

# The Legal Framework For investment in Telecommunications Services

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## Abstract

*Through reviewing the investment topics related to communications, we found the extent of technical, economic and organizational expansion witnessed by the communications sector. Perhaps one of the most important reasons for this expansion is the multiplicity and diversity of investment activities available to communications companies, as the communications sector has become a direct center for attracting capital owners to invest their money in one of the investment projects related to communications. Accordingly, this research will address the definition of the legal framework for investment in communications services, specifically investment in the field of mobile phone services and marketing communications services.*

**Keywords:** *Investment, Communications, Information Technology, Activities, Licensee.*

## Introduction

Investing in the field of telecommunications services is one of the most important activities sought by most companies specialized in providing telecommunications services, due to the great financial return of this activity, as the various commercial markets in our contemporary world depend on the advertising and promotional role played by marketing communications. This is what we see repeatedly regarding the continuous advertisements for various brands, trademarks and commercial services provided by companies to their beneficiaries, which has led to the creation of clear competition between companies operating in the markets, in addition to the importance of the role played by mobile phone services. Therefore, the research requires us to stand on the circumstances and details of investing in these services, so that we can know the legal framework for this investment and the nature of its legal means and mechanisms.

### *First: The Importance of Research*

The research derives its importance from the great role reflected by investment in communications services at the national and international levels, as it has become known to everyone the importance of technologies and communications in linking and financing economic sectors, as we cannot talk about the existence of electronic commerce or commercial electronic communication except with the existence of numerous networks of communications and the Internet, as communications are the nerve or main artery for operating various economic and commercial sectors.

### *Second: The Research Problem*

The research problem revolves around defining the nature of investment in communications services?, as well as defining the legal framework that governs companies working in providing these services?

### *Third: Research Methodology*

The research was based on the descriptive approach.-Comparative analytical study, And that By presenting and discussing the subject in light of the provisions of Order (65) of 2004 regarding the establishment of the Iraqi Communications and Media Commission, and in comparison with the Egyptian Communications

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Law No. (10) of 2003, the Saudi Communications Law, and the American Communications Law contained in Section (47) of the United States Code.

### *The First Topic*

#### *Investing In Telecommunications Services*

Communication services represent one of the most important investment fields that attract capitalists from specialized communications companies to work within this vital and pioneering field. Mobile and wireless phone services and marketing communications are among the best investment applications related to communications services, and this will be the subject of our study in this section. Therefore, we decided to divide the study into two requirements. In the first requirement, we will discuss investment in mobile and wireless phone services, while in the second requirement, we will discuss investment in marketing communications.

### *The First Requirement*

#### *Investing in Mobile and Wireless Services*

The topic of investing in mobile and wireless services includes two concepts: (investment-Mobile and wireless phone services) so they must be clarified first, and then we will discuss the details of investing in the aforementioned activity.

Jurisprudence has not agreed on a unified definition of the term investment, as it has been divided into several divisions, some of which adopted the legal concept and others the economic or financial concept of investment. Moreover, the proponents of the single concept were also divided among themselves regarding the elements of investment, as some focused when defining it on the foreign element, others on the capital element, and others on the element of the goal or function of investment. .

Regardless of the above jurisprudential differences, investment is defined as: (directing side from funds The project or His experience Technology to the job In areas geography outside border His country Original) The same concept is found in the other definition that includes ( transmission Heads Money from outside to The State The host In order to investigation profit Investor Foreigner And since Guarantee more Production and development in The State The host) .

It is clear to us from the above that the two definitions above focused on showing the concept of investment according to the criterion of the foreign element represented by capital, and thus narrowed the concept of investment to the process of transferring capital abroad, and this is considered a form of investment called foreign investment.

Another opinion defined it as (employment per type from Types Assets Finance, whatever She was Its nature or Its type, in activity economic specific With the aim of investigation Returns According to For the law, And he is on several Types And forms And pictures) .

The definition focused on the capital element used in investment, without specifying its type or nature, but rather included all financial assets. At the same time, the aforementioned definition was criticized for being too short. Investment According to the concept The economic represented by investigation Profits and returns .

