

Legislative and Regulatory Intelligence and Updates

Intelligence and updates include: Laws, Regulations, Directives & Decrees

Area of Focus
Cloud Computing & Cloud Security
Software Licensing
Telecommunications, Media and IT including: <ul style="list-style-type: none">- E-Signature- E-Commerce- Interoperability- Open Source Software- VoIP
Electronic Data Management including: <ul style="list-style-type: none">- Data Sovereignty- Data Storage- Data Flow- Data Privacy- Data Security
Cyber Security/Crimes
Intellectual Property affecting Software
National Security
Technology <ul style="list-style-type: none">- Legal Standards- Best Practice Standards
Commercial Laws including: <ul style="list-style-type: none">- Competition- Contracts- Employment- Tax- Public Procurement (<i>including Public Private Partnerships</i>)- Commercial Fraud

I. Cloud Computing & Cloud Security

The Tunisian legal framework provides an important legal arsenal related to the protection of the private life applying Cloud Computing and Cloud Security thanks to the **law n°2004-5 of February 3rd, 2004**.

This law organizes the IT security and fixes the main rules of computer systems and the networks protection.

A public non-administrative enterprise called "National Agency of the IT security" was created in order to make a general supervision of the computer systems and the networks related to public and private bodies.

Others laws and regulations organize such security:

- The organic law of July 24th, 2004 related to the personal data protection,
- New articles 172, 199 bis and 199 ter of the penal code,
- The statutory order promulgated on November 2nd, 2011.

These laws and regulations include provisions concerning the civil and penal responsibility related the users' participants of the internet network.

However, they do not answer effectively the major challenges and ICT issues related to the private life.

The decree n° 2013-4506 of November 6th, 2013 published on November 12th created the technical Agency of telecommunications (ATT) which is placed under the supervision of the ministry of ICT and having authority to supply the technical support in judicial inquiries concerning the fight against the cybercrime.

II. Software Licensing and Intellectual Property affecting Software

The main legal texts governing copyright and similar rights in Tunisia are:

- The article 41 paragraph 2 of the Tunisian Constitution which provides that “*The intellectual property is guaranteed*”.
- The law N° 94-36 dated on February 24th, 1994 relative to the literary and artistic Property, such as modified and completed by the Law N° 2009-33 dated on June 23rd, 2009.
- The decree N° 2013-2860 dated on July 1st, 2013, concerning the creation of the Tunisian organism of copyright and similar rights, fixing its administrative and financial organization and its operating procedures.
- The decree N° 2013-3201 dated on July 31st, 2013, fixing the conditions and the modalities of the intervention fund of the literary and artistic creation encouragement.
- The order of Minister of Culture of January 27th, 2014, fixing the composition of the advisory committee.

According to Article 1 of the Law n° 94-36 dated on February 24th, 1994 as modified by the law n°2009-33 dated on June 23rd, 2009, Software is protected by copyright.

Thanks to such law, the copyright software protection is granted without formalities to every author from the creation of the original software and the deposit is not a condition of the protection.

According to article 47 of the same law, the duration of the protection is of 25 years from the date of software creation.

The intellectual property affecting software confers to its author patrimonial and moral rights.

The permanent or temporary reproduction of software in any way and under any shape (the load, the display, the execution), the transmission or the storage, are possible only through the licensing of the author.

The law grants this profit to the employer when the software is created by one or several employees during the exercise of their professional duties.

It's the same when the software is created by officials, local public authorities and public institutions.

III. Telecommunications, Media and IT

Telecommunications are mainly governed by the telecommunication code promulgated by the Law N° 2001-1 dated on January 15th, 2001 as modified and completed by law N° 2013-10 dated on April 12th, 2013.

This Code has for object the organization of the telecommunications sector.

This organization includes:

- ✓ The installation and the exploitation of telecommunications networks;
- ✓ The supply of the universal Services) of telecommunications;
- ✓ The supply of the of telecommunications services;
- ✓ The supply of the broadcasting services;
- ✓ The management of rare resources of telecommunications.

A National Authority of Telecommunications (INT) was created by the article 63 of the law n°2001-01 dated on January 15th, 2001, such as modified and completed by the law n°2002-46 of May 7th, 2002 and the law n°2008-01 of January 08th, 2008.

The National Authority of Telecommunications (Instance Nationale des Télécommunications INT) main mission is the regulation of the telecommunications sector.

1. E-signature:

The Tunisian law related to Trade and electronic exchanges (Law n° 2000-83 of August 9th, 2000) grant the same legal value to the electronic signature and the handwritten signature. Thanks to this legal reorganization, these laws allows the consumers, the companies and governmental structures to use the Internet to make deals and electronic exchanges requiring a personal signature, including a signature of important documents, to make payments and on-line transfers.

2. E-commerce:

The interest of Tunisia for the e-commerce was early developed compared with the countries of the region. Indeed, year 1999 was marked by the creation of a national committee of e-commerce asked in particular to set up a development strategy of the sector and to propose solutions to the bound problems related to this new activity.

