

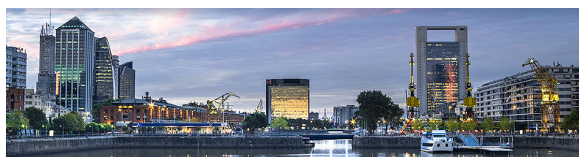
TELECOMMUNICATIONS LAWS OF THE WORLD

Argentina vs Kuwait



Downloaded: 28 April 2025

ARGENTINA



Last modified 29 October 2022

OVERVIEW OF LEGAL LANDSCAPE

Argentina is the third-largest economy in Latin America. Although it benefits from a wealth of natural resources, a diversified industrial base and a highly skilled labor force, statist and interventionist policies expose the economy to persistent boom-bust cycles. It is the fourth most populated country in Latin America and one of the countries with the highest penetration of mobile services.

The Government Body in charge of the control of the telecom and media industry is the National Entity of Communications (“**ENACOM**”), an autonomous and decentralized entity. It is in charge of the application of the Digital Argentina Law 27,078, Audio-visual Services Law 26,522, and related regulations.

Also, the Undersecretary of Telecommunications and Connectivity is in charge of the dictation of regulation about telecommunications.

Both entities are on the Federal Government. States and localities have no authority for regulation of the services, they only request a permit for the installation of telecommunications infrastructure.

The main regulations applicable to the ICT sector are:

- Digital Argentina Law 27,078,
- Audio-visual Services Law 26,522,
- Decree 764/2000 (Spectrum),
- Decree 690/2020 (Price Regulation),
- Decree 588/2008 (Universal Service),
- Resolution 286/2018 (Interconnection),
- Resolution 697/2018 (Licenses),
- Consumer Protection Law 24,240.

KUWAIT



Last modified 5 October 2016

OVERVIEW OF LEGAL LANDSCAPE

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

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

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

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

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

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

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

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

KEY TELECOMMUNICATIONS LAWS, REGULATIONS AND POLICIES

The Licensing Regulation rules licenses, resale services, serving areas, obligations of the licensee to other licensees, to customers, and to the Regulator. The regulations set a Single License System that allows the licensee to provide any kind of telecommunication services (fixed or mobile, wired or wireless, national or international). Licenses are granted without a term limit, on demand, with a national scope, and with freedom of choice on technology and investments.

Spectrum regulation establishes that the spectrum is a public domain property, and it is granted on a precarious basis. The bandwidth to be granted must be related with the services to be provided. The bands are granted on demand or by a public auction.

The pricing regulation of telecommunications services had established “fair and reasonable” prices, which meant unregulated prices, until the Decree 690/20 was enacted. This Decree states that the prices will be reasonable, fair, must cover the operation expenses, assure a reasonable profit margin, and that they will be “regulated” by the Authority.

This Decree, enacted in August 2020, prohibited raising prices until December 2020, and subsequent resolutions of the Authority allowed higher prices since that date. But these resolutions and the Decree were challenged in the courts, and a lot of companies (Telecom, Telefónica, Directv, Telecentro, TV Cable Color, etc.) received precautionary measures in their favor, halting the price regulation and consequently allowing price freedom again.

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

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Undersecretary of Telecommunications and Connectivity

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.

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

Any natural or legal person providing any ICT service (such as Fixed or Mobile Telephone, Internet Access - fixed, mobile, satellite etc.) or media services (cable or wireless TV, radio), is subject to ENACOM regulations.

On the other hand, services provided through Internet only (WhatsApp, Skype, Zoom, Netflix, etc.) are not subject to these regulations.

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

Single Licenses are granted by the ENACOM. ENACOM does not have the authority to deny a license if the application meets all the requirements. One the License is

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

acquired, the licensee can request a Registration of Services, by which they are able to provide the registered services. To register services, no technical, legal, or economic support documents must be filed, only a simple petition.

Once the license and registration are granted by ENACOM, the licensee is required to provide the registered services within 24 months from the date of registration, permit the interconnection of its networks to any provider that requests the interconnection as established by the National Interconnection Rule; and provide information about traffic, total revenues and other information related to the geographical coverage area, to ENACOM.