Comparative laws defined investment by saying: Use the money To create project investment or Expand it or Develop it or Financing it or Own it or His management With what Contributes in investigation Development Comprehensive And sustainable For the country.) ,As the law was known InvestmentIraqi number(13)For a year2006Average In the paragraph (N/1) of it is a term Investment That he is ( employment the money in any activity or project economic Come back For the benefit legitimate on Country).

It is clear from the above definitions that they focused on showing the purpose or goal of the investment. Which is represented by employing capital in achieving the development Economy To various productive sectors and thus contribute to achieving economic prosperity for the country. This, in our view, is the highest and most important goal of investment.

Investing in the communications sector means that: Capital expenditure for investment purposes during the fiscal year in order to acquire tangible assets such as physical facilities and intellectual assets as well as intangible assets such as computer software) .

The above definition shows that what is meant by investment in communications is directing (capital) during the fiscal year towards acquiring or purchasing tangible and intangible assets related to communications. However, at the same time, it lacked a statement of the goal or purpose of capital expenditure, which is directing resources and assets towards achieving comprehensive development of the communications sector and enhancing its resources, which is what the following definition addressed: Investing funds in fixed or current assets or deferred revenues with the intention of achieving material benefits in the form of financial returns represented by the costs of collecting and processing data And broadcast information And storing, updating and retrieving it, and non-material benefits represented in providing the best services to beneficiaries in a way that enhances their level of satisfaction when providing the information requested by them.) However, what is wrong with this definition is that it limits investment in the communications sector to communications services, information technology and data, while investment in communications has a broader concept that includes investments in networks, infrastructure and the communications industry.

Therefore, we propose defining investment in communications as (the employment of tangible and intangible assets with the aim of achieving the best benefits and returns in communications services, information technology, and communications infrastructure, according to the latest technologies and in a manner that achieves sustainable development for the sector).

As for defining the mobile and wireless phone service, the service is meant first. It is ( the job or Activity that Presented by any Side Meeting Reward or Without him On purpose Benefit From him) .

The purpose of telephone service is to make and receive calls. Calls Voice and text messages Multimedia and accessto Internet and Mobile networks And towers Cell phones To enable users to Network access And communicate with othersn) ,As for the legal definition of telephone services, the laws regulating communications in the comparative countries and Iraq were devoid of any definition for them, but some of them included the definition of communications services under which mobile phone services fall, stating that (providing or operating communications, regardless of the means used). .

Therefore, we can propose a definition of investment in mobile and wireless phone services as (the employment of tangible and intangible assets with the aim of developing and enhancing the investor's financial resources and developing the communications services provided to their beneficiaries).

Investing in telephone services is one of the most important investment fields that provide telecommunications companies with huge financial resources. It is also one of the most important fields that leads to the movement of competing economic forces in the market. Investment contracts of a commercial nature represent the means or legal tool that these companies resort to in order to engage in investment in telephone services, which requires us to research the details of these contracts. Therefore, we have decided to research the details of all of this in succession.

The contracts concluded by telecommunications companies for telephone services vary, and perhaps the most prominent of these are contracts for the sale of network capacities, which are called the term (Mobile Virtual Network Operator Agreement). Its parties are represented by the main investor licensed by the state to provide telephone service and secondary companies operating in the same area, whereby the latter are able to obtain the infrastructure (network capacities) for the purpose of providing their services for the benefit of their subscribers. .

The regulations issued by the licensing authorities in Iraq and the comparative countries have regulated the provisions of the aforementioned activity. This is done by obligating the contracting parties to obtain the necessary license to practice investment in mobile and wireless phone services. The regulations also clarify all the legal provisions of the contracts and agreements concluded between investors regarding the sale of network capacities.