This national committee promulgated the **law n°2000-83 of August 9th, 2000** to set up a regulatory framework of the exchanges and the e-commerce according to best practices adopted in the world.

The Tunisian Ministry of Trade established since January, 2012, task forces based on the Public Private Partnership to re-revitalize the sector and proposed a clear road map for the promotion of the e-commerce in Tunisia.

3. Interoperability:

The interoperability of services is considered as a general principle of the telecommunications public networks of and access networks exploitation by the **law n° 2008-3026 dated on September 15th 2008**.

According to article 2 of such law, the refusal to put at the disposal of other operators the information necessary for the services interoperability, is considered as an unfair and anticompetitive practice.

According to **law n°2000-83 of August 9th, 2000 related to exchanges and the e-commerce**, the provider of electronic certification services is charged of the emission, the delivery and the preservation of certificates according to tender specifications set out by a decree.

These specifications include the conditions insuring the interoperability of the certification systems and the interconnection of the certificates registers as approved by **decree n° 2001-1667 dated on July 17th 2001**.

4. Open source Software:

The Open Source Software in Tunisia is a national choice and a political will clear and determined to join the information society:

- In July, 2001: a Council of Ministers announces the political will to promote Open Source Software.
- In June, 2003: official creation of the Open Source Software unity within the Ministry of the Technologies of the Communication.
- In November, 2004: A new mission in the government was created: Secretary of State of IT in charge of the Computing, the Internet and Open Source Software.

5. VoIP:

VoIP is governed in Tunisia by the Decree N° 2008-2638 of July 21st, 2008 fixing the conditions to provide VoIP services.

According to article 2 of the said decree, such services related to VoIP can be provided only by the public networks of telecommunications operators holders of a license correspondingly as required by the article 18 of the code of telecommunications.

According to article 5 of such decree, VoIP services are provided by the public networks of telecommunications operators particularly for the benefit of:

- Call centers,
- Companies whose activity is based on the communication technologies,
- Administrative and economic companies having sites and multiple branches,
- Authorities and international organizations established in Tunisia.

IV. Electronic Data Management

1. Data Sovereignty

The establishment of the Data sovereignty became effective in Tunisia by the **law n°2004-5 of February 3rd, 2004**.

This law has for object to organize the IT security domain and to fix the main rules of computer systems and the networks protection.

By the same law, a public none-administrative enterprise character endowed with the legal personality and with the financial autonomy called "National Agency of the IT security" was created in order to make a general supervision of the computer systems and the networks related to public and private bodies.

This sovereignty was consolidated by the decree **n° 2008-3026 of September 15th, 2008**, fixing the general conditions of public telecommunications networks and networks access exploitation.

2. Data Storage:

There is a Bill concerning the fight against communication and information systems breaches which contains a first chapter entitled "Of the duty of data storage".

According to article 3 of such Bill, *"The communication service providers are entitled to keep the data stored in a computer system, during one year from the date of the registration each as far as the commitments which are imposed on him by the current legal and statutory measures.*

The data to be kept consist of what follows:

- *The data allowing to recognize the users of the service.*
- *The data relative to the traffic of the communication.*
- *The data relative to communication peripherals."*

Other than this Bill, **the decree n° 2001-1667 dated on July 17th 2001** obliges the electronic certification services provider to conserve all the data on electronic supports for at least 20 years from the date of their treatment.

The same decree describes the storage conditions in order to protect it from any deterioration further to the climate effects (heat, humidity...), magnetic effects and any form of disturbance.

3. Data Flow/ Data Privacy/ Data Security:

Those items are also regulated by different laws as described in the first section (Cloud Computing & Cloud Security).

V. Cyber Security/Crimes

The ICT ministry announced the official creation of the technical Agency of telecommunications (ATT). It is a public institution with administrative character and financially independent created by the decree **N° 2013-4506 of November 6th, 2013 published on November 12th** but placed under the supervision of the ministry of ICT, having authority to provide the technical support in judicial inquiries concerning the fight against the cybercrime.

The creation of this agency comes to confirm the conviction of the important national cloud security as the national immaterial or virtual space, in parallel with the protection of the real and material space of the country.

VI. National Security

The National Security is insured by different official state institution, such as:

- The ministry of internal affairs,
- The ministry of foreign affairs,
- The ministry of the defense.

Besides these ministries, a national council for security is created, by the **law n°90-1195 of July 6th, 1990**, having for mission to collect, to study, to analyze and to estimate all the information and the data relative to the National Security in the plans of the internal and outside policy and the defense policy, with the aim of protecting the internal and outside security of the State and strengthening foundations.

An Organic bill n°2014-9 relative to the fight against the terrorist offences and the repression of money laundering was submitted to the Parliament and still not yet adopted.

