

# **立法會**

## ***Legislative Council***

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### **Paper for the House Committee meeting on 16 July 2021**

#### **Report of Subcommittee on Telecommunications (Registration of SIM Cards) Regulation**

#### **Purpose**

This paper reports on the deliberations of the Subcommittee on Telecommunications (Registration of SIM Cards) Regulation ("the Subcommittee").

#### **Background**

##### Mobile telephone services in Hong Kong

2. Currently, mobile telephone services in Hong Kong are provided by the four Mobile Network Operators ("MNOs"), around 20 Mobile Virtual Network Operators ("MVNOs") and many others operating under Class Licence for Offer of Telecommunications Services ("CLOTS"). MVNOs and CLOTS licensees procure network capacity/ data volume/ call minutes from MNOs or MVNOs and offer mobile services with different brand names, service features and price level to meet different market needs and business strategies. These telecommunications licensees sell subscriber identity module ("SIM") cards in the market through their retailers and distributors (e.g. convenience stores, malls specializing in computer products/equipment and street stalls, etc.).

3. Mobile service subscribers may choose to use SIM service plans ("SSPs") or pre-paid SIM ("PPS") cards for their telecommunication services. SSP operators require users to provide personal particulars (such as name, identity document number and date of birth, etc.). These data are collected for regular billing and customer service purposes. It is purely a commercial practice. PPS cards users are not required to register their personal particulars for the use of the service.

### Need to regulate SIM cards

4. There have been serious and organized crimes such as telephone scams, human trafficking, detonating home-made bombs, drug trafficking, syndicated burglary, technology crime, terrorist activities and immigration-related racketeering, etc., that have exploited the anonymous feature of PPS cards. The Administration considers that there is an urgent need to introduce the Real-name Registration Programme for SIM cards ("Registration Programme") for better regulation of use of SIM cards and for facilitating the prevention and detection of crimes. The Administration considers that the proposed Registration Programme should cover both PPS and SSP card users.

5. At the meeting of the Executive Council on 1 June 2021, the Council ADVISED and the Chief Executive ORDERED that the Telecommunications (Registration of SIM Cards) Regulation ("the Regulation") should be made under section 37 of the Telecommunications Ordinance (Cap. 106) to introduce the Registration Programme. The Regulation (L.N. 75) was gazetted on 4 June 2021 and tabled in the Legislative Council ("LegCo") on 9 June 2021.

### **The subsidiary legislation**

6. L.N. 75 comprises six Parts and a Schedule. The key provisions of L.N. 75 are summarized below:

- (a) Part 2 provides for the registration of a SSP card and a PPS card for any eligible person<sup>1</sup> and the maximum number of PPS cards that may be currently registered with a specified licensee<sup>2</sup> for an eligible person;
- (b) Part 3 provides for the circumstances in which a specified licensee may or must de-register a SIM card that is currently registered with

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<sup>1</sup> Section 4 of L.N. 75 provides that for the purposes of L.N. 75, "an eligible person" means an individual acting in his or her individual capacity; an individual or a body acting in the capacity as the holder of a valid branch or business registration certificate under the Business Registration Ordinance (Cap. 310); or a body that does not hold such certificate.

<sup>2</sup> "Specified licensee" is defined under section 2(1) of L.N. 75 to mean (i) the holder of a unified carrier licence, or mobile carrier licence, as defined by section 2(1) of the Telecommunications (Carrier Licences) Regulation (Cap. 106V); (ii) the holder of a services-based operator licence issued under section 7(5) of Cap. 106; or (iii) a person given the right under a class licence created under section 7B(2) of Cap. 106 to offer in the course of business a telecommunications service.

the licensee, including where the licensee has ceased to supply any service through the SIM card, has reasonable cause to believe that there is irregularity concerning the registration of the SIM card, or has received a request for deregistration from an eligible person for whom a SIM card is currently registered with the licensee;

- (c) Part 4 provides for the requirements in relation to record keeping, including that a specified licensee must (i) keep a record of certain information in respect of its registered SIM card and the relevant eligible person until the expiry of one year after the SIM card is de-registered; and (ii) provide the record to a law enforcement officer in certain circumstances<sup>3</sup> with or without a warrant issued by a magistrate;
- (d) Part 5 empowers the Communications Authority ("CA") to issue guidelines and to enter and inspect any place in Hong Kong used by a specified operator for the purpose of compliance with L.N. 75 to verify such compliance;
- (e) Part 6 provides for transitional arrangements as follows:
  - (i) for an existing PPS card, the requirement under section 5 of L.N. 75 (i.e. that an operator must ensure that the SIM card is not active unless the SIM card is currently registered with the operator) does not apply until after 23 February 2023; and
  - (ii) for an existing SSP card, the requirement under section 5 of L.N. 75 does not apply so long as the specified licensee continues to supply a service through the SIM card to the existing user; and
- (f) the Schedule provides for the specified information of eligible persons to be kept by a specified licensee under Part 4.