The contracting parties are required to submit the contract concluded between them to the licensor for the purpose of reviewing it and ensuring the validity of the contractual terms and the extent of the parties' commitment to the controls issued by the licensor. For this purpose, the licensor may intervene in amending and cancelling the clauses that violate the licensor's controls. The contract also includes the legal provisions regulating the nature of the relationship between the contracting parties, and the nature of the rights and obligations of each towards the other, especially matters related to the services to be provided, the duration of the contract, fees, prohibiting assignment or subcontracting except with the approval of the licensor and in accordance with the terms of the contract, and resolving disputes. The court's authority to intervene to restore the contractual balance in the event of its disruption due to emergency reasons and other circumstances.

The contract for the sale of network capacities is subject, in general principle, to the provisions of the general theory of the contract, like all other contracts, whether in terms of the method of conclusion, effects, or liability. In addition, it is characterised by some legal aspects that we must highlight in accordance with the following paragraphs:

#### *First: Formal Contracts*

As is known, the principle in consensual contracts, as it is sufficient for their conclusion, is the mere agreement of two wills to create a specific legal effect. However, there are other contracts of a special nature that require formality as one of their components. Including contracts concluded between telecommunications companies regarding the sale or lease of part of their networks, as this can be inferred from what is stipulated in the regulations governing these contracts, which oblige the parties to provide the licensing authority with a complete and certified copy of the contract. This gives the licensing authority the right to audit and study the terms of these contracts and to review their nature, as these contracts are related to the communications sector, which is subject to state control.

#### *Second: Commercial Contracts*

It is Contracts Commercial Legal tool for practicing Economic activities, through which capital is mobilized and the economies of countries are developed in their various economic sectors.

Jurisprudence has addressed the criteria for giving commercial character to contracts, where the contract is commercial. If his business is an original commercial business, whether it is a single business, your Purchase of movable property for the purpose of selling it, banking activities, or if it was originally within the scope of a project, how much Industrial and transportation projects, And others, and the contract is also considered commercial. If the person doing the work is a merchant The work was linked to his craft. the commercial, i.e. Based on theory Business in packaging In application of the above, the contracts concluded by telecommunications companies regarding the sale of part of their networks are considered to be commercial contracts with distinction, based on their parties, the activities related to them, and their connection to economic projects with a clearly defined commercial nature.

Which led to it being surrounded by some special legal aspects, including what relates to obligating the contracting parties to implement the contract and launch commercial services within a period specified by the licensee. ...and obligating the parties to abide by the rules of fair competition when concluding such contracts.

According to our vision, we can give the above contracts a commercial character according to the Iraqi Commercial Law in light of what is stated in the text. The material Fifth From which it was stated ( It is

considered Business Next Works Commercial if She was You mean profit, It is assumed In it this Intent unless prove The AkkaQ: Firstly - buying or Rent Money Transferred She was or Real estate For Sell it or Rent it).

It becomes clear for us From the text of the aforementioned article ThatThe projectA IraqiThe purchase and rental of funds for the purpose of selling or renting them is considered a commercial activity, and this is what actually applies to the telecommunications investor who purchases network elements and components, then sells or rents them again for the purpose of making profits from this activity.

While the Egyptian Commercial Law stipulated that the activities of the communications sector are commercial, pursuant to Article (5/H), which stated: It is Business The following Commercial if She was Practicing it on face Professionalism:H -works The role And offices that It works in Areas Publishing And printing And photography And writing on Machines The writer and others And translation And the radio And television And the press And transfer News And the mail And communicationsAnd the advertisement).

The above text explicitly reveals the commercial nature of the activities and contracts related to the communications sector, contrary to what is the case in Iraqi law, which we have reached by inference the commercial nature of communications contracts. On this occasion, we propose to our legislator to amend the text of Article (5) of the Commercial Law and stipulate the commercial nature of the activities related to communications.

### *Third: Contracts With Special Considerations*

The contracts concluded by telecommunications companies during their investment are characterized by some special considerations, which are consistent with their economic and technical importance in the telecommunications sector. These considerations were regulated by some texts included in the regulations issued by the licensing authorities, as they clearly indicated the obligation of the contracting parties to the principle of good negotiation before entering into the final stage of concluding the contract. The principle of good negotiation is defined as (The conduct of the parties to the contract to be concluded in a manner of honesty, truthfulness and integrity, as required by law, in the exchange of opinions, discussions and negotiations to achieve the greatest possible benefits from the contract. This is what was indicated by the regulations that obligated investors not to delay or obstruct the negotiations, or refuse to provide technical information related to the subject of the contract, or refuse to make any changes required by necessity without justification or legal justification.

