LEGAL NOTICE No. 1

THE KENYA COMMUNICATIONS AND INFORMATION ACT
(Cap. 411A)

IN EXERCISE of the powers conferred by section 27 of the Kenya Information and Communications Act, the Minister for Information and Communications, in consultation with the Communications Commission of Kenya, makes the following Regulations:—

THE KENYA INFORMATION AND COMMUNICATIONS (REGISTRATION OF SUBSCRIBERS OF TELECOMMUNICATION SERVICES) REGULATIONS, 2012

Short Title.
1. These Regulations may be cited as the Kenya Information and Communications (Registration of Subscribers of Telecommunication Services) Regulations, 2012.

Interpretation.
2. In this Order unless the context otherwise requires—

“subscriber” means a person who has subscribed to a telecommunication service and is able to use such a service;

“Commission” means the Communications Commission of Kenya;

“deactivate” means to disable a telecommunications service to a subscriber by a licensee;

“identification particulars” means details given by a subscriber to a licensee or a licensee’s agent for the purpose of registration of the subscriber;

“licensee” means a person or entity licensed under the Act to own and operate a telecommunications system or to provide telecommunications services or both;

“registration” means the recording of identification particulars of a subscriber by a licensee or a licensee’s agent;

“proxy registration” means registration on behalf of a subscriber by a person not being the subscriber;

“subscriber” means a person who uses a telecommunication service provided by the licensee;

“subscription medium” includes a Subscriber Identity Module and any such device that contains a subscriber’s telephone number, encoded network identification details, personal identification number and any other user data that may be provided from time to time by a licensee for the provision of telecommunication services to a subscriber;

“suspend” means to temporarily disable a telecommunications service to a subscriber by a licensee.

Object.
3. The object of these Regulations is to provide a process for the registration of existing and new subscribers of telecommunication services provided by telecommunication licensees in Kenya.

Requirement for registration.
4. (1) A licensee shall register a subscriber as specified in these Regulations.
(2) Despite sub-paragraph (1), any subscriber who has not registered at the commencement of these regulations shall be registered by the licensee.

(3) A licensee shall only sell a subscription medium to a subscriber after complying with these Regulations.

(4) Where a licensee relies upon the services of an agent to comply with the provisions of these Regulations—

(a) such agent shall also comply with the provisions of these Regulations;

(b) the licensee shall notify the Commission in writing of this relationship; and

(c) the licensee shall keep a record of all registrations of subscriptions made by the agent and provide a copy of this record to the Commission upon request by the Commission.

Method of registration.
5. (1) Where a subscriber wishes to register a subscription medium that subscriber shall provide the following particulars to the licensee—

(a) the subscriber’s telephone number;

(b) the subscriber’s official name;

(c) the subscriber’s date of birth;

(d) the subscriber’s gender;

(e) the subscriber’s physical address;

(f) the subscriber’s postal address, where available;

(g) the subscriber’s national identity card number or passport number;

(h) a copy of the subscriber’s certificate of incorporation, where relevant;

(i) a copy of the subscriber’s certificate of registration, where relevant;

(j) the subscriber’s work permit number, where relevant; and

(k) the subscriber’s alien card number, where relevant.

(2) Where there is a change in any of the details provided by a subscriber under sub-paragraph (1), the subscriber shall inform the licensee of the change within thirty (30) days of the change taking place and the licensee shall alter the relevant registration particulars of the subscriber.

(3) The licensee or the licensee’s agent shall not register a subscription medium unless the subscriber complies with these Regulations.

Verification of identification particulars.
6. A licensee shall rely on the following documents to verify the registration details of a subscriber—

(1) for a Kenyan citizen—

(a) original identity card;
(b) original and valid passport;
(c) original driving license;
(d) military identity card; or
(e) student identity card from an accredited educational institution;

(2) for a foreign national—
(a) work permit;
(b) passport; or
(c) alien card.