7. According to paragraph 12 of the LegCo Brief (File Ref.: CCIB/SD 605-15/1) issued by the Commerce and Economic Development Bureau and Security Bureau on 1 June 2021, CA will issue guidelines to supplement/elaborate on L.N.75 regarding the detailed operational requirements of the Registration Programme. The guidelines will take effect when the Registration Programme starts on 1 September 2021.

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<sup>3</sup> For example, where it is necessary to obtain a SIM card record for the purpose of investigating or preventing an offence, or preventing the loss of life of, or serious bodily harm to, any person.

## **Commencement**

8. L.N. 75 will come into operation on 1 September 2021 except that Part 2 (Registration), Part 3 (Deregistration), Part 4 (Record Keeping), section 15 (Inspection), Part 6 (Transitional Arrangements) and the Schedule (Specified Information of Eligible Persons) will come into operation on 1 March 2022.

## **The Subcommittee**

9. At the House Committee meeting held on 11 June 2021, Members agreed that a subcommittee should be formed to examine the subsidiary legislation in detail. Hon WONG Ting-kwong was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in the **Appendix**.

10. The Subcommittee has held one meeting with the Administration and invited written views from the public and relevant organizations.<sup>4</sup>

11. To allow more time for scrutiny, the Chairman of the Subcommittee moved a motion at the Council meeting of 7 July 2021 to extend the scrutiny period of L.N. 75 to the Council meeting of 18 August 2021. The motion was passed.

## **Deliberation**

### Cap on number of registrable PPS cards

12. Members have queried the rationale for raising the cap on the number of registrable PPS cards from three for each user per operator to 10 PPS cards for each individual user per operator and 25 PPS cards for each corporate user per operator. Some members have expressed concern that allowing users to hold so many cards may make enforcement more difficult. Some members have commented that the increase may encourage people to register several cards at the same time and sell them for profits, while opening up opportunities for criminals to buy the cards and use them for illicit purposes.

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<sup>4</sup> Two written submissions have been received (LC Paper Nos. 1093/20-21 [\(01\)](#) and [\(02\)](#)).

13. On the other hand, some members hold the view that restricting each company to register up to 25 PPS cards per operator only may create additional hurdles for companies, as companies may have to source additional PPS cards from different operators. Members have pointed out that as each company would have set up a system that accounts for each PPS card it has registered, enforcement agencies are able to trace the holder of each PPS card if necessary for any investigation purposes. One member has suggested that the Administration should amend L.N. 75 to increase the cap to 100 PPS cards for each corporate user per operator.

14. The Administration has responded that during public consultation, nearly all parties concerned considered that the original proposed cap of three PPS cards for each user under each operator too limited. The number of PPS cards registrable by each person is unregulated at the moment and, for corporate users in particular, there may be valid operational reasons for acquiring a larger number of PPS cards. The Administration has, accordingly, taken into account the views gathered during public consultation and increased the cap on PPS cards with a bigger cap provided for corporate users. The revised caps have also struck a balance for enforcement needs. The Administration has added that corporate users should not have difficulties in obtaining a larger number of SIM cards if they would negotiate tailor-made service plans with operators. SIM cards issued under such arrangements would not be regarded as PPS cards as such and hence would not be subject to the caps stipulated in L.N. 75. The Administration considers that any amendment to L.N. 75 to further increase the cap for corporate users is not necessary.

15. As regards individual users, the Administration has explained that it is becoming more prevalent for an individual to own or use various mobile devices operating with SIM cards. The revised cap of 10 PPS cards per individual user per specified licensee should be sufficient for most users even if they wish to register all PPS cards they need with one specified licensee of their choice, while not causing too much difficulties for law enforcement at the same time.

#### Authentication and protection of users' personal information

16. Some members have queried how visitors to Hong Kong will register their personal information when they buy PPS cards, and what criminal liabilities they will be subject to if they willfully provide false information for registration. Members have also queried how operators would authenticate the information provided, and what liabilities and penalties operators will face if they fail to verify the information or fail to comply with the requirements as prescribed in L.N. 75.

