

FREQUENTLY ASKED QUESTIONS

IMPACT OF LICENSING ON OPERATIONS

Depending on how well or how poorly it is managed internally, telecommunications licensing and regulatory oversight can be a profit centre, or a cost centre. Beyond the impact of licensing on direct financial costs, licensing & compliance also has direct and indirect impacts on operations. Some of these impacts are described below.

Delay to operations in the field

The ability to deploy and use telecommunications and services depends on having the necessary licenses and authorizations in place. Equipment and services may have been procured and be physically available, but if not compliant, their use will not be lawful and in-country operations will be reluctant or outright unable to use them until the licensing process is completed.

Physical availability of equipment is also directly threatened by lack of licenses. Most countries make the importation of telecommunications subject to a license, type approval or import permit. When equipment arrives without that permit, it is liable to be impounded at customs until the issue is resolved. And because licensing can take months, failure to address licensing properly at project inception can cause months of delay to project implementation that is telecommunications-dependent, not to mention warehousing costs and customs penalties. Equipment stuck in customs is a leading cause of project delay and cost overrun for global organizations.

Inability to plan

Preparedness relies by definition on the ability to plan ahead. While planning is key for preparedness, it also affects field work and emergency operations. Indeed, selecting the right telecommunications tools itself requires an understanding of which may be authorized, or whether a receiving country's frequency allocation plan allows the frequencies identified for use by the organization. Without a compliance program and ready access to that information, the organization cannot make the right procurement choices.

Lost contractual expenditure

Most large organizations contract with global and regional service providers for delivery of multiple types of telecommunications services. In many such instances, no licensing will be required. However, in as many other areas, the regulatory framework is such that the license is up to the organization using the service, application or equipment. Where a contract for such service has been made, but the service cannot be deployed because the license is not yet issued, the contract may nevertheless provide that payments for the service or for spectrum remains owed. Ensuring licensing is dealt with avoids compulsory contract payments being made with no delivery of service for lack of a license.

Risks of non-compliance

In most countries, use of spectrum or operation of a telecommunications system without a license is a criminal offence. Even where that is not the case, certainly violations of licensing requirements is prohibited and can lead to a number of penalties or other enforcement actions being taken by the regulatory authority. On the financial side, fines can range from light to severe or substantial penalties. Authorities are also empowered to confiscate or seal equipment in situations in which they are of the view that a violation is being committed. When that happens, all operations dependent on that telecommunications equipment are immediately affected.

Beyond direct impacts on operations, real or alleged violations of telecommunications law may be seized upon to trouble operations or personnel. Our firm works in multiple challenging jurisdictions in which the authorities may be predatory in nature or have a heavy hand in enforcement. In those jurisdictions, even if an alleged violation is ultimately established to be groundless, the threat of harsh official intervention causes disruption and stress, in particular to local staff. In such situations, a properly organized record of all compliance documentation is key to protecting the organization, its staff, its budget and operations from wanton enforcement. This is as true in non-rule of law jurisdictions as it is in countries with good governance.

Many of the entities and agencies we represent enjoy immunity from prosecution. Though a useful tool, those privileges are no cure-all, and certainly no substitute for a well-ordered program of compliance. Equipment enjoys no such immunity.