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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 1948

31 March 2022



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**EQUIPMENT AUTHORISATION REGULATIONS, 2022**

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**REASONS DOCUMENT**

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**March 2022**

## Table of Contents

ACKNOWLEDGEMENTS .....	3
ACRONYMS .....	4
1. Introduction .....	5
2. Background.....	7
3. The Scope.....	11
4. The Purpose of the Reasons Document .....	11
5. The Authority's Decision Regarding the Title .....	12
6. The Authority's Decision Regarding Regulation 3(1) .....	13
7. The Authority's Decision Regarding Regulation 14(2) .....	13
8. The Authority's Decision Regarding Regulation 21(2) .....	13
9. Written and Oral Representations .....	14
9.1. Regulation 1 (Definitions).....	14
9.2. Regulation 2 (Purpose) .....	16
9.3. Regulation 3 (Essential Requirements) .....	17
9.4. Regulation 5 (Equipment Exclusion).....	19
9.5. Regulation 6 (Equipment Authorisation Exemptions).....	23
9.6. Regulation 7 (Equipment Authorisation Process) .....	24
9.7. Regulation 8 (Certification Application Process).....	25
9.8. Regulation 9 (Authorised Suppliers) .....	27

9.9.	Regulation 10 (Provisional Authorisation).....	28
9.10.	Regulation 11 (Technical Documentation) .....	28
9.11.	Regulation 13 (Applicable Standards).....	29
9.12.	Regulation 16 (Validity of the Equipment Authorisation Certificate) .....	29
9.13.	Regulation 18 (Mark of Compliance Requirements).....	30
9.14.	Regulation 19 (Mark of Compliance Design) .....	30
9.15.	Regulation 25 (Transitional Provisions).....	31
9.16.	Regulation 27 (Short Title and Commencement) .....	32
9.17.	Conformity Assessment Approaches.....	32
9.18.	General Submissions .....	34

## **ACKNOWLEDGEMENTS**

The Independent Communications Authority of South Africa (the "Authority/ICASA") hereby acknowledges and thanks all stakeholders that have participated in the process of developing the Equipment Authorisation Regulations, 2022 (the "Regulations") - by making written submissions, participating in the public hearings, and providing supplementary information as requested, as well as those stakeholders that contributed to the entire regulatory process that started in 2016.

The decisions made in these Regulations are intended to further the objects of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA"), as amended.

## **ACRONYMS**

**AAU** means Active Antenna Units;

**AmCham** means The American Chamber of Commerce in South Africa<sup>NPC</sup>;

**BT** means Bluetooth;

**CPE** means Customer Premises Equipment;

**ECA** means Electronic Communications Act, 2005 (Act No. 36 of 2005) as amended;

**EU** means European Union;

**EU-DoC** means EU Declaration of Conformity;

**ICASA** means the Independent Communications Authority of South Africa;

**ICT** means Information and Communications Technologies;

**MoU** means Memorandum of Understanding;

**MRA** means Mutual Recognition Arrangement;

**NFC** means Near Field Communications;

**NRFP** means National Radio Frequency Plan;

**RFID** means Radio Frequency Identification;

**RRU** means Radio Remote units;

**SDoC** means Supplier's Declaration of Conformity;

**STL** means Studio Transmission Link.

## **1. Introduction**

### **Legislative and Regulatory Framework**

The legal basis for the development of these Regulations is in accordance with section 4(1) and section 35 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA"), as amended, read with section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"), as amended.

Chapter 6 of the ECA gives the Authority powers to prescribe approval for 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, where:

- (1) Section 35 (1) of the ECA stipulates that—

*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 communications facility or radio apparatus has, subject to sub-section (2), been approved by the Authority.*

- (2) Section 35 (2) stipulates that the Authority may prescribe—

*(a) 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<sup>1</sup> prescribed by the Authority; and*

- (b) 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.*

The Independent Communications Authority of South Africa ("ICASA"/ "Authority") is further authorised in terms of section 4 (3)(j) of the ICASA Act to make regulations on any matter consistent with the objects of the ICASA Act and the underlying statutes, or that is incidental to or necessary for the performance of the functions of the Authority.

The Authority is empowered in terms of section 4 (1) of the ECA "to make Regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation".

The Authority published the Type Approval Regulations, 2013, in Government Gazette No. 36785 on 26 August 2013 (the "Type Approval Regulations") in order to ensure that electronic communications equipment or electronic communications facilities, including radio apparatus, are approved before being made available in the market.

The purpose of the Type Approval Regulations, 2013, is to:

- (i) streamline the Type Approval framework in accordance with the ECA and the ICASA Act;
- (ii) specify the fees structure with respect to Equipment Type Approval;

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<sup>1</sup> Official List of Regulated Standards for Technical Equipment and Electronic Communications Facilities Regulations of 2013, as amended from time to time

- (iii) protect the integrity of public networks, the consumer and avoid harmful interference.

## **2. Background**

On 28 September 2016, the Authority published a Discussion Document on Equipment Type Approval Exemption in Government Gazette No. 40309, in terms of section 4B of the ICASA Act.

The purpose of the Discussion Document was to solicit input from interested parties regarding the following:

- (1) 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 bodies, where the equipment complies with type approval standards prescribed by the Authority; and
- (2) 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, on 31 March 2017, the Authority published its Regulatory Position on Equipment Type Approval Exemptions ("the Position Paper"), in Government Gazette No. 40733.

