit frequency bands are granted through an auctioning process.

IFT also grants authorizations[2] to companies that are not concessionaires in order to:

- Establish and operate or exploit a telecom services provider; and
- Develop and exploit certain telecom activities such as internet services or reception of foreign satellites providing services in national territory.

The license required to carry out a telecom activity (concession or authorization) may vary and shall be analyzed on a case to case basis.

**DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES**
Concessions: domicile in national territory is required.

Authorizations: domicile provided may be abroad for activities of reception of foreign satellites providing services in national territory

Telecommunications sector allows foreign investment participation up to 100%.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Concessionaires operating public telecommunication networks shall provide interconnection to their networks to any other concessionaire that requests it and, for said purposes, subscribe an agreement within the sixty (60) days following the date in which the relevant request is submitted.

To that effect, in accordance with the provisions set forth in article 137 of the Law:

- on December 18, 2014 the IFT published in the Mexican Official Gazette the Resolution through which the IFT issued the methodology to calculate the interconnection costs pursuant to the Law (“Acuerdo mediante el cual el Pleno del Instituto Federal de Telecomunicaciones emite la metodología para el cálculo de costos de interconexión de conformidad con la Ley Federal de Telecomunicaciones y Radiodifusión”);
- on December 29, 2014 the IFT published in the Mexican Official Gazette the Resolution through which the IFT established the Electronic System of Interconnection Requests (“ACUERDO mediante el cual el Pleno del Instituto Federal de Telecomunicaciones establece el Sistema Electrónico de Solicitudes de Interconexión”); and
- on October 3, 2016 the IFT published in the Mexican Official Gazette the first Resolution through which the IFT points out the minimum technical conditions for interconnection between concessionaires that operate public telecommunication networks and determines the interconnection rates resulting from the calculation methodology for interconnection costs. This resolution is annually reviewed and approved by the IFT and published in the Mexican Official Gazette during the last quarter of the relevant year. The resolution applicable to the minimum requirements for interconnection for 2019 was published in the Mexican Official Gazette on November 13, 2018.

The general principle applicable to the approval and publication of the minimum requirements for interconnection is to avoid that resolutions regarding disagreements between concessionaires are carried out on a case by case basis. Thus, in the event that concessionaires fail to reach an agreement, the IFT will promptly apply the provisions contained in the referred resolution, unless the conflict is related to matters that are not covered therein. In this sense, the interconnection rates established by the IFT based on the cost model for network interconnection and reviewed annually shall be applicable in case of disagreements between networks operators.

Likewise, “unswitched” interconnection rates have been established by IFT which shall be used to resolve interconnection disagreements between operators. These rates offer a larger variety of options since they depend on the location and type of co-location or haul.

In addition to the foregoing, there are certain additional regulations applicable to economic agents with substantial power in order to promote free competition in the telecom sector.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

- Mexican Constitution (Article 6) guarantees the right of access to information and communications technology, as well as to the telecom and broadcasting services, including internet by establishing the basis, principles and main aspects that shall be included in the Law, as well as the mechanisms to ensure the protection of this right.
- The Law (Articles 191 to 203) provides the rights of consumers and the mechanisms for protection to said rights before the Federal Office of Consumer Protection (Procuraduría Federal de Protección al Consumidor (PROFECO)). These provisions promote the access of users (including disabled users) to all public telecom services under the principles of free competition, quality, plurality, global coverage, interconnection, convergence, continuity, free access and no unlawful interferences.
- According to NOM 184 (Mexican Standard for Telecommunications Consumers), telecommunications service providers are required to obtain PROFECO’s approval of the contract model they sign with their clients.
REGULATORY TAXES AND FEES

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

Companies in Mexico shall pay an income tax rate of 30% of the result obtained in the relevant fiscal year; incomes may be subject to preferential tax regimes depending on the relevant circumstances and certain legal provisions.

Main Taxes and Fees Levied Over Telecom Activities

- Public telecom services are subject to:
  - Value Added Tax (Impuesto sobre el Valor Agregado (IVA)) equivalent to 16%; and
  - Excise Tax on Production and Services (Impuesto Especial sobre Producción y Servicios (IEPS)) equivalent to 3%.
  Data transmission services (internet) are exempted from this tax.
- Telecom service for social purpose: exempted from paying taxes.

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

- Warnings
- Economic fines: from 0.01% up to 10% of annual revenues of the concessionaire or authorized depending on the seriousness of the contravention; up to double in case of recidivism.
- Cancellation of the concession of authorization granted and prohibition to obtain a new one.
- Economic and material sanctions to Telecom Services providers or to individuals causing damage to means of communication used for the provision of telecom and broadcasting services.

KEY CONTACTS

Eduardo Gallástegui Armella
Managing Partner
T +52 55 5261 1807
eduardo.gallastegui@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

The Omani Telecommunications Regulatory Authority (TRA) exercises jurisdiction over this sector.

The TRA, in conjunction with the Ministry of Transport and Communications, has the primary responsibility for approving applications for telecommunications licences. Generally speaking, it is a requirement that a telecommunications service provider hold a licence to provide telecommunications services.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Royal Decree No. 30 of 2002 promulgating the Telecommunications Regulation Law and its associated amendments (Telecoms Law) is the primary legislation governing the telecommunications sector in Oman and establishing the TRA. The Telecoms Law imposed a duty on the TRA to issue Executive Regulations which explain and elaborate on the policies set out in the Telecoms Law.

Ministerial Resolution No. 10 of 2007 issuing the Executive Regulation covers the following points:

- Procedures required to obtain a telecoms licence
- The review process for submitted applications
- Issuance of technical specifications
- Rules governing type approval of telecom equipment
- Rules governing the usage of telecommunications services

The remainder of the regulatory framework can be found on the TRA website and include the following:

- Regulations and Decisions including on:
  - The National Numbering Plan
  - Access and Utilisation of Passive Infrastructure
  - Ex Ante and Ex Post Regulations
  - Universal Service Implementation
  - Domain Names
  - VoIP
• **Guidelines**: rules and advisory documents which are issued on an ad hoc basis, directed at the operators of Class I, Class II and Class III licences, including:
  
  ○ Tariff Transparency
  
  ○ Billing Accuracy
  
  ○ Site Sharing
  
  ○ Tariff Rebalancing
  
  ○ International Roaming
  
  ○ Access Deficit Contribution
  
• **Determinations**: issued to resolve disputes which parties have not been able to resolve themselves

**REGULATORY BODIES OR AUTHORITIES**

The Telecommunications Regulatory Authority (TRA) is a financially and administratively independent body.

The Telecoms Law establishes the TRA’s basic aims which include:

• Ensuring the provision of telecommunications services throughout Oman at reasonable prices

• Encouraging the use of telecoms services with the aim of facilitating access to global markets and information, encouraging visible and non-visible exports

• Ensuring optimal use of frequency

• Safeguarding the interests of beneficiaries and dealers regarding the prices of equipment, quality and efficiency of telecommunication services

• Preparing suitable conditions for competition between licensees

**Telecommunications Regulatory Authority**

Address: P.O. Box 3555, P.C. 111, Muscat, Sultanate of Oman

Website: [www.tra.gov.om](http://www.tra.gov.om)

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

A licence is required in order to 'establish, operate, or manage':

• 'A system that permits the conveyance of signals or symbols or signs or texts or visual and non-visual images or sound or data or information of any nature between defined terminal points by wire or radio or optical and other electromagnetic or electronic means'

• 'Telecommunications systems or a group of integrated systems including the necessary infrastructure that permits telecommunication between and among defined network termination points including means to access the World Wide Web'

• 'Services through which telecommunications are conveyed in whole or in part regardless of the systems or means used'

• 'Specified radio frequencies'
OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

The regulatory regime provides for three main types of licence:

- **Class I licence**: Permits licensees to establish or operate a public telecommunications network or international telecommunications infrastructure, and/or offer public telecommunications services or international access services. This licence type is issued by Royal Decree following a proposal by the Minister of Transport and Communications after approval by the TRA. The Decree will determine the duration of the licence and will detail the terms and conditions under which the licensee must operate. According to the Law, these licences may not be exclusive. Class I licences include fixed, mobile and international gateway services licences.

- **Class II licence**: This class of licence is issued to those operators providing public telecommunications services which rely upon a Class I licence network capacity. In addition, licensees holding a Class II licence may provide 'additional, or value added, public telecommunications services which make use of numbering resources'. Class II licences are issued pursuant to a Ministerial Decision from the Minister of Transport and Communications based on an approved proposal by the TRA. According to the Law, the licence duration may not exceed 10 years but may be renewed upon application.

- **Class III licence**: Issued by the TRA to operators of private telecommunications services (not connected to the public network) who meet the requisite qualifying criteria (as set by the TRA). According to the Law, the licence duration may not exceed five years but may be renewed upon application.

The TRA also issues licences for the use of telecoms radio frequency and for the operation of radio stations and radio equipment.

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

There are no express domicile restrictions or requirements for the application of a licence.

However, foreign nationals and foreign companies may not conduct business activities in any sector of the Omani economy or participate in an Omani company without obtaining a licence to do so from the Ministry of Commerce and Industry. Such a licence is only granted once certain requirements have been met.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Telecoms Law provides licensees with a right to interconnect and share sites. Parties must seek to negotiate these agreements. If such negotiations do not result in an agreement within three months then the parties may seek the intervention of the TRA.

Dominant operators must issue a Reference Interconnection Offer (RIO), and the TRA may choose to approve or amend the RIO.

Terms and conditions must be reasonable and non-discriminatory, and be in accordance with the Executive Regulation.

The Executive Regulation details the TRA’s Interconnection Principles, and outlines the required content of a RIO and pricing principles.

In 2012, the TRA issued regulations for ex-ante provisions ‘to ensure fair competition in the telecom market’, and a regulation regarding ex-post enforcement and guidelines was issued in 2013. These are contained in TRA Decisions 69 of 2012 and 70 of 2013 respectively.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TRA has issued Consumer Guidelines outlining its powers, and its complaints and investigation process. The Omani Consumer Rights Law also states that ‘the Consumer shall have the right to obtain correct information about the good he buys or
uses or the service he receives'. Therefore, with regard to telecommunications services, the following should be 'clearly indicated':

- Price
- Characteristics
- After sales services

**REGULATORY TAXES AND FEES**

Once an entity obtains a licence as required by the Telecoms Law, it will be required to pay the prescribed licence fee as set by the TRA.

Although it is often considered a 'tax free' jurisdiction, Oman has a number of taxes that apply to corporations.

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

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**

Any person who establishes, operates, assists or incites another to establish or operate a telecommunications system or offer a service without a licence, or who uses non-type approved equipment is liable to a criminal punishment of imprisonment of up to two years or a fine of up to OMR 50,000 or both.

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

The TRA is given discretion by the Telecoms Law to take any one or more of the following actions 'according to the size of the violation':

- Suspend the licence granted to the licensee for three months
- Remedy the violation at the expense of the violator
- Reduce the licensed services of the licensee by one service per violation
- Reduce the licence duration for a period not exceeding half of the licence period
- Collect a financial fine of not more than OMR 1,000,000 for each violation
- Take custody of the seized equipment, devices, and instruments and hold them until the dispute is settled by a final court order
- Cancel the licence

The Telecoms Law also provides that: 'The fine shall be doubled in case of repetition or the violator pays up to two times the value of the damage, whichever is higher'.

However, any party concerned may request for the TRA to review any decision within one month of the decision being handed down if any new information which was not originally considered becomes available. A verdict on such a request must be made within 30 working days of the request being submitted, and any rejection by the TRA requires a justification. If no reply is given by the TRA within the 30 working day period, the lack of reply will constitute a rejection of the request.
KEY CONTACTS

Paul Allen
Partner, Head of Intellectual Property and Technology
DLA Piper Middle East LLP
T +971 4 438 6100
paul.allen@dlapiper.com

Eamon Holley
Partner
DLA Piper Middle East LLP
T +971 4 438 6100
eamon.holley@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

Currently, only two licensees provide both fixed and mobile telecommunications services in Qatar. They are Vodafone Qatar and Ooredoo (formerly QTel).

Additionally, the Qatari Government has incorporated the Qatar National Broadband Network, which was developed in order to provide passive access network infrastructure to these licensees.

Until 2014, Qatar’s telecoms sector was regulated by Supreme Council for Information and Communications Technology (ictQatar), which was part of the now Ministry of Transport and Communications.

Through various amendments and restructures of the regulatory framework in 2014, the Communications Regulatory Authority (CRA) was established as an independent regulator, and has taken over the role of ictQatar. Therefore references to ictQatar in the applicable regulatory framework (below) are now taken to refer to the CRA.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key telecoms statutes include:

Decree Law No. (34) of 2006 on the promulgation of the Telecommunications Law ('Telecoms Law')

This contains provisions relating to telecommunications licences, radio spectrum management, controls on interconnection and access agreements, dominant service providers, service tariffs, numbers and numbering, competition policy, consumer protection and property access, as well as the objectives and powers of the Supreme Council of Information and Communication Technology (ictQATAR). The Telecoms Law can be found here.

Emiri Decision No. (42) of 2014 establishing the Communications Regulatory Authority of Qatar

This is the instrument by which the CRA (successor to ictQatar’s regulatory arm) was established, and it covers, amongst other things, the CRA’s objectives and powers functions and management responsibilities, and financial resources.

Executive By-Law No.1 of 2009 for the Telecommunications Law ('Bylaws')

This supplements the Telecoms Laws, and includes provisions regulating the telecommunications sector.

Regulatory documents

ictQATAR, and more recently the CRA, have also published a number of regulatory documents. These include, for example, the recently published Competition Framework, Market Definition and Dominance Designation, and Consumer Protection Policy.
which contains principles and rules relating to monitoring and enforcing service provider’s compliance with fair competition and dispute resolution processes. These, and other regulations, can be found on the CRA website here.

**REGULATORY BODIES OR AUTHORITIES**

**CRA**

The CRA regulates the telecommunications and information technology, postal services and access to digital media sectors.

Address:
The Communications Regulatory Authority
Al Nasr Tower B
Corniche
PO Box 23404
Doha, Qatar

http://cra.gov.qa/en

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

The types of telecommunications activities which are subject to legal and regulatory requirements include but are not limited to:

- The provision of telecommunications services to the public in return for a fee
- Ownership or operation of a telecommunications network used for the provision of telecommunications services to or for the public in return for a fee
- Ownership or operation of any other telecommunications network

In addition, a person who wishes to import telecoms equipment to Qatar must be registered with the CRA and may need to obtain an import authorisation license, type approval and a customs clearance certificate from the CRA.

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

A licence is required from the CRA to engage in:

- The provision of telecommunications services to the public in return for a fee
- Ownership or operation of a telecommunications network used for the provision of telecommunications services to or for the public in return for a fee
- Ownership or operation of any other telecommunications network

Telecommunications licences can be individual licences or class licences. Individual licences are for mobile and fixed services, VSAT and public satellite services. Class licences exist for short range devices, telecommunications service on-board aircraft, and private networks.

