



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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22 June 2021

Miss KWOK Wing-see, Grace
Deputy Secretary for Commerce & Economic
Development (Communications &
Creative Industries) (Special Support)
Commerce and Economic Development Bureau
21/F, West Wing, Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Miss KWOK,

**Telecommunications (Registration of SIM Cards) Regulation
(L.N. 75 of 2021)**

We are scrutinizing the captioned Regulation with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Regulation, we should be grateful if you could clarify the matters set out in **Annex**.

Please let us have your response by email in both English and Chinese as soon as possible, preferably by 28 June 2021.

Yours sincerely,

(Rachel DAI)
Assistant Legal Adviser

c.c. Department of Justice
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Registration and deregistration

1. Under section 6(2), a specified licensee may register a SIM card for an eligible person only if the licensee has no reasonable cause to believe that the specified information provided by the eligible person is (i) incomplete or contradictory; or (ii) false or misleading in a material respect.
 - (a) Please clarify how and on what basis a specified licensee verifies the accuracy or completeness of the information provided by an eligible person.
 - (b) Under what circumstances would the licensee later deregister such SIM card under section 9(1) on the ground that it has reasonable cause to believe that the current specified information of the eligible person contained in the SIM card record is (i) incomplete or contradictory; or (ii) false or misleading in a material respect? Please clarify whether a specified licensee is required to check and verify the information provided by an eligible person from time to time after it has registered a SIM card for an eligible person.
2. Under section 7, a specified licensee must ensure that for each eligible person mentioned in section 4(1)(a) (i.e. an individual acting in his or her individual capacity), the person has no more than 10 pre-paid SIM ("PPS") cards that are currently registered with the licensee; and for each eligible person mentioned in section 4(1)(b) or (c) (i.e. an individual or a body acting in the capacity as the holder of a valid business registration certificate or valid branch registration certificate), the person has no more than 25 PPS cards that are currently registered with the licensee. In the light of the meaning of "eligible person" provided under section 4(2), please clarify (with examples) the maximum number of PPS cards that a specified licensee may register for an individual who has the capacity as the holder of more than one relevant certificate in addition to his or her individual capacity.

Record keeping

3. Section 11 requires a specified licensee to keep a record of certain information in respect of its SIM card during the period in which the SIM card is currently registered with the licensee for an eligible

person plus one year after the SIM card is deregistered. Please explain the rationale(s) for the requirement for keeping the record for the period of one year after the SIM card is deregistered.

Provision of SIM card record to law enforcement officer without a warrant

4. Under section 13, a specified licensee must provide the SIM card record to a law enforcement officer without a warrant issued by a magistrate in the circumstances where a law enforcement officer of a senior rank is satisfied that there is reasonable cause to suspect that a serious offence has been, is being, or is about to be committed, and it is necessary to obtain a SIM card record for the purpose of investigating or preventing the offence, or it is necessary to obtain a SIM card record for the purpose of preventing loss of life of, or serious bodily harm to, any person; and that a delay caused by an application for warrant is likely to defeat the purpose of obtaining the SIM card record, or for any reason it is not reasonably practicable to make such an application.
 - (a) According to paragraph 3.14 of the Consultation Paper on Real-name Registration Programme for SIM Cards issued by the Commerce and Economic Development Bureau ("CEDB") in January 2021, such arrangements are similar to those under existing legislation (such as the Crimes Ordinance (Cap. 200), the Immigration Ordinance (Cap. 115), the Dangerous Drugs Ordinance (Cap. 134) and the Societies Ordinance (Cap. 151)). To facilitate Members' understanding, please illustrate in tabular form those similar arrangements under the aforementioned existing legislation.
 - (b) Please clarify with examples the circumstances in which it would be considered "not reasonably practicable" to make an application for a warrant under section 12(1).

Guidelines

5. Under section 14, the Communications Authority ("CA") may issue guidelines. Please clarify:
 - (a) whether the guidelines issued by CA under section 14 would be subsidiary legislation subject to scrutiny by the Legislative Council ("LegCo");

- (b) whether CA would consult any persons or parties before issuing the guidelines; and
- (c) how the guidelines would be made known to the public.

Inspection

- 6. Section 15 empowers CA to enter and inspect any office, premises or place in Hong Kong that is or are used by a specified licensee in any way (including by installing a facility in it or them) for the purpose of compliance with L.N. 75, to verify that the licensee is complying with L.N. 75.
 - (a) It is noted that section 7J(1) of the Telecommunications Ordinance (Cap. 106) gives CA a similar entry and inspection power for the purpose of verifying that the licensee is complying with the licence conditions. Section 7J(6) of Cap. 106 provides that CA shall not exercise its power under section 7J(1) in respect of any office, premises or place in such a way as to disrupt any operations being carried on therein (a) by a licensee or any other person; and (b) any more than is necessary for the proper exercise of that power in all the circumstances of the case. Please consider whether a similar provision should be added to section 15 of L.N. 75.
 - (b) Under section 15, there is no specific restriction on the manner in which CA may exercise the above entry and inspection power. Please explain the reasons for the absence of any built-in restriction on the scope of CA's power under section 15. For instance, there is no provision to provide that in the event CA comes into contact with other information (including commercially sensitive or legally privileged information) in the licensee's possession, custody, or control in the course of an inspection, CA must not in any way make use of such information in the performance of its function or make use of such information in any other manner.
 - (c) In this regard, please also consider whether the absence of any built-in restriction on the scope of CA's power under section 15 would lead to encroachment on the protection of privacy from "arbitrary or unlawful interference", which is protected under Article 14 of the Hong Kong Bill of Rights ("HKBOR"), the privilege against self-incrimination protected under Article 11(2)(g) of HKBOR, or the right to

confidential legal advice enshrined in Article 35 of the Basic Law. Please clarify whether and how section 15 could satisfy the four-step proportionality test as laid down by the Court of Final Appeal in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372.

Non-compliance

7. According to paragraph 2(f) of the LegCo Brief (File Ref.: CCIB/SD 605-15/1) issued by CEDB and the Security Bureau on 1 June 2021, the existing sanctions as imposed by CA on telecommunications operators under Cap. 106 will be applicable in enforcing the Real-name Registration Programme and no new criminal offences will be created. To facilitate members' understanding of the legal consequence for failure to comply, please illustrate in tabular form the current penalty or sanctions applicable to non-compliance by specified licensees under L.N. 75.

Specified information of eligible persons

8. Under paragraph 2(c) of the Schedule, if the eligible person is an individual acting in his or her individual capacity who is aged below 16, the information specified for the eligible person includes specified information in respect of an individual who is aged 18 or above ("adult") and a statement of relationship between the adult and the eligible person.
 - (a) Please clarify whether it is intended that the adult concerned can be any individual who is aged 18 or above, regardless of his or her relationship with the eligible person. For instance, whether a friend (as opposed to parent or guardian) of the eligible person would fall within the intended meaning of "adult".
 - (b) Please clarify whether an application for the registration of a SIM card for an eligible person who is aged below 16 (including the statement of relationship between the adult and the eligible person) is required to be endorsed or co-signed by the adult.
 - (c) Please clarify whether the relationship between the adult and the eligible person is required to be verified, and if so, how and on what basis a specified licensee verifies such relationship.