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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

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The Independent Communications Authority of South Africa ("the Authority") hereby publishes the Conformity Assessment Framework for Equipment Authorisation pursuant to paragraph 8.4 of ICASA's Regulatory Position on Equipment Type Approval Exemption published in General Notice No. 248 of 2017 (Government Gazette No. 40733).

A copy of the Framework is available on the Authority's website (www.icasa.org.za) and in the ICASA Library at 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion, Highveld Park 0169, Block C during the Authority's office hours.

A handwritten signature in black ink, appearing to read 'Modimoeng', written over a horizontal line.

Dr Keabetswe Modimoeng
Acting Chairperson
ICASA

**CONFORMITY ASSESSMENT FRAMEWORK
FOR
EQUIPMENT AUTHORISATION**

Definitions

"Accreditation" means third-party attestation related to a conformity assessment body conveying formal demonstration of its competence to carry out specific conformity assessment tasks;

"Accreditation Body" is an organization that provides accreditation services, which is a formal, third party recognition of competence to perform specific tasks;

"Certification" means a process involving initial testing of equipment and continuous equipment surveillance. An initial assessment of the manufacturer's premises and manufacturing practices is also undertaken. The quality management system of the manufacturer may also be assessed during the process of certification;

"Certification Body" or "CB" means an organization accredited by a recognized accrediting body for its competence to audit and issue certification confirming that an organization meets the requirements of a standard;

"Conformity Assessment" means a demonstration that specified requirements relating to a product, process, system, person or body are fulfilled;

"Conformity Assessment Bodies" means independent accredited agencies that undertake conformity assessment techniques and activities which are testing, inspection and certification;

"Economic operators" means the supplier, manufacturer, the authorised representative, the Importer and the distributor;

"Federal Communications Commission" means an independent agency of the United States government that regulates interstate communications by radio, television, wire, satellite, and cable;

"ICASA" means the Independent Communications Authority of South Africa established in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No.13 of 2000);

"Importer" means any natural or legal person established within the country who places equipment on the market that is produced outside South Africa;

"Information and Communications Technology or ICT" means all (i) technologies for the communication of information, encompasses; any medium to record information (whether paper, pen, magnetic disk/ tape, optical disks - CD/DVD, flash memory etc.); (ii) technology for broadcasting information - radio, television; any technology for communicating through voice and sound or images- microphone, camera, loudspeaker, telephone to cellular phones;

“International Electrotechnical Commission or IEC” means an international organisation that publishes consensus-based international standards and manages conformity assessment for all fields of electrotechnology;

“Market Surveillance” means activities carried out and measures taken by public authorities to ensure that products comply with the applicable requirements and do not endanger health, safety or any other aspect of public interest protection;

“NMISA” means the National Metrology Institute of South Africa established in terms of the Measurement Units and Measurement Standards Act, 2006 (Act No.18 of 2006);

“NRCS” means the National Regulatory Compulsory Specifications established in terms of the National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008);

“Quality Infrastructure” means the system comprising the organizations together with the policies, relevant legal and regulatory framework, and practices needed to support and enhance the quality, safety and environmental soundness of goods, services and processes;

“SABS” means the South African Bureau of Standards established in terms of section 2 of the Standards Act, 1945 (Act No. 24 of 1945) read with section 3 of the Standards Act, 2008 (Act No. 5 of 2008), as amended;

“SANAS” means the South African National Accreditation System established in terms of section 3(1) of the Accreditation for Conformity Assessment Calibration and Good Laboratory Practice Act, 2006 (Act No. 19 of 2006);

“Supplier” means manufacturer, Importer, or distributor of equipment or any person registered with the Authority for the purposes of Type Approval;

“Surveillance” means a systematic iteration of conformity assessment activities as a basis for maintaining the ongoing validity of the statement of conformity;

“Type Approval” means certifying that a product meets certain requirement for its type, for example cell phones operating in a certain frequency band. Type Approval is granted to a product that meets a minimum set of regulatory, technical and safety requirements by a competent body.

