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## **THE PRESIDENCY**

No. 17

9 January 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 48 of 2008: Regulation of Interception of Communications and Provision of Communication-related Information Act, 2008.**



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Act No. 48, 2008 REGULATION OF INTERCEPTION OF COMMUNICATIONS  
AND PROVISION OF COMMUNICATION-RELATED  
INFORMATION AMENDMENT ACT, 2008

**GENERAL EXPLANATORY NOTE:**

- [ ] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)  
(Assented to 6 January 2009.)

# ACT

To amend the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, so as to insert certain new definitions and to amend certain definitions; to provide afresh for information to be obtained and kept in respect of cellular phones and SIM-cards; to further regulate offences and penalties; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 70 of 2002**

1. Section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of “Agency” of the following definitions:

“**‘activate’** means to allow access to the electronic communication system of the electronic communication service provider who provides a mobile cellular electronic communications service and “activated” has a corresponding meaning;

**‘address’** means—

(a) in the case of a natural person—

(i) the address where the person usually resides, or where such residential address is not available— 15

(aa) the address where the person is employed;

(bb) the address where the business of the person is situated; or

(ii) where such a person resides in an informal settlement and cannot provide an address contemplated in subparagraph (i), any other address, including that of a school, church or retail store, where a person usually receives his or her post; or 20

(b) in the case of a juristic person, the registered address or the address where the business is situated;” 25

(b) by the substitution for the definition of “customer” of the following definition:

“**‘customer’** means any person—

(a) to whom an electronic communication service provider provides an electronic communications service, including an employee of the electronic communication service provider or any person who receives or received such service as a gift, reward, favour, benefit or donation; 30

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- (b) who has entered into a contract with an electronic communication service provider for the provision of an electronic communications service, including a pre-paid electronic communications service; or
- (c) where applicable—
- (i) to whom an electronic communication service provider in the past has provided an electronic communications service; or
  - (ii) who has, in the past, entered into a contract with an electronic communication service provider for the provision of an electronic communications service, including a pre-paid electronic communications service;”;
- (c) by the insertion after the definition of “Executive Director” of the following definition:
- “**‘family member’** means—
- (a) a person who is related to another person—
    - (i) biologically; or
    - (ii) by statutory, customary or religious law, including affinity by marriage, adoption or foster care;
  - (b) a person’s permanent life partner; or
  - (c) in the case of an orphan, a care-giver as defined in the Children’s Act, 2005 (Act No. 38 of 2005);”;
- (d) by the substitution for the definition of “identification document” of the following definition:
- “**‘identification document’** means, in the case of a person—
- (a) who is a South African citizen or is lawfully and permanently resident in the Republic—
    - (i) a green, bar-coded identity document issued in terms of section 8 of the Identification Act, 1986 (Act No. 72 of 1986), until such identity document is replaced by an identity card as contemplated in section 25 of the Identification Act;
    - (ii) an identity card issued in terms of section 14 of the Identification Act;
    - (iii) a temporary identity certificate issued in terms of section 16 of the Identification Act; or
    - (iv) a South African passport issued in terms of the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994); or
  - (b) who is not a South African citizen or not permanently resident in the Republic, excluding a refugee, a valid passport or travel document as contemplated in paragraphs (b) and (c) of the definition of ‘passport’ in the Immigration Act, 2002 (Act No. 13 of 2002); or
  - (c) who is a refugee, a valid identity document issued in terms of section 30 of the Refugees Act, 1998 (Act No.130 of 1998);”;
- (e) by the insertion after the definition of “identification document” of the following definition:
- “**‘identity number’** means—
- (a) in the case of a person who is a South African citizen or who is lawfully and permanently resident in the Republic, the number referred to as the identity number in the document contemplated in paragraph (a)(i), (ii) or (iii) of the definition of ‘identification document’ or the number referred to as the passport number in the document contemplated in paragraph (a)(iv) of the definition of ‘identification document’;
  - (b) in the case of a person who is not a South African citizen or who is not permanently resident in the Republic, excluding a refugee, the number referred to as the passport number in the document contemplated in paragraph (b) of the definition of ‘identification document’; or
  - (c) in the case of a refugee, the number referred to as the identity number in the document contemplated in paragraph (c) of the definition of ‘identification document’;”;
- (f) by the insertion after the definition of “indirect communications” of the following definition:

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**“ ‘informal settlement’** means a place in an urban or rural setting used for residential purposes and in respect of which no physical addresses or street particulars are officially assigned;”.

**Substitution of section 40 of Act 70 of 2002**

**2.** The following section is hereby substituted for section 40 of the principal Act: 5

**“Information to be obtained and kept by electronic communication service provider who provides a mobile cellular electronic communications service**

**40.** (1) (a) Subject to paragraph (b), an electronic communication service provider who provides a mobile cellular electronic communications service shall not activate a SIM-card on its electronic communication system unless subsection (2) has been complied with. 10

(b) Paragraph (a) does not apply to a customer of an electronic communication service provider who provides a mobile cellular electronic communications service outside the Republic who enters the geographical coverage area of a mobile cellular electronic communication service provider in the Republic and uses the electronic communication system of such provider to make, receive and send voice calls or data or access other services. 15

(2) From the date of commencement of this section an electronic communication service provider must, subject to subsection (4), at own cost implement a process to record and store, and must record and store— 20

(a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN-number) of the SIM-card that is to be activated by an electronic communication service provider at the request of a person contemplated in paragraphs (b) and (c); 25

(b) in the case of a person who—  
(i) is a South African citizen or is lawfully and permanently resident in the Republic, the full names and surname, identity number and at least one address of such person who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider; or 30

(ii) is not a South African citizen or who is not permanently resident in the Republic, and who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider, the full names and surname, identity number and at least one address of such person and the country where the passport was issued; or 35

(c) in the case of a juristic person—  
(i) the full names, surname, identity number and an address of the authorised representative of the juristic person; and 40  
(ii) the name and address of the juristic person and, where applicable, the registration number of the juristic person.