

7th February, 2014

LEGAL NOTICE NO. 10

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

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

—

THE KENYA INFORMATION AND COMMUNICATIONS (REGISTRATION OF SUBSCRIBERS OF TELECOMMUNICATIONS SERVICES) REGULATIONS, 2014

Short Title

1. These Regulations may be cited as the Kenya Information and Communications (Registration of Subscribers of Telecommunication Services) Regulations, 2013.

Interpretation

2. In these Regulations unless the context otherwise requires—

"activate" means to enable access to telecommunication services to a subscriber after registration by a licensee

"agent" means a person contracted or otherwise engaged by a licensee or by a third party on behalf of a licensee, to carry out the registration of subscribers under these Regulations;

"Commission" means the Communications Commission of Kenya;

"deactivate" means to disable access to telecommunication services to a subscriber by a licensee;

"identification particulars" means details given by a subscriber to a licensee or an agent for the purpose of registration of the subscriber;

"licensee" means a person or entity licensed under the Act to own and operate a telecommunication system or to provide telecommunication services or both;

"pre-activate" means to enable access to telecommunication services, other than emergency communication or communication to a licensee's call centre, to a subscriber by a licensee prior to the registration of a subscription medium in accordance with these Regulations.

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

"registration" means the process of recording identification particulars of a subscriber by a licensee or an agent for the purpose of facilitating access to a telecommunication service, in accordance with these Regulations;

"subscriber" means a person who has access to telecommunication services provided by a licensee;

"subscription medium" includes a Subscriber Identity Module and any such device that contains a subscriber's 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 access to telecommunication services to a subscriber;

"suspend" means to temporarily disable access to telecommunication services 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 or agent shall register a subscriber as specified in these Regulations.

(2)(a) Without prejudice to the generality of paragraph (1), all existing subscribers who are not registered at the commencement of these

Regulations shall present their subscription mediums for registration by a licensee or agent in accordance with these Regulations.

(b) If an existing subscriber fails to comply with paragraph (2) within thirty days of commencement of these Regulations, a licensee shall suspend and deactivate the unregistered subscription medium in accordance with these Regulations.

(3) a subscription medium shall only be sold and activated upon registration of identification particulars of a new subscriber as specified under these Regulations.

(4) A licensee shall not sell or market pre-activated subscription mediums to new subscribers with effect from the date of commencement of these Regulations.

(5) (a) A licensee may contract or otherwise engage an agent for purposes of registering existing or new subscribers.

Provided that the agent shall be bound to the same extent as a licensee, by the requirements under the Act and these Regulations with necessary modifications.

(b) It shall be an offence for a person other than a licensee or an agent to sell a subscription medium.

(6) A licensee shall keep a record of-

(a) all its agents;

(b) all subscription mediums sold to agents; and

(c) all registrations of existing and new subscribers made by the licensee and the licensee's agents and any changes made thereto

(7) A licensee shall submit the records maintained pursuant to paragraph (6) to the Commission in the prescribed form after every quarter and at the end of its financial year, prepare and submit to the Commission in the prescribed form, an annual report of its operations on the maintenance of

records under paragraph (6) of this regulation after every seven days or at any other time upon request by the Commission.

(8) The Commission shall from time to time, prescribe the format in which licensees submit information to the Commission.

(9) A licensee or an agent who contravenes the provisions of this regulation commits an offence.

#### Method of registration

5. (1) Where an existing or new subscriber wishes to register a subscription medium, that subscriber shall provide the following particulars to the licensee or agent —

(a) subscriber number;

(b) official name;

(c) date of birth;

(d) gender;

(e) physical address;

(f) postal address, where available;

(g) any other subscriber number associated with the subscriber;

(h) an original and true copy of the national identity card, military card, passport or alien card;

(i) an original and true copy of the birth certificate, in respect of registration of minors.

(j) an original and true copy of the certificate of incorporation and a true copy of the national identity card or passport of at least one director, where relevant; and

(k) an original and true copy of the certificate of registration, where relevant;

(2) Where there is a change in any of the details provided by a subscriber under paragraph (1), the subscriber shall inform the licensee or an agent of the change within fourteen days of receipt of new identification documents and the licensee shall alter the relevant registration particulars of the subscriber within seven days.

(3) An existing or new subscriber, who knowingly provides false information to a licensee or an agent during the registration process, commits an offence.

#### Verification of registration identification particulars

6. (1) A licensee or an agent shall, on registration of an existing or new subscriber, verify the information provided by the subscriber pursuant to regulation 5.

(2) A licensee or an agent shall only rely on the following documents to verify the registration particulars of a subscriber—

(3) For a Kenyan citizen —

- (a) original identity card;
- (b) original and valid passport;
- (c) original military identity card; or
- (d) original birth certificate

(4) For a foreign national —

- (a) original and valid passport; or
- (b) original alien card.

(5) For a corporate person or a statutory body, certified copies of the following documents —

- (a) certificate of incorporation and original national identity card or passport of at least one director;

(b) certificate of registration and original national identity card or passport of the proprietor or at one least partner as the case may be; or

(c) constitutive legislation or gazette notice.

(6) A licensee shall verify the registration particulars of subscribers provided by a licensee's agents.

(7) It shall be an offence to register a subscriber in contravention of this regulation.