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1 Legislative Mandate

In terms of section 35 (1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("ECA") no person may possess, use, supply, sell, offer for sale or lease or hire any type of electronic communications equipment or electronic communications facility, including radio apparatus, used or to be used in connection with the provision of electronic communications, unless such equipment, electronic communication facility or radio apparatus has subject to subsection (2), been approved by the Authority.

Section 35 (2) of the ECA, read with regulation 3 (1) of the Type Approval Regulations¹ provides that the Authority may prescribe the types of equipment, electronic communications facilities and radio apparatus, the use of which does not require approval where such equipment, electronic communications facilities and radio apparatus has been approved for use by the European Telecommunications Standards Associations or other competent standards body where the equipment complies with type approval standards and circumstances under which the use of equipment, electronic communications facilities and radio apparatus does not require approval.

1.1 The Type Approval Framework

The Type Approval Framework ("Approval Framework") consist of the following:

- Type Approval Regulations, 2013²;
- Labelling Regulations³;
- Guidelines relating Type Approval Framework, as amended⁴;
- Official List of Regulated Standards for Technical Equipment and Electronic Communications Facilities⁵;
- Radio Frequency Spectrum Regulations, 2015;⁶ and
- Regulatory Position on Equipment Type Approval Exemption.⁷

¹ Type Approval Regulations, General Notice No. 871 of 2013 (Government Gazette No. 36785).

² Ibid.

³ Labelling Regulations, General Notice 872 of 26 August 2013 (Government Gazette 36786).

⁴ General Notice No. 883, Government Gazette No. 36792 of 2013.

⁵ General Notice No. 896, Government Gazette No. 39182 of 2015.

⁶ General Notice No. 279, Government Gazette No. 38641 of 2015

⁷ General Notice No. 248, Government Gazette No. 40733 of 2017.

2 Introduction

2.1 Background

Review of the Type Approval Framework

On 28 September 2016, the Authority published a Discussion Document on Equipment Type Approval Exemption, General Notice 621 of 2016 (Government Gazette No. 40309) ("the Discussion Document"), in terms of section 4B of the ICASA Act, with the following objectives:

1. reduce the regulatory burden for equipment manufacturers and Importers;
2. encourage investment and innovation in the information, communication and technology (ICT) sector;
3. promote competition in the ICT sector; and
4. encourage research and development within the ICT Sector.

The purpose of the Discussion Document was to solicit inputs from interested parties on the following:

- the types of equipment, electronic communications facilities and radio apparatus, the use of which does not require approval where such equipment, electronic communications facilities and radio apparatus has been approved for use by the European Telecommunications Standards Associations or other competent standards body where the equipment complies with type approval standards prescribed by the Authority; and
- circumstances under which the use of equipment, electronic communications facilities, radio apparatus and subscriber equipment does not require approval, including uses for research and development, demonstrations of prototypes and testing.

Following the Discussion Document, the Authority published the Regulatory Position on Equipment Type Approval Exemptions ("the Position"), General Notice No. 248 of 31 March 2017 (Government Gazette No. 40733), stating the Authority's position on Equipment Type Approval Exemptions. The Position necessitated a review of the type approval framework as follows:

- that the Authority define circumstances and conditions under which exemption could be granted and/or the type of equipment that will be exempted;
- that the Authority consider entering and/or amending Memoranda of Understanding (MoU) with relevant regulatory bodies to alleviate the regulatory burden to affected stakeholders; and

- that in the Authority embarking on a process of reviewing the current Type Approval Framework, it develops a multi-level Conformity Assessment Framework to deal with equipment intended for the South African market. This broader framework will incorporate the circumstances under which Mutual Recognition Agreements (MRA) may be entered and provide for robust market surveillance activities.

On 13 December 2018, the Authority published the Draft Conformity Assessment Framework for Equipment Authorization in General Notice 1381 of 2018 (Government Gazette No. 42108) for public comments. The Authority received written submissions and subsequently held public hearings on 25 March 2019.

