

# TELECOMMUNICATIONS LAWS OF THE WORLD

Belgium vs Kuwait



Downloaded: 8 July 2024

# BELGIUM



*Last modified 6 October 2022*

## 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, depending on the frequency used), 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.

# 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Regulations have been issued, any existing regulations issued according to applicable law, or any laws that have been repealed pursuant to the Telecoms Law, will continue to apply to the extent they are not inconsistent with the Telecoms Law.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.



## 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
- Directive 2018/1972 establishing the European Electronic Communications Code

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

- The Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

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

- The Code of Criminal Procedure, which governs the interception of communications.

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

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

## 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.

Telephone: 02 226 88 88

Website: [www.bipt.be](http://www.bipt.be)

## Community Regulators with regard to broadcasting

For the sake of completeness, the following regulators are of importance for the broadcasting in the three Belgian communities (Flemish, French and German-speaking):

- [The Flemish council for the media](#)
- [The French \(Walloon\) High Council for Broadcasting](#)
- [The Medienrat from the German-speaking Community](#)

## Other important regulatory bodies

- The Belgian Competition Authority, which has been charged with (1) the duty of settling certain types of lawsuits between operators and (2) giving opinions (binding or not depending on the case) to the BIPT with regard to decisions that demand a market analysis imposed by the European regulatory framework.
- Mediation services, such as the ombudsman.

## 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 ("ECN") and providers of electronic communication services.

A further subdivision is made between public and private providers. This is of importance, because providers of public ECN or services will qualify as operators and will thus have to fulfil the obligations corresponding to the role of an operator in Belgium.

To assess the public character of an ECN, it is necessary to consider whether there is an open or closed group of users. For example, a public ECN has an open user group as its target audience, whereas a non-public ECN only has

## 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'.

a closed user group as its target audience. This closed user group is a specific group of individual users, with a certain stability and common interest, that predates the provision of the ECN or services.

Another possible way to qualify as a public ECN or service is to consider the service or network as 'publicly available'. For this, it is necessary to consider whether everyone in the targeted audience can generally choose to use the services offered or if the access to the services is partially restricted to a specific group of users.

## **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**

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**

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.

However, it should be noted that a contact person is required. This contact person can be located elsewhere, but should remain available at all times.

## 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.

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

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](#).

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

In case of a breach of the Telecommunications Act, criminal fines of up to EUR 100,000 and imprisonment up to 4 years can be imposed.

Administrative fines of up to 1% of the turnover for the telecommunication activities of the last accounting year.

However, it is to be noted that higher fines are possible in some specific cases.

## 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.

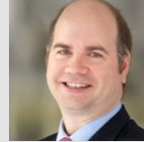
## KEY CONTACTS



### **Kristof De Vulder**

Partner  
DLA Piper UK LLP  
T +32 (0) 2 500 15 20  
kristof.devulder@dlapiper.com

## 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



### **Rami Zayat**

Legal Consultant  
[DLA Piper Middle East LLP](#)  
T +965 2291 5811  
rami.zayat@dlapiper.com

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