



PRESS RELEASE:

COMMENCEMENT OF THE REGULATION OF INTERCEPTION OF COMMUNICATIONS AND PROVISION OF COMMUNICATION-RELATED INFORMATION AMENDMENT ACT, 2008

The Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 regulates various aspects relating to communications. It, among others, prohibits the interception of communications, except in terms of the provisions of the Act. The Act allows for the interception of communications when there are reasonable grounds to believe that a serious offence has been or will be committed and upon the issuing of an interception direction by a designated judge.

The Act was necessitated by the fact that criminals make use of new technology to plan and execute crimes. These amendments are in line with similar legislation that has recently been adopted by many other countries across the world. The aim of the amendments is to assist the law enforcement agencies in the investigation and combating of serious crime and to ensure that the identity and whereabouts of the owner of a SIM-card who used a cellular phone in the planning and execution of a serious crime is known. Government will therefore work closely with the various services providers to ensure the successful implementation of this Act.

In terms of the Act certain information had to be obtained and kept by persons who sell cellular phones and SIM –cards through a “paper-based” registration process. The Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2008, mainly seek to move away from the “paper-based” registration process to an “electronic solution.”

The Amendment Act, with the exception of section 3, comes into operation with effect from 1 July 2009. Section 3 of the Amendment Act which deals with offences and penalties comes into operation on 1 August 2009.

In terms of the amended section 40, mobile cellular service providers (MTN, Cell C, Vodacom and Neotel) are from 1 July 2009 prohibited from activating a new SIM-card unless they have captured the customer's cellular phone number, his or her full names and surname, identity number and an address, preferably a residential address and have verified the personal information of the customer. The identity of the customer may be verified by means of a green, bar-coded identity document, a temporary identity certificate, a passport or a travel document. An address may be verified by means of various documents, including bank statements, municipal rates and taxes invoice, a recent telephone account, an account of a retailer, a current television licence or a new motor vehicle licence document. Section 40 also requires that both the person who sells or provides an activated SIM-card to another person (other than a family member) and the person who receives the SIM-card must go through a capturing and verification process and furnish their particulars to the mobile cellular service provider in question.

In terms of the amended section 62(6), mobile cellular service providers must, within 18 months from 1 July 2009, capture and verify the particulars discussed above of a person who is the owner of a SIM-card on the aforementioned date. If the particulars are not captured within that period, the service provider must terminate the service associated with the SIM-card.

In terms of section 62C juristic persons who furnish SIM-cards to their employees and persons who lease SIM-cards are required to record the particulars referred to in section 40 in respect of the recipients of the SIM-cards and store that information for a period of five years.

ISSUED BY THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT:

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