Challenges with the Type Approval Framework

The current Type Approval process is not robust as it does not categorise equipment neither does it have in place risk profiles for different products to develop and implement different mechanisms of conformity assessment. The validation of the evidence and proof that equipment or systems conform to the appropriate standards and specifications depends on the test facility confirming the authenticity of test reports.

South Africa's mechanism to oblige certification bodies to authenticate test reports along with the results is reactive and ineffective. There is a lack of post-market surveillance in place to continuously ensure that the equipment and systems placed in the market maintain conformance with the applicable technical standards. Manufacturers, distributors and suppliers are dissatisfied with the turnaround time to place ICT equipment in the market, they are of the view that the turnaround time is lengthy. This is because the Authority had adopted a single approach of Conformity Assessment for all categories of equipment.

2.2 Purpose

The purpose of this Conformity Assessment Framework is to prescribe conformity assessment approaches for equipment authorisation to improve the efficiency of product placement in the market.

2.3 Scope

The Conformity Assessment Framework applies to any type of electronic communications equipment or electronic communications facility, including radio apparatus, used or to be used in connection with the provision of electronic communications.

3 Conformity Assessment Framework

This framework consists of the following, *inter alia*—

- Regulations;
- Conformity Assessment approaches that are consistent with the equipment classification;
- regulated standards;
- market surveillance and enforcement; and
- MoUs and MRAs for a strong coordination across relevant agencies.

In order for Conformity Assessment to be effective, it needs to be supported by a Quality Infrastructure (QI) comprising of the following pillars: regulations, standards, metrological traceability, and accreditation. The South African QI is composed of the following institutions: ICASA, NRCS, SABS, NMISA and SANAS.