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

The CRA requires that companies wishing to hold licences should be registered in Qatar.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**
The Telecoms Law and Bylaws contain provisions relating to interconnection and access, negotiations/requests between/by service providers to reach interconnection agreements and related objectives, and provides for a binding resolution by the General Secretariat in the event that an agreement cannot be reached (see, for example, ‘Determination on Interconnection Charges between Vodafone & Qtel’ issued in February 2009, and available here).

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The Telecoms Law provides for the preparation, development and implementation of a consumer protection policy and the setting of rules regulating the same. In addition, the Telecoms Laws prescribe certain ‘fair dealing practices’, including requiring the service provider to provide the consumer, before the consumer subscribes to the service or incurs any commercial obligations to the service provider, with the terms of the service and any other terms and conditions and all tariffs, rates and costs applicable to any telecommunications service. These rules have been supplemented by a number of regulatory documents that the CRA have issued, and available here.

The Service provider may not charge a consumer except for the service fee relating to telecommunications services or telecommunications equipment ordered by the consumer. The consumer cannot be liable for any service or equipment relating to telecommunications that has not been ordered. There are also additional protections relating to the protection of customer/consumer information.

The Bylaws overlap and supplement the consumer protection provisions in the Telecoms Law. Additional provisions in the Bylaws include, for example, requirements relating to the provision, accuracy and format of invoicing, record keeping, and the avoidance of certain misleading practices/claims to consumers.

**REGULATORY TAXES AND FEES**

The CRA determines licence fees, any other fees, remuneration or charges. In addition, corporate taxes on taxable income and withholding taxes apply in Qatar.

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

The Telecoms Laws list a number of offences and associated penalties. For example, providing a telecommunications service without a licence is punishable by imprisonment of up to one year and a fine of up to QAR 1,000,000.

**KEY CONTACTS**

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<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Contact Details</th>
</tr>
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<tbody>
<tr>
<td>Paul Allen</td>
<td>Partner, Head of Intellectual Property and Technology</td>
<td>+971 4 438 6100, <a href="mailto:paul.allen@dlapiper.com">paul.allen@dlapiper.com</a></td>
</tr>
<tr>
<td>Eamon Holley</td>
<td>Partner</td>
<td>+971 4 438 6100, <a href="mailto:eamon.holley@dlapiper.com">eamon.holley@dlapiper.com</a></td>
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RUSSIA

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 AUTHORISATIONS 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 (ie 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 (eg 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
SAUDI ARABIA

OVERVIEW OF LEGAL LANDSCAPE

The Kingdom of Saudi Arabia (KSA) has a tightly regulated telecommunications market.

Broadly speaking, it is a requirement that a locally incorporated company must hold a licence to provide public telecommunications services.

Currently, there are two fixed and three mobile service providers in the KSA, and these service providers have been issued with Individual Licences. There are a number of other licensees that provide specialised services under class licences, including ISPs that operate a network.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Key telecoms statutes include:

The Telecommunications Act (the ‘Act’)

Issued under the Council of Ministers Resolution No. (74), dated 05/03/1422H (corresponding to 27/05/2001),(as amended by the Council of Ministers Resolution No (121), dated 21/02/1440H (corresponding to 01/11/2018) , and it was approved pursuant to the Royal Decree No. (M/12), dated 12/03/1422H (corresponding to 03/06/2001).

The Act came into force in June 2001, and provides a legal foundation for developing the telecommunications sector whilst also including a number of objectives pursuant to which the telecommunications sector is to be regulated.

The CITC Ordinance (‘Ordinance’) 

Issued pursuant to the Council of Ministers Resolution No. (74), dated 05/03/1422H (corresponding to 27/05/2001), and it was amended pursuant to the Council of Ministers Resolution No. (123), dated 21/05/1424H (corresponding to 21/07/2003) and the Council of Ministers Resolution No. (120), dated 21/02/1440H (corresponding to 01/11/2018).

The Ordinance came into force in June 2001, and is the instrument by which the Communications and Information Technology Commission (CITC) was established. It covers, amongst other things, the CITC’s responsibilities, board composition and membership, governance and sources of finance.

The Telecommunications Bylaws (‘Bylaws’)

Under the provisions of Article 40 of the Act, the Bylaws were issued by the Ministerial Resolution No. (11), dated 17/05/1423H (corresponding to 27/07/2002).

The Bylaws came into force in July 2002. They supplement the Act and include provisions by which the telecommunications sector
is regulated.

**Regulatory instruments**

The CITC has also issued a number of more specific technical and regulatory instruments, including, for example, quality of service regulations, numbering, equipment approval and licensing instruments.

**REGULATORY BODIES OR AUTHORITIES**

**The CITC**

The CITC regulates the telecommunications sector in the KSA.

The CITC’s contact details and address in Riyadh are:

Address: P.O Box 75606 - Riyadh 11588 Kingdom of Saudi Arabia

Phone: 0114618000

Int’l. phone: 00966114618000

Fax: 0114618120

Int’l. Fax: 00966114618120

Website: [http://www.citc.gov.sa/](http://www.citc.gov.sa/)

The Ordinance lists a number of activities which the CITC is required to undertake, including, amongst other things, the issuing of licences in accordance with the Act, Bylaws and Ordinance, and implementation of approved polices, plans and programs for the development of the telecommunications sector.

**The Ministry of Communications and Information Technology ("Ministry")**

The Ministry is required by the Act to undertake a number of activities, including, amongst other things, the making of general policies, plans and development programs for the telecommunications sector, and representing the KSA in domestic, regional and international bodies in the telecommunications sector. Appeals against the decisions of the CITC, in the first instance, can be made to the Minister of Communications and Information Technology.

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

The Act defines Telecommunications Services as the conveying and routing of signals in whole or in parts over the public telecommunications networks, including TV and Radio Transmission and Internet Services.

The By Laws state that a licence is required in order to provide a telecommunications service to the public, or to operate a telecommunications network used to provide a telecommunications service to the public.

Private internal telecommunications networks with limited capacity for the interconnection between the parts of one facility (such as hospitals, residential compounds and hotels) do not require a licence. Such networks cannot be interconnected with a public telecommunications network without CITC approval.

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

The CITC has currently limited the number of fixed, mobile and MVNO licences available.

However, other types of class licences are available. These include ISP, VSAT, GMPCS, Call Centres, On-board Aircraft services,
IVL, e-wallets - the full list can be found on CITC’s website.

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

The Act provides that fixed and mobile telecommunications services shall only be provided through joint stock that places their stock for public subscription. The licence for these services is subject to Council of Ministers’ approval.

The CITC appears to require that all licensees are registered entities within Saudi Arabia.

Certain licences, such as the IVL and NOC licence, require that the licensee maintains equipment within the Kingdom.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Act and Bylaws contain provisions relating to interconnection agreements, and the CITC has also issued dedicated interconnection regulations.

‘Dominant’ service providers must generally submit copies of interconnection agreements to the CITC, and must provide to the CITC, at such time or times as the CITC prescribes, a report on its interconnection arrangements, which must satisfy certain requirements. The CITC may require non-compliant interconnection agreements to be amended.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The CITC approved terms and conditions for fixed, mobile and data services can be found on CITC’s website.

REGULATORY TAXES AND FEES

Initial and annual licence fees for various licences can be found here.

Generally, telecoms licence fees are paid in favour of the General Treasury. Other fees may be payable to various Saudi Government bodies, depending upon what form of entity is established to hold the licence.

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

The Act and the Bylaws do not specify fines or penalties for breaches of specific provisions. Violations of the Act and Bylaws are to be referred by the CITC to a Violations Committee (nominated by the CITC Governor and approved by its board), which will assess violations on a case by case basis and determine an appropriate penalty that is proportionate to the gravity of the violation and the circumstances. The Violations Committee is required to issue reasoned decisions in writing.

KEY CONTACTS

Paul Allen
Partner, Head of Intellectual Property and Technology
DLA Piper Middle East LLP
T +971 4 438 6100
paul.allen@dlapiper.com

Eamon Holley
Partner
DLA Piper Middle East LLP
T +971 4 438 6100
eamon.holley@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

With effect from 1 October 2016, the regulatory landscape changed with the restructuring of the Info-communication Development Authority of Singapore (IDA) and the Media Development Authority of Singapore (MDA) to form the Info-communications Media Development Authority of Singapore (IMDA). The IMDA - alongside accompanying telecommunications legislation and regulation - aims to pave the way for a pro-consumer and pro-business telecommunications environment within Singapore.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Info-Communications Media Development Authority Act (No. 22 of 2016) is an Act that establishes and incorporates the IMDA, to provide for its functions and powers, and for connected matters. It deals with matters that include:

- the establishment, incorporation and constitution of IMDA
- the functions, duties and powers of IMDA
- the staff, finances and assets of IMDA

Additionally, subsidiary legislation under the Info-Communications Media Development Authority Act can be found here.

The Telecommunications Act (Cap. 323) is an Act that aims to provide for the operation and provision of telecommunication systems and services in Singapore. It deals with matters that include:

- the licencing of telecoms systems and services and the granting of spectrum rights
- the erection, maintenance and repair of telecom installations
- IMDA’s powers to issue codes of practice, standards of performance, directions and advisory guidelines relating to telecom systems and services
- telecom cable detection work
- ownership and management controls over designated telecom Licencess
- offences and penalties relating to telecom systems and services

Subsidiary legislation under the Telecommunications Act can be found here.

In addition, the IMDA also regulates the provision of postal services and postal systems. While these are typically not categorized as telecommunications, postal and telecommunications services do fall under the same wider category of communications services.

REGULATORY BODIES OR AUTHORITIES

Infocomm Media Development Authority of Singapore (IMDA)

Address: 10 Pasir Panjang Road #03-01, Mapletree Business City. Singapore 117438
TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

Broadly speaking, a telecommunication service is any service for telecommunications but excludes any broadcasting service. A telecommunication system means any system used or intended to be used for telecommunications, including any such system capable of being used for the operation of any broadcasting service. Any person who operates a network or provides a telecommunication service in Singapore must be licensed and will be regulated by the IMDA. This includes, but is not limited to facilities-based operators, service-based operators, any parties who establish Very Small Aperture Terminal (VSAT) networks, radio-communications stations operators and any parties who works on telecommunication cable detection works.

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

The Info-communication Media Development Authority has the exclusive privilege for the operation and provision of telecommunication systems and services in Singapore. Under the Telecommunications Act, the IMDA has authority to license telecommunication systems and services.

There are various licences regulated by IMDA, including but not limited to the following:

- Facilities Based Operators (FBO) licences for holders that intend to deploy telecoms infrastructure to provide telecoms services to other telecoms licence holders or end users. An FBO must be individually licensed.
- Service Based Operators (SBO) licences for holders that do not intend to deploy telecoms infrastructure, but instead lease telecoms network elements from FBO licence holders to provide telecoms services, or resell telecoms services of other telecoms licence holders. A SBO can be individually or class-licensed.

- In respect of class licences, if an entity resells telecoms services they are automatically class licensed under the Broadcasting (Class Licence) Notification (i.e. without any need to submit a registration). Such entity is thereafter required to comply with the licence conditions and the relevant codes of practice.

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

In order for a company to be granted an FBO or SBO licence by the IMDA, the company can be foreign-owned but must be incorporated under the Singapore Companies Act (cap. 50).

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Code of Practice for Competition (‘Code’) (which is found within the Provision of Telecommunication Services 2012) distinguishes between Licensees that are subject to competitive market forces and Licensees whose conduct is not constrained adequately by competitive market forces. Most Licensees are subject to competitive market forces and, therefore, IMDA will impose minimum regulatory ‘rules of the road’, coupled with the ex post enforcement of general prohibitions on anti-competitive conduct, on these Licensees. By contrast, where a Licensee’s conduct is not constrained by competitive market forces, IMDA will require it to comply with more stringent regulatory requirements (The Code 2.1.2).

Sections 3 through to 7 of the Code impose ex ante regulatory obligations on Licensees. These include:
The duty of Licensees to their end users

The duty of dominant Licensees to provide services on just, reasonable and non-discriminatory terms

Required cooperation amongst Licensees to promote competition

Interconnection rules with dominant Licensees

Infrastructure sharing

Sections 8 and 9 of the Code provide a basis for IMDA to take enforcement action if a Licensee has engaged in conduct that unreasonably restricts, or is likely to unreasonably restrict, competition (ex post enforcement). These include:

- Abuse of dominant position and unfair methods of competition
- Agreements involving Licensees that unreasonably restrict competition

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

There are no differences between the telecommunication laws and regulations applying to the provision of services to businesses and those which apply to the provision of services to consumers.

**REGULATORY TAXES AND FEES**

**SBO Class Licence**

SGD 200 per licence.

**SBO Individual Licence**

SGD 4,000 per annum licensing fee for the first SGD 50 million of the Annual Gross Turnover (AGTO).

The next SGD 50-100 million in AGTO attracts a fee of 0.5% of the AGTO.

For a company with above SGD 100 million in the AGTO, there is a licensing fee of 0.8% of the AGTO.

**FBO Licence**

SGD 80,000-200,000 licensing fee for the first SGD 50 million of the Annual Gross Turnover (AGTO).

The next SGD 50-100 million in AGTO attracts a fee of 0.8% of the AGTO.

For a company with above SGD 100 million in the AGTO, there is a licensing fee of 1% of the AGTO.

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

Any person guilty of an offence under the Telecommunications Act or any regulations made under it, may be liable on conviction to a fine not exceeding SGD 10,000, or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding SGD 1,000 for every day or part thereof during which the offence continues after conviction.
KEY CONTACTS

Scott Thiel
Partner
DLA Piper Hong Kong
T +852 2103 0519
scott.thiel@dlapiper.com

Lauren Hurcombe
Senior Associate
T +852 2103 0814
lauren.hurcombe@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

The licensing framework for telecommunications is contained in the Electronic Communications Act, 2005 (‘ECA’). Licences are required for the provision of electronic communications services (‘ECNS’) and electronic communications services (‘ECS’) as well as for the use of radio frequency spectrum.

Telecommunications services in South Africa are regulated by the Independent Communications Authority of South Africa (‘ICASA’) which was established in terms of the Independent Communication Authority of South Africa Act of 2000. (‘ICASA Act’).

ICASA is an independent regulator charged with regulating the telecommunications, broadcasting and postal industries in the public interest and with ensuring the availability of affordable services of a high quality for all South Africans. It is responsible for licensing of services, prescribing regulations and for enforcing compliance with rules and regulations, protecting consumers from unfair business practices and poor quality services. Its mandate includes conducting inquiries and adjudicating disputes and complaints brought against licensees. ICASA has concurrent competition jurisdiction with the Competition Commission, a body established in terms of the Competition Act 89 of 1998. In most instances, ICASA’s competition jurisdiction is secondary to that of the Competition Commission. However, in terms of section 67 of the ECA, ICASA is specifically authorised to define markets and impose appropriate pro-competitive licence conditions on licensees which it determines have significant market power.