From another perspective, these contracts are characterized by their legal provisions being subject to the supervision and study of the licensor, who has the full right to amend and change the terms of the contract in a manner consistent with the requirements of the public interest. This has led to the obligation of the contracting parties to obtain the approval of the licensor in the event of waiving the contract or resorting to subcontracting or terminating the contract or terminating the contract before its term. All of these matters are only carried out with the official approval issued by the licensor. .

The agreement concluded between Zain and Ericsson is a practical model for such contracts in Iraq, as well as Telecom Egypt and Vodafone in Egypt, and Virgin Mobile and Jawhara in Saudi Arabia.

### *The Second Topic*

#### *Investing In Marketing Communications Services*

Investing in marketing communications is the most important activity for communications companies due to the huge financial resources it generates, given its importance on the commercial and economic levels. As most companies and owners of small and large projects seek to promote and market their products and services and deliver them to the largest possible number of beneficiaries. .

Telecommunications companies are the best interface to carry out this task, due to their advantages, specialists, technical expertise, and very large subscriber base.

On this basis, it is necessary to clarify the definition of marketing communications, as Ray defined it as (the various economic operations authorized to meet the needs and desires of individuals by creating and exchanging products and ideas of value to consumers).

The aforementioned definition showed the elements of marketing communication represented by the economic operations and activities related to services, products and ideas that have a market value, and at the same time it is criticized for not specifying the method through which marketing is done, which is communication networks. This is what the following definition includes: Use technology Information And communications To achieve Objectives Marketing Using Contact Direct And communications Computer and networks Social And phones Smart And cares Marketing Digital In operations Commercial and administration Relationships Clients Electronic, from during study The market, And research on New clients, And service Clients Current, And give The opportunity For customers To contribute in development Products And services) .

The same meaning is found in the definition that says (the various marketing functions associated with the use of Internet technology. It does not only refer to advertising via various websites, but rather extends to various electronic functions via the Internet, such as e-mail and social networking sites) .

As for the legal definition of marketing communications, Order (65) of 2004, as well as the Egyptian and American Communications Law, lacked a definition of the aforementioned term, in contrast to the Saudi law, which defined marketing communications by saying: Use network Communications For advertising And promotion To use project or service It includes that Messages And calls Mechanism or Calls Outgoing from The person Natural) .

The researcher suggests adopting the definition of marketing communication provided by the Saudi legislator in the texts of Order (65) of 2004, due to the economic and commercial importance that the activity has gained, which requires our legislator to regulate it legally.

As it became clear to us through research in this field, the investment made by the investor in the field of communication marketing is either for his benefit in his capacity as a communication company marketing its services, or for the benefit of others in his capacity as a contracting party in electronic marketing contracts, which requires us to clarify the details of all of that according to the following paragraphs:

First: The investor, in his capacity as a communications company marketing and advertising its services:

He knows Jurisprudence: The person who advertises or markets himself as (He is the merchant or Bodies or Interests Government or Individuals who They use Advertisement in way Definition With product or service or any purpose last) .

It is clear to us from the definition above that it is among the elements of the person who advertises without specifying the aim or purpose of that, and according to our perception, the aim of marketing lies in the material and commercial benefit that is reflected in the marketing process by spreading it in the market and attracting others to it, which leads to strengthening the commercial reputation of the marketing company.

It is also known according to a second opinion as (all person natural or moral He does By advertising on The item or Service or Promotion she has Using means Electronic) The researcher believes that this definition does not differ from the previous one except that it specifies the tool by which advertising is done, which is electronic means.

Therefore, we go to define the marketer or advertiser for himself as (any natural or legal person who advertises or markets his services and products by any electronic means with the aim of promoting and

disseminating his services and benefiting from the money resulting from that and enhancing the commercial reputation of his store).