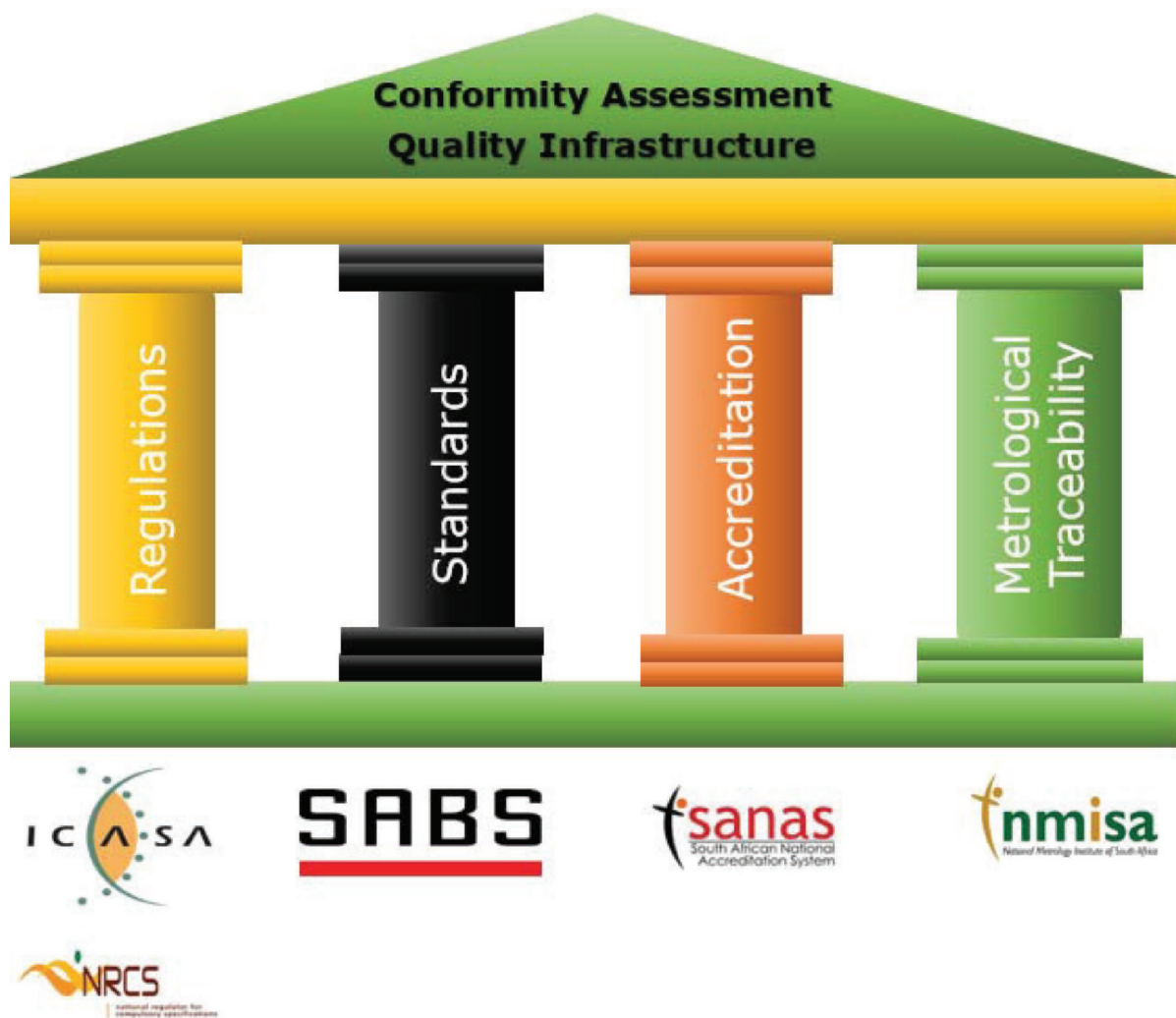


Figure 1: Conformity Assessment Quality Infrastructure

The approval framework used by the Authority, in accordance with section 35 of the ECA, is one of the approaches to equipment authorisation which incorporates several regulatory interventions aimed at mitigating entry of non-compliant ICT equipment in the market. Along with this, the Authority collaborates with key stakeholders in an effort to promote the efficiency of placing the equipment in the market.

Rapid technological advancement in the communications sector and convergence of technologies continues to blur the lines between historically telecommunications and non-telecommunications equipment. As a result, the industry becomes uncertain about which institution have jurisdiction to assess product compliance. In an effort to mitigate uncertainty in the market, the Authority collaborates with NRCS to simplify challenges presented by concurrent jurisdiction. The NRCS is an institution under the regulations pillar of the QI responsible for the administration, maintenance of compulsory specifications, the implementation of a regulatory and compliance systems for compulsory specifications.

In terms of section 36 of the ECA, the Authority is mandated to prescribe technical standards for equipment and electronic communication facilities. In the QI, the SABS contributes to the standards pillar wherein it develops and adopts voluntary standards that may be prescribed by the Authority.

Compliance of the equipment is measured against the prescribed technical standards. The Conformity Assessment of equipment to ensure compliance with the prescribed technical standards is executed by accredited Conformity Assessment bodies. The role of SANAS in the QI under the accreditation pillar is to accredit Conformity Assessment bodies. In ensuring reliable and traceable measurements, Conformity Assessment Bodies should conform with fit for purpose measurement standards and measurements.

NMISA is responsible for metrological traceability, methods validation and aligning South African standards with other countries' standards to ensure global measurement equivalence.

3.1 Regulations

The Authority will develop and/or amend existing regulations in support of the Conformity Assessment Framework shown in figure 2 below for it to be implemented.

3.2 Conformity Assessment Approaches

The Authority has developed a multilateral Conformity Assessment Framework for equipment authorization based on equipment inherent risk profile. The risk associated with the equipment is used to determine the appropriate conformity

assessment procedures to be used. Taking note of the Quality Infrastructure described in figure 1 above, the Authority will continue to collaborate with key stakeholders to ensure the effectiveness of its Conformity Assessment Framework. Figure 2 below outlines the Conformity Assessment Framework in terms of Equipment Risk Profiling and corresponding conformity assessment approaches.

