January 29, 2019

Independent Communications Authority of South Africa (ICASA)
350 Witch-Hazel Avenue /
Eco Point Office Park,
Eco Park, Centurion,
Highveld Park 0169

Attention: Mr. Lumkile Qabaka
Email: LQabaka@icasa.org.za

Comments of the Information Technology Industry Council (ITI) in Response to ICASA Draft Conformity Assessment Regime

Dear Sir,

I am writing on behalf of the Information Technology Industry Council (ITI) [1] and its member companies to respectfully offer the following comments on the Draft Conformity Assessment Framework for Equipment Authorization, as published by the Independent Communications Authority of South Africa (ICASA) in the Government Gazette No. 42108 on December 13th, 2018.

Public Consultation and WTO Notification

ITI was expecting ICASA to issue a draft regulation that specified conformity assessment requirements, including support for Supplier's Declaration of Conformity (SDoC). The published draft Framework does not include the level of detail needed for a full and complete assessment of the regulations included in the current Approval Framework. However, the proposals included therein appear to be represent movement in the correct direction to assuage concerns of affected industries while continuing to provide adequate protections to support South Africa's Electronic Communications Act. Therefore, we request that ICASA consider our comments and those of other stakeholders and publish a second draft Conformity Assessment Framework that addresses the future authorization schemes including SDoC1 and SDoC2, as described in the proposal, and labeling regulations. ITI also asks for ICASA to notify the World Trade Organization's Technical Barriers to Trade Committee, per South Africa's WTO obligations, when it publishes a second draft framework.

Acceptance of International Test Reports and SDoC

ITI recommends that ICASA accept reports from ISO/IEC 17025 accredited laboratories and ILAC accredited laboratories for new ICASA equipment authorizations. This will ensure international alignment and promote quality of products in the market and be in line with the ECONOMIC PARTNERSHIP

[1] ITI is the global voice of the tech sector. We advocate for public policies that advance innovation, open markets, and enable the transformational economic, societal, and commercial opportunities that our companies are creating. Our members represent the entire spectrum of technology: from internet companies, to hardware and networking equipment manufacturers, to software developers. Visit http://www.itic.org/ to learn more. Follow us on Twitter for the latest ITI news @ITI_TechTweets.

AGREEMENT between the European Union and its Member States, of the one part, and the SADC EPA States, of the other part.

ITI encourages ICASA to adopt the EU model of Supplier's Declaration of Conformity (SDoC2) for low risk devices and to strengthen its post-market surveillance in order to increase the chances of detecting non-compliant products, while applying significant penalties for non-conformity. However, conformity testing for equipment subjected to these SDoC procedures should only be conducted in ISO/IEC 17025 accredited laboratories or ILAC accredited laboratories. Exemption could also be considered for low risk devices already assessed for the EU, with an EU DoC and CE mark after successful implementation of the proposed SDoC system.

ITI is aware that adoption of an SDoC system depends on having an effective market surveillance process. Therefore, we urge ICASA to consider the following issues as it designs this program:

- Cost of acquiring test sample;
- Cost of testing selected sample;
- Penalties for non-compliance;
- Creating partnership with ILAC laboratories through MoU; and
- Developing a program that takes into account
    - Monitoring of accidents (type of equipment, suppliers, etc.);
    - Follow up of complaints;
    - Compliance or hazard alert systems;
    - Relevant information from stakeholders (e.g. consumer protection organizations, etc.);
    - Information from market surveillance authorities of other countries having regional arrangements (e.g. APEC, EAC, NAFTA, EU, etc.);
    - Results of previous surveys;
    - Compliance records of suppliers.

A Flexible Approach

ITI also notes that ICASA's current approval framework is based on Type Approval procedures and accepts test results from any ISO/IEC 17025 accredited laboratories. Consequently, ITI proposes to ICASA to move from the Type Approval system to an SDoC system with registration (SDoC1)for equipment that may be considered to fall under higher risk categories. A new conformity assessment procedure (DoC) should be promoted to recognize devices tested in ISO/IEC 17025 accredited laboratories or ILAC laboratories only. ITI and its members recommend a lead time of three weeks for all applications processed by ICASA

As ICASA looks to the future, it should develop a conformity assessment regime that is efficient and capable of dealing with an influx of ICT equipment requiring entry into the market. OEM continue to develop new products with advanced technologies that require a flexible and adaptable approach to approvals.

In summary, ITI believes that the proposed combination of a new SDoC system will improve ICASA's capability to facilitate seamless entry of compliant products and, at the same time, provide a regulatory solution to address non-conforming products already in the market.

Technical requirements are also a key element in the authorization process, and ICASA should maintain alignment of its technical requirements with those in the EU. In particular, we urge ICASA to review the current short-range devices document because it is not in alignment with the latest ERC/REC-07-03 recommendations. Frequency spectrum for low powered devices must be continually monitored and

harmonized. Doing so will foster technology innovation and the introduction of new applications in the market and thus widen consumer choices.