In the Position Paper, the Authority developed its position on information gathered through its international benchmarking study and the public consultation process, and took the following position in relation to exemption of equipment from Type Approval, namely that the Authority would:

- (1) commence a process to develop a framework for the exemption of equipment operating under the circumstances listed in Table 1 of the Position Paper;



- (2) define circumstances and conditions under which exemption could be granted and/or the type of equipment that would be exempted;
- (3) consider entering into and/or amending MoUs with relevant regulatory bodies to alleviate the regulatory burden to affected stakeholders; and
- (4) develop a multi-level Conformity Assessment Framework to deal with equipment intended for the South African market, which broader framework must incorporate the circumstances under which MRAs may be entered and provide for robust market surveillance activities.

On 13 December 2018, the Authority published the Draft Conformity Assessment Framework for Equipment Authorisation in Government Gazette No. 42108, for public comments, and subsequently held public hearings on 25 March 2019.

On 25 February 2020, the Authority published the Conformity Assessment Framework for Equipment Authorisation ("Conformity Assessment Framework") in Government Gazette No. 43047. The purpose of the Conformity Assessment Framework is to prescribe conformity assessment approaches for equipment authorisation to improve the efficiency of product placement in the market.

This provides for a regulatory framework that adopts a multilateral and multifaceted approach to conformity assessment for equipment authorisation, aimed at achieving the following:

- (1) reducing regulatory burden and improving operational efficiency;
- (2) creating a more robust multilateral conformity assessment approach with relevant criteria that is responsive and adaptive to the ever-advancing ICT developments.

Subsequently, on 31 March 2021, ICASA published Draft Equipment Authorisation Regulations ("Draft Regulations") in Government Gazette No. 44371 in support of the Conformity Assessment Framework, soliciting public inputs.

The purpose of the Draft Regulations was to:

- (1) streamline the Equipment Authorisation process in accordance with the ECA;
- (2) protect the integrity of electronic communications networks;
- (3) ensure proper functioning of connected electronic communications equipment, electronic communications facilities and subscriber equipment;
- (4) ensure interoperability, interconnectability and harmonisation; and
- (5) avoid harmful interference with the electronic communications network by prescribing electronic communications equipment, electronic communications facility and subscriber equipment conformance requirements.

The Authority received thirty-five (35) written representations on the Draft Regulations, from the following stakeholders:

- (1) ADC Automotive Distance Control Systems GmbH;
- (2) AFCOB Comments on Equipment Authorisation;
- (3) Bosch;
- (4) AmCham;
- (5) DEKRA Testing and Certification, S.A.U.;
- (6) DENSO TEN;
- (7) Dirí Enterprises International;
- (8) ELEOS COMPLIANCE;
- (9) EmComm (Pty) Ltd.;
- (10) HBC-radiomatic SA (Pty) Ltd.;
- (11) Huawei Technologies South Africa (Pty) Ltd.;

- (12) Information Technology Industry Council (ITI);
- (13) KYOCERA;
- (14) Mobile Manufacturers' Forum' to 'Mobile & Wireless Forum;
- (15) MTN Limited;
- (16) Ndabenhle Business Enterprises;
- (17) Nokia Corporation, Finnish;
- (18) Panasonic Corporation;
- (19) The People's Republic of China;
- (20) PCN Africa;
- (21) RADWIN;
- (22) Ray Webber (ZS6RSW);
- (23) Richard Rauff;
- (24) Robert Bosch GmbH, Germany;
- (25) Sony Corporation, Tokyo;
- (26) South African Radio League (SARL);
- (27) Telkom SA SOC Ltd ("Telkom");
- (28) The American Chamber of Commerce in South Africa<sup>NPC</sup> (AmCham);
- (29) The People's Republic of China;
- (30) TOKAI RIKAI;
- (31) TÜV Rheinland, Japan;

- (32) UL VS South Africa Pty Ltd.;
- (33) UL LLC
- (34) Vodacom (Pty) Ltd.;
- (35) Volkswagen of South Africa (Pty) Ltd.

Following the submissions, the Authority held public hearings from 25 to 27 August 2021. Twenty-one (21) stakeholders who had made written submissions, took the opportunity to make oral representations based on their written submissions.

### **3. The Scope**

All electronic communications equipment, electronic communications facilities and subscriber equipment used or to be used in connection with the provision of electronic communications, unless explicitly exempted/excluded by the Authority are subject to authorisation by the Authority.

### **4. The Purpose of the Reasons Document**

The purpose of this Reasons Document is to delineate the reasons for the Authority's decisions, as expressed in the final Equipment Authorisation Regulations of 2022.

The Authority's decisions follow due consideration of the submissions made by stakeholders in relation to the Draft Regulations.

Those submissions which the Authority accepts/agrees with are not necessarily set out in full detail below.

However, those that have not been adopted in the final Equipment Authorisation Regulations of 2022 are addressed, and the reasons for the Authority's decisions are delineated below.