The function of the Minister of Communications (‘Minister’) is to develop legislation and to make policies on matters of national policy applicable to the ICT sector that are consistent with the objects of the ECA and related legislation. ICASA is obliged to consider, but not necessarily implement, Ministerial policies in executing its regulatory mandate.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The ECA

The ECA provides for the regulation of electronic communications in the public interest based on a technologically neutral licensing framework. The primary policy imperative underlying the ECA is the facilitation and implementation of a simplified, flexible regulatory regime which recognises and accommodates the convergence of new technologies, platforms and services and promotes the development of interoperable and interconnected networks.
The ECA delineates the respective roles of ICASA and the Minister. It contains provisions broadly governing: licensing; access to facilities; infrastructure rights such as way-leaves; the management and assignment of radio frequency; markets and competition; interconnection; facilities leasing; type approvals; consumer protection; and promotion of universal service and access.

Regulations prescribed by ICASA pursuant to the provisions of the ECA cover: facilities leasing; interconnection; call termination rates; type approvals; numbering; number portability; labelling of equipment; license fees; consumer protection, ownership and control of licences; standard terms and conditions; and procedures for applying for licences and for licence exemptions.

The ICASA Act

The object of the ICASA Act is to establish an independent authority for the regulation of broadcasting, electronic communications and postal services for the public benefit. As an independent regulator, ICASA is subject only to the Constitution of South Africa and is required to perform its functions without fear, favour or prejudice, free from political or commercial interference.

The ICASA Act enumerates the powers and functions of ICASA and its chairperson. It also delineates the respective roles of ICASA and the Competition Commission. The ICASA Act permits ICASA to hold inquiries into matters within its remit and sets out the procedures for conducting these inquiries. The ICASA Act also establishes the Complaints and Compliance Committee (‘CCC’). The CCC is an independent body tasked with dealing with matters referred to it by ICASA and with complaints.

The ICASA Compliance Procedure Manual Regulations, 2011 (‘Compliance Procedure Manual Regulations’) prescribed in terms of the ICASA Act impose extensive reporting obligations on licensees. In terms of the Compliance Procedure Manual Regulations, licensees must submit prescribed reports on compliance with regulations relating to universal service, E-rates, tariffs, and codes of conduct for customers and persons with disabilities. Licensees are also required to submit annual financial statements to ICASA.

Other relevant legislation

Other legislation which it is relevant to the telecommunications sector includes:

- **The Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (‘RICA’):** RICA sets out a lawful intercept regime and details the obligations of electronic communications service providers in relation to cooperating with law enforcement authorities and the storage of traffic data. Electronic communication service providers are required to verify the identity of the consumer prior to providing services. Consumer information and documents must be retained by the service provider for the periods specified in RICA.

- **The Electronic Communications and Transactions Act 25 of 2002 (‘ECT Act’):** The ECT Act exempts any person who provides information system services from liability for damages if that person acts as an mere conduit, caches data, or provides hosting services, if the applicable provisos contained in the ECT Act are met.

- **The Competition Act 89 of 1998:** The Competition Act legislates against anti-competitive practices such as collusion and cartels. The Commission, established in terms of the Competition Act, enforces the provisions of the Competition Act. ICASA and the Competition Commission have concurrent jurisdiction in the telecommunications sector. Subject to
ICASA’s section 67 powers, the Competition Commission has primary authority to detect and investigate past or current commissions of alleged prohibited practices in the communications sector and to review mergers within the sector. ICASA may not take any action where a matter has already being dealt with by the Competition Commission. On 29 August 2019, ICASA and the Competition Commission signed a Memorandum of Agreement (‘MOA’) setting out the principles of cooperation and interaction when dealing with complaints, mergers and when making determinations regarding the effectiveness of electronic communications markets and significant market power in those markets. Where a merger requires the approval of both the Competition Commission and ICASA the MOA requires that the Competition Commission and ICASA consult with each other and that they each make independent determinations based on their respective legislative mandates.

- **The Films and Publications Act 65 of 1996**: This Act requires internet service providers (‘ISPs’) and others to register with the Films and Publications Board (‘FPB’). ISPs are required to take reasonable steps to prevent the use of their services for the hosting or distribution of child pornography. An amendment to the Films and Publications Act in October 2019 imposed new obligations on persons providing child orientated services via mobile cellular phones or the internet. Controversially, the amendment extends the FPB’s mandate to include the regulation and monitoring of online distribution of films and games.

**The Consumer Protection Act 68 of 2008 (‘CPA’)**: The CPA is applicable to the telecommunications sector as it does not include electronic communications services among the categories of services that are exempted from its application. For the purposes of the CPA a ‘consumer’ includes natural persons and juristic persons with an asset value or turnover which equals or exceeds a threshold of R 2 million. The CPA recognises the role of regulators in promoting and safeguarding consumer interests. To this end, the CPA authorises the National Consumer Commission (‘NCC’ to enter into agreements with regulatory authorities such as ICASA. In terms of a Memorandum of Understanding concluded in 2016, the NCC and ICASA have agreed to liaise on matters of common interest.

**REGULATORY BODIES OR AUTHORITIES**

**ICASA**

Physical Address:

350 Witch-Hazel Ave, Eco-Park Estate, Centurion, 0144

Postal Address:
Private Bag X10, Highveld Park, 0169

Telephone:
+27 (0)12 568 3000/3001

Email:
General enquiries: info@icasa.org.za
Consumer complaints: consumer@icasa.org.za
International relations: international@icasa.org.za

Website:
www.icasa.org.za

COMPETITION COMMISSION

Physical Address:
The DTI Campus, Mulayo (Block C), 77 Meintjes Street, Sunnyside, Pretoria

Postal Address:
Private Bag x23, Lynwood Ridge, 0040

Telephone:
+27 (0)12 394-3200 / 3320

Email:
ccsa@compcom.co.za

Website
www.compcom.co.za

NATIONAL CONSUMER COMMISSION

Physical Address:
Building C - South African Bureau of Standards Campus (SABS), 01 Dr. Lategan Road, Groenkloof, Pretoria

Telephone:
NCC Call Centre: 012 428 7000

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

Licences are required to provide ECS and ECNS unless an exemption applies.

Facilities leasing and interconnection agreements between licensees are subject to regulatory requirements and approval by ICASA.

A radio frequency spectrum licence is required to make use of radio frequency spectrum. Type approval is required for electronic communications facilities and equipment. Numbers from the national numbering range are managed and allocated by ICASA.

Further particulars regarding these regulatory requirements are set out below.

Electronic Communications Network Services

The ECA defines ECNS as a service whereby a person makes available an electronic communications network (‘ECN’), whether by sale, lease or otherwise:

- for that person’s own use for the provision of an electronic communications service or broadcasting service;

- to another person for that other person’s use in the provision of an electronic communications service or broadcasting service; or

- for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated by the Act.

An ECN is defined in the ECA as being a system of electronic communications facilities and, in line with the technologically neutral licensing framework, there is no restriction on the types of facilities and systems that can be used for the conveyance of electronic communications. These may include, but are not limited to, satellite systems, fixed and mobile systems, fibre-optic cables, and electricity cable systems.

Electronic Communications Services
The ECA defines ECS as any service provided to the public, sections of the public, the State, or the subscribers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an ECN, but excludes broadcasting services. An operator who holds an ECS licence may provide services to customers over its own or a third party’s network.

It is helpful to consider the following fundamental distinctions between these ECS and ECNS types:

- **Wholesale vs. retail**: An ECNS licensee wholesales network capacity to ECS licensees or other ECNS licensees for resale, but it does not deal with the public. An ECS licensee, on the other hand, offers retail services to the public (and may also provide wholesale services for resale to third parties).

- **Physical vs. virtual networks**: An ECNS licensee operates physical networks made of facilities such as fibre or base stations. An ECS licensee operates virtual networks such as VPNs and MPLS networks.

### Radio Frequency Spectrum

The ECA vests the control of radio frequency spectrum in ICASA. Unless exempted, no person may make use of radio frequency spectrum without a licence. The *National Radio Frequency Plan, 2018* (‘National Radio Frequency Plan’) allocates the electromagnetic spectrum to radio services in the frequency bands between 8.3 kHz and 3000 GHz. All frequency assignments must be in accordance with the current version of the national radio frequency plan. Only ECNS licensees may apply for a radio frequency spectrum licence in terms of the Radio Frequency Spectrum Regulations. The National Radio Frequency Plan takes into account the International Telecommunications Union (‘ITU’) spectrum allotments for radio frequency spectrum use.

### Radio Apparatus

Unless exempted, no person may possess radio apparatus without a radio frequency spectrum licence. This applies to all persons and not just to licensees and exempted persons. Apparatus that have low power applications are generally exempted from the radio frequency spectrum licence requirement.

### Type Approval and Labelling

No person may possess, use, supply, sell or lease any type of electronic communications equipment, facility, or radio apparatus used (or to be used) in connection with the provision of electronic communications unless that equipment, facility or radio apparatus has been type approved by ICASA. in accordance with the *Type Approval Regulations, 2013* (‘Type Approval Regulations’). These regulations apply to all persons (including retailers and importers) and not just to electronic communication service providers and exempted persons. Guidelines relating to type approvals have also been published in the *Government Gazette*.

ICASA is authorised by the ECA to prescribe the types of equipment, facilities and radio apparatus and the circumstances in which type approval is not required. In this regard, low power devices operating on FM Band II are exempt from licensing and type approval.

ICASA generally recognises type approval given by international standards organisations such as the European
Telecommunications Standards Association.

All equipment that has been type approved and received type approval certificate must have a label permanently affixed thereto reflecting ICASA’s logo and the type approval reference number. Electronic labels may also be installed in products with a built-in display which is integral to the equipment. The labelling requirements set out in the Labelling Regulations, 2013.

**Number Allocation**

The ECA requires that ICASA maintain and manage a national numbering plan consisting of geographic and non-geographic numbers. Only individual ECS licensees may apply for numbers from the national numbering plan for use in conjunction with mobile, fixed line and VoIP voice services. Numbers are regarded as a national resource and are not owned by a licensee. Conditions apply to the allocation of numbers. These conditions as well as application procedures are set out in the Numbering Plan Regulations, 2016.

**Number Portability**

ICASA introduced number portability as a consumer protection initiative in 2005. The Number Portability Regulations, 2005, were published under the Telecommunications Act in 2005 as were the Functional Specifications for Mobile Number Portability. The Functional Specifications for Geographic Number Portability were published in 2007.

New regulations, namely the Number Portability Regulations, 2018 and the Ordering System Specification for Number Portability, 2019 have been gazetted and these will replace and repeal the existing regulations mentioned above upon a date determined by ICASA. As of xxxx October, a date has not yet been determined and, consequently, although the regulations are on the statute books, they have yet to come into operation.

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

**Service Licences**

Unless exempted, no person may provide ECS or ECNS without a licence. Depending on the scope of the services, either an individual or class service licence will be required. Applications for licenses will not be considered unless the applicant is a South African citizen (in the case of a natural person) or a juristic person registered in South Africa and which has its principal place of business in South Africa.

The ECA requires that ICASA must, in granting any service licence, ensure that the services, viewed collectively, are provided by persons or groups of persons from a diverse range of communities in South Africa. ICASA is also required to promote broad-based black economic empowerment when considering licence applications.
An application for an individual licence may only be made in response to an Invitation to Apply (‘ITA’) issued by ICASA. ICASA may only issue an ITA pursuant to a Ministerial policy direction. It is unlikely that an ITA will be issued for either individual ECS or individual ECNS in the foreseeable future.

Applicants for individual licences must demonstrate to ICASA that at least 30% of the applicant is owned by historically disadvantaged individuals. The term “historically disadvantaged individuals or groups” is not defined in the ECA or the ICASA Act or any regulations but it is taken to include black people, women, the youth and people with disabilities.

The processes and procedures applicable to individual ECNS licence applications are contained in the Regulations regarding the Processes and Procedures for Applications for an Individual Licence to Provide Electronic Communications Network Services, Electronic Communications Services and Broadcasting Services and for Temporary Special Authorisations and Matters Pertaining Thereto, 2008.

The standard terms and conditions applicable to individual ECNS licensees are contained in the Regulations Regarding Standard Terms and Conditions for Individual Licences, 2010. An individual licence endures for twenty years and the licence may be renewed upon application to ICASA. ICASA may refuse to grant the application for renewal if the ownership and control of the applicant by historically disadvantaged persons is less than 30%.

A class licence may be obtained by registration and application can be made at any time. The processes and the procedures applicable to the registration of class licences are contained in Processes and Procedures for Applications for an Individual Licence to Provide Electronic Communications Network Services, Electronic Communications Services and Broadcasting Services and for Temporary Special Authorisations and Matters Pertaining Thereto, 2008. ICASA is required to process the application within 30 days unless it notifies the applicant otherwise. The standard terms and conditions applicable to class licences are set out in the Regulations Regarding Standard Terms and Conditions for Class Licences, 2010. A class licence endures for ten years and a licensee can apply to have its licence renewed upon application. ICASA’s decisions are not contingent upon ownership by historically disadvantaged persons.

The requirements for individual and class service licences are elaborated upon below:

- **Individual ECNS licence (issued for 20 years):** An individual ECNS licence is required for ECNs of provincial and national scope operated for commercial purposes.

- **Class ECNS licence (issued for 10 years):** A class ECNS is required for ECNs of district municipality or local municipal scope operated for commercial purpose. South Africa has 48 district municipalities and 231 local municipalities as well as 7 metropolitan municipalities.

- **Individual ECS (issued for 20 years):** An individual licence is required to provide ECS that consists of voice telephony utilising numbers from the national numbering plan. An individual service licensee may provide all forms of electronic communications in addition to voice telephony and there is no restriction on the geographical scope of the services. It is the use of numbers from the national numbering plan that triggers the individual licence requirement. An individual ECS licensee can make use of its own ECN if it holds the requisite ECN licence or it can enter into agreements with third party ECNS licensees to carry the services to the customer.

- **Class ECS (issued for 10 years):** A class licence is required to provide ECS that does not make use of numbers from the national numbering plan. This licence allows the holder to provide the same services as those authorised in terms of and individual ECS licence, including voice services. As is the case with individual ECS licensees, a class ECS licensee can make use of its own ECN if it holds the requisite licence or it can enter into agreements with third party ECS licensees to carry the services to the customer.
Radio Frequency Spectrum Licences

Absent an exemption, no person may make use of the radio frequency spectrum without a licence issued by ICASA. The Radio Frequency Spectrum Regulations, mentioned above, are applicable.

A standard application procedure is applicable to radio frequency spectrum used for the services listed in annexure C to the Radio Frequency Spectrum Regulations. These include amateur radio, frequencies above 40 GHz, microwave point to point, citizen band radio and satellite bands direct links.

An extended application procedure is required for all other radio frequency spectrum licences and for frequency bands which are the subject of an ITA. An ITA will be published where ICASA determines that the radio frequency spectrum concerned is insufficient to meet demand.