VII. Technology

Legal Standards/Best Practice Standards

The standardization system is governed in Tunisia by the **law n° 2009-38 of June 30th, 2009**, concerning the national system of normalization.

Tunisia which ratified the agreements of the Uruguay Round is a member of the World Trade Organization since 1995. Accordingly, Tunisia has to apply the agreements SP relative to the sanitary and phyto-sanitary standards as well as the agreement TBT on the technical obstacles to the trade.

The principle of these agreements expresses that the national measures should be established on the basis of the standards developed by the competent international organizations in accordance with the rules of the World Trade Organization (WTO).

The INNORPI (Tunisian standardization institute) provides the standardization program pursuant to the directives of the Minister of Industry.

The INNORPI publishes also annually the official bulletin concerning the program of standardization with an update every six months.

VIII. Commercial Laws

1. Competition:

Competition laws in Tunisia are governed by laws on the competition and prices:

- Law n° 91-64 of July 29th, 1991
- Law n° 93-83 of July 26th, 1993,
- Law 95-42 of April 24th, 1995,
- Law n° 99-41 of May 10th 1999,
- Law n° 2003-47 of November 11th, 2003.

These laws include provisions on prices liberalization, the prohibition on the anticompetitive practices and the discriminatory practices, as well as measures concerning the protection of the consumers.

This legal framework was consolidated by the implementation of an independent authority (the Competition Council) and the Head office of the competition.

2. Contracts:

The Tunisian contracting policy is governed by the obligations and contracts code promulgated by the decree of December 15th, 1906 and came into effect on June 1st, 1907.

3. Employment:

The employment is governed by the Tunisian Labor Code Law n°27 of April 03rd, 1966.

Since its independence, Tunisia became a member to the **ILO** (International Labor Organization).

Tunisia ratified 58 international labor conventions, the last one of which is the convention n° 135 concerning the representatives of the workers ratified in 2007.

1. The Minister of Finance Order of August 1st, 2014 fixing the models of the joint and personal guarantees commitment required within the framework of procurement contracts.
2. Circular n°19-2011 of September 10th, 2011 to relax the procedures of public procurement.
3. Minister of Finance Order of November 04th, 2008 fixing the models of the joint and personal guarantees commitment required within the framework of procurement contracts.

4. Tax

The Tunisian Tax Legal Framework is governed by an important legal arsenal:

1. Value-added tax Code promulgated by the law n°88-61 of June 2nd, 1988.

Law N°88-62 of June 2nd, 1988 related to the revision of the regulations relative to the consummation duty.

2. Code of the Personal income tax and the corporate tax promulgated by the law n°89-114 of December 30th, 1989

3. Code of recording and Stamp Fees promulgated by the law n°93-53 of May 17th, 1993.

4. Incitements in the Investments Code promulgated by the law n°93-120 of December 27th, 1993.

5. Local Tax system Code promulgated by the law n°97-11 of February 3rd, 1997.

6. Fiscal rights and Procedures Code promulgated by the law n°2000-82 of August 09th, 2000.

A new law was recently adopted: Law N° 2015-4 dated on March 16th, 2015, exempting from the tax on the departure from Tunisia.

5. Public Procurement:

Public Procurement is governed by several laws, decrees and ministry orders:

1. Law n° 91-64 of July 29th, 1991 related to competition and prices such as modified and revised by the law n° 93-83 of July 26th, 1993, the law 95-42 of April 24th, 1995, the law n° 99-41 of May 10th 1999 and the law n° 2003-47 of November 11th, 2003.
2. Law n° 2003-43 of June 09th, 2003 modifying and completing the law n°73-81 of December 31st, 1973 promulgating the public accounting code.
3. Decree n° 2014-1039 of 13 Mars 2014 related to public procurement regulations.
4. Decree n° 2014-764 of January 28th, 2014 fixing the conditions and the procedures of the ministry of lawyers to represent the public bodies before the courts and the judicial, administrative, military authorities, of regulation and arbitration.
5. Decree n°2013-5096 of November 22nd, 2013 announcing the creation of the state high authority of commission.
6. The Minister of Finance Order of August 1st, 2014 fixing the models of the joint and personal guarantees commitment required within the framework of procurement contracts.
7. Circular n°19-2011 of September 10th, 2011 to relax the procedures of public procurement.
8. Minister of Finance Order of November 04th, 2008 fixing the models of the joint and personal guarantees commitment required within the framework of procurement contracts.

There is a decree draft related to the conditions of exclusion from the participation to procurement contracts submitted for deliberation to the Parliament.

6. Commercial Fraud

The commercial fraud is governed in Tunisia by the law n° 92-117 of December 7th, 1992.

The commercial frauds departments are responsible that the conformity of products with the current statutory texts is respected.

This legal framework protect several products as defined in the article 2 of the law n° 92-117 of December 7th, 1992 related to the consumer protection, including:

- Industrial, agricultural or home-made products
- Any service of any nature.