Regarding Comparative laws, where the Egyptian legislator defined Advertiser That is (all person He does By advertising on commodity or service or Promotion she has By itself or by jealousy Using any means from means Media or Advertising NYes, With what in that means Digital and Ycounting Announcing, student Advertisement The mediator Advertising And the agency Advertising And a means Advertising, And that entire According to For specifications Standard Egyptian Private With conditions Advertisement on Goods And services) , bDirectionsame goldTo him our legislator The advertiser is known as ( all person natural or moral He does By advertising About coughor service or Promotion she has It started or by jealousy Using any means from means Advertisement) .

It is clear to us from the above The advertiser is any natural or legal person.He does By himself or by Other than advertising and promoting his goods and services, by any means suitable for this purpose. .

This actually applies to telecommunications companies as marketers or advertisers of their services, through which they aim to achieve and enhance their commercial reputation in the telecommunications market, and to introduce others to their services, which increases legitimate competition between companies and is positively reflected in the efficiency of the services provided to beneficiaries.

We have concluded that the legal means used by telecommunications companies as an advertiser of their services is represented by the promotional offers that they launch from time to time, and the promotional offers are subject in terms of their licensing, content and duration to the provisions and controls of the licensing authority, through the regulations it issues, which have guaranteed that the investor must obtain the license for the offers by submitting a request to the licensor. Attached with all the required legal data and documents, the licensee studies and audits it, and inquires about the paragraphs of the advertisement or offer, and the company is informed of approval or rejection according to what the latter reaches. .

The investor's activity in marketing communications as an advertiser in the market is also subject to several main laws, which are:

#### *Telecommunications Law*

There is no doubt that the investor, when practicing his marketing activity, is subject to the provisions of the Telecommunications Law in his capacity as a telecommunications company licensed by the state (the licensee). In this regard, the telecommunications laws, regulations and controls issued by the competent authorities regulating the telecommunications sector have clarified the obligation of the investor (the telecommunications company) to the rules of transparency and credibility of the advertisements launched by companies about their services.

#### *Competition Law*

From another perspective, the investor is subject to the provisions of the Law on Fair Competition and Anti-Monopoly in his capacity as an investment company operating in the communications market. Especially if we know the importance of the advertisements and offers launched by telecommunications companies with the aim of attracting and attracting more subscribers. This may lead to the creation of a dominant position in the market or the conduct of some illegal practices by telecommunications companies, such as manipulating the prices of their service offers contrary to the prevailing prices in the market, and thus negatively impacts the telecommunications sector.

#### *Consumer Protection Act*

Telecommunications companies, as advertisers and marketers, are subject to the provisions of the Consumer Protection Law, specifically the legal articles that address the obligation of the advertiser to adhere to the provisions of transparency and clarity in advertisements and marketing. And the texts that

dealt with the provisions of consumer protection from misleading advertisements. On this basis, the company is committed to launching its offers with complete transparency and clarity, and to include all details related to the offer information in terms of duration, prices and features. The offers must also be real and not misleading to the public.

*Second: The Investor as A Contracting Party to The Electronic Marketing Contract*

Ycustom a contract MarketingElectronic That he is ( The contract that He concludes I mean broadcast advertisements Certain same nature Commercial or Professional via Channels Send or network Internet, so It is done presentation Sites on network Information Free where Includes this the site Program Helps beneficiary on Dealing with The network And it does author The program In width advertisements Merchants on this the site ) Another opinion defined it as (a contract Committed According to Presenter Service That maybe(The merchant)from an offer His goods from during location electronic or center commercial hypothetical AndOpposite Salary Agreed attic) .

It is understood from the two definitions above that a marketing contract is an agreement between two parties, one of which is the service requester and the other the marketer, in exchange for an agreed-upon sum of money. This is what happens between telecommunications companies and business owners, including merchants and companies that wish to market their products and services via telecommunications networks, through the short text message service that the company sends to its subscribers. The SMS Services Regulation issued by the Saudi Communications Authority defines the messaging service as (a service provided through the licensed public telecommunications networks in the Kingdom; it allows service providers or their customers to send or exchange short messages (text, voice, visual), which are directed directly to the beneficiary, for the purpose of promoting a specific product, providing them with information, notifying them of new developments, answering their inquiries, and other similar services, and this includes broadcasting general messages to a specific area) .