(3) For a corporate person or a statutory body, certified copies of the following documents shall be used for verification—
(a) certificate of incorporation;
(b) certificate of registration; or
(c) enabling legislation or Gazette notice.

The registration process.
7. The registration process shall involve the recording of data by the licensee or the licensee’s agent in the following manner—
(a) by entering the registration particulars in an electronic or physical form;
(b) by requiring the person submitting the registration particulars to appear before the licensee or licensee’s agent in person; and
(c) by keeping and protecting the registration particulars collected in a secure form.

Record of registration.
8. (1) A licensee shall maintain a physical or electronic record of registration particulars of a subscriber.

(2) Where a subscription has been deactivated the licensee shall keep the records of the relevant subscriber for a period of one year from the date of the deactivation of the subscription.

Confidentiality and disclosure of personal information of a subscriber.
9. (1) A licensee shall not disclose the registration particulars of a subscriber to any person without the written consent of the subscriber.

(2) Despite sub-paragraph (1), a licensee may disclose the registration particulars of a subscriber—
(a) for the purpose of facilitating the performance of any statutory functions of the Commission;
(b) in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings; or
(c) for the purpose of any civil proceedings under the Act.
(3) A licensee shall ensure that the registration details of a subscriber are kept in a secure and confidential manner.

(4) A licensee shall notify the Commission of the steps taken and processes introduced to ensure the security and confidentiality of the registration particulars of its subscribers within ninety (90) days of the commencement of these Regulations.

Registration period.
10. All licensees shall be required to ensure that—

(a) every subscriber is registered; and

(b) all necessary steps are taken to ensure full compliance with these Regulations within thirty days of the coming into force of these Regulations.

Suspension and notification of deactivation of unregistered subscriber.
11. (1) A licensee shall suspend a telecommunication service to an unregistered subscriber if the unregistered subscriber fails to comply with these Regulations at the expiry of the registration period provided under paragraph 10.

(2) A licensee may reactivate a suspended telecommunication service to a subscriber if the subscriber complies with these Regulations during the period of suspension of the service.

(3) All licensees shall notify all their unregistered subscribers that the subscribers’ telecommunications services will be suspended if they do not comply with these Regulations.

(4) A notice under this paragraph may take the form of—

(a) an advertisement in a newspaper of national circulation;

(b) an advertisement in an electronic medium that broadcasts throughout the country;

(c) any other form as may be permitted in writing by the Commission.

Deactivation of unregistered subscriber.
12. (1) A licensee may deactivate a subscriber’s telecommunication service if the service has been suspended for at least ninety (90) days.

(2) A licensee shall deactivate a subscriber’s subscription medium if—

(a) the licensee or the Commission establishes that the subscriber has provided false information for registration; or

(b) upon request by a subscriber after verification and confirmation of the subscriber in the subscription medium.

(3) Despite sub-paragraph (2) (b), any other person who establishes that the subscriber has provided false information for registration shall lodge a complaint with the Commission and ask the Commission to deactivate the subscription medium and the Commission shall notify the licensee of the complaint and the proposed deactivation of the subscriber’s subscription medium within a reasonable period.

(4) A licensee shall only deactivate a subscriber’s subscription medium where a complaint has been made to the Commission by another person after verifying the particulars of the complaint and giving the subscriber a reasonable opportunity to be heard.
(5) The licensee shall reactivate a suspended subscription medium where a subscriber complies with these Regulations.

Prohibition of proxy registration.
13. There shall be no proxy registration of any subscription medium.

Liability for activities using a subscriber's subscription medium.
14. (1) A subscriber shall be liable for activities carried out using a subscription medium registered in that person's name.

(2) Despite sub-paragraph (1), a subscriber shall not be held liable if that subscriber can prove that when the activities were being carried out the subscriber was not in control of the subscription medium.

Notice.
15. Any notice required to be given by a licensee to a subscriber may also be given using any electronic means permitted by the Commission.

Made on the 27th December, 2012.

SAMUEL POGHISIO,
Minister for Information and Communications.