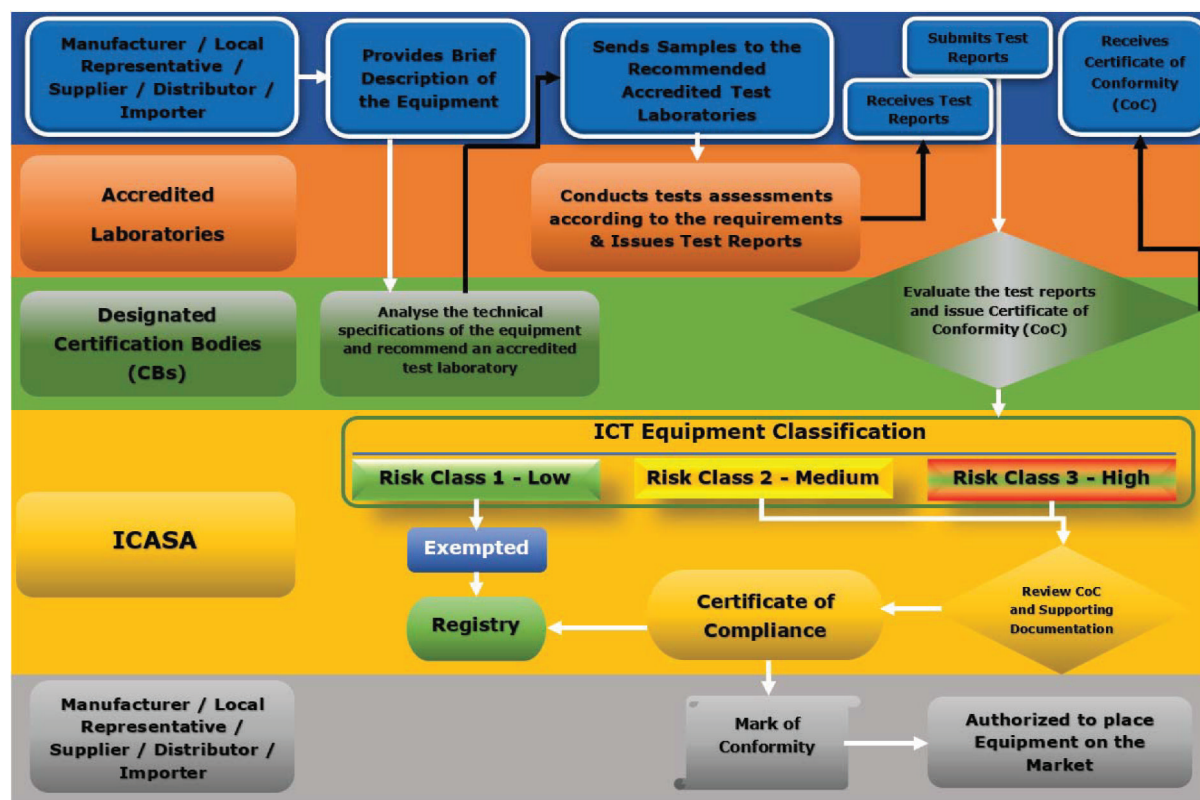


Figure 2: Conformity Assessment Framework for Equipment Authorization

In case where a manufacturer is not based in South Africa, that foreign manufacturer shall appoint a local representative who can be held accountable for the performance of the manufacturer's equipment in the market.

The Authority uses risk profiling in determining the appropriate conformity assessment approach to different classes of equipment. Based on the determined risk profile of equipment, the Authority classifies the risk associated with equipment as follows:

Classification 1 – Low Risk ICT Equipment;

Classification 2 – Medium Risk ICT Equipment; and

Classification 3 – High Risk ICT Equipment.

Classification 1 equipment are exempted and need not undergo the process of conformity assessment, however such equipment still needs to conform with the

mandatory technical standards and must be registered with the Authority as shown in figure 2 above.