The Reasons Document will focus on the following preceding documents which provide the legal framework within which these Regulations are aligned:

- (1) the provisions of section 35 of the Electronic Communications Act, 2005 (Act No 36 of 2005), as amended;
- (2) Regulatory Position on Equipment Exemption as published in the Government Gazette No. 40309;
- (3) Conformity Assessment Framework for Equipment Authorisation as published in the Government Gazette No. 43047;
- (4) Draft Equipment Authorisation Regulations, 2021 as published in Government Gazette No. 44371.

Those representations made either in writing or through the public consultation process, that are in line with the position of the Authority will not necessarily be covered by these reasons.

#### **5. The Authority's Decision Regarding the Title**

The draft regulations stipulated as follows:

*"... declares its intention to make regulations for the approval of type ..."*

The Equipment Authorisation Regulations, 2022 is used as a more readily understandable synonym for the formulation from the ECA, namely "**Approval of type**", as follows:

*"...hereby publishes the Equipment Authorisation Regulations..."*

The Authority decided to use equipment authorisation in order to highlight that the approval of type under this Conformity Assessment Framework is a multifaceted process involving the Certification followed by equipment authorisation.

**6. The Authority's Decision Regarding Regulation 3(1)**

The draft regulations stipulated as follows:

*"...use of the radio frequency in a manner..."*

The Authority has recognised that the use of the term "radio frequency" may be too broad and not accurate to the entire spectrum of electromagnetic frequencies used for communications, and thus decided to include "**spectrum**" as follows:

*"...use the radio frequency **spectrum** in a manner..."*

**7. The Authority's Decision Regarding Regulation 14(2)**

The draft regulations stipulated as follows:

*"...test report must be in full..."*

The Authority has recognised that a test report may be drafted in full but may not necessarily be final. In addressing this unintentional omission, the Authority has decided to add "**and final**", and for these Regulations only complete and final reports are accepted.

**8. The Authority's Decision Regarding Regulation 21(2)**

The Authority has realized that sub-regulation 21(2) as it stipulates:

*"In carrying out such Market Surveillance, the Supplier must provide the Authority with a representative sample for..."*

may give the impression that the Market Surveillance activities must be activated by Suppliers, on the contrary, the actuator for these activities is the Authority, therefore will request the representative samples from the Suppliers when is carrying out these duties.

## **9. Written and Oral Representations**

### **9.1. Regulation 1 (Definitions)**

- (a) AmCham recommended that the Authority should consider including a definition for "**Designation**" in order to clarify the designation process.
- (b) Telkom recommended that the Authority should be clear which "organisation" is referred to within the definition for "**Certification Body**" or "**CB**", as it may be confused to refer to Accredited Test Laboratory.
- (c) Telkom recommended that the Authority should consider adding definitions for "**passive**" and "**active**" antennas.
- (d) MTN recommended that the Authority should replace "**Telecommunications Line Terminal Equipment**" or (**TLTE**) with "**Telecommunications Terminal Equipment (TTE)**", as TTE is the more commonly used term globally. Further to that, the definition for Electronic Communications Equipment should be revised accordingly.
- (e) Telkom recommended that the Authority should add a definition for "**Remote Piloted Aircraft System**".

### **The Authority's Decision**

- (a) The Authority's view is that "**Designation**", as the process of designating Certification Bodies, will be outlined in the Equipment Authorisation Guidelines, to be issued after these Regulations have been promulgated.
- (b) The "organisation" in the definition for Certification Body is generic and does not refer specifically to an accredited test laboratory. For example, an ATL is accredited in accordance with the ISO/IEC 17025 and not ISO/IEC 17065. ISO/IEC 17065 is the International Standard that contains requirements for the competence, consistent operation and impartiality of product, process and service **certification bodies**.

- (c) The Authority has decided not to include the definitions for "**passive**" and "**active**" antennas. The Authority is of the view that the terms "*passive antenna and active antenna*" have generic definitions from which the Authority is not deviating.
- (d) The Authority has noted MTN's submission. However, its proposed term, TTE, comprises both radio and wire. The context which the Authority intends relates to transmission through a conductor, wire, or similar medium. The Authority has decided to revise the term Telecommunications Line Terminal Equipment to "**Fixed-line Terminal Equipment**" to remain within the context, because the term, TLTE, although relevant, may be outdated.
- (e) The Authority has decided to add a definition for "**Remote Piloted Aircraft System**" in the Regulations.
- (f) The Authority has included a definition for "Accreditation Body" since the term is used in the definition for "Certification Body".
- (g) The Authority has decided to add a definition for "Alternative Marking Method", which was used in the Draft Regulations. It became apparent that it was not clear to the stakeholders that what is meant by the Authority in Regulation 19 (4) were means to cater for any other identifier method, including, but not limited to e-labelling.
- (h) The Authority has included the specific term "Amateur Radio Equipment" in order to replace the less precise term "Amateur Radios" from Regulation 5, Table 1.
- (i) The Authority has added the terms "Amateur Service and "Amateur-Satellite Service", which were drawn from the NRFP, and which are used in the definitions of the Regulations since the terms are used in the definition of Amateur Radio Equipment.



