

CAYMAN ISLANDS



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**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY LAW
(2011 REVISION)**

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY
AUTHORITY (INTERCEPTION OF TELECOMMUNICATION
MESSAGES) (AMENDMENT) REGULATIONS, 2016**

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AUTHORITY (INTERCEPTION OF TELECOMMUNICATION
MESSAGES) (AMENDMENT) REGULATIONS, 2016**

ARRANGEMENT OF REGULATIONS

1. Citation
2. Amendment of regulation 5 of the Information and Communications Technology Authority (Interception of Telecommunication Messages) Regulations, 2011 - grounds of interception
3. Insertion of regulation 8A - destruction of intercepted communication and related communications
4. Amendment of regulation 9 - exclusion of matters from legal proceedings
5. Insertion of regulations 9A and 9B - unauthorised disclosure prohibited; offence of making unauthorised disclosure
6. Amendment of regulation 17 - establishment of audit committee
7. Amendment of regulation 20 - report

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AUTHORITY (INTERCEPTION OF TELECOMMUNICATION
MESSAGES) (AMENDMENT) REGULATIONS, 2016**

In exercise of the powers conferred by section 97 of the Information and Communications Technology Authority Law (2011 Revision), the Cabinet makes the following Regulations -

Citation

1. These Regulations may be cited as the Information and Communications Technology Authority (Interception of Telecommunication Messages) (Amendment) Regulations, 2016.

Amendment of regulation
5 of the Information and
Communications
Technology Authority
(Interception of
Telecommunication
Messages) Regulations,
2011- grounds of
interception

2. The Information and Communications Technology Authority (Interception of Telecommunication Messages) Regulations, 2011, in these Regulations referred to as “the principal Regulations”, are amended in regulation 5 as follows -

- (a) by inserting after the word “may” the word “only”;
- (b) by inserting before the word “purpose” the word “the”; and
- (c) by inserting after paragraph (2) the following paragraph -

“(3) In this regulation “serious crime” includes -

- (a) an offence for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; and
- (b) an offence where the conduct -
 - (i) involves the use of violence;
 - (ii) results in substantial financial gain; or

(iii) is conduct by a large number of people in pursuit of a common purpose.”.

3. The principal Regulations are amended by inserting after regulation 8 the following regulation -

“Destruction of intercepted communication and related communications

8A. The Commissioner of Police shall ensure that arrangements are in place for the destruction of any communication intercepted under a warrant, any copies made of such communication and all related communications data, as soon as the intercepted communication is no longer needed for the purposes of regulation 9(3).”.

Insertion of regulation 8A - destruction of intercepted communication and related communications

4. The principal Regulations are amended in regulation 9 as follows -

- (a) in paragraph (1) by deleting the words “No evidence” and substituting the words “Subject to paragraph (3), no evidence”;
- (b) in paragraph (2) by deleting the words “postal service or”; and
- (c) by inserting after paragraph (2) the following paragraph -

“(3) Nothing in this regulation prohibits a disclosure of any information that continues to be available for disclosure if it is confined to a disclosure to -

(a) a person conducting a criminal prosecution, for the purpose of enabling that person to determine what is required of the person as a prosecutor in order to secure the fairness of the prosecution; or

(b) a judge of the Grand Court or a magistrate in a case in which the judge or magistrate -

- (i) is satisfied that the exceptional circumstances of the case make the disclosure essential in the interests of justice; and
- (ii) orders the disclosure to be made to such judge or magistrate alone.”.

Amendment of regulation 9 - exclusion of matters from legal proceedings

5. The principal Regulations are amended by inserting after regulation 9 the following regulations -

“Unauthorised disclosures prohibited

9A. (1) No person to whom this section applies shall make an unauthorised disclosure to another person.

Insertion of regulations 9A-and 9B - unauthorised disclosure prohibited; and offence of making unauthorised disclosure

(2) A person makes an unauthorised disclosure who discloses any of the following matters in relation to a warrant issued under regulation 5 –

- (a) the existence or contents of the warrant;
- (b) details of its issue, renewal or modification;
- (c) the existence or contents of any requirement to provide assistance in giving effect to the warrant;
- (d) the steps taken in pursuance of the warrant or a requirement referred to in subparagraph (c); or
- (e) any material obtained under the warrant.

(3) This regulation applies to the following persons -

- (a) public officers;
- (b) persons employed by, or for the purposes of, a police force;
- (c) telecommunications operators and persons employed or engaged for the purposes of their telecommunications business; and
- (d) any person to whom any of the matters referred to in paragraph (2) have been disclosed under a warrant.

(4) For the purposes of this regulation, the following disclosures are authorised -

- (a) a disclosure authorised by the warrant, by the person to whom the warrant is addressed or by the terms of any requirement to provide assistance in giving effect to the warrant;
- (b) a disclosure made to the ICAC or the Police Public Complaints Authority for the purposes of facilitating the carrying out of any of their functions; and
- (c) a disclosure, other than a disclosure made with a view to furthering any criminal purpose, made -
 - (i) by a legal adviser in contemplation of, or in connection with, any legal proceedings, for the purposes of those proceedings;

- (ii) by a professional legal adviser to the adviser's client or the client's representative in connection with the adviser giving advice to the client or representative about the effect of these Regulations; or
- (iii) by the client or representative referred to in subparagraph (c)(ii) to a professional legal adviser in connection with a matter referred to in that subparagraph.

(5) Nothing in paragraph (4) affects the operation of regulation 9.

Offence of making unauthorised disclosure

9B. (1) Any person who makes an unauthorised disclosure contrary to regulation 9A commits an offence and is liable -

- (a) on summary conviction, to a fine of ten thousand dollars or to imprisonment for a term of 6 months; or to both; or
- (b) on conviction on indictment, to a fine of twenty thousand dollars or imprisonment for a term of two years or to both.

(2) In proceedings against any person under this regulation in respect of any disclosure, it is a defence for the person to show that they could not reasonably have been expected, after first becoming aware of the matter disclosed, to take steps to prevent the disclosure.”.

6. The principal Regulations are amended in regulation 17 by revoking subsection (2) and substituting the following -

Amendment of regulation 17 - establishment of audit committee

“(2) The ICAC shall consist of the following persons -

- (a) a retired Judge who shall be the chairperson; and
- (b) three Justices of the Peace.”.

Amendment of
regulation 20 -
report

7. The principal Regulations are amended in regulation 20 by deleting the word “Governor” and substituting the words “National Security Council”.

Made in Cabinet this 24th day of May, 2016.

Meredith Hew

Acting Clerk of the Cabinet.