Radio frequency spectrum licences that are the subject of an ITA are awarded on a competitive basis. An applicant for a radio frequency spectrum licence that is the subject of an ITA will be disqualified unless it can show that it has a minimum 30% equity ownership held by persons from historically disadvantaged groups or is a level 4 Broad-Based Black Economic Empowerment contributor.

Service Licence Exemptions

The ECA permits ICASA to prescribe regulations regarding the types of ECNS, ECNs, and ECS that may be provided without a licence. ICASA may also prescribe the radio frequency spectrum that may be used without a licence.

In terms of the Regulations Regarding Licence Exempt ECN, ECNS and ECS, 2008, (‘Licence Exemption Regulations’) the following persons providing ECS may apply for a licence exemption:

- persons providing ECS on a non-profit basis;

- resellers of ECS obtained from a licensed ECS; and

- persons providing an ancillary service (i.e. a retail service which incorporates ECS elements that do not constitute the major purpose, utility or value of the retail services, for example, tracking, alarm and similar services).

In terms of the Licence Exemption Regulations, the following ECNs are exempt from licensing:

- small electronic networks, provided that small electronic networks must use frequencies that are licence exempt; and

- private electronic networks.
DOMICILE RESTRICTIONS PREVENTING THE OPERATION OF CERTAIN TELECOMMUNICATIONS ACTIVITIES BY NON-DOMICILED ENTITIES

The ECA requires that applicant for a licence in terms of the ECA must show that it is a South African citizen (in the case of a natural person) or that it is be registered in South Africa with its principal place of business located within South Africa. If a foreign entity wishes to apply for a licence it will, at the very least, need to incorporate a local entity in South Africa. There are however provisions in the ECA and its regulations that effectively prevent foreign entities from acquiring ownership and control of more than 70% of an individual licensee.

If a foreign entity wishes to apply for an individual licence, that foreign entity must, in addition to incorporating a local company, ensure that at least 30% of the local company is owned and controlled by historically disadvantaged individuals or groups. This shareholding requirement also will apply if a foreign owner wishes to take transfer of an existing individual licence.

If a foreign entity’s acquisition of shareholding in an individual licensee results in a change of control of that licence, ICASA will need to be satisfied that 30% of the licensee is still owned and controlled by historically disadvantaged individuals if permission for the transfer is to be granted. If the acquisition of equity in an individual licence does not result in a change of control then ICASA need only be notified of the change in shareholding after the transaction it has been concluded. ICASA may however require a copy of the shareholding agreement and affidavits from the parties to satisfy itself that the acquisition did not in fact amount to a change of control.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection Regulations

ECNS and ECS licensees must, upon request, interconnect to any other ECA licensee and to exempted persons requesting interconnection. The processes for requesting, negotiating and enforcing interconnection agreements are contained in ICASA’s pro-competitive ‘Interconnection Regulations, 2010’ (‘Interconnection Regulations’). In general, interconnection must be provided on a non-discriminatory basis as between comparable types of licences and must be of the same standard and quality as provided by a licensee to itself. All interconnection agreements concluded pursuant to the Interconnection Regulations are filed with ICASA and are available for public inspection. An interconnection agreement does not become binding until approved by ICASA. ICASA is empowered to adjudicate interconnection agreement disputes that are referred to it in terms of the Interconnection Regulations.

Call Termination

The Call Termination Regulations, 2014 (‘Call Termination Regulations’) are aimed at remedying market failure in the wholesale call termination markets. Following a review of the fixed and mobile wholesale call termination markets ICASA has imposed procompetitive conditions on Telkom SA SOC Limited (‘Telkom’) in the fixed termination markets and on both MTN (Pty) Ltd (‘MTN’) and Vodacom (Pty) Ltd (‘Vodacom’) in the mobile termination markets.

In terms of the Call Termination Regulations, Telkom, MTN and Vodacom are required to publish a reference interconnection
offer that complies with the requirements set out in the Call Termination Regulations. These licensees are also subject to cost-based pricing control. The maximum termination rates are specified in the regulations. Between 1 October 2019 and 30 September 2020, Telkom may charge no more than R0.07 for termination to a fixed location and Vodacom and MTN may charge no more than R0.10 for termination to a mobile location. From 1 October 2020, Telkom may charge no more than R0.06 and Vodacom and MTN may charge no more than R0.09 for termination to a mobile location. ICASA is required to review the effectiveness of the procompetitive terms as well as the prescribed termination rates when it deems necessary but may not do so before 1 October 2021.

Call termination rates aside, tariffs are not tightly regulated. It is a requirement that all licensees lodge their tariffs with ICASA prior to offering a service and that the tariffs be made known to the public. Only Telkom’s year on year increases are limited by regulation.

Roaming

Roaming is not defined in the ECA although it does fall within the definition of ECNS. There are no regulations directly applicable to roaming or to the conclusion of roaming agreements. In practice, roaming agreements are concluded between the ECNS service providers on commercial terms and payment is made by one network operator to the other network operator for the services utilised by its subscribers. Roaming agreements are not subject to regulatory approval and are not made publicly available.

Facilities Leasing

In terms of the ECA, ECNS licensee must, on request lease electronic communications facilities to any other person licensed or exempted in terms of the ECA. The Electronic Communications Facilities Leasing Regulations, 2010 (‘Facilities Leasing Regulations’) prescribe, in terms very similar to those in the Interconnection Regulations, the processes for requesting, negotiating and enforcing facilities leasing agreements. The Facilities Leasing Regulations require that facilities leasing be provided on a transparent and non-discriminatory basis. Facilities leasing agreements only become enforceable when approved by ICASA. Facilities leasing agreements are made publicly available. ICASA is empowered to adjudicate facilities leasing agreement disputes that are referred to it in terms of the Facilities Leasing Regulations.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

One of the primary objects of the ECA is to promote and safeguard the interests of consumers with regard to price, quality and variety of licensed services. In furtherance of this objective and as required by the ECA, ICASA has published a number of regulations aimed at advancing and protecting the rights of consumers. These include:

- Regulations Drafted in Terms of Section 4 Read with Section 76, 2008: These are more commonly known as the known as the ‘Emergency Call Regulations’. Amongst other things, provision is made for a 112 emergency call centre in these regulations.
• **Carrier Pre-selection Regulations, 2010:** The ECA requires that ICASA prescribe carrier pre-selection regulations and these regulations were accordingly prescribed in 2010. Carrier pre-selection has not however been implemented in South Africa.

• **End User and Subscriber Service Charter Regulations, 2016:** These regulations impose a wide range of obligations on licensees that are aimed at ensuring that consumer rights are protected. In addition to satisfying the requirements of these regulations, licensees must file periodic reports with ICASA to show continued compliance with the regulations.

• **Regulations in Respect of the Code of Conduct for Electronic Communications and Electronic Communications Network Services Licensees, 2007:** Licensees are required, amongst other things, to develop a code of conduct intended to safeguard and promote the interests of consumers. The code of conduct must include the key commitments enumerated in the regulations and must be displayed at the licensee’s business premises and on its website. In addition to complying with the requirements of these regulations, licensees must file periodic reports with ICASA to show continued compliance.

• **Code on People with Disabilities, 2007:** These regulations set out the basic standards applicable to licensees in order to ensure that their services are accessible and available to people with disabilities. Licensees are required to file periodic reports with ICASA to show compliance with these regulations.

• **Regulations in Terms of Section 4 read with Section 73 of Electronic Communications Act in Respect of E-Rate, 2009:** These regulations are more commonly known as the e-rate regulations. These regulations oblige licensee to provide internet services to schools at discounted rates. Annual compliance reports must be filed with ICASA.

• **Number Portability Regulations:** ICASA, as required by the ECA, prescribed number portability regulations in 2005. As mentioned above, new regulations have been prescribed but they are not yet in operation.

In addition to the above regulations, ICASA has established a Consumer Advisory Panel to advise it on matters relating to consumer issues. Consumers may also lodge complaints against licensees with the CCC.

The Consumer Protection Act is applicable to the provision of telecommunications services. Complaints regarding the provision of services licensed under the ECA can be lodged with either ICASA or the NCC.

**REGULATORY TAXES AND FEES**

Annual licence fees are payable in accordance with the terms of the **ICASA General Licence Fee Regulations, 2012.**

Annual service licence fees for both class an individual service licensees are calculated using the following formula:
Pa = R x B

Where:

Pa = payable annual licence fee

R= revenue from licence services

B = applicable percentage as set out in the following table:

<table>
<thead>
<tr>
<th>Licence Revenue (R)</th>
<th>Percentage applied (B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 -50 000 000</td>
<td>0.15%</td>
</tr>
<tr>
<td>50 000 001 -100 000 000</td>
<td>0.20%</td>
</tr>
<tr>
<td>100 000 001 -500 000 000</td>
<td>0.25%</td>
</tr>
<tr>
<td>500 000 001 -1 000 000 000</td>
<td>0.30%</td>
</tr>
<tr>
<td>1 000 000 001 -and above</td>
<td>0.35%</td>
</tr>
</tbody>
</table>

Revenue is defined in terms of international accounting standards. The calculation of the amount due must supported by audited financial statements ( Fees can be paid quarterly or annually, and late payments are subject to stringent interest penalties and fines for non-compliance.

Licensees are further required to pay an annual contribution to the Universal Service and Access Fund - an entity set up by Government to fund development of services in rural areas - amounting to 0.2% of annual turnover derived from licensed services.

The following fees are payable in respect of initial licence applications, applications to amend or renew or transfer licences. The fees applicable to applications to transfer a licence are also applicable to applications for approval for a change of control of a licensee.
<table>
<thead>
<tr>
<th>APPLICATION TYPE</th>
<th>FEE (R)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INDIVIDUAL ECS AND ECNS LICENCES</strong></td>
<td></td>
</tr>
<tr>
<td>Initial applications for licences</td>
<td>As specified in the ITA</td>
</tr>
<tr>
<td>Applications for the amendment of licences</td>
<td>R 60,940</td>
</tr>
<tr>
<td>Applications for renewal of licences</td>
<td>R 6,094</td>
</tr>
<tr>
<td>Applications for transfer of licences</td>
<td>R 60,940</td>
</tr>
<tr>
<td><strong>CLASS ECS AND ECNS LICENCES</strong></td>
<td></td>
</tr>
<tr>
<td>Initial applications for licences</td>
<td>R 12,187</td>
</tr>
<tr>
<td>Applications for the amendment of licences</td>
<td>R 6,094</td>
</tr>
<tr>
<td>Applications for renewal of licences</td>
<td>R 6,094</td>
</tr>
<tr>
<td>Applications for transfer of licences</td>
<td>R 6,094</td>
</tr>
</tbody>
</table>

Application fees for radio frequency spectrum licences are specified in the Radio Frequency Spectrum Regulations. Application fees for radio frequency spectrum that is the subject of an ITA will be specified in the ITA. Other fees, including annual fees, are specified in the *Radio Frequency Spectrum Licence Fee Regulations, 2010*. Fees for type approvals and numbers are specified in the applicable regulations.
KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF TELECOMMUNICATIONS LAWS AND REGULATIONS

The CCC is required, in terms of the ICASA Act, to investigate, and hear (if appropriate), and make findings on: all matters referred to it by ICASA; complaints received; and allegations of non-compliance with applicable law. Once the CCC has made a finding, ICASA may, based on the recommendations made by the CCC, impose fines and issue directions to the licensee.

If the licensee has been found to be repeatedly in violation of ECA, applicable regulations or its licence conditions, ICASA may revoke or suspend its licence.

Most of the regulations that require compliance on the part of licensees make provision for penalties and fines. In most instances, a maximum fine is specified and ICASA has the discretion to impose a lesser fine or no fine at all. Certain contraventions are treated as offences which may result in imprisonment.

Presently, the highest maximum fines that are contained in the Call Termination Regulations and the End-User and Subscriber Service Charter Regulations. These regulations allow ICASA to impose a maximum fine of R 5 million or 10% of the licensee’s annual revenue for every day of non-compliance with the regulations, whichever is greater.

In terms of the Type Approval Regulations any person that offers for sale or possesses, with the intention to sell, any equipment (including but not limited to radio apparatus) that is not type approved is guilty of an offence and is subject to imprisonment of 6 months and/or is liable to a fine not exceeding R1 million.

In terms of the Radio Frequency Spectrum Regulations, which postdate the Type Approval Regulations, a person who is in possession of radio apparatus may be found guilty of an offence and, upon conviction, may be imprisoned for not less than 6 months but no more than 24 months and/or be held liable to a fine of not less than R250,000. A person found in unauthorised possession of a radio blocking device may be subject, on conviction, to imprisonment of not less than 12 months and/or liable to a fine of not less than R 250,000 but not exceeding R 5 million. Any person that contravenes the terms and conditions of their radio frequency licence is subject to a fine not exceeding R 5 million.

Failure to comply with the provisions of the Interconnection Regulations or the Facilities Leasing Regulations may result in a fine of up to R 500,000.

Failure to comply with certain provisions of the RICA Act may result in fines of up to R 5 million and to imprisonment of up to 10 years, as well as licence revocation.

<table>
<thead>
<tr>
<th>KEY CONTACTS</th>
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<td>Kathleen Rice</td>
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Kathleen Rice Attorneys
SPAIN

OVERVIEW OF LEGAL LANDSCAPE

The regulatory framework for electronic communications adopted by the European Union in 2002 was initially transposed to the Spanish legal framework by means of the Spanish General Telecommunications Act 32/2003 (no longer in force). The aim of this piece of legislation was to develop the principles of free competition and minimal administrative intervention.

Since its publication, the Spanish General Telecommunications Act 32/2003 has experienced several changes in order to ensure the emergence and viability of new operators, the protection of users’ rights and the administrative supervision of public services aspects, public domain and competition.

Recently, the Spanish General Telecommunications Act 32/2003 has been replaced by the new Spanish Telecommunications Act 9/2014 (in force since 9 May 2014), which transposed, among other things, the EU Directives 2009/136/EC and 2009/140/EC.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

Currently, the primary piece of legislation governing the telecoms industry in Spain is the Spanish Telecommunications Act 9/2014 (the ‘Spanish Telecommunications Act’).

The following subordinate legislation may also impact the provision of communication services and the operation of communication networks:

- The Spanish Royal Decree 424/2005, approving the rules on the conditions for the provision of electronic communications, universal service and consumers’ protection
- The Spanish Royal Decree 2296/2004, of 10 December, approving the Regulations on electronic communication markets, access to networks and numbering
- The Spanish Royal Decree 899/2009, of 22 May, which approves the rights of the electronic communication services users

In addition to this, the following legislation may also impact the provision of communication services and the operation of communication networks:

- General Data Protection Regulation (‘GDPR’)
- The Spanish Competition Act 15/2007 (‘Spanish Competition Act’)
- The Spanish Royal Legislative Decree 1/2007 approving Consumer Protection Act (‘Spanish Consumer Protection Act’)

The key features of the Spanish Telecommunication Act are to:

- Protect recipients of communication services, making sure that telecommunication providers comply with the regulatory
requirements set forth in the applicable regulations

- Ensure that telecommunication services are provided in a competitive market
- Regulate and control the allocation of telephone numbers, including premium rate telephone services
- Ensure the principle of universal service, namely that affordable basic telephony services should be available to everyone

REGULATORY BODIES OR AUTHORITIES

The Spanish regulatory authority for telecommunication matters is the so-called Spanish Telecommunications Market Commission (Comisión Nacional del Mercado de las Telecomunicaciones or the CMT) which has been recently incorporated under the Spanish Commission for the Market and the Competence (Comisión Nacional de los Mercados y la Competencia or the CNMC).