- (j) The Authority has deemed it proper to include the term "Provisional Authorisation Permit" in the definitions because it is used in these Regulations.
- (k) The Authority decided to use the term "Equipment Authorisation" instead of "Homologation" in a number of definitions in order to ensure closer alignment with the ECA in respect of electronic communications equipment.
- (l) The Authority decided to include a definition for "Equipment Authorisation Exemptions" in these Regulations. The terms "Exemptions" and "Exclusions" were often used interchangeably in the representations, and for greater clarity the Authority decided to define each term separately.
- (m) The Authority decided to include the internationally accepted term "Statement of Conformity" in the definitions since it is more appropriate to the context of these Regulations in respect to compliance with the Essential Requirements, or conformity with the Applicable Standards. The first-party declaration (SDoC) is less closely aligned with the context of these Regulations while the EU-Type Examination Certificate and EU-DoC are produced by EU Designated CBs (Notified Bodies). These Regulations seek to open certification to a wider pool of Certification Bodies, and are not restrictive, but encompassing in as far as those bodies that are ISO/IEC 17065 competent.

## **9.2. Regulation 2 (Purpose)**

- (a) SARL recommended that the Authority should consider an additional sub-regulation under Purpose, namely:
  - (6) *To facilitate continuing research and development of radio and communication technologies.*

## **The Authority's Decision**

- (a) The objective of section 35 of the ECA is to ensure that all electronic communications equipment, electronic communications facility or subscriber

equipment used or to be used in connection with the provision of electronic communications in the market has been approved/authorised by the Authority. In other words, approval of type regulation is not intended primarily to support research and development.

Therefore, the Authority has decided not to include the recommended additional purpose, in order to align the purpose of the regulations with the objectives of the ECA. However, recognising the importance of research and development, the Authority ensured it is addressed in terms of Provisional Authorisation (regulation 10).

### **9.3. Regulation 3 (Essential Requirements)**

- (a) AmCham proposes that the Authority should consider rewording the requirements for the 'Official List' to refer to "relevant technical regulations" as the requirements for using an Official List would be limiting.
- (b) Telkom submits that essential requirement should be focused on three (3) components tested as part of equipment authorisation, namely: (i) radio frequency use/interference management, (ii) electromagnetic emissions/immunity and (iii) health and safety. Therefore, Telkom recommends that equipment authorisation should be performed based on the prescribed standards for these three categories, as contained in the Official List.
- (c) MTN submits that phrase three (3) of the essential requirements ensures the protection of the health and safety of persons and of domestic animals and the protection of property, including the requirements of applicable standards/specifications as contained in the Official List. As such, MTN argues that its inclusion is not warranted, as it is not provided for in the Type Approval Regulations or section 36 of the ECA but contained within Chapter 3 of the ECA Licencing framework - section 8(2)(d)(i), which deals with prescribed standard terms and conditions to be applied to individual licences and class licences. MTN proposes rewording phrase three (3) to

conform to the exposure limits recommended by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) and applicable standards/specifications as contained in the Official List. Further, MTN recommends that the Authority include a fourth requirement, i.e. adhere to the principles of Universal Design to cater to the needs of persons with disabilities.

### **The Authority's Decision**

- (a) The Authority decided to replace the term 'Official List' in these regulations with the term "Applicable Standards" since there is a regulation that addresses standards, Regulation 13. "Applicable Standards" is also a more inclusive phrase as it recognises that there may be standards that are not included in the Official List, prescribing the conditions thereof. The Authority decided not to revise the term to technical regulations, since that term has not been defined within the context of these Regulations and thus may be confusing.
- (b) The three characteristics that Telkom recommends the Authority should focus on cannot guarantee that equipment/systems will not cause interference to other services or may not suffer harmful interference from co-channel services or adjacent services. It is the Authority's view that the adherence to these essential requirements is necessary. In order to facilitate conformity assessment with essential requirements, it is necessary to provide for presumption of conformity for electronic communications equipment, electronic communications facilities and subscriber equipment which is in conformity with the applicable standards.
- (c) Section 36 (1) of the ECA provides that the Authority may prescribe the standards for performance and operation of any equipment or electronic communication facility, including radio apparatus. Section 36 (2)(b) of the ECA further provides that such standard must be aimed at ensuring the proper functioning of connected equipment or electronic communications facilities. With the backdrop of section 36 (2)(b) of the ECA, the Authority

has prescribed safety standards, in consultation with the public regarding the Official List, since this addresses issues of hazards inherent in the products (e.g., chemical hazards, fire hazards, etc. are some of the hazards assessed in the products). The electrical safety requirement ensures the safety of the equipment operator or user, and such safety extends to preventing property damage, e.g., fires as a result of a faulty equipment. It is the view of the Authority that the adherence to the principles of Universal Design to cater to the needs of persons with Disabilities may not be addressed by these regulations.

#### **9.4. Regulation 5 (Equipment Exclusion)**

- (a) Vodacom submits that the draft regulations do not clearly state the types of equipment that are excluded from equipment authorisation. For example, Vodacom translates circuits to mean anything related to a router and server. It is suggested that the Authority explicitly list equipment used for fixed services (routers, switches, firewalls, etc.) as excluded from the equipment authorisation regulations. Vodacom further recommends that the Authority should confirm that the equipment category "International Gateway" refers to both mobile and fixed systems, and while the Authority refers to 'International Gateways', it makes no reference to 'Local Gateways' between providers. Vodacom requests the Authority to confirm that the 'Local Gateways' are also exempted from the equipment authorisation regulations and are also not required to be registered with the authority.
- (b) Telkom requests that the Authority clarify the decision to include "Cable landing stations" and "International Gateways" in the Regulations as equipment to be excluded from authorisation requirements while not including categories such as "exchange buildings", "data centres" and "carrier-neutral hotels", considering that these categories are contained in the definition of an electronic communication facility in the ECA.

