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28 June 2021

Miss Rachel Dai
Assistant Legal Adviser 2
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex,
1 Legislative Council Road, Hong Kong

Dear Miss Dai,

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

I refer to your letter dated 22 June 2021 requesting information/clarification on a number of issues regarding the operation of the Real-name Registration Programme for SIM Cards (the Registration Programme) under the Telecommunications (Registration of SIM Cards) Regulation (the Regulation). In consultation with the Security Bureau, the Police and the Office of the Communications Authority (OFCA), our responses to the various issues raised are as follows.

Guidelines

2. The Regulation is made in accordance with section 37(1)(a) of the Telecommunications Ordinance (Cap. 106) (TO) where the Chief Executive in Council may make regulation to provide for the control and conduct of means of telecommunications. Pursuant to section 14 of the Regulation, the Communications Authority (CA) may issue guidelines regarding various aspects of the operational details of the Registration Programme. OFCA is in

the course of preparing the guidelines in consultation with the telecommunications industry and relevant licensees operating SIM card services. The guidelines will then be submitted to CA for consideration and endorsement, and will be published on CA's website (https://www.coms-auth.hk/en/policies_regulations/cop_guidelines/telecomm/index.html) for public information. Similar to other guidelines issued under the TO, the subject guideline is not subsidiary legislation and will take effect at the same time when the Regulation commences on 1 September 2021.

Registration and Deregistration

3. While the guidelines are being worked out, it is intended that various options will be provided under the guidelines for the specified licensees to verify the registered information, including face-to-face registration to be performed at the licensees' retail outlets, manual verification, online verification or using other platforms/methods acceptable by OFCA to provide for verification of such information. While the specified licensees are not required to proactively check and verify the information provided by the users upon activation of their SIM cards, in case they are aware of any irregularity as specified in section 9(1) of the Regulation, they should approach the users for clarification and/or rectification within a reasonable period. They should deregister the concerned SIM cards if such irregularities are not rectified.

4. According to section 4(2) of the Regulation, in respect of each capacity in which an individual is acting, the individual is taken to be a separate eligible person. For each business registration certificate or each branch registration certificate held by a user, the user is allowed to register a maximum of 25 pre-paid SIM (PPS) cards with each specified licensee. To illustrate by example, if an individual holds two business registration certificates and three branch registration certificates, the individual will be regarded as six separate eligible persons (including one acting in his/her own individual capacity, two in relation to the two business registration certificates and three in relation to the three branch registration certificates).

Record Keeping

5. The requirement imposed on specified licensees to keep registration records of their SIM cards for at least 12 months after the SIM cards are deregistered is to ensure that perpetrators of crimes would not become untraceable even if they deactivate and destroy the concerned SIM cards immediately afterwards. The 12-month period has taken into account the enforcement need in general for various types of crimes involved as revealed in past cases and the need for privacy protection.

Provision of Registration Record to Law Enforcement Agencies (LEAs)

6. The existing laws have provided for the search and collection of information by LEAs for purposes related to enforcement of various types of crimes. A table illustrating similar provisions under the Crimes Ordinance (Cap. 200), the Immigration Ordinance (Cap. 115), the Dangerous Drugs Ordinance (Cap. 134), the Societies Ordinance (Cap. 151) and the Police Force Ordinance (Cap. 232) that endow LEAs with the power to enter and search any premises without warrant under exigent circumstances is at **Annex A**. Some examples of urgent or emergency situations where it is not reasonably practicable for LEAs to obtain a warrant beforehand are at **Annex B**.

Inspection Power

7. In exercising the power under section 15 of the Regulation to inspect places used by specified licensees for the purpose of compliance with the Regulation, the CA is subject to an implied duty of reasonable care and will follow the usual procedures, including not to exercise the power in such a way as to disrupt any operations being carried on therein by a licensee or any other person; and any more than is necessary for the proper exercise of that power in all the circumstances of the case.

8. The power of entry and inspection has a clear legal basis and will be exercised by the CA pursuant to specific empowering provisions in the Regulation. It is expressly limited to office, premises or place used for compliance with the Regulation which is usually business premises where, generally, the level of expectation of privacy is relatively lower than domestic premises. Also, reasonable prior written notice must be given and the CA is not empowered to enter any premises by force, and cannot inspect or examine any information found on the premises which is unrelated to the stated purposes. All in all, the power serves a legitimate aim of enabling the CA to effectively monitor specified licensees' compliance with the relevant requirements under the Regulation.

9. For the above reasons, we consider the concerned power lawful and justifiable under the proportionality test, and has not engaged the privilege against self-incrimination and right to confidential legal advice. As mentioned above, the concerned power is essential and serves the legitimate aim of ensuring compliance of the specified licensees with the relevant requirements under the Regulation, and is rationally connected to such aim to be delivered by the CA. It is proportionate to such aim, in particular given that the proposed power is carefully limited in time, place and scope having taken into account

all the safeguards in place. A reasonable balance has been struck between the demands of the general interest of society in ensuring proper functioning of the Registration Programme and enhancing people’s confidence in the integrity of telecommunications services on the one hand, and the protection of individual’s rights on the other hand, bearing in mind that the inspection is not intrusive.

