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Regulatory Alert – South Africa

South African Regulator (ICASA) invites industry to comment on product types to be exempt from RF Type Approval

On 28th September 2016, the Independent Communications Authority of South Africa (ICASA) issued a *discussion document* inviting industry to comment and provide feedback with regards to new proposals to exempt certain product types from ICASA Type Approval.

The aforementioned document allows all interested parties to respond to ICASA's questions and proposals, and also put forward suggestions on equipment that should be considered for exemption. The main exemption considerations that ICASA have noted are as follows:

1. Equipment that is Approved for use by the European Telecommunications Standards Associations or other competent standards body.
2. Equipment used under certain circumstances, such as research and development, demonstrations, prototype testing, maritime or aeronautical operations, and equipment imported as spare parts or components for repair.

Please find attached a full copy of the discussion document. All comments and proposals must be submitted by 2nd December 2016.

For any additional information on the above information please contact:

Sarah Thalmessinger

Product Compliance Specialists Ltd.

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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GENERAL NOTICES • ALGEMENE KENNISGEWINGS			
Independent Communications Authority of South Africa/ Onafhanklike Kommunikasie-owerheid van Suid-Afrika			
621	Independent Communications Authority of South Africa (13/2000): Discussion document on Equipment Type Approval Exemption: Invitation for written representations	40309	4

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
NOTICE 621 OF 2016



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

DISCUSSION DOCUMENT ON

Equipment Type Approval Exemption

SEPTEMBER 2016

INVITATION FOR WRITTEN REPRESENTATIONS

1. The Independent Communications Authority of South Africa ("the Authority") hereby invites, in terms of section 4B (2) of the Independent Communications Authority of South Africa Act, Act No. 13 of 2000 ("ICASA Act"), interested persons to submit their written representations on the Discussion Document on exemption of equipment from Type Approval.
2. A copy of the Discussion Document will be made available on the Authority's website¹ and in the Authority's Library at Block D, Pinmill Farm, 164 Katherine Street, Sandton between 09h00 and 16h00, Monday to Friday.
3. Written representations must be submitted to the Authority by no later than **16h00** on **02 December 2016** through either of the following: post, hand delivery or email (in Microsoft Word) and marked specifically for attention:

Mr. Lumkile Qabaka (The Project Leader)

Independent Communications Authority of South Africa

Private Bag X10002

Sandton

2146

Delivery Address: Block A, Pinmill Farm, 164 Katherine Street Sandton.

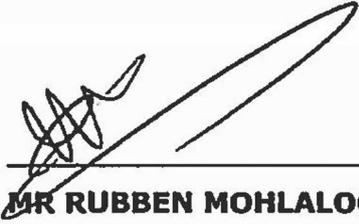
Electronic mail: lqabaka@icasa.org.za.

4. All enquiries may be directed to the Project Leader on 011 566-4106.
5. The Authority will make available for inspection written representations at its library and copies or extracts from representations may be obtainable upon payment of the prescribed fee.
6. Interested persons who submit written representations may request that such representations or any part thereof, be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused,

¹ <http://www.icasa.org.za>

the person who made the request will be allowed to withdraw such representations or portion thereof.

7. Interested persons may indicate in their written representations whether they require an opportunity to make oral representations in the event the Authority decides to hold public hearings.



MR RUBBEN MOHLALOGA
ACTING CHAIRPERSON
DATE: 23 / 09 / 2016

Contents

1. Definitions	4
2. Purpose	5
3. Introduction and Background	5
4. Objectives of Exemption of Equipment from Type Approval	7
5. International Benchmark Study on Type Approval Exempted Equipment	8
6. Findings of the International benchmark study	8

1. Definitions

“Accreditation” means third-party attestation related to conformity assessment bodies conveying formal demonstration of their competence to carry out specific conformity assessment tasks.

“Certification” means involving initial testing of equipment and continuous equipment surveillance. An initial assessment of the manufacturer’s premises and manufacturing practices is also undertaken. Quality management system of the manufacturer may also be assessed during the process of certification.

“Conformity Assessment” means the process for demonstrating conformity of a product, that meets all legislative requirements, and includes testing, inspection and certification before a product is placed on the market.