- (c) Telkom reasons that, since standards pertaining to, for example, electromagnetic emissions/immunity and health and safety would equally apply to cable landing stations and international gateways, it is not clear why these facilities have been included in the exemption, whereas others have been excluded.
- (d) Volkswagen seeks clarity on whether these Regulations exempt spare parts.
- (e) ITI recommends that spare parts should be viewed as any replacement unit meant to restore a product to normal operation, and should not be limited to replacing identical parts, as it is often impossible to get identical parts. ITI believes that replacement with functionally similar parts should not be considered a "new" product.
- (f) A proposal from AmCham is for the Authority to include data centres, data centre equipment, and equipment that can be installed at the customer's premises, to be considered for exclusions by the Authority. AmCham motivates that the type of equipment installed and used in data centres and at customer premises is operated in highly controlled environments by trained professionals. It is subjected to a high standard of testing by manufacturers that adhere to all requirements in regulation 4.
- (g) EmComm proposes that "equipment" used by licensed radio amateurs should be broken down into two types of equipment, i.e.:
  - (i.) Equipment which is or can be developed and/or built by licensed radio amateurs (which is generally referred to as home brew equipment) as part of fulfilling their purpose of self-training or technical investigations.
  - (ii.) Brand name equipment such as Icom, Kenwood, Yaesu and Alicno, which licensed radio amateurs can purchase from suppliers and local suppliers.

EmComm reasons that the description proposed by the Authority for amateur radios does not comprehend direct context and fails to depict the actual equipment being referred to for "amateur radios" under the "Equipment Category", and rather refers to a general description of what Amateur Radio describes as a service in general terms. The following description is recommended:

Equipment Category	Description
Equipment used by licensed radio amateurs	"Radio or satellite equipment which is or can be developed and/or built by licensed radio amateurs as part of their self-training or technical investigations and which is generally referred to as "home brew" equipment and shall exclude all commercially available amateur radio equipment."

### The Authority's Decision

- (a) The Authority's view is that an international gateway, as a facility, services both fixed and mobile networks since the international gateway traffic is between one country's domestic network facilities and those in another country. Therefore, both the mobile and the fixed international gateway facilities are excluded.

The Authority has considered the representations and has resolved that a gateway, whether international or local, will be excluded from these regulations as a facility. However, electronic communications equipment that resides in these facilities (e.g., routers, switches, etc.) falls within the scope of these Regulations and therefore need equipment authorisation.

The Authority is of the view that a circuit, as described in Table 1 of the Regulations, does not include electronic communications devices, such as routers, switches, etc.

- (b) The Authority has considered the representations and has resolved that "exchange buildings", "data centres", "Local Gateways" and "carrier-neutral hotels" will be excluded from these Regulations as a facility.

However, electronic communications equipment that resides in these facilities (e.g., routers, switches etc.) fall within the scope of these Regulations, and therefore need equipment authorisation as described in Table 1 of the Regulations.

- (c) The Authority has decided that spare parts are excluded from these Regulations, in so far as the description is maintained within the context of these Regulations.
- (d) The Authority notes the submission by ITI. However, it is the Authority's considered view that a complete unit may not fall within the confines of the description of spare parts as it would not be an interchangeable part within the authorised equipment. If the part replacing a faulty part, identical or not, has an impact on conformance, that would warrant a reassessment to ensure continuous conformance.
- (e) The Authority notes the submission by AmCham. However, it is of the considered view that data centre equipment and customer premises equipment fall within the scope of these Regulations, and therefore need equipment authorisation.
- (f) The Authority decided to include the definition for "Amateur Radio Equipment" in the Regulations, which consequently addresses the concern related to the licensing of radio amateurs. The Authority is of the considered view that the term "Amateur Radio Equipment" adequately depicts the equipment being referred to in the Regulations. The Authority decided to exclude amateur radio equipment from equipment authorisation for as long as the equipment is in the possession of an amateur. If it is made commercially available, then equipment classification 3 conformity assessment procedure will apply. However, amateurs in possession of or using amateur radio equipment are required to adhere to other applicable regulatory requirements of the Authority.

### **9.5. Regulation 6 (Equipment Authorisation Exemptions)**

- (a) Telkom submits that the inclusion of "satellite transponders" under the category of equipment is problematic. Satellite transponders are located onboard satellites, which are deployed and operated by international satellite providers such as Intelsat, Eutelsat, etc. It is not clear what standards will be added to the Official List for purposes of compliance with the draft Regulations. Telkom recommends that "satellite transponders" be excluded from these regulations, as there might not be any technical standards to address compliance requirements for this equipment.
- (b) Telkom noted the title of Table 2 contains a reference "Annexure A", which is not included in the draft Regulations. Telkom recommends that it either be deleted or further clarified. Further, Telkom noted the standalone listing of "Earth Station" and assumed was in error, it should be removed or, if needed, be further clarified.