Non-compliance and Relevant Sanctions

10. There is no new sanctions or penalties to be introduced by the Regulation and the existing sanctions under the TO will be applicable in enforcing the Registration Programme against any non-compliance with or breach of the registration requirements by the specified licensees. The details are tabulated as follows:

Section(s)	Applicable Sanction(s)
Administrative sanctions	- The CA may issue written advice, warning and/or request for rectification/ improvement in case of any minor non-compliance with any requirements set out in the Regulation or the CA’s guidelines.
Section 34(4) of TO	- Licence granted to the specified licensee under the TO may at any time be cancelled or withdrawn by the CA, or suspended by the CA for such period not exceeding twelve months, as the CA specifies, in the event of any contravention of the Regulation by the specified licensee.
Sections 36B and 36C of TO	<ul style="list-style-type: none"> - The CA may issue a direction to the specified licensee for compliance with any provision of the Regulation and impose a financial penalty for breach of the Regulation. - The maximum levels of penalties imposed by the CA are \$200,000 for the first occasion of breach; \$500,000 for the second occasion of breach; and \$1,000,000 for any subsequent occasion of breach. - Where the financial penalty of \$1,000,000 for any subsequent occasion of breach is considered inadequate, the CA may apply to the Court of First Instance for a penalty of a sum not exceeding 10% of turnover of the specified licensee in the relevant telecommunications market in the period of the breach, or \$10 million, whichever is higher.

As far as the users are concerned, failure to register their SIM cards under the Regulation will render the SIM cards not usable.

Specified Information of Eligible Persons

11. For an individual user aged below 16, the Regulation additionally requires certain personal information (including name, date of birth, number and copy of identification document) of an adult aged 18 or above. This requirement aims at preventing youngsters from being exploited by unscrupulous elements to act as a registered user of SIM cards for other persons. To strike a balance between enforcement need and practicality of the Registration Programme, we accept any relationship (parents, guardians, relatives, teachers and friends, etc.) between users aged below 16 and the concerned adult. As the registration would be done remotely in most cases, it is impossible for the specified licensees to verify the stated relationships prior to activating the SIM cards. Hence, the requirement for including only a statement of the relationship as part of the registration procedure is a pragmatic arrangement. There is also no need for specified licensees to verify the stated relationship afterwards.

12. I hope the above has clarified the issues raised in the letter.

Yours sincerely,



(Tony YIP)

for Secretary for Commerce and Economic Development

c.c.

Secretary for Justice (Attn: Mr Winson So, Mr Henry Chan and Miss Wendy Ho)

Secretary for Security (Attn: Miss Joey Lam)

Director-General of Communications (Attn: Miss Elaine Hui)

Legislative Council Secretariat (Attn: Mr Daniel Sin)

Examples of Warrantless Entry and Search Powers

	LEA	Ordinance	Relevant section(s)	Conditions for Warrantless Entry and Search
1.	Police	Crimes Ordinance (Cap. 200)	Section 152	- Police officer of the rank of superintendent or above may authorise in writing the power to enter any place, search, seize and detain evidence if a Part XII offence, i.e. sexual and related offence, is suspected of being committed.
2.	Immigration Department	Immigration Ordinance (Cap. 115)	Section 56(1A)(e)	- Section 56AA provides for application of warrants. - Section 56(1A)(e) provides that any immigration officer or immigration assistant may enter and search any place if he has reason to suspect that there is therein anything which may be seized under the Ordinance and it is not reasonably practicable to obtain a warrant.
3.	Police/ Customs and Excise Department	Dangerous Drugs Ordinance (Cap. 134)	Section 52(1)(e)	- Section 52(1E) provides for application of warrants. - Section 52(1)(e) provides that any police officer or member of the Customs and Excise may enter and search any place if he has reason to suspect that there is an article therein liable to seizure and it is not reasonably practicable to obtain a warrant under section 52(1E).

	LEA	Ordinance	Relevant section(s)	Conditions for Warrantless Entry and Search
4.	Police	Societies Ordinance (Cap. 151)	Section 33	- Police officer of the rank of inspector or above may enter any place, search, seize and detain evidence therein in relation to any unlawful society.
5.	Police	Police Force Ordinance (Cap. 232)	Section 50(3)-(4)	<ul style="list-style-type: none"> - Section 50(7) provides for application of warrants. - Section 50(3) provides that if any police officer has reason to believe any person to be arrested has entered into or is in any place, the person in charge of the place shall allow the officer free ingress thereto. - Section 50(4) provides that any police officer may forcibly enter and search any place if ingress is not allowed under section 50(3) and a warrant cannot be obtained without affording the person to be arrested an opportunity to escape.

Examples of Urgent or Emergency Situations

Bomb Threat

A culprit used a mobile phone to call the Police, alleging that a number of bombs have been planted in an MTR station and would be detonated an hour later. In this situation, there will be an imminent need for the Police to obtain registration information of the SIM card lodging the call to locate the caller as soon as possible and to confirm the location of the bombs for ensuring public safety and apprehending the culprit.

Murder and Serious Wounding

Intelligence revealed that a victim had just been murdered by an unidentified person. With limited details and description of the murderer, the Police identified several possible suspects for subsequent investigation. In this situation, urgent acquisition of relevant SIM card registration records would help expedite the identification of the murderer.

Kidnapping

A child was kidnapped, and the culprit used a mobile phone to demand ransom. In this situation, there will be an imminent need for the Police to obtain registration information of the SIM card making the ransom call in order to locate the caller as soon as possible for ensuring the safety of the victim and apprehending the culprit.

Unlawful Detention

A person was unlawfully detained by a gang for failing to repay a debt. A member of the gang used a cell phone to call the person's family members for exorbitant amount of money or otherwise the person would be wounded. In this situation, there will be an imminent need for the Police to obtain registration information of the SIM card making the call in order to locate the caller as soon as possible for ensuring the safety of the person and apprehending the culprit.