

MCIT–PTD Public Consultation
on a Code of Practice for Mobile Customer Registration:
SUBMISSION FROM MYANMAR CENTRE FOR RESPONSIBLE BUSINESS

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1. Mandatory Registration May Undermine the Intended Benefits

While a number of governments have recently introduced mandatory registration, a number of others have decided against it (e.g. the United Kingdom, Canada, the Czech Republic, Romania and New Zealand) or repealed the requirement shortly after introduction (e.g. Mexico).ⁱ This is because to date no evidence has been shown to prove the effectiveness of registration in deterring terrorism or in supporting law enforcement efforts. These are usually the stated common aim of such a policy measure.ⁱⁱ Moreover, mandatory registration can actually raise a range of unintended consequences, discussed below.

1.1 A Range of Unintended Consequences can Result from Mandating Registration

- The policy can actually incentivize criminal activity – theft of mobile devices, fraudulent registration, the creation of a “black market” for the distribution and sales of unregistered SIMs from overseas, and innocent citizens being wrongfully implicated in a criminal offense due to their registered SIM/phone being stolen and improperly used.
- Consumer research studies show consumer distrust in the inordinate tracking abilities that accompanies mandatory registration can actually deter the creation and uptake of mobile services and commerce.ⁱⁱⁱ
- Studies have shown that uptake of mandatory registration actually depresses growth in mobile penetration.^{iv} Mandatory registration can actually act as a barrier to widening the range of SIM distribution channels by barring sales by shops not owned/controlled by licensed operators or retailers. This can also have a knock on impact to the income such shop owners would have derived, impacting the potential on them to improve their family’s economic conditions.

- The definition and registration process of “dealers” in the draft Code of Practice is unclear on this point, noting only that “The Regulator will provide a process and template for such registration of dealers” (para 3(c), draft Code of Practice).
- This could undermine the expected income generation opportunities available to e.g. ‘shop-house’ keepers who will not be able or be unwilling to fulfil the document registration requirements.
- A mandatory registration system places a cost burden on operators (through training of staff, ensuring adequate public awareness, ensuring the regular updating and accuracy of data held, and storing user data), which can potentially deter investment in Myanmar into innovative services and infrastructure, and disproportionately affect small businesses.
 - As para 7(e) of the draft Code of Practice confirms, there will be no compensation for the costs incurred for information collection and storage.
 - It is unclear what the requirement for “A minimum of 25% of customer records must be checked within one week of first use of the SIM on the network” (para 6(a)) would mean in practice: for example is a requirement to constantly check 25% of records, or only to check 25% of new registrations?. A time limit of one week appears impractical given the time it would take to collect customer records from dealers, and enter them into a system.
 - The draft Code of Practice is unclear as to how regularly user information must be amended and updated, or penalties on operators for failing to do so, noting only that it should be “without undue delay” (para 7(g), draft Code of Practice).

1.2 The Stated Advantages of Mandatory Registration in Myanmar Require Further Investigation

The consultation document postulates a number of advantages of requiring registration (para 5, Consultation document). Further analysis and clarification of the proposed advantages of SIM registration is required. As discussed above and in section 2 below,

the negative consequences of mandatory SIM registration appear to us to outweigh any intended benefits. We have provided a brief response to each stated advantage below:

- *a) More reliable statistics on actual number of active subscribers;*
 - It is not clear how SIM registration would provide more reliable statistics on the number of subscribers. Telecoms operators would already have this information. Furthermore, it has been reported in Ghana for example, where mandatory SIM registration is required, that telecom operators have had to repeat the process and re-register SIM cards 3 years after mandatory SIM registration was first introduced as fake identity cards were widely used to register SIM cards^v.
- *b) Greater effectiveness in the prevention of fraud involving mobile phones;*
 - It is not clear what kind of fraud is being referred to here and therefore difficult to determine if SIM registration would assist in its prevention.
- *c) Easier enablement of new and innovative services (e.g., mobile money and mHealth services);*
 - While further identification of users may be required in order to register for extra mobile enabled services where sensitive data is exchanged, such as mobile banking or health services, registration should always be service focused, rather than general SIM registration. For other services, such as news updates and access to government services, these services should be 'opt in' and voluntary.
- *d) Prevention of unregistered SIMs being used for "SIM boxing fraud"*.
 - Tackling "SIM boxing fraud" is a serious issue. It affects many telecoms companies around the world resulting in losses of revenue. However, more avenues should be explored and questions asked in tackling SIM box fraud before settling on mandatory SIM registration, which disproportionately impacts

the majority of innocent users not associated with SIM box fraud. Firstly, how likely is it that SIM box fraud will be a major problem in the near future in Myanmar? In countries where mandatory SIM registration is not required, what are telecoms companies doing to tackle the issues (e.g. developing tools to detect SIM boxes, monitoring quality of calls which can often be very poor if made through a SIM box)?