“Registration” means that there is no issuance of the certificate by the regulatory authority before a product is put onto the market. Manufacturers and suppliers are required to make submission of the appropriate technical documentation, together with supporting evidence, such as test reports, to the regulatory body. The regulatory authority, following an assessment of the documentation, lists the product on a register or gazette of approved/recognized products.

“Regulatory Authority” means a government agency responsible for telecommunications systems and products within its territory. The Regulatory Authority develops and publishes technical regulations, including conformity assessment requirements, in the public interest.

“Supplier Declarations of Conformity” means a procedure recognized internationally whereby a Manufacturer, Importer, Distributor or Supplier tests a product to measure conformance to the applicable technical regulations and labels before it is placed on the market. It is a written undertaking by the Manufacturer declaring that a particular product conforms to specified technical requirements.

“Testing Laboratory or TL” means the testing laboratory responsible for conducting relevant test procedures to specific requirements.

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

2. Purpose

The purpose of this Discussion Document is to solicit inputs on prescribing:

- 2.1 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 body where the equipment complies with Type Approval; and
- 2.2 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.

3. Introduction and Background

- 3.1 In terms of section 35 (1) of the Electronic Communications Act, (Act No. 36 of 2005) (“ECA”) the Authority is mandated to consider for approval, 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.
- 3.2 Section 35 (2) of the ECA 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 and circumstances under which the use of equipment, electronic communications facilities and radio apparatus does not require approval.

- 3.3 On 26 August 2013, the Authority published the Type Approval Framework, which comprises, *inter alia*, the Type Approval Regulations, 2013 ("Type Approval Regulations")² and the Labelling Regulations ("Labelling Regulations")³, in terms of sections 4(4) and 35 (2) of the ECA.
- 3.4 Type Approval is important for ensuring good network performance, prevention against distortion and degradation of networks, avoiding harmful radio interference, safeguarding and preservation of network integrity, and the elimination of dumping of inferior or sub-standard equipment to the local market. Further, Type Approval protects Manufacturers who produce high-quality equipment, service providers who use the equipment and the consumers who eventually buy it.
- 3.5 Electronic communications equipment or facilities, including radio apparatus are required to undergo Conformity Assessment before they can be introduced into and made available in the South African market. The requirement is applicable to both imported and locally manufactured equipment. Conformance is necessary to ensure that equipment performs as expected, is safe to use, and where applicable, can interoperate with other equipment with relative ease.
- 3.6 In order for equipment to be certified it needs to comply with performance, safety and electromagnetic compatibility requirements.
- 3.6.1 Performance requirements

Adherence to, *inter alia*, the following specifications: maximum temperature of operation, type of modulation, frequency of operation, channel/frequency separations, maximum transmitter radiated field strength/maximum output power through a defined antenna, and duty cycle.

3.6.2 Safety requirements

Ensuring the safety of persons, domestic animals or property that come into contact with electronic communications equipment.

² General Notice 871 of 2013, Government Gazette No. 36785

³ General Notice 872 of 2013, Government Gazette No. 36786

3.6.3 The Electromagnetic Compatibility (EMC) requirements

Ensuring that equipment does not generate electromagnetic disturbances that exceed an allowable level, and that apparatus have some adequate level of intrinsic immunity to electromagnetic disturbance to enable them to operate as intended.

- 3.7 The current scope of equipment requiring Type Approval is very broad in that it comprises all types of equipment, electronic communications facilities and radio apparatus. Section 35(2) of the ECA, however, provides for the limitation of the scope by empowering the Authority to 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 prescribed by the Authority, and circumstances under which the use of equipment, electronic communications facilities, radio apparatus and subscriber equipment does not require approval.
- 3.8 The Authority has, in the spirit of section 35(2) of the ECA, read with Regulation 3(1) of the Type Approval Regulations, initiated a project to review the Type Approval regulatory framework in order to determine the requirements for exempting certain equipment from the Type Approval process by 2017. The Manufacturers, Importers, Distributors and Retailers of exempted equipment will be required to ensure conformity of their equipment to the prescribed standards.

