

SIM Card Transferability to Third Party

Facts in Brief :

An Indian company (the Company) is engaged in the business of tour and travels and thus is in regular transactions with foreign nationals. The Company wishes to rent out the mobile numbers obtained on its name to the foreign clients for their short visit in India.

Queries to be considered :

1. Whether the Indian Company can transfer the mobile numbers /SIM card obtained on its name to third party /foreign national for any span of time?
2. What is the procedure to be followed in order to provide an Indian mobile connection/ SIM card to foreign nationals?

Legislations Involved :

1. Indian Telegraph Act 1885
2. The Indian Wireless Telegraphy Act 1933
3. The Telecom Regulatory Authority of India Act, 1997
4. New Telecom Policy, 1999 (**The Telecom Policy**)
5. Department of Telecommunication Order No. 800-04/2003- VAS/112 dated 10.05.2005 (**The First Order**)
6. Department of Telecommunication Order No. 842-725/2005/157 dated 23.03.2009 (**The Second Order**)
7. License Covenants for Cellular Mobile Telephone Services (**the Said License**)

Explanation :

The First Query

1. A telecom service providers, under the Telecom Policy, are given license by the Department of Telecommunications, Ministry of Communications, Government of India (**the Government**), for twenty years, renewable for another ten years, to operate for and under the area of Cellular Mobile Telephone Services. The Government issues licenses to telecom service provider for operating into the sphere of cellular mobile telephone services by and under the Said License and all the conditions under the Said License are duly applicable up on all the telecom service providers. The Said License has a prescribed proforma which is applicable on all the companies seeking for the grant of license for Cellular Mobile Telephone Services. Performa of the Said License has been uploaded on the Government's website.
2. Under the said License, certain clauses speaks about the user's end /subscriber of the Subscriber Identification Module (SIM) issued by the telecom service provider

a. Clause 32.2 reads as follows :

*“The Licensee shall be responsible to ensure that the user /mobile terminal is operated in accordance with the terms of the Licence and the WPC Licence. **The SIM Card in the user terminal is non-transferable.**”*

b. Clause 44.13 reads as follows :

*“The complete list of subscribers shall be made available by the licensees on their website (having password controlled access), so that authorised Intelligence Agencies are able to obtain the subscriber list at any time, as per their convenience with the help of the password. The list should be updated on regular basis. Hard copy as and when required by security agencies shall also be furnished. The licensee shall ensure adequate verification of each and every customer before enrolling him as a subscriber; instructions issued by the licensor in this regard from time to time shall be scrupulously followed. **The SIM Card used in the User terminal shall be registered against each subscriber for his bonafide use. The licensee shall make it clear to the subscriber that the SIM card used in the user terminal registered against him is non-transferable and that he alone will be responsible for proper and bonafide personal use of the service.**”*

3. As per the license terms and conditions, it becomes evident that the SIM is issued solely on the name of the Indian entity and for the sole use and purposes of the person against whose name the SIM has been registered. All the liabilities/responsibilities of any kind whatsoever shall be on the subscriber on whose name the SIM has been registered. It's specifically mentioned that the SIM, at no cost, is transferable.

The Second Query :

1. As for the policies for issuing/ registering SIM for end use by the subscribers in India, the Government issues orders for regulating the said area and in furtherance of the same the Government had issued the First Order wherein a proper performa was also attached with the First Order pertaining to the requirements / documents to be submitted by the end user/subscriber to register a SIM card.
2. Again a recent explanatory and further notification by the Government has been issued as the Second Order. Under the Second Order, requirements for registering a SIM card against a foreign tourist was prescribed but which is ambiguous and may lead to dispute since once it's written that for registering a SIM card against a foreign tourist, he must provide a local reference but in the same clause its written that in absence of any local reference, he is to provide his intended place of stay. So as per the Second Order, it seems and could also be interpreted that the requirement of the local reference is not necessary and a foreign national can avail a SIM card after producing a photocopy of his passport and visa along with address of intended place of stay.

The Second Order says that for Foreign nationals and outstation subscribers :

- a. Local reference shall mean a local resident with his name, address, phone number with an identity proof thereof.
- b. Under rule 6 of the Second Order, it is mentioned that for foreign tourist, a photo copy of valid passport with valid visa shall be accepted along with the local reference. But herein, it is also mentioned that if a foreign tourist does not have a local reference, he will indicate the address of stay.

Conclusion :

1. The SIM Card is not transferable and the Company can not transfer, howsoever, the SIM Card issued on its name to any third person. Even if it does transfer the SIM to any person, all the liabilities /responsibilities shall be borne by the Company itself which might also be a criminal liability too.
2. The other way round the Company can help the foreign tourists be issued an Indian SIM card after producing photocopy of their passport and visa along with name, address, phone number and identification proof of any local person as a referee for the foreign tourist. It is also not necessary to provide a local reference and in that case, the foreign tourist shall be required to provide their intended place of stay.