Comisión Nacional de los Mercados y la Competencia

Address: Calle Alcalá 47 (28014 Madrid)
Telephone: 91 432 9600
Website: www.cnmc.es

Comisión Nacional del Mercado de las Telecomunicaciones

Address: Carrer de Bolivia 56 (08018 Barcelona)
Telephone: 93 603 6200
Website: www.cmt.es

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

Under the Spanish Telecommunications Act, there are two types of telecommunications services providers:

- Providers of electronic communication services
- Providers of electronic communication networks

(together, the 'Services')

As detailed below, providing those Services is subject to having previously been registered before the Spanish Telecoms Operators Registry of the CMT.

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

As indicated before, successfully completing a registration process before the Spanish Telecoms Operators Registry is required prior to providing the Services in Spain. Besides being registered, an additional regulatory authorisation or licence is not requested.

By completing the registration process, any operator will be qualified as a 'telecommunication operator' in Spain, and shall be legally entitled to start providing the Services.

In order to successfully complete this registration process, certain administrative and technical documentation shall be submitted to the CMT, as follows:
Administrative documentation

Application form: the legal representative signing this form shall be empowered to act on behalf of the VGE, as representative of the operator before the CMT. A copy of the relevant Power of Attorney shall be attached to the application form.

Corporate information of the company that aims to be registered as a telecom operator: This includes the incorporation deed, Spanish Tax Identification Number, powers of attorney, etc. If it is not a Spanish company, all such documents shall be duly legalised, apostilled, and translated (sworn translation).

Technical information

Description of the network to be used including the following information:

- Brief description of the engineering and network design including:
  - Territorial coverage scope
  - Information on whether the network is owned by the operator or by others (wholly or partially)
  - Information on whether the network implementation requires the occupation of public domain or private property
  - Information on whether the network implementation requires the occupation of radio spectrum
  - Information on whether the network shall provide the support service for broadcasting services (radio/TV)
  - Explanatory block diagram to facilitate the description

- Type of technology or technologies that shall be used

- Security and confidentiality measures to be implemented in the network

- Confirming the particular type of communication network which is to be operated:
  - Telephone network (fixed or mobile)
  - Electronic communications network

Description of the service to be supplied:

- Functional description of the services including:
  - Complementary block diagram to facilitate the description of the services, including the technology that shall be used
  - Information on whether the network used is owned by the operator or by others. In the event that their own network is used, the technical documentation listed above (in ‘description of the network to be used including the following information’) shall be also submitted
  - Territorial scope of the provision of services

- Commercial information of the services to be provided
• Indicate the specific type of telecommunication services to be provided

The notification shall also include a statement from the operator’s representative stating that the operator meets all legal requirements set forth in any applicable provisions.

In order to successfully complete this registration process, operators should be registered within 15 working days following CMT’s analysis of the documentation submitted by the operator. The CMT will only be entitled to dismiss a registration request in the case where the operator has not provided the completed information requested.

The relevant information and documentation to be provided in connection with this notification process can be found in detail here.

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

From a regulatory standpoint, it is not required to have a permanent establishment or legal residence in Spain in order to be registered in the Spanish Telecoms Operators Registry. Any entity located within the EU territory is entitled to be registered in the Spanish Telecoms Operators Registry (provided that the administrative and technical requirements described in Registration / licensing are met).

However, a legal representative in Spain should be designated for notification purposes.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Interconnection: The interconnection principle is set forth by the Spanish Telecommunications Act, establishing the right to have universal access to the telephone services. Therefore, the CMT is empowered to appoint a ‘dominant operator’ for certain Services. This dominant operator must ensure access to fixed telecommunication services at an affordable cost from anywhere in Spain.

Roaming: In early April 2014, the European Parliament voted to end roaming charges which resulted in the surcharges that telephone companies charge their customers for the use of their mobiles in another country, to completely disappear on 15 December 2015.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

In addition to the principles and obligations set forth in the Spanish Telecommunication Act, there are other regulations regarding consumer protection principles, which will also be applicable to telecommunication operators registered before the Spanish Telecoms Operators Registry and providing telecoms services involving consumers.

The main piece of legislation in Spain regarding consumer protection matters is the Spanish Consumer Protection Act.

It should be noted that the provisions and principles in connection with consumer protection (set forth in the Spanish Telecommunication Act) will prevail from the principles set forth in the Spanish Consumer Protection Act, which will only be applicable on a subsidiary manner.

Moreover, the Spanish Data Protection Law will also be applicable to operators responsible for collecting and processing the personal data of consumers in Spain, who will be considered data controllers.

REGULATORY TAXES AND FEES

A registered telecom operator is subject to the payment of an annual regulatory tax, called a General Telecommunications Tax (GGT).

The GGT rate for 2018 is 1/1000 of the annual gross income of the operator generated because of the provision of the telecom services which have been offered in Spain.
The procedure for completing the payment of the GTT is as follows:

In January, the tax department of the CMT sends a request to all registered telecom operators, to notify their net income for the previous year (covering from 1 January to 31 December). The timeframe to provide the CMT with this information is usually 10 working days. Upon receiving such information, the CMT will determine the amount to be paid (by applying the approved tax rate) and send the operator a payment request.

This is connected to operating in the Spanish telecommunications’ market and therefore being subject to the regulatory supervision of the Spanish authorities. In theory, the GTT is intended to compensate the authorities for the efforts made in the course of such monitoring activities. All operators are therefore subject to the GTT.

On top of the GTT, there are other ad hoc taxes that apply only to the operators that seek and obtain the assignment of numbering blocks, the reservation of specific frequencies of the radio-electric domain, or the issue of compliance/homologation certificates by the Spanish regulatory authorities. The specific amount of these ad hoc taxes is established on a case-by-case basis in a specific piece of regulation when granting the assignment/reservation/certificate. All these taxes are regulated within indents 1 to 5 of Annex 1 of the Spanish Telecommunications Act 9/2014.

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

The Spanish General Telecommunications Act sets forth a sanctioning procedure and depending on the type of the breach, different penalties and sanctions will apply.

In particular, the following three types of sanctions set forth:

- Minor infractions, which are subjected to fines up to EUR 50,000
- Serious infractions which are subjected to fines up to EUR 2,000,000
- Very serious infractions which are subject to fines up to EUR 20,000,000 and in the case of very severe breaches, additional penalties such as the operator being disqualified from offering the Services in Spain for 5 years

**KEY CONTACTS**

Diego Ramos  
Partner  
DLA Piper Spain S.L.  
T +34 91 319 12 12  
diego.ramos@dlapiper.com

Paula González de Castejón  
Legal Director  
DLA Piper Spain S.L.  
T +34 91 788 7374  
paula.gonzalez@dlapiper.com
**OVERVIEW OF LEGAL LANDSCAPE**

Subject to certain exemptions (mostly concerning the use of the radio spectrum and frequencies), communication providers have general authorisation to operate in the Netherlands and do not require a licence, permit, consent etc. There is, however, an obligation to register with the Dutch telecoms regulator; the Autoriteit Consument & Markt (ACM). Details of this obligation to register are provided under Registration/Licensing.

The concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States.

The roles and responsibilities of ACM, as well as the obligations of communication providers that operate in the Netherlands are codified in the primary telecoms legislation in the Netherlands, known as the Telecommunicatiewet (the 'Dutch Telecommunications Act').

**KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES**

The primary legislation governing the telecommunications sector in the Netherlands is the Dutch Telecommunications Act which came into force on 19 October 1998. The Dutch Telecommunications Act has been amended over time in order to implement (successive amendments of) the following European Directives:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
- Directive 2002/20/EC on the authorisation of electronic communications networks and services
- Directive 2002/19/EC on access to and interconnection of electronic networks and associated facilities
- Directive 2002/22/EC on universal service and user rights
- Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks

In addition to the Dutch Telecommunications Act the following legislation may also impact the provision of communication
services and the operation of communication networks in the Netherlands:

- Competition Law (both the Dutch Competition Act (Mededingingswet) and EU Competition Law)

- Data Protection Law (primarily the Dutch Personal Data Protection Act (Wet Bescherming Persoonsgegevens)) which governs the processing of personal data

- Universal Service Decree of 13 June 2014 (Regeling Universele Dienstverlening en Eindgebruikersbelangen)

The key features of the Dutch Telecommunications Act are:

- The obligation for communication providers to register with ACM (paragraph 2)

- A regulatory framework for use of radio spectrum (paragraph 3)

- The regulation and allocation of telephone numbers and the regulation of number retention (paragraph 4)

- A regulatory framework for laying network cables in public grounds (paragraph 5)

- A regulatory framework for access to physical infrastructure (paragraph 5a)

- An obligation for communication providers who control the connectivity to end users to negotiate in good faith with other communication providers (i.e. the principle of interoperability, paragraph 6)

- The power of ACM to set specific conditions relating to universal services, access, privileged suppliers and - most notably - ‘significant market power’ (SMP). In accordance with the EU directives mentioned above, ACM has a duty to periodically review the telecoms markets recommended for review by the European Commission and where it finds that one or more of the operators have SMP it must impose such a condition on the SMP operator(s) (paragraphs 6a and 6b)

- An obligation to provide end users with clear information on the nature of the services and clear contractual terms as well as several mandatory provisions in relation to consumers such as the right to compensation in case of an outage and the right to terminate a contract after the initial term with a maximum notice period of one month (paragraph 7)

- The principle of universal service; that affordable basic telephony services should be available to everyone (paragraph 9)
• Rules on protecting the end user’s privacy and personal data (paragraph 11)

• The ACM’s power to hear disputes between communication providers (although referral to ACM does not preclude the bringing of court proceedings), and the access for consumers to a dispute resolution committee (paragraph 12)

• The obligation for communication providers to ensure that the telecommunications services that are offered to end users can be intercepted upon request by the competent authority (paragraph 13)

REGULATORY BODIES OR AUTHORITIES

ACM

Physical Address: Muzenstraat 41, 2511 WB Den Haag
Postal Address: PO Box 16326, 2500 BH Den Haag
Telephone: +31 70 7222 000
Website: www.acm.nl

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

There are two main categories of communication providers for the purposes of the Dutch Telecommunication Act; providers of electronic communication networks (ECNs) and providers of electronic communication services (ECS). The categories are then further sub-divided into public and private providers.

The definitions of electronic communications network and electronic communications service in the Dutch Telecommunications Act are fully in line with the EU Framework Directive (2002/21/EC):

• Electronic communications network: transmission systems and, where applicable, switching or routing equipment and other resources which permits the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, and networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed

• Electronic communications service: a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in article 1 of the Notification Directive which do not consist wholly or mainly in the conveyance of signals on electronic communications networks

In relation to qualification of a service as an ECS, one of the decisive elements is whether the provider’s (contractual) responsibility towards the user is mainly to bring about the transmission of a signal. Merely providing a connection to an ECS in itself is insufficient when the responsibility for bringing about the actual transmission is not a main element of the service for which the provider is contractually responsible towards the user. In this respect, Dutch practice seems is in line with the European Court of Justice’s judgements in cases C-142/18 (Skype/IBPT) and C-193/18 (Google/Germany).

The Telecommunications Act’s provisions relating to use of the radio spectrum and frequencies in principle apply to all ECN and ECS providers, but most other provisions only apply to providers of public ECNs or ECS. An ECS is ‘public’ when the services
provided are available to the public, while an ECN is ‘public’ when it is only or mostly used for providing public electronic communications services.

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

Communication providers have general authorisation to operate in the Netherlands and do not require a licence, permit, consent etc. In the Netherlands, all providers of public electronic communications services and all operators of public electronic communications networks must register with the regulatory authority (ACM) prior to the start of their operations in the Netherlands. In order to register, information must be provided on the provider’s corporate structure, its turnover and the services provided in the Netherlands.

Once the registration is effective, the provider will be listed in the public register of communication companies and will receive a registration number. In case of a subsequent change of activities, the registration must be updated by notifying the change to ACM. All registered communication companies must annually report the turnover they achieved by providing communication services in the Netherlands to ACM. On this basis, ACM levies an annual fee (called ‘contribution in the costs of regulation’), the amount of which depends on the turnover achieved. No fee is due if the turnover amounts to EUR 2 million or less.

Mobile operators (and other users of spectrum) do require a licence in order to install or operate certain mobile network equipment.

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

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in the Netherlands prior to or during the provision of services. Advice should however be sought from a tax perspective.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

ACM has certain powers with regards to ex-ante regulations on interconnection and roaming.

Providers of a public ECN or public ECS are under a general obligation to enter into negotiations with other providers in relation to access to end users. Whilst the underlying principle of these negotiations is freedom of contract, the outcome of these negotiations should be aimed at an agreement regarding end-to-end connectivity. Such negotiations are to be conducted objectively, transparently, proportionally, and non-discriminatory, with a view to reaching agreement on the technical aspects of the connection of the network(s), tariffs, quality of the services, and other relevant conditions. Providers are to enter into these negotiations ‘proactively’.

The obligation to enter into negotiations concerns an obligation to achieve a result. When the desired result is not reached, ACM may be requested to make the provider install the requested end-to-end connectivity on conditions set forth by ACM. These conditions may even relate to subjects such as what tariffs are considered ‘reasonable’. ACM may also act on its own discretion, if no request is filed.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

Specific obligations relating to consumers include:

- The requirement to include certain minimum terms in consumer contracts
- Conditions relating to maximum contract duration and maximum notice periods for contract termination
The requirement to make certain information available to the customer such as a description of the services offered and the standard tariffs

Availability of number portability

In addition to specific telecoms regulations, provisions of general consumer law also apply, such as rules concerning unfair contract terms.

**REGULATORY TAXES AND FEES**

Registration with ACM itself is free of charge. Once registered, however, all providers that achieve a turnover in excess of EUR 2,000,000 in the Netherlands with the provision of a public ECN or public ECS must pay an annual fee to the regulator as a contribution to the costs of regulation. The fee is annually set at a percentage of the relevant turnover. For 2019, the fee is set at 0.02839%.

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

Certain provisions of the Dutch Telecommunications Act, including those relating to use of frequencies (Chapter 3) and interception (Chapter 13), are subject to criminal prosecution by the Department of Justice on the basis of the Economic Offences Act. Depending on whether the violation was intentional or non-intentional, providers may be sentenced with a maximum fine of EUR 20,750 or EUR 83,000, respectively. If the infringement resulted in profits exceeding 25% of these amounts, however, the maximum fines are increased to EUR 83,000 or EUR 830,000 respectively. Individuals can receive a jail sentence of up to one year and six years, respectively.