4. Objectives of Exemption of Equipment from Type Approval

- 4.1 Reduce regulatory burden for equipment Manufacturers and Importers.
- 4.2 Encourage investment and innovation in the ICT sector.
- 4.3 Promote competition in the ICT sector.
- 4.4 Encourage research and development within the ICT Sector.

Question 1

Do you agree with the above listed objectives and would you suggest other objectives?

5. International Benchmark Study on Type Approval Exempted Equipment

- 5.1 The Authority has conducted a preliminary comparative study on various countries to review international practices on exemption of electronic communications equipment or electronic communications facility, including radio apparatus from conformity assessment regimes. This exercise was done in attempt to discover these countries considered to exempt the same and what basis was used for exemption.
- 5.2 The countries that were selected for conducting the benchmark study are: United Kingdom, Ukraine, Russia, United Arab Emirates, Qatar, Egypt, Tanzania, Kenya, Botswana, Brazil, United States of America, Canada, Venezuela, India, China, South Korea, Australia, Nigeria and Thailand. The above selected countries fairly cover the International Telecommunications Union (ITU) Regions 1, 2 and 3.

6. Findings of the International benchmark study

- 6.1 Exemption of equipment from Type Approval relies on the Manufacturers, Importers, Distributors or Suppliers, rather than the Authority, taking on the responsibility for ensuring that products entering the market do indeed comply with the relevant domestic mandatory technical regulations.
- 6.2 Exemption of equipment from Type Approval should not, however, be regarded as a non-conformity with the prescribed standards. Manufacturers, Importers or Suppliers are still required to undertake some form of conformity assessment to demonstrate that due diligence has been undertaken prior to placing the equipment in the market. This is a necessary step for Manufacturers, Importers, Distributors or Suppliers so that they are in a defensible position should the conformity of their products be ever questioned by the Authority against the required standards, during the course of a post-market surveillance exercise.

- 6.3 Exemption of equipment from Type Approval provides significant advantages to industry as Manufacturers, Importers, Distributors or Suppliers will no longer be required to apply for approvals from the Authority prior to placement of goods onto the market. Instead, Manufacturers, Importers, Distributors or Suppliers can opt from any number of accredited conformity assessment bodies or in some cases, use their own internal conformity assessment mechanisms to ensure compliance.
- 6.4 The exemption of equipment from Type Approval is considered as a procedure that explicitly outlines all the equipment and circumstances that are excluded from obtaining approval prior to market placement.
- 6.4.1 Exemption of equipment from Type Approval
- 6.4.1.1 The study has demonstrated that some countries including Germany, Qatar and Brazil exempt equipment from security and emergency services which includes, military equipment, amateur radios developed and used by licensed operators, and also satellite equipment.
- 6.4.1.2 It was also established that it is not best practice to exempt equipment from conformity assessment regimes as the focus is on performance, safety, health, environment and avoidance of harmful radio interferences. The countries that have exempted equipment from the conformity assessment regimes do not exempt equipment from complying with the objectives of the Type Approval regimes. Therefore, a strong post market surveillance mechanism must be conducted to curb the possible negative implications that may arise from exempted equipment.

Question 2

In the South African context, do you think that there is a need for the Authority to prescribe the types of equipment, electronic communications facilities and radio apparatus, the use of which does not require Type Approval? If so, please specify such types of equipment, electronic communications facilities and radio apparatus, and provide reasons why you think they should be exempted from the Type Approval process.

6.4.2 Circumstances warranting Exemption of Equipment

There are circumstances that countries such as Qatar, United Kingdom, Brazil and China consider appropriate to exempt equipment from their Conformity Assessment regimes as indicated below:

- a) Scientific studies and researches;
- b) Sample testing and demonstrations;
- c) Operations of specialised agencies;
- d) Maritime or aeronautical operations;
- e) Commercial exhibition, but not for marketing;
- f) Equipment produced, imported for the purpose of export only; and
- g) Spare parts, components used for repairs

Question 3

In the South African context, do you think that there are any circumstances under which the use of equipment, electronic communications facilities and radio apparatus does not require approval? If so, please specify such circumstances and provide reasons.

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