In any case, the electronic marketing contract is subject, in terms of its conclusion, to the provisions of the general theory of contracts, like other contracts. The contract is distinguished by being one of the contracts based on personal consideration, as the (investor) is the communications company that is considered in the electronic marketing contract with respect to the other party (the service applicant). Accordingly, the company may not waive its obligation towards the other party except with his consent or in accordance with the terms of the agreement concluded between them.

E-marketing contracts are also characterized by a commercial nature based on: For its parties and its connection to economic activities, in addition to that, communication marketing is one of the commercial activities stipulated by our Iraqi legislator in Article (5/Fifth) of the Commercial Law.

Telecommunications companies, as advertisers on behalf of others, carry out their obligations towards the latter, as specified in the marketing contract concluded between them, through the mechanism of short text messages that the company sends to its subscribers. The regulations issued by the licensee have organized the legal provisions related to text messages that the company sends as a marketing means to others, as they obligated the company to obtain the necessary license to activate the text message service. This is what was decided by Rules and conditions and procedures Necessary To grant license presentation Services Messages Text Issued by the Egyptian National Telecom Regulatory Authority , which was decided by the Saudi Communications Authority. The Federal Communications Commission in Section (47) of the United States Code.

Marketing contracts, as commercial contracts targeting consumers in the market, are subject to all legal provisions contained in consumer protection laws, specifically the provisions related to transparency and clarity, and protection from misleading advertisements, according to the details previously explained in paragraph (first) of this. The requirement.



## Conclusion

### *First: Results*

- Investing in mobile and wireless services and marketing communication services is one of the most vital and pioneering activities in the communications sector due to its positive impact and great financial return.
- Investing in the telecommunications sector is known as:Employing tangible and intangible assets with the aim of achieving the best benefits and returns in communications services, information technology and communications infrastructure, in accordance with the latest technologies and in a manner that achieves sustainable development for the sector.
- Investing in mobile and wireless phone services is defined as the employment of tangible and intangible assets with the aim of developing and enhancing the investor's financial resources and developing the communications services provided to their beneficiaries.
- Investment contracts of a commercial nature represent the legal means or tool that these companies resort to in order to invest in mobile phone services and marketing communications services. This is what is applied to electronic marketing contracts and contracts for the sale of communications network capacities.
- Investing in marketing communications services refers to the various marketing functions associated with the use of communications and Internet technology. It does not only include advertising via various websites, but also extends to various electronic functions via the Internet, such as e-mail and social networking sites.
- Investment in the field of marketing communications has received legislative attention from some laws regulating the communications sector, and this is what we have noticed regarding the Saudi and American communications law.
- Investment companies enter the field of marketing communications either as an advertiser and marketer of their services and products, or as a marketer or advertiser of other products.

### *Second: Recommendations*

- We propose to our legislator to amend Section (2 / Definitions) of Order No. (65) of 2004 by adding a definition for the term investment in the communications sector, which we propose to be ( employment Assets Materialism And other Materialism With the aim of investigation better Benefits And the returns in Services Communications And technology Information And the buildings Infrastructure For communications, According to No latest Technologies And since achieves Development sustainable For the sector).
- We suggest to our legislator to define investment in marketing communications and add it to Section (2/Definitions) of Order No. (65) of 2004, and we suggest that it be (Use network Communications For advertisingAnd marketingAnd promotion To use project or serviceCertain It includes that Messages And calls Mechanism or Calls Outgoing from The person Natural ).
- We propose to our legislator to amend Order (65) of 2004 and stipulate the definition of the legal framework for investment in mobile phone services and marketing communications services.
- We suggest to our legislator to amend Order (65) of 2004 and stipulate that telecommunications companies are obligated to provide licensed entities with copies of contracts related to marketing

and advertising activities and activities related to mobile phone and portable services, so that the licensee can audit them and determine the extent of their compliance with the relevant legal texts.

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