17. The Administration has explained that visitors to Hong Kong will be required to provide relevant personal information, including the visitors' name,

date of birth, number and a copy of their passport (or identity document) in accordance with L.N. 75 for registering PPS cards bought and for use in Hong Kong. They can register using remote means through the Internet, mobile applications or by any other methods as provided by the operators. Further details on the registration procedure will be specified in the guidelines to be issued by CA. The Administration has also explained that obtaining services by deception is an offence under the Theft Ordinance (Cap. 210), and the use of false instrument is also an offence under the Crimes Ordinance (Cap. 200).

18. As regards legal liabilities and penalties for operators, the Administration has explained that, while operators are not responsible for the truthfulness of personal information provided by users, they should verify that the information provided is consistent with that as shown in the copy of the identification document provided by the user. Operators may also make use of available third-party software to aid the authentication process. Further details on the authentication process will be elaborated in CA's guidelines.

19. Members have pointed out that the public is concerned about the effectiveness of authentication process on registering SIM cards particularly PPS cards. They have mentioned that it is not difficult to get hold of the relevant personal information of an individual especially those of public figures and people may be at risk of their personal information being used for registering SIM cards without their knowledge or consent. Members have pointed out that more effective identity authentication system such as "know-your-customer" software which had been widely used in the banking and other financial services sectors as well as the iAM Smart platform introduced by the Government can facilitate identity verification. Members consider that the Administration should issue clear guidelines for operators on how to authenticate users' identity effectively in the registration of SIM cards.

20. The Administration has responded that users are required to provide or upload a copy of their identity document when registering a SIM card. There are technologies that can help verify the authenticity of the uploaded document. The guidelines to be issued by CA can be regularly updated and revised in the light of new developments and latest technology available for such purposes.

21. Some members have asked whether the Administration would prescribe an identity authentication system for all operators. The Administration has explained that operators will set up their own authentication system to suit their own operational needs so long as such systems fulfill the requirements stipulated in L.N. 75 and the guidelines.

### Liability of registered SIM card users

22. Members have queried whether a person is liable for any offence if a SIM card registered in his or her name is found to be involved in some illegal activities, and whether the law affords protection to a person whose identity is used without his or her knowledge for registering a SIM card.

23. The Administration has explained that L.N. 75 has not made it an offence for or forbidden a registered user of a SIM card to let other persons use his or her SIM cards. A person who finds that his or her identity has been used without his or her knowledge for registration of a SIM card should report the case to the Police for follow-up.

### Sale of existing PPS cards during the transitional periods

24. Members have queried whether existing PPS cards (which do not require prior registration for their use) would continue to be in circulation during the transitional periods, and whether users would need to register their personal information for these PPS cards with the relevant operators after the transitional periods having expired. Members have also asked whether L.N. 75 covers roaming cards bought and activated overseas.

25. The Administration has explained that while it would be possible that some of the existing PPS cards would still be in circulation during phase two of the transitional period, the Administration has reminded operators to plan ahead for phasing out of the existing non-registrable PPS cards before commencement of phase two of the transitional period and operators will be required to use different packaging for new PPS cards so that consumers will be able to distinguish new PPS cards from existing ones. L.N. 75 will not regulate SIM cards bought and activated outside Hong Kong but used in Hong Kong (i.e. SIM cards for roaming services). Where necessary, law enforcement agencies can seek assistance from their overseas counterparts for enforcement actions involving these roaming SIM cards if they are associated with suspected criminal activities.

26. Some members have asked the Administration to work out a specific cut-off date with operators for the sale of existing PPS cards, so as to avoid the confusion of having both types of PPS cards on the market. The Administration has said that it would not be practically possible for setting a specific deadline as such given the complex and numerous distribution and sale channels of SIM cards in Hong Kong. Operators will be reminded to note carefully the requirements and timeline of the Registration Programme and plan the stock and sale of their existing SIM cards ahead.

Law enforcement and inspection power

27. Members note that operators are required to keep users' personal information for at least 12 months after the SIM cards have been deregistered. They have queried whether the period is sufficient for the law enforcement agencies to conduct investigation. They have made the point that in many fraudulent cases involving anonymous PPS cards, perpetrators often use several PPS cards at a time. It may take months before people realize that they have fallen victims to deception, and it may take an even longer time before they decide to report their cases to the Police. By such time, some of the PPS cards would have been deregistered for more than 12 months and the personal information kept might have been erased, leaving the enforcement agencies less means to trace the perpetrators. One member has asked the Administration to consider amending L.N. 75 to require operators to keep users' personal information for at least 18 months after the PPS cards have been deregistered.