Other violations of the Dutch Telecommunications Act are subject to administrative prosecution by either the Telecoms Department (Agentschap Telecom) of the Ministry of Economic Affairs or by ACM, depending on the subject-matter of the violation. Both authorities have a broad degree of discretion when deciding the measure to be imposed. The maximum penalties are generally set at a percentage of annual turnover, ranging between 1% and 40% depending on the nature, duration and the severity of the infringement.

**KEY CONTACTS**

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Contact Information</th>
</tr>
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<tbody>
<tr>
<td>Martijn van Wanroij</td>
<td>Legal Director</td>
<td>DLA Piper Nederland N.V. T +31 (0)20 5419 643 <a href="mailto:martijn.vanwanroij@dlapiper.com">martijn.vanwanroij@dlapiper.com</a></td>
</tr>
<tr>
<td>Joris Willems</td>
<td>Advocaat - Partner</td>
<td>DLA Piper Nederland N.V. T +31 (0)20 5419 992 <a href="mailto:joris.willems@dlapiper.com">joris.willems@dlapiper.com</a></td>
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OVERVIEW OF LEGAL LANDSCAPE

The provision of telecommunications services is subject to authorisation in Turkey. Under the Electronic Communications Law w. no. 5809, two types of authorisation procedures are stipulated:

1. authorisation by notification to the Information and Communication Technologies Authority (“Authority”) for services for which spectrum allocation is not required; and

2. authorisation by obtaining a licence for telecommunication services for which specific spectrum allocation is required.

It is fundamental that the electronic communication service and/or network or its infrastructure be met from the operators authorized by the Authority. However, in the following two cases electronic communication service and/or network or infrastructure is not subject to authorization;

a) Within any natural person’s or legal entity’s property under his/its own use, which do not exceed any property’s borders, which is used upon exclusively individual or organizational needs, which is not used for providing any electronic communications services to third parties, which is provided without any commercial intention and which is not publicly available, b) Constructed pertaining solely to the services of public corporations and institutions in accordance with the specific laws thereof.

The roles and responsibilities of the Authority are stipulated in laws such as Law no. 5809 and Law no. 2813 on the Establishment of the Information and Communication Technologies Authority. Further, there are several pieces of secondary legislation which stipulate the detailed roles and responsibilities of the Authority, the licensing regime and the legal and technical requirements for operators.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing telecommunications in Turkey is the Electronic Communication Law w. no 5809 which came into force on 11 October 2008. Further, there are several secondary laws and regulations drafted by the Authority that directly affect the telecommunications sector. These key laws/regulations are:

- Regulation on Authorisation in the Electronic Communications Sector dated 28.05.2009, published in Official Gazette no. 27241,
- Regulation on Tenders for Authorisation in the Electronic Communications Sector, dated 15.01.2010, published in Official Gazette no. 27463,
- Regulation on Consumer Rights in the Electronic Communications Sector dated 28.07.2010, published in Official Gazette no. 27655,
- Spectrum Regulation dated 02.07.2009, published in Official Gazette no. 27276,
• Regulation on Access and Interconnectivity dated 08.09.2009, published in Official Gazette no. 27343,

• Numbering Regulation dated 27.06.2009 published in Official Gazette no. 27271,

• Regulation on Service Quality in the Electronic Communications Sector dated 12.09.2010, published in Official Gazette no. 27697,

• Regulation on Number Portability dated 02.07.2009, published in Official Gazette no. 27276,

• Regulation on Network and Data Security in Electronic Communications Law dated 13.07.2014, published in Official Gazette no. 29059,

• Regulation on Electronic Communications Framework and Data Systems dated 13.07.2016, published in Official Gazette no. 29769,

• Regulation on Emergency Calls in Electronic Communications Sector dated 05.06.2012, published in Official Gazette no. 28314; and

• Regulation on Radio and Telecommunications Terminal Equipment dated 24.03.2007, published in Official Gazette no. 26472.

• Regulation on Internet Mass-use Providers dated 11.04.2017, published in Official Gazette no. 30035

REGULATORY BODIES OR AUTHORITIES

The Information and Telecommunication Technologies Authority is the authority for regulating and monitoring the telecommunications sector in Turkey. It is an institution with special budget and with administrative and financial autonomy. The Authority is independent and regulates/supervises the telecommunications sector in Turkey with regards to authorisation, tariffs, access, numbering, spectrum management, licensing, market supervision etc. The Authority’s main address is in the capital Ankara at Eskişehir Yolu 10.Km No:276 Çankaya/Ankara – Turkey. The website of the Authority is www.btk.gov.tr

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

There are two main types of activities regulated under Law no. 5809. These are:

1) the provision of electronic communication services; and

2) the establishment and operation of electronic communication networks and infrastructure. Therefore, entities which provide the aforementioned services are the primary parties that are subject to the rules and regulations under Law no. 5809.

1. ** Provision of electronic communication services:** Law no. 5809 describes electronic communication services as the provision of services regarding the transmission, exchange and receiving of all kinds of signals, symbols, sounds, images and data which could be converted into electrical signals, by means of cable, radio, optic, electric, magnetic, electromagnetic, electrochemical, electromechanical and other types of transmission systems.

2. **Establishment and operation of electronic communication networks and infrastructure:** Under Law no. 5809, electronic communication infrastructure is defined as all kinds of network components, relevant facilities and the supplementary elements, including switching equipment, hardware and software, terminals and lines over or by which electronic communications is provided.

Further, the operation of electronic communications infrastructure is defined as the provision of infrastructure for use of operators and other third parties by the construction, hiring or procuring of the electronic communication infrastructure.

Both types of activities are regulated under Law no. 5809 and parties which provide either of these activities are deemed to be ‘operators’ and are subject to licensing/authorisation requirements.
OVERVIEW OF CONSENTS, LICENCES AND AUTHORISATIONS REQUIRED PRIOR TO THE COMMENCEMENT OF TELECOMMUNICATIONS ACTIVITIES

Pursuant to Law no. 5809 and the Regulation on Authorisation in the Electronic Communications Sector, entities must obtain authorisation prior to commencing the provision of telecommunication services. However, authorisation is not required if the telecommunication service is exclusively used internally for individual or organisational needs within the entity’s property, does not exceed the property’s physical borders and the electronic communications service is not provided to third parties.

There are two types of authorisation:

1. Authorisation by notification to the Authority; and
2. Authorisation by obtaining a licence for those services which require spectrum allocation.

For services which do not require spectrum allocation, entities are entitled to automatic authorisation after notifying the Authority as to the commencement of the electronic communication services. If the entity meets the relevant conditions, such as being incorporated within the Republic of Turkey under Turkish laws, the entity will be authorised.

For services which require spectrum allocation or the allocation of limited resources, entities must obtain a licence from the Authority by requesting spectrum allocation. The Authority determines whether the number of use rights for these services should be limited. The Authority shall grant the right of use within 30 days following the duly application for the electronic communication services which are determined not to limit the number of use rights. The number of use rights may be limited only when resources need to be carried out by a limited number of operators and to ensure active and efficient use of resources. Further, for services which must be provided by a limited number of operators (such as mobile telecommunication licences), the Authority provides licences following a tender process.

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

In order to provide electronic communication services in Turkey, entities must be established within the Republic of Turkey and must be incorporated under the laws of Turkey. Therefore, entities are required to have a permanent establishment in Turkey.

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

Pursuant to the Regulation on Access and Interconnectivity, all operators are obliged to "negotiate" interconnection with other operators with a view to reaching an agreement within a reasonable time. If the operators do not reach an agreement within a reasonable time, the Authority has the right to impose an interconnection obligation on the operators.

The Authority may decide to limit the interconnection obligation on the grounds that there are technical and commercial alternatives to the interconnection or that there are no resources to provide the interconnection.

In cases where an operator denies interconnection or imposes unreasonable terms and if the Authority decides that the actions of that operator damages competition or damages the interests of end-users, the Authority may oblige such operator to provide interconnection.

Further, the Authority may oblige operators with significant market power to provide interconnection/access. In such cases, operators are obliged to provide interconnection/access on a non-discriminatory basis and with the same conditions and qualities that apply to their subsidiaries or partners.

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Under Law no. 5809, there is a distinction between consumers and other subscribers (non-consumers). Pursuant to this law, those who use electronic communication services for non-commercial purposes are consumers.

The rules that apply to operator – consumer relations are different to those which apply to operator – non-consumer relations, as
consumers have extended rights.

Pursuant to the Regulation on Consumer Rights in the Electronic Communications Sector, consumers have specific rights, including for example, rights relating to transparency, non-discrimination, service quality, specific requirements that protect consumers in subscription contracts, invalidity of unfair terms that are against consumers, number portability, switching operators and open and transparent billing etc.

The operators should inform consumers about the safe use of communication services. They should provide infrastructure-level services to protect consumers against illegal and harmful content at no additional cost.

REGULATORY TAXES AND FEES

Authorisation is subject to a certain fee which is determined annually by the Authority. Further, the fee changes depending on the type of authorisation requested. Also, the Authority requests a certain fee for the allocation of certain limited resources, which again is determined annually by the Authority and changes depending on the type of allocation and service.

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

The Authority has a wide range of powers and in practice, it chooses to actively enforce such powers.

If there is a breach of the laws or the requirements regarding authorisation and the right to use, the Authority may impose an administrative fine equal to 3% of the operator’s net sales during the previous year.

In the case of non-payment of authorisation fees, the Authority may cancel the operator’s authorisation.

Further, in respect of those operators which recently started their services, the Authority has the right to impose different administrative fines, starting from TRY 1,000 to 1,000,000 (approximately USD 260.00 to USD 260,000.00).

In addition to the above, commencing the provision of electronic communication services without obtaining authorisation or obtaining a right of use, could lead to the imprisonment of company officials.

KEY CONTACTS

Burak Özdastanli
Managing partner
IP.TECH Legal
T +902123674489
bozdogistanli@iptech-legal.com
UAE - DUBAI

OVERVIEW OF LEGAL LANDSCAPE

The United Arab Emirates (UAE), and the city of Dubai in particular, is a regional business 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, these 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.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The United Arab Emirates has a Federal Telecommunication Law.

The Telecommunications Law:

- Establishes a Telecommunications Regulatory Authority (TRA)
- 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 TRA’s website does publish an English translation of the Telecommunications Law (see here) and Regulations (see here).

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

REGULATORY BODIES OR AUTHORITIES

The Telecommunications Regulatory Authority regulates the telecommunications sector in the UAE.

The TRA’s main prerogative is to foster sustainable competition in the UAE’s telecommunications sector. The UAE’s TRA is also involved in cyber security, and hosts the UAE’s Computer Emergency Response Team, as well as managing an ICT development fund.
TELECOMMUNICATIONS LAWS OF THE WORLD

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’

In March 2018 the TRA published a Regulatory Policy regulating the provision of Internet of Things.

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

A licence is required from the TRA 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 however the TRA 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.

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

The TRA has conducted market reviews and has taken steps to issue ex ante regulation against the licensed operators.
TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

The TRA actively regulates consumer protection and has recently issued a consolidated and updated Consumer Protection Regulation, which can be found here.

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.

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 TRA, 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 TRA has taken issue in the past with certain OTT services that were not susceptible to lawful interception.

KEY CONTACTS

Paul Allen
Partner, Head of Intellectual Property and Technology
DLA Piper Middle East LLP
T +971 4 438 6100
paul.allen@dlapiper.com

Eamon Holley
Partner
DLA Piper Middle East LLP
T +971 4 438 6100
eamon.holley@dlapiper.com
UKRAINE

OVERVIEW OF LEGAL LANDSCAPE

The telecoms market is mainly regulated by the Law of Ukraine "On telecommunications" as of 18 November 2003 No. 1280-IV ("Telecom Law") and on a significant number of subordinate documents of the National Commission for the State Regulation of Communications and Informatization ("NCCIR") and Administration of the State Service of Special Communication and Information Protection of Ukraine ("Administration of SSSC").

NCCIR is the state regulatory authority responsible for ensuring compliance with laws in the area of telecommunications by market players.

Administration of SSSC is an authority responsible for the development and implementation of state policy in the areas of special communications, information security, telecommunications and use of the radio frequency resource of Ukraine ("RFR").

On 19 September 2019 the amendments to the Telecom Law were introduced and such amendments will come into force on 25 December 2019 ("Amended Telecom Law"). The main changes that were introduced by Amended Telecom Law relate to abolishment of licensing of telecommunications services. At the same time, the subordinate legislation supporting the Amended Telecom Law as of today has not been adopted yet.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The regulatory framework for the Ukrainian telecom market is mainly established by Telecom Law, which outlines the rights, obligations and liabilities of the telecoms market players and authorities of NCCIR.

Further, a Law of Ukraine "On Radio Frequency Source of Ukraine" as of 01 June 2000 No. 1770-III ("Law on RFR") regulates the use of radio frequency resource of Ukraine ("RFS").

Finally, there are also a number of subordinate acts which contribute to the regulation of the telecoms market by detailing provisions of the above laws. In particular, the main subordinate acts are as follows:

- Rules for Provision and Receipt of Telecommunications Services, approved by the Regulation of the Cabinet of Ministers of Ukraine as of 11 April 2012 No. 295;
- Plan for Use of Radio Frequency Resource of Ukraine, approved by the Decree of the Cabinet of Ministers of Ukraine as of 09 June 2006 No. 815;
- Basic Requirements to the Agreement on Provision of Telecommunications Services approved by the Decision of NCCIR as of 29 November 2012 No. 624;
- Procedure for Maintenance of the Register of Operators, Providers of Telecommunications, approved by the Decision of the NCCIR as of 1 November 2012 No. 560;
License Terms and Conditions for Activities in the Area of Telecommunication with Regard to Provision of Services on Technical Maintenance and Operation of Telecommunications Networks, On-Air TV and Radio Broadcasting Networks, Wired Radio and TV Networks, approved by the Decision of the National Commission for the Regulation of Communications (“NCRC”) as of 11.11.2010 No. 513;

License Terms and Conditions for Activities in the Area of Telecommunications with regard to Provision of the Fixed Telephony Services Using the Wireless Access to Telecommunications Networks with the Right of Technical Maintenance and Lease of Electronic Communications Channels (local, national long-distance, international), approved by the Decision of NCRC as of 29.07.2010 No. 348;

License Terms and Conditions for Activities in the Area of Telecommunications with regard to Provision of the Fixed Telephony Services with the Right to Technical Maintenance and Operation of Telecommunications Networks and Lease of Electronic Communications Channels (local, national long-distance, international), approved by the Decision of NCRC as of 10.12.2009 No. 1789;

License Terms and Conditions in the Area of Telecommunications with Regard to Provision of Mobile Telephony Services with the Right of Technical Maintenance and Operation of Telecommunications Networks and Lease of Electronic Communications Channels, approved by the Decision NCRC as of 26.01.2006 No. 179; and


REGULATORY BODIES OR AUTHORITIES

NCCIR

NCCIR is the state regulatory authority for telecommunications, informatisation and use of the RFR.