#### The registration process

7. (1) The Commission shall from time to time, prescribe a standard format in which licensees and agents register subscribers.

(2) The registration process shall involve the recording of data by a licensee or an agent in the following manner—

(a) by entering the verified registration particulars provided by an existing or new subscriber in an electronic or physical form;

(b) by requiring an existing or new subscriber to appear before the licensee or agent in person;

(c) by submitting all the information obtained pursuant to regulation 5 to the licensee's database; and

(d) by keeping the registration particulars obtained in a secure and confidential manner.

#### Registration of a minor

8. (1) A minor, who wishes to register a subscription medium, shall be accompanied by his or her lawful guardian, possessing relevant identification particulars as provided for under regulations 5 and 6.

(2) The licensee or agent shall record the date of birth of the minor on registration of the minor's subscription medium.

(3) A lawful guardian accompanying a minor for purposes of registering a minor's subscription medium under paragraph (1) shall be deemed to be

registered as the subscriber of that particular subscription medium until such minor attains the age of majority.

(4) Upon the minor attaining the age of majority, a licensee shall advise a minor registered as user under this regulation to register his or her personal identification details according to regulations 5 and 6 within a period of ninety days of attainment of the age of majority and the licensee shall inform the minor that his or her telecommunication services will be suspended if he or she fails to comply with these Regulations.

(5) Where a person fails to register identification particulars according to paragraph (3), within ninety days, such subscription medium shall be suspended and deactivated as provided for under these Regulations.

(6) A lawful guardian accompanying a minor under paragraph (1) shall prima facie be held liable for any activities carried out using a subscription medium registered with that lawful guardian's personal information, provided that such liability shall cease upon the minor attaining age of majority.

#### Record of registration

9. (1) A licensee shall maintain a physical or electronic record of registration particulars of subscribers, including copies of the identification documents provided pursuant to regulation 5.

(2) Where a subscription has been deactivated the licensee shall retain the records of the relevant subscriber for a period of two years from the date of the deactivation of the subscription.

(3) A licensee who fails to maintain records under this regulation commits an offence.

(4) A licensee shall verify the accuracy and authenticity of the information contained in its database of subscribers' particulars as required by the Commission from time to time.

#### Confidentiality and disclosure of personal information of a subscriber

10. (1) A licensee or an agent shall not disclose the registration particulars of a subscriber to any person without the written consent of that subscriber.

(2) Notwithstanding paragraph (1), a licensee or an agent 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;

(c) for the purpose of any criminal proceedings; or

(d) for the purpose of any civil proceedings under the Act

(3) A licensee shall ensure that the registration particulars 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 its subscribers' registration particulars within thirty days of the commencement of these Regulations.

(5) A licensee or an agent who contravenes this regulation commits an offence.

#### Notwithstanding

#### Prohibition of proxy registration

11. There shall be no proxy registration of any subscription medium.

#### Liability for use of a subscription medium

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

(2) Notwithstanding 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.

#### Access to sites and records

13. A licensee shall grant the Commission's officers access to its systems, premises, facilities, files, records and other data to enable the Commission



inspect such systems, premises, facilities, files, records and other data for compliance with the Act and these Regulations.

#### Penalties

14. A person who contravenes these Regulations shall on conviction be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both for each contravention.

#### Miscellaneous Provisions

15. (1) All existing registered subscribers who at the time of these regulations taking effect, did not provide the particulars and documentation provided for under regulation 5 of these Regulations, shall present their particulars and documentation for registration by a licensee or agent in accordance with these Regulations within six (6) months of commencement of these Regulations.

(2) A licensee shall suspend and deactivate a subscription medium of a subscriber who fails to comply with paragraph (1) of this Regulation in accordance with Regulation 16 and 17 subject to necessary alterations and modifications.

16. (1) A licensee shall suspend telecommunication services to an unregistered subscriber if the unregistered subscriber fails to comply with these Regulations within thirty (30) days of the commencement of these Regulations.

(2) A licensee shall notify all its unregistered subscribers that the subscribers' telecommunication services will be suspended if they do not comply with these Regulations.

(3) A notice under these Regulations 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) a personal notification from a licensee to the subscriber;

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

(4) A licensee shall reactivate a suspended subscription medium where a subscriber complies with these Regulations.

17. (1) A licensee shall deactivate a subscriber's subscription medium if —

(a) telecommunication services to the subscriber have been suspended for ninety (90) days.

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

(c) upon request by a subscriber after verification and confirmation of the subscriber.

(2)(a) Notwithstanding paragraph (2) (b), any other person who establishes that a subscriber has provided false information for registration shall lodge a complaint with the Commission and request the Commission to deactivate the subscription medium.

(b) The Commission shall notify the licensee of the complaint and the proposed deactivation of the subscriber's subscription medium within a reasonable period.

(3) 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, including notifying the subscriber of the breach through a message delivered to the subscriber.

(4) A licensee shall file quarterly returns with the Commission on the record of deactivated and suspended subscribers.

Revocation of L.N. No. 1 of 2013

18. Legal Notice Number 1 of 2013, the Kenya Information and Communications (Registration of Subscribers of Telecommunication Services) Regulations, 2012, is revoked.

Made on the 14<sup>th</sup> January, 2014.

FRED MATIANG'I,  
Cabinet Secretary for Information,  
Communications and Technology.