28. The Administration has explained that in determining the duration for operators to keep registered information after a SIM card has been deactivated or deregistered, the Administration has to strike a balance between law enforcement efficacy and personal data protection considerations. The views of the Office of the Privacy Commissioner for Personal Data have also been sought over the arrangement. From past experience, most investigations on cases involving the use of SIM cards could be completed within 12 months. Where cases would require a longer period for investigation, law enforcement agencies could resort to other means to follow up. The Administration considers that there is no need to amend L.N.75 to lengthen the period for keeping users' personal information.

29. Members note that L.N. 75 provides that a law enforcement officer of a senior rank may authorize in writing any law enforcement officer to require, without a warrant, an operator that keeps SIM card user records to provide the records. They have queried whether the records a law enforcement officer can obtain from operators under that provision are limited to the personal information as specified under L.N. 75. They have also queried whether there are similar provisions in other existing regulations or ordinances that allow law enforcement agencies to obtain information without a warrant.

30. The Administration has explained that L.N. 75 has specified circumstances where law enforcement agencies may require operators to provide SIM card user records without a warrant. The records are restricted to the registered information in the record required to be kept under L.N. 75. There were provisions under other ordinances such as Cap. 200, the Immigration Ordinance (Cap. 115), etc., that endow law enforcement agencies with the power to enter and search any premises without a warrant under exigent circumstances.



31. In relation to section 15 of L.N. 75, which does not contain any built-in restriction on the scope of CA's power, the Legal Adviser has referred to paragraph 7 of the Administration's reply in its letter dated 28 June 2021 and has asked the Administration to consider whether procedural safeguards, similar to those set out in section 7J(6) of Cap. 106<sup>5</sup>, should be expressly provided for in L.N. 75 to restrict the manner in which CA may exercise its entry and inspection power rather than just relying on the principle of implied duty of reasonable care as mentioned in its reply. The Administration has explained that as it is expressly provided in section 15(1) of L.N. 75 that CA's powers to enter and inspect are restricted to offices, premises and places used by the operators and may only be exercised for the purpose of verifying that the operators are complying with L.N. 75, the Administration considers it not necessary to expressly provide for similar procedural safeguards in L.N. 75.

32. The Legal Adviser has pointed out that, in the course of an inspection, it is possible that CA may come into contact with commercially sensitive or legally privileged information that is in an operator's custody or control. Section 15(2) of L.N. 75 provides that the operator "must provide any assistance reasonably required by CA for the inspection", but L.N. 75 does not elaborate what "assistance" is expected of the operator. The Legal Adviser has sought the Administration's clarifications of its assertion in paragraph 9 of its letter dated 28 June 2021 that it considers the entry and inspection power under section 15 of L.N. 75 justifiable under the proportionality test and has not engaged the privilege against self-incrimination and the right to confidential legal advice.

33. One member has echoed the Legal Adviser's concern and has further mentioned that SIM card users and other customers of an operator have no avenue for lodging complaint or seeking remedies if the operator has provided more personal information than is required under L.N. 75 to law enforcement agencies.

34. The Administration has explained that as the scope of the information that CA would inspect is very limited and CA is not empowered to inspect or examine any information found on the premises which is unrelated to the stated purposes, it is of the view that the concerned power is lawful and justifiable under the proportionality test and has not engaged the privilege against self-incrimination and right to confidential legal advice.

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<sup>5</sup> 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.

### **Recommendation**

35. The Subcommittee has completed scrutiny of L.N. 75. The Subcommittee supports L.N. 75 in general. Both the Administration and the Subcommittee will not propose amendments to L.N. 75.

### **Advice sought**

36. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 1  
Legislative Council Secretariat  
15 July 2021

**Subcommittee on Telecommunications (Registration of SIM Cards) Regulation**

**Membership list**

**Chairman** Hon WONG Ting-kwong, GBS, JP

**Members** Hon YIU Si-wing, SBS  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon Elizabeth QUAT, BBS, JP  
Hon CHUNG Kwok-pan  
Hon SHIU Ka-fai, JP  
Hon YUNG Hoi-yan, JP  
Dr Hon CHENG Chung-tai  
Hon Tony TSE Wai-chuen, BBS, JP

(Total : 10 members)

**Clerk** Mr Daniel SIN

**Legal Adviser** Miss Rachel DAI