Within its specified areas under law, the NCCIR exercises powers of a licensing, regulatory and state controlling authority.

Among other things, the NCCIR has the following responsibilities:

- to ensure the compliance with telecommunications laws by market players;
- to grant licences for telecommunications (until Amended Telecom Law becomes effective, i.e. until 24 December 2019) and use of the RFR;
- to establish rules for business activities for telecommunications, and to adopt decisions which are obligatory to telecom market players;
- to allocate, assign, and account for the numbering resource, to issue and withdraw permits, and supervise the use of the numbering resource;
- to define the relevant telecom markets, conduct an analysis of these markets and determine incumbent operators;
- to regulate cooperation between telecom operators through network interconnection, including traffic transmission services; and
- to establish the procedure for traffic routing.

Address: 22, Khreshchatyk Str., Kyiv 01001, Ukraine; website: http://www.nkri.gov.ua/

Administration of SSSC

Administration of SSSC is a state authority which, among other things, has the following responsibilities:

- to set technical specifications to telecom networks; and
1. to determine the list of technical means which may be used in public telecommunication networks.

Address: 13, Solomianska Str., Kyiv 03680, Ukraine; website: http://www.dsszzi.gov.ua

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

Broadly speaking, Ukrainian telecommunications law regulates relations arising between telecoms market players in respect to telecommunications networks and the provision/consumption of telecommunications services.

The Telecom Law defines the telecommunications network as a set of technical means of telecommunications and facilities designated for routing, switching, transmission and/or receipt of signs, signals, written text, images and sounds or messages of any kind via radio, wire, optical or other electromagnetic systems between end user equipment.

The Telecom Law defines telecommunication service as the product of an activity of an operator and/or provider of telecommunications which is aimed at meeting the needs of consumers in the area of telecommunications.

The Telecom Law differentiates between the following market players:

1. operators and providers of telecommunications;
2. consumers of telecommunications services; and
3. manufacturers and/or suppliers of technical means of telecommunications.

The main difference between operators and providers of telecommunications ("Operators" and "Providers") is that Operators may conduct activities in the area of telecommunications with a right to technical maintenance and operation of telecommunications networks, while Providers may conduct activities in the area of telecommunications but without a right to technical maintenance and operation of telecommunications networks.

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

Under the current Telecom Law (effective until 24 December 2019) business entities willing to provide telecommunications services may conduct such business activities only upon their registration with the Register of Operators and Providers of Telecommunications ("Register") and, in cases provided by the effective Telecom Law, under respective licenses.

Further, the following activities in the area of telecommunications are currently (until 24 December 2019) subject to licensing:

1. provision of fixed telephony services with a right of technical maintenance and the operation of telecommunications networks and leases of such electronic communication channels as: (i) local; (ii) national long-distance; and (iii) international;
2. provision of fixed telephony services by use of wireless access to a telecommunications network with a right of technical maintenance and the operation of telecommunications networks and leases of such electronic communication channels as: (i) local; (ii) national long-distance; and (iii) international;
3. provision of mobile telephony services with a right of technical maintenance and the operation of telecommunications networks and leases of electronic communication channels;
4. provision of services of technical maintenance and the operation of telecommunications networks, On-Air TV and Radio Broadcasting Networks, Wired Radio and TV Networks.

Furthermore, under the current Telecom Law (effective until 24 December 2019) business entities willing to carry out business activities in the area of telecommunications must submit to NCCIR an application on their registration with the Register in a form approved by NCCIR in at least one month prior to the date of commencement of such activities.

After Amended Telecom Law will become effective i.e. starting from 25 December 2019 the business entities willing to provide telecommunication services will be allowed to provide such services upon submission to the NCCIR a notification on
commencement of services in the area of telecommunication (in a form approved by NCCIR). The NCCIR adds respective information to the Register based on said notification. The licensing of telecommunication services will be abolished.

In addition to above, if the Operator needs a numbering resource or use of radio frequency resource for provision of its services, it may apply to NCCIR for respective authorizations.

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

Only residents of Ukraine - legal entities and private entrepreneurs - may be registered as Operators or Providers.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Ukrainian telecom regulations provide for a number of technical, organisational and economic requirements regarding the interconnection between Operators. Among other things, the requirements are as follows:

- operators shall not create obstacles to interconnection;
- interconnection is to be negotiated between the concerned Operators according to the established procedure under law;
- agreement on interconnection shall be in written form and include all provisions which are specified by NCCIR as applying to such agreements (e.g. location of an interconnection point, data protection obligations, etc); and
- economic conditions and tariffs for interconnection, as well as tariffs for traffic transmission services, are to be calculated in accordance with the procedure approved by NCCIR.

There are some additional requirements for interconnection with those Operators recognized by NCCIR as having significant market power (“SMP Operators”) in traffic transmission markets. Among others, the following requirements apply:

- SMP Operators may not refuse to interconnect with another Operator (except if the network of such Operator does not meet the requirements of Law on Telecommunications); and
- the fees for services of traffic transmission to the networks of SMP Operators are established by NCCIR.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

From the perspective of the Ukrainian telecoms law, both individuals and legal entities (which need, order and/or consume telecommunications services for their own needs) are considered consumers of telecommunications services and the same telecoms regulations apply to the provision of services to both of these groups. Apart from that, individuals are also protected by general consumer rights legislation which does not extend its effect to legal entities.

Further, certain obligatory requirements with respect to the provision of telecommunications services and its content are established by the Basic Requirements to the Agreement on Provision of Telecommunications Services approved by Decision of NCCIR as of 29 November 2012 No. 624.

Apart from the above, under the Telecom Law, Operators/Providers are obliged to protect data about:

1. a customer obtained upon conclusion of the agreement;
2. telecommunications services that this customer has obtained (the scope and volume of services, routes of data transmission, etc); and
3. data about the location of the customer’s end user equipment.

Such data can only be transferred if required by the law or with the customer’s prior written consent.

In addition, personal data protection requirements must also be complied with.
Please note that in certain cases NCCIR establishes the upper amount of fees which Operators/Providers may charge its consumers for provided telecommunications services.

REGULATORY TAXES AND FEES

TAXES

Generally, Operators and Providers pay value added tax (VAT), corporate profit tax (CPT), personal income tax (PIT), unified social contribution (USC) and some other taxes and duties.

VAT

Telecommunication services are generally subject to VAT at the rate of 20% of the services' value. If the services are rendered abroad, VAT is not applicable.

CPT

Operators and Providers of telecommunication services pay corporate profit tax at the standard rate of 18%.

PIT

Operators and Providers of telecommunication services shall withhold personal income tax at the rate of 18% of the income payable to their employees and military duty at the rate of 1.5% of the income payable to their employees.

USC

USC shall be paid by the Operators and Providers of telecommunication services at the rate of 22% of the income payable to their employees and this shall be the cost of the Operators and Providers of telecommunication services. Minimum USC is set as 22% of minimum salary which currently is equal to USD 37 per month per employee. Maximum USC is set as 22% of 15 minimum salaries and is thus currently capped by USD 550 per month per employee.

Radio frequency rent

Those Operators which use radio frequency when rendering telecommunication services, and which obtained the respective authorisations, shall pay rent for their use of radio frequency. The base for rent payment is calculated by reference to radio frequency bandwidth. The rent shall be calculated by the Operators and Providers based on the fixed rate established in the Tax Code of Ukraine and which depends on the type of radio connection, radio spectrum and bandwidth.

Pension Fund duty

Those Operators which provide mobile communication services are liable for transferring to the budget a 7.5% Pension Fund duty calculated based on the value of mobile communication services. Duty is included in the price of mobile communication services and is paid by customers as part of the price.

FEES

Provision of telecommunication services

Provision of certain telecommunication services are subject to a respective license until Amended Telecom Law will become effective, i.e. until 24 December 2019. The fees for issuance of the licenses depending on the type of telecommunications service are the following:

- provision of international fixed telephony services (on the whole territory of Ukraine) - UAH 8,993,000 (approximately USD 369,778);
- provision of intercity fixed telephony services (no less than for 2 regions) - UAH 340,000 (approximately USD 13,980) for one region;
- provision of local fixed telephony services:
Allocation of the numbering resource

Operators are obliged to pay a fee for the allocation of numbering resources. The amount of the fee depends on the type of numbering resource (e.g., the national identification code of the mobile communication network).

Use of radio frequency resource

Depending on the type of radio connection, range of radio spectrum, and region of Ukraine, there are different fees for a licence for the use of radio frequency resource.

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

Compliance of telecom market players with the requirements of telecommunications laws is controlled by NCCIR by means of its scheduled and unscheduled inspections. Until Amended Telecom Law becomes effective, i.e. until 24 December 2019 the NCCIR may annul the Operator’s license(s) the if the inspections would reveal certain incompliances of Operator’s business with telecom regulatory requirements.

Separately, based on results of inspections the NCCIR may issue administrative offence protocol, which is a basis for administrative proceedings conducted by NCCIR in accordance with the Code of Ukraine on Administrative Offences. The main administrative offences and respective sanctions are as follows:

1. Breach of conditions and rules regulating telecommunications activities and the use of radio frequency resource may entail the imposition of a fine on officials of the entity in the amount (approximately) from USD 70 to 140 (starting from 25 December 2019, i.e. from the date when Amended Telecom Law becomes effective - from USD 350 to 699);

2. Failure to comply with the demands of NCCIR may entail the imposition of a fine in the amount (approximately) from USD70 to

In addition to sanctions above, starting from 25 December 2019, i.e. from the date when Amended Telecom Law becomes effective, the following administrative offences and respective sanctions may be applied to the Operators/Providers:

- UAH 1,700 (approximately USD 70) - in case the network capacity is less than 1,000 numbers; UAH 8,500 (approximately USD 350) - in case the network capacity is less than 10,000 numbers; UAH 51,000 (approximately USD 2,097) - in case the network capacity exceeds 10,000 numbers;
- UAH 102,000 (approximately USD 4,194) - in case of using the wireless access;
- UAH 5,800 (approximately USD 238) - in case of using the wireless access with DECT technology; and
- UAH 340 (approximately USD 14) - in case of services provision in rural area;

- provision of mobile telephony services - UAH 340,000 (approximately USD 13,980);
- provision of services of technical maintenance and the operation of telecommunications networks:
  - UAH 1,700 (approximately USD 70) - in case of on-air TV broadcasting networks;
  - UAH 1,700 (approximately USD 70) - in case of radio broadcasting networks;
  - UAH 340 (approximately USD 14) - in case of wired radio networks;
  - UAH 4,250 (approximately USD 175) - in case of TV networks (within one city/village).
I. Provision of telecommunication services without submission to the NCCIR the notification on commencement of services in the area of telecommunication or provision of inaccurate or incomplete information in such notification may entail the imposition of a fine in the amount (approximately) from USD 699 to 1,398.

I. Failure to submit within established period a notice on change of information that has been provided earlier in the notification on commencement of services in the area of telecommunication may entail the imposition of a fine in the amount (approximately) from USD350 to

The repeated commitment of the above offences may lead to increases of the amounts of the fines.

Finally, under Telecom Law, the revenue earned by the Operator/Provider (i) arising from business activities which were not submitted to NCCIR, (ii) without obtainment of the appropriate license (until 24 December 2019, i.e. until Amended Telecom Law becomes effective), (iii) authorization for use of numbering resource, (iv) as a result of a breach of the tariffs set by NCCIR, shall be withdrawn and transferred to the State Budget of Ukraine.

KEY CONTACTS

Natalia Kirichenko
Legal Director
T +380 44 490 9575
natalia.kirichenko@dlapiper.com

Natalia Pakhomovska
Partner
T +380 44 495 1789
natalia.pakhomovska@dlapiper.com
UNITED KINGDOM

OVERVIEW OF LEGAL LANDSCAPE

Subject to a handful of discrete exemptions (concerning the use of spectrum), communication providers have general authorisation to operate in the UK and do not require a licence, permit, consent etc.

This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States. Unlike other Member States the UK does not require any notification to the telecoms regulator, the Office of Communications (‘Ofcom’).

The roles and responsibilities of Ofcom are codified in the key telecoms legislation in the UK, the Communications Act 2003. Ofcom regulate the TV and radio sectors, fixed line telecoms, mobiles, postal services, plus the airwaves over which wireless devices operate.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The primary legislation governing the telecommunications in the UK is the Communications Act 2003 which came into force on 25 July 2003 (largely replacing the Telecommunications Act 1984). The Communications Act 2003 implements the following European Directives:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
- Directive 2002/20/EC on the authorisation of electronic communications networks and services
- Directive 2002/19/EC on access to and interconnection of electronic networks and associated facilities
- Directive 2002/22/EC on universal service and user rights

These directives form the framework on which the Communications Act 2003 is based.

In addition to the Communications Act, the following legislation (and subordinate legislation sitting underneath) may also impact the provision of communication services and the operation of communication networks:

- The Wireless Telegraphy Act 2006 which sets out the regulatory framework for radio spectrum
- The Competition Act 1998
- The Data Protection Act 1998 which governs the processing of personal data
- The Regulation of Investigatory Powers Act 2000 which governs the interception of the communications. For example, the Act permits certain public bodies to require ISPs to provide access to a customer’s communications in secret
The key features of the Communication Act are:

- Although communication providers are generally authorised, this authorisation is subject to compliance with the General Conditions of Entitlement published by Ofcom here. The primary purpose of this is to protect recipients of communication services and they include conditions regulating the contents of bills, accessibility of information etc. It is the responsibility of each communications provider to consider which of the current 24 General Conditions are applicable to the services they provide.

- In addition to the published General Conditions of Entitlement, Ofcom has the power to set specific conditions relating to universal services, access, privileged suppliers and - most notably - ‘significant market power’ (SMP). In accordance with the EU directives mentioned above, Ofcom has a duty to periodically review the telecoms markets recommended for review by the European Commission, and where it finds that one (or more) operators have SMP it must impose such a condition on the SMP operator(s).

- The regulation and allocation of telephone numbers and controls and restrictions relating to premium rate telephone services.

- The principle of universal service; that affordable basic telephony services should be available to everyone.

- Ofcom is empowered to hear disputes between communications providers (although referral to Ofcom does not preclude the bringing of court proceedings).

The Electronic Communications Code (‘the Code’) sets out the powers that can be given to providers of electronic communications networks (ECNs) and providers of conduit systems available for use by providers of ECNs to enable them to install and maintain electronic communications apparatus.

**REGULATORY BODIES OR AUTHORITIES**

**Ofcom**

Address: Ofcom Riverside House, 2a Southwark Bridge Road, London, SE1 9HA

Website: www.ofcom.org.uk

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

Broadly speaking there are two types of communication providers for the purposes of the Communications Act; providers of electronic communication networks (ECNs) and providers of electronic communication services (ECS). The categories are then further sub-divided into public and private providers.