### **The Authority's Decision**

- (a) The Authority decided to exclude satellite transponders from these regulations, rather than exempting them, as equipment under classification 1 is required to conform to the applicable standards. The Authority recognises that there are currently no locally adopted applicable standards addressing satellite transponder conformance. Including this equipment in the Regulations would result in regulatory ineffectiveness.
- (b) The Authority has decided to remove the "distribution" part from the Equipment Categories in Table 2: "Systems and equipment used for the production and distribution of broadcast and content services". Broadcast distribution equipment may also include Fixed-Line Telecommunications Terminal and/or microwave (STL) equipment which operates in licensed bands. Therefore, the "distribution" should not be considered as low risk category equipment.



## 9.6. Regulation 7 (Equipment Authorisation Process)

- (a) AmCham submits that sub-regulation (1)(a) provides for the submission of Technical Documentation, in accordance with regulation 12, which will involve an additional process for manufacturers to obtain a CoC. AmCham argues that, not only will this prove onerous for the manufacturer/s, but it may also result in additional costs and time taken to obtain a CoC. AmCham fears this will result in bottlenecking of processes at ICASA with this additional requirement, as it is aware that ICASA has constrained capacity, and this process might prove detrimental to the release of Equipment Authorisation Certificates for new equipment to the market, significantly impacting the consumer.

AmCham, therefore, recommends, that ICASA review the requirement for technical documentation for equipment under Classifications 2 and 3, and remove these from the Regulations.

- (b) ITI encourages ICASA to adopt the simple European Union (EU) model, with Supplier's Declaration of Conformity (SDoC) for low-risk devices. Equipment that may be considered under high-risk categories should move from a Type Approval system to an SDoC with registration.
- (c) Huawei submits that the proposed two-step process, the CoC and the Equipment Authorisation certification, may not streamline the overall process, but could lead to further delays in the equipment authorisation process overall.

Huawei and the People's Republic of China recommend that the EU-type examination certificate or EU declaration of conformity be considered as a replacement of the CoC in order to support the Authority in achieving its goal of streamlining the overall Type Approval process.

### **The Authority's Decision**

- (a) The Authority has revised the requirement of Technical Documentation ("TD") in the Equipment Authorisation process. The requirement of TD is redundant, as is also a requirement in the Certification Application process. The Authority has put provisions for the retention of the TD, that must be kept for five (5) years and must be made available to the Authority on request.
- (b) The Authority notes the submissions from ITI, Huawei and The People's Republic of China, but is, however, of the considered view that the current equipment authorisation environment is not ready for a relaxed regulatory regime such as the SDoC. SDoCs require a structured and consolidated effort that includes collaboration between industry and conformity assessment institutions, and South Africa is yet to reach that point.
- (c) In response to Huawei and The People's Republic of China's recommendation to adopt the EU-type examination certificate or EU declaration of conformity, the Authority has opted to make use of a modified version of the EU-Type Examination Certificate, which is not restricted to notified bodies, but instead opens the certification process for classification 2 equipment to all other certification bodies (e.g., Telecommunications Certification Bodies).

### **9.7. Regulation 8 (Certification Application Process)**

- (a) AmCham recommends that the two processes be run separately, with the Certification managed through the designated Certification Bodies, and the Equipment Authorisation process managed by the Authority.

AmCham recommends that the Authority should consider removing the expiration for the CoC, and rather align CoC validity to the proposed validity of Equipment Authorisation Certificate, because the CoC is not considered an official trade document but rather a means to get the Equipment Authorisation Certificate. AmCham proposes that the CoC should be made valid indefinitely.

- (b) Huawei recommends that the CoC, for both equipment classification types, be granted permanently or that the CoC be aligned with a product's lifespan and allow for a transition period for products already in warehouses or in production, allowing the industry to flourish at a most critical time.
- (c) ITI submits that there is no substantial reason for the Authority to bind validity restrictions on the CoC, as there are inherent limitations placed on the Equipment Authorisation Certification, depending on whether the respective standards or products have been modified. ITI, therefore, recommends that a CoC remain valid until the certified product changes or standards change, or is left valid for a limited duration until the updated applicable standards can be applied upon the renewal of the CoC.
- (d) The MWF does not support that a CoC is issued for a limited time period, nor that its renewal has to be based on new Test Reports because Test Reports of the product already placed in the market can be renewed in circumstances where there are technical changes on the equipment or when there are new standards affecting the compliance of such equipment with the essential requirements.
- (e) EmComm recommends that the CoC should be valid indefinitely, the same as for the Equipment Authorisation Certificate and that, if the provision of regulation 17 were to come into effect, the CoC should be considered null and void.

### **The Authority's Decision**

- (a) The Authority has considered the representations and has resolved that a CoC will remain valid for as long as it meets the following conditions:
  - the applicable standards, as prescribed in regulation 13, under which it was obtained, do not change as to render the equipment non-conformant as determined by the Authority; and

- no modifications are made with respect to the electronic communications equipment, electronic communications facility or subscriber equipment brand/trademark, name and/or model recorded on the Certificate of Conformity; and
  - no changes are made to the technical specifications, design or characteristics of the electronic communications equipment, electronic communications facility or subscriber equipment.
- (b) The Authority decided to keep the Equipment Authorisation Certificate valid for as long as the CoC remains valid.