Single Licenses are granted to both domestic and foreign companies (branches of foreign companies that are registered to conduct business in Argentina). There are no restrictions on foreign participation in the capital of the licensee. A completely foreign-owned company, if locally registered or a branch of a foreign company, can qualify for a license and a spectrum permit.

The Single License can be obtained upon filing the following information with ENACOM:

- Full legal name, Articles of Incorporation, Bylaws, Minutes of designation of valid authorities duly registered with the corresponding registries;
- Principal place of business and address in which legal notices shall be deemed duly given by ENACOM;
- An affidavit indicating that the applicant and its shareholders are not subject to any incompatibility;
- An affidavit assuring the compliance with the standards and technical specifications regarding telecommunications equipment and devices.

To hold a spectrum permit, the process depends on whether the spectrum authorization is granted by auction or by direct award. Radio spectrum can be assigned to service providers through public auctions, bidding processes (when there is a shortage of band frequencies), or upon demand. When a request to use a frequency band is filed with the ENACOM, it shall publish the frequency band requested in the Official Gazette, establishing a period of 15 days for third parties to have the opportunity to give evidence of their interest of said frequency band. If there are more interested parties

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.

registered than bands of frequencies available for authorization or if a shortage of frequencies is foreseen, the authorization for the use of a frequency band will be made through public auctions. If there are no third parties interested in a particular frequency band other than the one that has filed a request or if there is no shortage of frequencies foreseen, authorizations will be granted on demand.

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

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

EXISTENCE OF RELEVANT INTERCONNECTION/ROAMING REGULATIONS

The Interconnection Rules 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 ENACOM for resolution if no agreement is reached. Licensees with Significant Market Power must publish a Reference Offer.

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

Domestic inter-carrier roaming is not mandatory and is regulated through commercial agreements reached between the relevant carriers.

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

TELECOMMUNICATION LAWS AND REGULATIONS AFFECTING CONSUMERS

Consumer regulations states that licensees must provide to the consumer all the information related to the service, in Spanish, in a clear, detailed, free of cost manner. On the website and in the stores, it must be informed:

- The consumer's rights recognized by this Rule,
- The standard contract filed to the ENACOM,
- The address and free phone number of Customer Service of both the company and the Regulator, and the procedure to file claims,
- Details and prices of the services,
- Covered areas,
- Terms for the reception of messages with ads,
- Procedure to unsubscribe from content services (must be the same as the procedure to subscribe),
- Policies about recycling and final disposition of electronic waste, of electronics used for the service.

Besides, the licensee must publish information about the speed, quality of the link, type of services, on a site that must be linked to the main site of the company. For each type of service, the licensee must inform commercial characteristics of the service, speed, downloads limits, oversubscription rate, technical standards of quality service, resetting operation time, quality and availability of links, and network management measures.

REGULATORY TAXES AND FEES

The cost of the License is USD 100. There is no cost for the registration of specific services.

Telecom services providers must pay:

- the Control, Inspection, and Verification fee: 0.50% of the total income accrued for the provision of services, net of taxes, and charges.

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.

- the contribution to the Universal Service Trust Fund: 1% of the total income accrued for the provision of services, net of the taxes and charges.
- payment for the use of the radio spectrum.

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

ENACOM can impose fines for breaking the federal regulations and consumer regulations.

Both federal and local Consumer Protection offices can impose fines for breaking Consumer Protection laws.

Fines, closure, confiscation of the products, can be imposed by Consumer Protection Offices.

ENACOM can impose fines, closure, administrative precautionary measures about ceasing to operate, and in the most serious cases, the penalty could be the termination of the Register.

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.

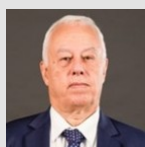
The Commission is given discretion by the Telecoms Law to take any of the following actions 'inasmuch as matches with the size of the violation':

- 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

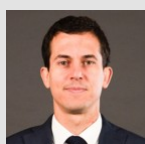
The Telecoms Law also provides that: 'The fine shall be doubled in case of repetition of the offence, or the violator pays double the amount of damage incurred, whichever is greater'. However, any interested party may request the Commission revisit any decision within one month of the decision being 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



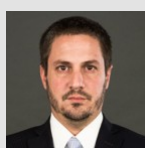
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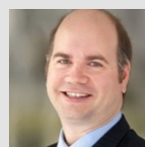
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