

Being Here: Local Presence Requirements for Telecommunications Equipment and IoT Service Providers in the UAE

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Certain businesses servicing the telecommunications and technology sector in the UAE may now need to have a physical presence in the UAE under regulations and policies that have been issued by the Telecommunication Regulatory Authority ('TRA') in the past 12 to 18 months.

Under Federal Law by Decree No. 3 of 2003 Regarding the Organization of Telecommunications Sector, as amended ('Telecoms Law'), the TRA is the competent body to oversee the telecommunications sector in the State and has the power to issue regulations, instructions, decisions and rules in connection with its statutory function.

The local UAE establishment requirements are set out under the following regulations/policies:

1. Regulation on Telecommunications Equipment Type Approval Regime V2.0 dated 2 October 2018 ('Type Approval Regulations');
2. Internet of Things ('IoT') Regulatory Policy dated 22 March 2018 ('IoT Policy'); and
3. IoT Regulatory Procedures dated 6 March 2019 ('IoT Procedures'); and

Type Approval

Under the Type Approval Regulations approval must be obtained from the TRA before telecommunications equipment can be used, sold, offered for sale or connected to any telecommunications network in the UAE ('Type Approval').

The key objectives of the Type Approval regime are to protect the health and safety of persons, the public interest, property and telecommunications networks (including by ensuring equipment effectively uses the radio frequency spectrum and does not cause damage or harmful interference with other telecommunications networks).

'Telecommunications Equipment' is defined as Radio and Telecommunication Terminal Equipment ('RTTE') made or adapted for use in transmitting and/or receiving and/or conveying any of the Telecommunications Services (as defined in the Telecoms Law) through a telecommunications network.

Type Approval is achieved through conformity of Telecommunications equipment with technical specifications published by the TRA and by registration of the Telecommunications Equipment with the TRA.

To apply for Type Approval the manufacturer, the importer or distributor that is the applicant must first be registered with the TRA.

The Type Approval Regulations, which updated the TRA's requirements for Type Approval in October 2018, expressly state that the 'local' manufacturer, importer or distributor of Telecommunications Equipment must provide a valid trade licence issued by the Department of Economic Development based in the UAE, with an economic activity specific to Telecommunications Equipment.

Accordingly, there is a requirement to have a local presence in the UAE.

The need to be legally established in the UAE to apply for Type Approval is further supported by the definitions in the Type Regulations.

A 'Local Manufacturer' is a manufacturer based in the UAE which can manufacture, assemble, offer or sell telecommunications equipment in the UAE market, provided that it holds a valid trade licence for the relevant telecommunications equipment and is registered in the Type Approval Regime.

An 'International Manufacturer' is a manufacturer based outside the UAE, that can provide telecommunications equipment in the UAE market through an importer based in the UAE and registered in the Type Approval Regime.

A 'Telecommunications Equipment Importer' is any legal person established within the UAE who imports telecommunications equipment from other countries. The Importer can also offer, sell or acquire telecommunications equipment in the UAE market.

A 'Telecommunications Equipment Distributor' is any legal person established within the UAE who offers, sells or acquires telecommunications equipment in the UAE market.

Despite these definitions, the regulations do not use them in the defined form (and also use undefined terms such as 'dealer').

The TRA registration certificate for the registered local manufacturer, importer or distributor is valid for five years and is renewable for a similar period.

The registered manufacturer, importer or distributor of Telecommunication Equipment can then obtain Type Approval for the respective Telecommunications Equipment by conforming with technical

specifications published by the TRA along with payment of prescribed fees.

The TRA will issue a Telecommunications Equipment type approval certificate which will contain the Telecommunications Equipment approval number. This Type Approval certificate is valid for three years and is renewable for similar periods.

In addition to the Type Approval, a registered Importer will also have to apply for customs clearance from TRA to import the approved Telecommunications Equipment into the UAE.

IoT Policy

Broadly speaking, the IoT refers to the growing number of physical devices around the world that are now connected to the internet, collecting and sharing data.

The TRA's IoT Policy is intended to allow IoT services to develop in the UAE in a co-ordinated, coherent, safe and secure manner. The TRA implemented the IoT Policy in March 2019 when it issued its IoT Procedures, which cover the registration procedure of an IoT service.

Any business offering an IoT Service to the UAE market, irrespective of its place of establishment, management or operations, is subject to the Telecoms Law and any regulatory framework related to IoT, including the IoT Policy.

Under the IoT Policy, an IoT Service Provider must register with the TRA to provide IoT service and obtain an IoT Service Provider Registration Certificate.

It is a pre-requisite for an IoT Service Provider to have a local presence.

Alternatively, an IoT Service Provider can appoint an official representative who will be responsible for communication with the TRA and other law enforcement agencies in the UAE. Such official representatives must be physically present in the UAE. The qualifications of the official representative, other than being physically present in the UAE, are not clear under either the IoT Policy or IoT Procedure. Can the representative be a chartered accountant or law firm? Could it be an entity registered with the TRA under the Type Approval Regulations (discussed above)?

Sale of eSIM

IoT devices that use cellular connectivity need a SIM. For the purpose of IoT, the TRA will permit the use of both physical SIM (e.g. a legacy plastic SIM card that is removable) and/or an eSIM (an embedded SIM that is physically integrated/soldered in a device).

Although permanent roaming is not prohibited in the UAE, the actual issue with the use of an eSIM is that selling an IoT device with a non-UAE eSIM amounts to a Regulated Activity.

This is because Resolution No. (44) of 2009 Regarding the Organisation of Selling Mobile Phone SIM Cards and Recharge Cards states that the Regulated Activities defined in Article (1) of the Telecoms Law that requires a licence includes the sale of SIM cards (and the TRA does not consider that this law distinguishes an IoT eSIM from any other SIM card).

Consequently, the sale of IoT devices with embedded SIM cards must be done with either the SIM card of an UAE licensee (i.e. Etisalat or du) or with the explicit or implicit consent of the licensees.

In general, if Etisalat or du consent to the sale of SIM cards by a third party, the TRA's policies related to the matter must still be adhered to.

Under the TRA's Registration of Mobile SIM Cards Points of Sale Policy (issued 18 May 2018) a commercial entity selling SIM must have:

- a business licence for the economic activity of selling SIM cards in the UAE; and
- registration with the TRA as a SIM Cards point of sale.

However, it is not clear if an IoT device manufacturer (or its local distributor) would be selling the SIM in the IoT Device. SIM generally remain under the control of the telecommunications service provider that issues the SIM, so compliance is an issue for the telecommunications service provider that is providing the IoT connectivity for the IoT device. Consequently, there only appears to be an issue if the SIM used by the IoT device is not the SIM of Etisalat or du (i.e. the IoT connectivity provider is a foreign telco and the IoT device is roaming in the UAE).

Conclusion

Despite the internet being the 'world wide web', telecommunications equipment manufacturers, importers and distributors and IoT service providers do not operate their businesses in a world without borders. To provide telecoms' equipment and IoT services in the UAE, having a form of local presence (with an appropriate trade licence) is now necessary under certain TRA regulatory policies.

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