#### **9.8. Regulation 9 (Authorised Suppliers)**

- (a) UL VS SA recommends that only local suppliers should be allowed to apply for Certificate of Conformity (CoC) and Homologation Certificate.
- (b) Telkom submits that there seems to be a discrepancy between sub-regulations 6(2) and 6(3) of the draft Regulations. It states that in sub-regulation 6(2), where a local supplier appoints a local legal representative, the local supplier will assume all responsibilities associated with the compliance. Further, Telkom recommends that a local supplier or legal representative provide contact details for its international supplier in cases where the local supplier ceases operation or represents the manufacturer.

#### **The Authority's Decision**

- (a) Equipment Authorisation may only be applied for by local suppliers or local representatives.
- (b) Sub-regulation 6(1) places the responsibility of maintaining compliance on the local supplier. Sub-regulation 6(2) provides for instances where the local supplier makes use of a local legal representative, with the responsibility of maintaining compliance remaining with the local supplier. Sub-regulation 6(3) thereafter makes allowance for a situation where a supplier wishes to

grant the responsibility of maintaining compliance to a local legal representative mandated to do so.

### **9.9. Regulation 10 (Provisional Authorisation)**

- (a) Although ITI has reservations regarding the Authority's personnel being present during demonstrations of prototypes, exhibitions and trials, it has no objection on the condition that confidentiality will be retained. It submits that this requirement is unique and raises issues with the management of visitors at facilities where testing takes long. In some cases, there may be multiple manufacturers involved, for interoperability of systems/products, leading to a multi-layered process of confidentiality rules and agreements with multiple stakeholders.

### **The Authority's Decision**

- (a) The Authority notes the submission from ITI but reiterates that it may only request to observe on a case-by-case basis for demonstrations of prototypes, exhibitions and trials and not at the research and development stage.

### **9.10. Regulation 11 (Technical Documentation)**

- (a) AmCham submits that the requirement to include the conceptual designs and manufacturing drawings and schematics, might render ICASA in breach of other legislation, Intellectual Property law<sup>2</sup> and the Registered Designs Act (195/1993<sup>3</sup>). Further, disclosing such information to third-party Certification Bodies adds to the risk of not ensuring confidentiality. AmCham strongly urges ICASA to delete sub-regulations (2) and (3) of regulation 11 in the Regulations.

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<sup>2</sup> <http://www.cipc.co.za/index.php/trade-marks-patents-designs-copyright/what-ip/>

<sup>3</sup> [http://www.saflii.org/za/legis/consol\\_act/da199391.pdf](http://www.saflii.org/za/legis/consol_act/da199391.pdf)

### **The Authority's Decision**

- (a) The Authority acknowledges AmCham's recommendation and has decided to remove the requirement of a conceptual design and manufacturing drawings and schematics of components from the Regulations. However, subassemblies, PCB and other relevant similar elements including the functional descriptions are important in the analysis of the equipment's technical aspects regarding technologies to be assessed for conformance and will be retained in the Regulations.

### **9.11. Regulation 13 (Applicable Standards)**

- (a) AmCham recommends that ICASA should consider replacing "Official List" with "relevant technical regulations".

### **The Authority's Decision**

- (a) The Authority notes the submission and opts to retain the use of the Official List as it refers to the Authority's list of regulated standards. The Authority recognises that equipment may be assessed in accordance with technical standards alternative to those in the Official List. However, the Authority has made provision for this possibility in regulation 13(2).

### **9.12. Regulation 16 (Validity of the Equipment Authorisation Certificate)**

- (a) AmCham recommends that the Equipment Authorisation Certificate should be the only official document to trade, and the conditions thereof should not be confused with activities that can only take place at the Certification phase.

### **The Authority's Decision**

- (a) The Authority has reviewed regulation 16, taking into consideration the submission from AmCham.

**9.13. Regulation 18 (Mark of Compliance Requirements)**

- (a) AmCham submitted that the Authority's Labels are applied during the production stage of products, and that any delays in the issuance of a unique certificate number would halt production and have a severe impact on the operations of the factory. It is for these reasons that AmCham recommends that the Authority should implement Generic Labelling on Classification 2 equipment. The concept of Generic Labelling has been applied in various jurisdictions, essentially to minimise interruption of the production of equipment, and thereby facilitate the quick launch of authorised equipment.

**The Authority's Decision**

- (a) The Authority's decision is to maintain the requirement for a mark of compliance. The mark of compliance required by the Authority is a unique identifier, only issued once the Authority is satisfied that the equipment in question meets all the essential requirements. As such a generic mark would not address this requirement.

**9.14. Regulation 19 (Mark of Compliance Design)**

- (a) AmCham proposes a Generic Code in relation to regulation 19 to differentiate equipment categories within a classification. Various generic codes could be allocated by prescribing technologies such as:
- Wi-Fi device: 0532;
  - BT/Zigbee: 0531;
  - UWB device: 1583;
  - Inductive applications: 0528;
  - Other: 2589.

- (b) AmCham further submitted an example of a Wi-Fi device assigned a four-digit number and a label:



### **The Authority's Decision**

- (a) The Authority has decided to keep the design it had proposed in the draft Regulations, as it aligns with the overall management of the equipment authorisation regime.