2. Mandatory Registration Poses a Number of Risks to People

In addition to the unintended consequences that mandatory registration can produce, such a system can also create a range of risks to people, discussed further below.

2.1 Regarding Code of Practice paragraph 7(h): “Service providers will be required to provide customer registration records to the Regulator or other entities, upon lawful request.”

- The Ministry of Communications and Information Technology (MCIT) has not yet defined its procedures for the lawful interception of user data, the process for any suspension of networks, or procuring user data for law enforcement purposes, though it has committed to doing so.^{vi} This is a crucial and important procedure that requires further consultation and consideration before any mass collection of customer data through mandatory registration is considered.
- The absence of such lawful interception procedures is of concern in light of Myanmar’s new Telecommunications Law (No. 31/2013)^{vii}, which enables control of services and data by the Union Government without clearly articulated definitions of justifications (namely, what constitutes “public interest”, “national defense/security”, and “emergency situation”). The Law states that:
 - the Union Government may, “*as may be necessary, direct to the relevant organization for enabling to obtain any information and telecommunications which causes harm to national security and prevalence of law without affecting the fundamental rights of the citizens*” (s 75).

- government authorities may “*enter and inspect, supervise the operation of any Telecommunications Service being operated by the licensee and may require to submit the documents if necessary*” (s76).
- Moreover, government authorities may, “*when an emergency situation arises to operate for public interest, direct the licensee to suspend a Telecommunications Service, to intercept, not to operate any specific form of communication, to obtain necessary information and communications, and to temporally control the Telecommunications Services and Telecommunications Equipments*” (s 77).
- Accordingly, licensees must “*make prior arrangements to be enable to carry out any Telecommunications Service for the purposes of security in a lawful manner*” (s 78)
- The Telecommunications Act provides a welcome caveat to data interception “without affecting the fundamental rights of citizens” (s 75). However, mandatory customer registration combined with the absence of a clear and comprehensive procedure governing the lawful interception of data according to international standards will create a disproportionate and unnecessary ability to track and locate registered individuals and an infrastructure which has the potential to be used for surveillance, censorship, locating and targeting of political opponents, and infringement of freedom of expression. This raises serious risks to peoples’ security, safety, privacy and expression rights.
- Myanmar’s present government has initiated a historic reform process intended to establish democratic practices and address censorship and curbs on freedom of expression. A mandatory registration system has the potential to undermine the delicate trust that is being built through the reform process.

2.2 *Data retention requirements are disproportionate and unsupported by a clear and effective policy and legal framework*

- Related to the above concerns around the preservation of mobile users' privacy are the disproportionate requirements for user data to be held for 12 months from the date of termination or suspension (para 7(d), draft Code of Practice). More concerning is the open-ended retention of registered users' data (para 7(a)-(b), and the requirement for a photograph of the customer's face if it is not already contained within the ID provided.
- There is no comprehensive legislation that regulates the processing and protection of personal data in Myanmar, and there do not appear to be any plans to introduce any such data protection law in the near future. There only appear to be plans to develop best practices or guidelines as part of its integration to the ASEAN Economic Community by 2015, but further details have not been made public.^{viii} The current lack of clear legal frameworks governing Myanmar's Information and Communication Technology (ICT) sector creates substantial uncertainties as to legal obligations of ICT companies, the nature and scope of government oversight, and the extent of protections for ICT users' rights. This increases the possibility of such a large amount of data, held for an indefinite amount of time, being susceptible to unlawful uses, including unauthorized surveillance, leaks, security breaches, and so on.

2.3 *Mandatory registration will potentially impact some Myanmar citizens' access to telecom services*

- Mandatory registration requires those seeking to access mobile telecommunications to provide personal details as well as documentation proving such details are correct. This can be difficult for people who are: homeless; those living in informal housing or remote communities; those living in displacement due to decades of conflict; many young people; those from less well-documented groups, including those not able for whatever reason to obtain National

Registration Cards; those who are dependent on families and unable or less able to leave their home to register; as well as those reluctant to register due to concerns over the possible violation of their privacy and/or freedom of expression.