A electronic communication network is defined in the Communications Act as:

- A transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description

- Such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals
  - Apparatus comprised in the system
  - Apparatus used for the switching or routing of the signals
  - Software and stored data

An ’electronic communications service’ means a service consisting in, or having as its principal feature, the conveyance by means of
an electronic communications network of signals (except in so far as it is a content service). As the above hopefully illustrates, there is a breadth of regulated activities. Even if a service is provided over the use of another’s network (or through an agreement with a communications provider), the entity providing that service is subject to the same regulations and so is considered a communications ECS provider. Those regulations principally are the General Conditions of Entitlement described above.

Ofcom also regulates the allocation of telephone numbers in the UK. The provision of certain premium rate services may require prior permission from another regulator, PhonePay Plus and there are also various codes of practice which premium rate service providers must adhere to.

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

Communication providers have general authorisation to operate in the UK and do not require a licence, permit, consent etc. This concept of general authorisation is derived from the European Authorisation Directive which has been implemented in EU Member States. Unlike other Member States the UK does not require any notification to the telecoms regulator, OfCom.

Mobile operators (and other users of spectrum) do require a licence from Ofcom in order to install certain mobile network equipment.

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

From a telecoms regulatory perspective, there are no requirements for a communications provider to be domiciled in the UK prior to or during the provision of services. Advice should however be sought from a tax perspective.

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

The General Conditions require all providers of public electronic communications networks (irrespective of ownership) to ‘negotiate’ interconnection with other providers of public electronic communication networks with a view to reaching agreement within a reasonable time.

In addition, where Ofcom has found SMP following a market review it typically imposes an access-condition concerning an obligation to offer interconnection or related services.

Moreover Ofcom has the power to impose access conditions in the absence of SMP. Since 2011 there has been an increased use of access-related conditions to encourage sustainability, efficient investment in infrastructure, to promote innovation and to ensure ‘end-to-end connectivity’ within the UK network. Access related conditions may, for example, be imposed by Ofcom on:

- Providers of a subscription service or service accessed using an authorisation card (known as conditional access system)
- Code operators under the Electronic Communications Code

Ofcom (via an SMP designation) regulates the wholesale rates for termination of phone calls from other networks or their customers. All operators are currently required to provide call termination on fair and reasonable terms, conditions and charges.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The General Conditions of Entitlement contain a number of consumer specific provisions. A ‘consumer’ is defined as someone who uses or requests a service for non-business use, which would include someone not contractually bound to the supplier.

Specific obligations relating to consumers include:

- The requirement to include certain minimum terms in consumer contracts (condition 9)
- Conditions relating to term and termination
- The requirement to make certain information available to the customer, such as a description of the services offered and the standard tariffs
- Availability of number portability
- Restrictions on sales and marketing activities

In addition to specific telecoms regulations and codes, provisions of general consumer law also apply, such as rules concerning unfair consumer terms.

**REGULATORY TAXES AND FEES**

A mobile operator is required to pay a licence fee when granted a licence to install mobile equipment under the terms of the Wireless Telegraphy Act 2006.

All service providers with relevant turnover in excess of a set threshold (currently GBP 5,000,000) must also pay an 'administrative charge' currently set at around 0.0833% of turnover.

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

Where Ofcom (acting reasonably) identifies a breach, it will notify the relevant provider and require it to take necessary steps to rectify the breach. Failure to comply with the initial notice may lead to Ofcom issuing an enforcement notice and where the terms of the enforcement notice are not complied with, Ofcom may instigate civil proceedings and levy a fine. In addition, in the most serious of cases, Ofcom may suspend or restrict the providers’ entitlement to provide a regulated communications service and require that compensation is paid to the providers’ customers. Breach of a direction is a criminal offence although providers in receipt of a notice or direction must be given the opportunity to make representations in their defence.

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

**KEY CONTACTS**

**Mike Conradi**  
Partner  
DLA Piper UK LLP  
T +44 (0)207 796 6603  
mike.conradi@dlapiper.com

**Amanda Pilkington**  
Partner  
DLA Piper UK LLP  
T +44 (0)114 283 3071  
amanda.pilkington@dlapiper.com
OVERVIEW OF LEGAL LANDSCAPE

In the United States, interstate telecommunications are regulated at the Federal level by the Federal Communications Commission (FCC) and intrastate telecommunications are regulated by the state public utility commissions/public service commissions. The FCC also regulates, but to a lesser extent, Voice Over Internet Protocol (VoIP), which, according to the FCC, is a jurisdictionally mixed service.

All 50 states and the District of Columbia regulate intrastate telecommunications. There is great variation in telecommunications regulation under state law. However, all states generally require telecommunications providers to register with the state public utility/service commission, some require particular types of carriers to file tariffs for applicable services, and about half of the states requires carriers to contribute to state universal service funds and other similar programs. Additionally, some states and many localities collect emergency 911 fees.

The states do not have jurisdiction over either information services or wireless services, both of which are inherently interstate. Some states require VoIP providers to register, but otherwise the FCC generally has pre-empted state regulation of VoIP.

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Communications Act of 1934, as amended (the Act), authorizes the Federal Communications Commission (FCC) to regulate telecommunications, cable, wireless, satellite and other similar services in the US. Please see Chapter 5 of Title 47 of the United States Code (47 U.S.C § 151 et seq.) and 47 C.F.R Chapter I, the rules of the FCC implementing the Act.

REGULATORY BODIES OR AUTHORITIES

The Act authorizes the FCC to regulate and license telecommunications services and the use of the radio spectrum, as well as to enforce the Act.

Where not pre-empted by the Act, state public utilities commissions/public service commissions regulate intrastate telecommunications, including by requiring a state authorization.

Either the US Congress (through the Act) or the FCC has designated certain non-governmental or quasi-governmental entities with the authority to administer and audit compliance with certain programs. For example, the Universal Service Administrative Corporation (USAC) is authorized by the Act to administer the Universal Service Fund (USF), which subsidizes telephone and broadband services in rural and high-cost areas and to low-income individuals, and Internet service to schools and libraries. USF is supported by the revenue contributed by telecommunications carriers and other providers of telecommunications. USAC is authorized to audit contributor compliance with the FCC rules on USF contributions. USAC also makes disbursements from the USE programs to service providers qualifying for support.
TYPES OF TELECOMMUNICATIONS ACTIVITIES AND/OR PERSONS WHICH ARE SUBJECT TO LEGAL AND REGULATORY REQUIREMENTS

The FCC regulates:

- Telecommunications services generally and some Voice over Internet Protocol (VoIP) offerings
- Submarine cables
- Wireless services including, but not limited to, commercial mobile wireless, private mobile wireless, microwave, and satellite through rules on licensing, technical requirements, and interference applicable to both commercial, private, and non-commercial spectrum users (ie local governments/public safety) except Federal government agencies
- TV and radio broadcast services
- Experimental radio services
- Access to telecommunications, advanced communications services, cable/video programming, and customer premises equipment for people with disabilities
- Intercarrier compensation for the exchange of traffic
- Use and protection of customer information by telecommunications carriers
- Cable television rates at the basic level
- Equipment authorizations for both intentional and unintentional emitters of radio frequencies

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

Entities are authorized to provide domestic telecommunications services in the US pursuant to a Section 214 authorization, which is automatically granted by the FCC upon registration with the FCC (and USAC). There is no requirement to renew a Section 214 authorization.

Entities seeking to utilize the radio spectrum to provide domestic telecommunications service must apply for and obtain a radio license for the frequencies to be used before commencing service. Providers of licensed wireless, broadcast or satellite services are required to operate consistent with the terms of their FCC license and applicable FCC rules, including those limiting operating parameters to protect against interference. Licensees providing commercial mobile radio services are classified as telecommunications carriers. Radio licenses are term-limited and must be renewed to permit continued operation beyond the license term.

Entities seeking to provide telecommunications services between the United States and any foreign point must apply for and obtain an international Section 214 authorization from the FCC before commencing service. There is no requirement to renew a Section 214 authorization.

Telecommunications carriers must obtain an FCC Registration Number (FRN).

Telecommunications carriers and other providers of telecommunications must file an FCC Form 499-A registration with USAC prior to commencing service and contribute to USF pursuant to the revenue reported in quarterly filed Form 499-As.

FCC radio licenses and Section 214 authorizations generally may not be transferred or assigned except with the prior approval of the FCC (internal reorganizations and involuntary bankruptcy being exceptions). Approval of applications for license transfers or assignments may occur as rapidly as overnight or can take many months, depending on the nature of the license(s), the
competitive issues raised, and whether foreign ownership is involved. Some state laws also require approval by the state’s respective public service/utilities commission prior to the transfer of control or assignment of state telecommunications authorizations.

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

With respect to non-wireless services, there are no outright prohibitions on foreign telecommunications carriers serving US customers and no requirement for foreign carriers to hold the Section 214 authorization through a US subsidiary. However, an applicant for Section 214 authority that is a foreign telecommunications carrier, an entity that is affiliated with one or more foreign carriers, and/or an entity with a 10% or greater direct or indirect foreign owner, generally will experience a more rigorous and much longer application process often taking six months or more. This is because the FCC will refer such application to an interagency review body called Team Telecom to review the application with respect to national security, law enforcement, foreign policy, and trade concerns. Team Telecom is comprised of officials from the Department of Justice, Department of Homeland Security, Federal Bureau of Investigation, Department of Defense, and potentially other agencies. Team Telecom will typically seek more information from the applicant regarding its ownership (particularly foreign ownership), affiliates, the nature of the facilities and equipment used, the provisioning of services, the protection of customer data, network security, and how the applicant will respond to law enforcement service of process. The FCC will not act on the application until Team Telecom indicates it has no objection to the grant. In some cases, the applicant may be asked to execute a network security agreement or take other mitigating measures to address potential concerns. On rare occasions, Team Telecom may object, in which case the FCC will generally not grant the license application.

The Communications Act does impose foreign ownership limitations on radio licenses. Section 310 of the Act prohibits any radio license from being held by a foreign government or its representative. Commercial mobile radio licenses, broadcast licenses, certain types of aeronautical licenses are subject to additional restrictions. These restrictions prohibit such licenses from being held by any foreign entity and any US corporation with more than 20% direct foreign ownership or voting power. In addition, where an application for a commercial mobile radio, broadcast, or aeronautical license has indirect non-controlling foreign ownership of 20% or more or indirect controlling foreign ownership of 25% or more, the FCC will refer the application to Team Telecom for review. The FCC will not act until the executive agencies indicate no objection.

Telecommunications common carriers, providers of interconnected VoIP and non-interconnected VoIP are required to have an agent in Washington, DC to receive service of process related to FCC matters (47 U.S.C. § 413; see also 47 C.F.R. § 1.47(h)).

**EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS**

Telecommunications carriers are required to interconnect facilities and equipment with other carriers in order to exchange traffic. Generally, interconnection is negotiated between telecommunications carriers. State public service/public utilities commissions approve interconnection agreements and adjudicate interconnection disputes between carriers. Carriers are required to pay various forms of intercarrier compensation for the exchange of traffic.

Providers of wireline local exchange service are sometimes required to file intrastate tariffs with state public service/public utilities commissions pursuant to state law. Carriers file interstate tariffs for a decreasing number of legacy services with the FCC.

Mobile wireless service providers enter into roaming agreements with each other in order to allow customers to receive service outside of their home network. Providers of commercial mobile data services must offer data roaming arrangements on commercially reasonable terms and conditions, subject to certain limitations.

**TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS**

The FCC has adopted numerous consumer protection rules, which generally do not apply to telecommunications services provided to enterprise/business customers or to wholesale services provided to other carriers.

FCC consumer protection rules include:

- The protection of telecommunications proprietary information generally and customer privacy by telecommunications
carriers (including both wireline and wireless) based upon the requirement under the Act to protect and hold confidential, Customer Proprietary Network Information (CPNI), which is defined as:

- Information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. Subscriber list information is the information in a telephone directory (47 U.S.C. § 222)

- The FCC Truth-in-Billing policy, which applies to telecommunications services offered to consumers and is designed to improve consumers' understanding of their telephone bills. Among other things, the rules require that a telephone company’s bill must:
  - Be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered
  - Identify the service provider associated with each charge
  - Clearly and conspicuously identify any change in service provider
  - Contain full and non-misleading descriptions of charges
  - Identify those charges for which failure to pay will not result in disconnection of the customer’s basic local service
  - Provide a toll-free number for customers to call in order to lodge a complaint or obtain information (47 C.F.R § 64.2401)

- The regulation by the FCC of the process for switching a consumer’s telecommunications carrier in order to protect against unauthorized changes (47 C.F.R §§ 64.1100 - 64.1190)

- Telemarketing including using robocalls, robotexts, and auto-dialers

- Access to telecommunications services and equipment by persons with disabilities, including hearing aid compatibility, access to advanced communications services and equipment, access to Internet browsers built into mobile phones, telecommunications relay services, and accessible video programming and video programming apparatus

REGULATORY TAXES AND FEES

Telecommunications carriers and other providers of telecommunications are required to pay various regulatory fees and surcharges. These fees and surcharges, however, are not classified as ‘taxes’ and must clearly be distinguished from taxes on any invoice.

Specifically, a telecommunications carrier must contribute to the Universal Service Fund, absent an applicable exemption. The current contribution factor for USF is approximately 25% of qualifying interstate revenues.

Telecommunications carriers and other providers of telecommunications may be required to pay contributions to Telecommunications Relay Service, Local Number Portability (LNP), and the North American Numbering Plan Administrator (NANP) for numbering resources ( invoiced following registration with USAC). It is permissible under FCC rules to pass these contributions and fees through to end user customers.

Telecommunications carriers, submarine cable licensees, and wireless, broadcast and satellite licensees are required to pay an annual FCC regulatory fee (which is established annually in August based upon the service category).

Most states have instituted state universal service fund and emergency 911 fees (emergency 911 fees are also frequently assessed
KEY SANCTIONS AND PENALTIES IN THE CASE OF CONTRAVENTION OF
TELECOMMUNICATIONS LAWS AND REGULATIONS

Compliance with the Act, the FCC rules, and the terms and conditions of licenses and authorizations are investigated and enforced by the Enforcement Bureau of the FCC. The Enforcement Bureau may first contact the licensee through a notice of inquiry or proceed directly to a Notice of Apparent Liability. If the Bureau finds noncompliance, the investigation is typically resolved through an Order of Forfeiture, which can mandate fines or order the seizure of property. Alternatively, the Bureau and licensee can resolve the investigation by jointly entering into a Consent Decree, which may involve an admission of liability, a reduced fine, and a multi-year compliance plan. Violations of a consent decree’s terms is considered a violation distinct from any subsequent violation of the FCC’s rules. In cases of egregious violation, the FCC may revoke some or all of a wrongdoer’s licenses. The FCC has delegated investigative capacity to USAC to review (in the first instance) a carrier’s compliance with its Universal Service Fund contribution obligations.

KEY CONTACTS

Michael Senkowski
Partner
DLA Piper LLP (US)
T +1202.799.4103
Michael.Senkowski@dlapiper.com

Nancy Victory
Partner
DLA Piper LLP (US)
T +1202.799.4216
nancy.victory@dlapiper.com
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