Classification 2 and 3 equipment will be subject to a detailed conformity assessment process which comprises assessment by designated certification bodies, accredited laboratories and the Authority. Classification 2 and 3 equipment will be re-evaluated for conformity at frequencies to be determined by the Authority and for every re-evaluation a Certification of Conformity (CoC) must be submitted by the Certification Body to the Authority.

The Authority will publish and update this classification of equipment to the public as and when required. The Authority reserves the right to re-classify equipment.

The Authority will prescribe different marks of conformity for different conformity assessment approaches.

The Authority will include in regulations provisions of liability for non-compliance. The intention of this provision is to address the liability of equipment that are non-compliant with the regulations and processes as prescribed by the Authority.

The Economic Operators shall, in respect to their respective roles in the supply and distribution chain, be held responsible for all the conformance of their products with all the applicable standards upon placing their products in the market.

Economic Operators shall be responsible for ensuring that all information they provide is accurate, complete and in compliance of with Community rules applicable.

If the re-evaluation process confirms that the equipment failed to conform to the relevant technical standards, the manufacturer/local representative/supplier/distributor of that equipment will be held liable for any findings made against the equipment in terms of the laws of SA.

Conformity of equipment to technical standards, whether voluntary or mandatory (regulatory), does not necessarily exonerate manufacturers from accountability in cases of liability lawsuits as a result of damages caused by defective equipment.

3.3 Regulated Standards

The Authority, subject to the provisions of section 36 of the ECA has prescribed standards⁸ to which equipment must conform. The equipment which is in conformity with standards or parts thereof the references of which have been

⁸ The Regulations on the Official List of Regulated Standards for Technical Equipment and Electronic Communications Equipment Regulations, 2015: published in Notice No. 896 under Government Gazette No. 39182.

published in the Official List of Regulated Standards for Technical Equipment and Electronic Communications Equipment Regulations ("the Official List") shall be presumed to be in conformity with the type approval requirements for the performance and operation of any equipment or electronic communication facility, including radio apparatus. Such standards are aimed at—:

- (a) protecting the integrity of the electronic communications network;
- (b) ensuring the proper functioning of connected equipment or electronic communications facilities;
- (c) ensuring interoperability, interconnect ability and harmonisation; and
- (d) avoiding harmful interference with the electronic communications network.

3.4 Market Surveillance and Enforcement

The regulatory framework shall be supported by the Market Surveillance to ensure that the authorized equipment maintain conformity with the regulated standards/requirements while are on the market.

The Authority, Conformity Assessment Bodies, manufacturers, Accreditation Body must put in place Market Surveillance procedures to audit, monitor and assess the products and services. Appropriate actions must be taken by these entities to address and correct the problems resulting from the actions of the Market Surveillance procedures.

The Authority shall carry out Enforcement activities for electronic communications equipment or electronic communications facility, including radio apparatus, in relation to protection and management of the radio frequency spectrum.

The Authority shall enter into MoUs with the accredited test laboratories and collaborate with designated Certification Bodies to conduct Post-Market Surveillance activities. The Authority shall specify Post-Market Surveillance requirements to be carried out in collaboration with testing laboratories and the Certification Bodies through regulations.

Market Surveillance and Enforcement remains a collective responsibility of all stakeholders within the conformity assessment value chain and the public.

3.5 Designation of Certification Bodies

The Authority shall designate Certification Bodies for the certification of equipment, where the Certification Bodies would issue the CoC for the equipment that comply with the requirements. Certification Bodies shall not provide any other

services and products which might compromise the objectivity, confidentiality, impartiality of its certification decisions or processes.

The manufacturer or its authorized representative must use a conformity assessment procedure appropriate with the equipment classification which involves a designated Certification Body.

Any type of electronic communications equipment or electronic communications facility, including radio apparatus used or to be used in connection with the provision of the electronic communications must be authorized by the Authority before any person can possess, sell, use, supply, offer for sale or lease or hire in the market.

4 Short Title and Commencement

This Framework will come into effect at a date to be determined by the Authority by notice in the Government Gazette.