### **9.15. Regulation 25 (Transitional Provisions)**

- (a) EmComm pointed out to the Authority that invalidating labels previously issued and affixed to the type approved equipment would render such equipment invalid. The proposal implies that the Authority expects the new "Mark of Compliance" to be affixed to equipment already approved prior to these Regulations.
- (b) ITI recommends that labels obtained prior to the effective date of this final Regulation should remain valid as affixed onto those products that have Type Approval certificates.
- (c) Volkswagen recommends that the Authority should review regulation 25(2), since it is not practical to change labels on approved equipment.

### **The Authority's Decision**

- (a) The Authority decided to revise regulation 25(2) to allow equipment that has already been approved under the existing Type Approval regime to remain valid, as the Regulations cannot be applied retrospectively.



### **9.16. Regulation 27 (Short Title and Commencement)**

- (a) AmCham recommends that ICASA allows for seamless migration to new Regulations by providing a transition timeline of a minimum of twenty-four (24) months. The transition timeline should recognise and allow for both Regulations (old and new) to be implemented until such time as the new Regulations are made compulsory.
- (b) ITI recommends a transition period of at least one year, and preferably two years, following the date of publication of the final regulation, in which both the current and new processes are accepted. This will facilitate compliance by allowing ample time for manufacturers to adapt to the new requirements.

### **The Authority's Decision**

- (a) In consideration of the new regime for Equipment Authorisation being adopted by the Authority, a sufficient transition period will be provided to allow industry to prepare their operations and plan accordingly. The Authority has decided to hold in abeyance the date when these regulations shall come into force and will publish a notice to announce a suitable effective date.

### **9.17. Conformity Assessment Approaches**

- (a) Huawei raised a concern that equipment classifications (low, medium and high) have not been categorised clearly, as it lacks lists of equipment under each classification. Huawei recommends that the classifications be categorised as follows:
  - (i) Classification 1: TTE does not have radio functionality and does not cause any harmful or interference to any spectrum application or services, and Huawei does not think they should be classified as either medium or high-risk equipment.

- (ii) Classification 2: Active antenna units (AAU), Radio remote units (RRU), Base Stations, CPEs, Smartphones, Pockets Routers, Electronic toys, Gadgets.

These equipment types, according to Huawei, comply with related standards and do not cause harmful interference to other spectrum applications/services. Some of these types are deployed in fixed settings such as RRU, AAU, etc. Terminal devices such as smartphones and routers do not emit significant amounts of power and are unlikely to be a source of harmful interference to other spectrum applications/services in busy or congregate settings like malls, stadiums, large gatherings, etc.

- (iii) Classification 3: Lasers, X-ray systems, Ultrasound equipment, Cardiovascular Medical Devices, Laboratory X-ray fluorescence, Scanning electron microscope. As these are potentially hazardous equipment, where exposure to them can adversely impact the health of living organisms, including humans, possibly these equipment types can fall in this category. Equipment such as X-ray fluorescence and scanning electron microscopy are used in laboratory environments under controlled conditions but are included in this category given the potential exposure risks.

- (b) The MWF notes that radio equipment is categorised according to low, medium, and high risk and submits that the draft Regulations do not define or specify the kind of risk that should be addressed. MWF recommends that the Authority should address the said risks and reasons for their categorisations in the Regulations. The MWF cautions against using the unspecified expression "risk" in a classification scheme of radio equipment, as it is likely to raise public concerns without need and might trigger unnecessary public debates about the safety of mobile communications despite complying with international safety limits EMF exposure. MWF

further recommends that the Authority should consider inductive, NFC, Zigbee, BT, RFID and similar devices for equipment classification 1. MWC further argues that equipment classification 2 be that equipment operating in an unlicensed part of the radio spectrum, and that equipment classification 3 comprise equipment that operates in the licensed parts of the radio spectrum and covers all licensed technologies.

- (c) AmCham submits that, with licensed equipment connecting to larger networks (public telecommunications networks), the impact of non-compliance in that respect could result in dire consequences, while the consequences / impact of non-compliance caused by unlicensed devices may be mild and controllable. AmCham, therefore, recommends that licensed equipment should remain high risk, and unlicensed equipment be linked to medium risk. AmCham further recommends that equipment classification 1 should include inductive, NFC, Zigbee, Bluetooth, RFID, and Wi-Fi and similar devices only.

#### **The Authority's Decision**

- (a) The Authority has detailed the types of equipment and their associated risk classification in table 3 of the final Regulations in order to clarify the ambiguities raised with regards to the levels of risk associated with the different types of equipment.

#### **9.18. General Submissions**

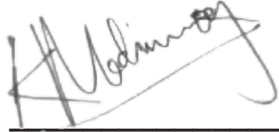
- (a) AmCham submits that the cost of compliance under the new Equipment Authorisation Regulations must not escalate to more than what the Authority is currently charging, in order to avoid the burden of additional costs to manufacturers, which will eventually impact consumers.

#### **The Authority's Decision**

- (a) The Authority recognises that reaching a cost estimate would require consideration of various factors, including expenses, identification of cost

drivers, allocation of costs to each stage and creating a standard costing system.

The Authority will undertake a process to determine a fee structure that is reasonable.



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**DR. KEABETSWE MODIMOENG**

**CHAIRPERSON**

**DATE: 28/03/2022**