- Furthermore, the requirements for dealers to take copies of proof of ID (para 4(a) and 5(a), draft Code of Practice) can inhibit wider uptake of SIM Cards amongst the poor and in remote areas since outlets may not have the facilities to make such copies and it will incur an additional cost for the user.
- The right to seek, receive and impart information is a basic human right, and the mandatory registration places a burden that could infringe on that right.
- The draft Code of Practice is silent on how existing but unregistered prepaid SIM cards users would be treated. Furthermore, it does not address the issue specific to Myanmar, that the historically high cost of SIM cards and their restricted availability has led to a very high proportion of existing SIM card holders having acquired their SIM cards from an unconnected but registered individual via a third party broker, together with associated paperwork connected to that individual.
- The deadline for the roll out of the mandatory system is also unclear in the consultation document and draft Code of Practice, but experience from other countries shows that such deadlines have often had to be repeatedly extended (as in Ghana and Uganda) due to lack of awareness, and if not extended, a large number of users would otherwise be cut off from access.

3. An Assessment of the Impacts of a Mandatory Registration System

Would Be Beneficial

This consultation is welcome and a further demonstration of MCIT's commitment to the development of Myanmar's telecoms sector in line with international best practice. We hope that the responses will aid in the identification of the full range of potential impacts on those living in Myanmar, including on the right to privacy. Indeed, the

consultation document states that: “*The privacy of customers and confidentiality of information collection is a key objective of this code of practice*” (para 6). Give that this is a key objective, MCRB encourages MCIT and PTD to delay its decision on requiring registration and first identify independent experts to undertake an assessment on its viability, feasibility and likely impact. Conducting and publishing such an assessment is the logical next step to be consistent with international best practice.^{ix}

While study of customer registration shows that positive outcomes for consumers can be achieved, this requires first:

- examining the national and regional conditions, including market dynamics and cultural and historical factors (which, as outlined above, are of crucial importance in Myanmar);
- engaging with mobile operators on how such a system would operate, how it might burden or benefit them, and allowing them to propose alternative systems (in particular with regard to SIM box fraud) with far less risk to people and far greater efficiency in achieving the intended advantages;
- assessing the potential impact, including on the concerns outlined above, of any system on the Myanmar people and foreigners living and working in the country.

ⁱ See a range of country experiences at: ITU, “Regulatory Newslog”, at: <http://www.itu.int/ITU-D/treg/newslog/SearchView.aspx?q=registration>. See also the country profiles in Research Report for the Office of the Privacy Commissioner of Canada, “Privacy Rights and Prepaid Communication Services”, at: <http://blogs.sfu.ca/departments/cprost/wp-content/uploads/2012/06/0601.pdf>

ⁱⁱ GSMA, “White Paper on Mandatory Registration of Prepaid SIM Users” (Nov. 2013). At: http://www.gsma.com/publicpolicy/wp-content/uploads/2013/11/GSMA_White-Paper_Mandatory-Registration-of-Prepaid-SIM-Users_32pgWEBv3.pdf

ⁱⁱⁱ See GSMA research on mobile users’ general privacy attitudes: <http://www.gsma.com/publicpolicy/mobile-and-privacy/resources>

^{iv} See for example, Nicola Jentzsch, “Implications of Mandatory Registration of Mobile Phone Users in Africa” (March 2012). At: http://www.diw.de/documents/publikationen/73/diw_01.c.394079.de/dp1192.pdf

^v <http://allafrica.com/stories/201403131740.html> and

<http://pctechmag.com/2014/03/ghana-telecoms-ordered-to-repeat-sim-registration/>

^{vi} MCIT, consultation on the “Proposed Rules for Telecommunications Sector Relating to Licensing, Access and Interconnection, Spectrum, Numbering, and Competition” (4 November 2013), pg. 5.

^{vii} Telecommunications Law (2013), Section 77, official English translation:

<http://www.mcit.gov.mm/sites/default/files/Final%20Official%20English%207-2-2012%20update-1DThida%20Tun%20Zan.pdf>

^{viii} ZICOLaw, “ASEAN Insights 4: personal data protection”, pg 3-4. At:

<http://www.lexology.com/library/detail.aspx?g=54dee7ca-c115-4840-91fd-d1529875d670>

^{ix} See GSMA above, pg. 20