Labeling
ITI recommends that ICASA consider applying two different labeling options; one for SDoC1, and another for registered SDoC2. These labels could include the following information (respectively):

'ICASA logo' for SDoC2
'ICASA logo' + registration number' for registered DoC (SDoC1)

These labels should also be allowed to be displayed electronically, via e-label.

Conclusion
Thank you for your consideration of these comments on this issue of importance to the ICT industry. In the attached table, ITI respectfully offers its responses to the specific questions posed by ICASA in its notice.

ITI is committed to working with ICASA to ensure that it achieves its regulatory objectives without creating unnecessary obstacles to trade. We welcome discussion on this submission and look forward to your reply.

Sincerely,

Josh Rosenberg
Director, Policy

Questions asked in the draft Conformity Assessment Framework	**ITI responses**
Question 1 What are the benefits of having Conformity Assessment to support the regulations?	To ensure only compliant products, whether locally manufactured or imported, are on the market.
Question 2 Do you see any benefits in risk profiling and the categorisation of equipment in carrying out the conformity assessment?	There are great benefits in categorizing equipment associated to risk level and this will improve the lead times, as different equipment authorization procedures will be developed to match different levels. However, equipment risk categorization should be made as simple as possible in order to avoid ambiguity. Clear and precise definition of risk profiles will have an added advantage to the entire equipment authorization program. To keep ICASA conformity assessment aligned with the EU, we suggest aligning to the principle of article 5 of the EU radio equipment directive, which differentiates product types with low level of compliance from others; DoC of equipment with low level of compliance has to be registered. We propose the high risk to be defined as products with low level of compliance. All other products should be considered low risk.
Question 3 With the recommended steps for using conformity assessment in support of the regulations (figure 10), which of the steps would you say are missing in the Approval Framework, and how can they help improve the Approval Framework efficiency?	We ask for ICASA to consider our proposal as outlined above within these steps; an approach proposed for South Africa is essentially based on EU SDoC.
Question 4 Can you suggest an appropriate conformity assessment approach that can address the current Approval Framework challenges?	ITI proposes a combination of Declarations of Conformity, where Declaration of Conformity (SDoC II) is the procedure linked to low risk products and SDoC1(registered DoC) is linked with equipment with low level of compliance (high risk products). We also proposed that both procedures must accept ISO/IEC 17025 and ILAC test results only.
Question 5 In South African context, what are the benefits for the Authority collaborating with other regulatory institutions/organizations/states?	ICASA should collaborate with the following stakeholders:

	Test laboratories- for the purpose of post-market surveillance through MoU. Other regulatory institutions in the SADC- for the purpose of implementing MRAs in order to reduce trade barriers among countries of the SADC. **EU authorities**- to share information and experiences, as the objectives and technical requirements are similar. **Market surveillance authorities of countries with MRAs**- to better identify product types to be targeted by market surveillance surveys.
Question 6 Given table 3, which SDoC scheme/s would best suit the South African market, and why?	We recommend SDoC I and SDoC II schemes, as noted above. However, where ICASA chooses to adopt SDoC I, the registration process must be left entirely to the manufacturers or their representatives who trigger the registration and directly obtain a registration number. We also propose that manufacturers be obliged to retain TCFs for a period of 5 years. See ITI proposal in answer 4. The EU scheme has a long record of efficiency with minimum burden. Market surveillance is critical, especially in proactive campaigns. It prevents non-compliant suppliers from gaining an economic advantage over those that are compliant, while heavier pre-market controls only increase this economic advantage without improving the quality of the products on the market.
Question 7 In your definition/understanding, what ICT equipment can be classified as low risk and may be considered for equipment authorization exemption?	No equipment brought into the country for commercial reasons must be exempted from any equipment authorization scheme. Any product should be subject to a conformity assessment procedure similar to that in the EU and be self-declared, except those with a low level of compliance that should be also registered. The possibility to exempt products already assessed for the EU could be also considered once the new SDoC I and SDoC II procedures are in place for non-radio products, unlicensed radio products and licenced radio products using frequencies harmonized with the ones of the EU. Equipment brought into the country for the following reasons should be exempted:

	a) Scientific studies and researches; b) Sample testing and demonstrations; c) Commercial exhibition, but not for marketing; d) Equipment produced, imported for the purpose of export only; and e) Spare parts, components used for repairs.
Question 8 What are the risks associated with exempting ICT equipment from Approval Framework, and how can they be mitigated or eliminated?	Increased non-adherence to ICASA technical standards by unscrupulous equipment vendors. Similar equipment may be configured to technical standards that are contrary to the local and adopted standards. Increased dumping of sub-standard and dangerous products. May degrade the integrity of the ICT networks. Self-declaration based on a Conformity assessment with auditable data on request, and approval for products with low level of compliance are adequate. The corner stone of mitigation of risks is an effective and efficient market surveillance system. A burdensome pre-market approval without market surveillance has already proven a huge commercial advantage to non-compliant suppliers over compliant suppliers.

Question 9 What would you propose the Authority do to effectively execute its responsibilities on market surveillance considering the current fiscal challenges?	We agree that market surveillance funding is essential; it often requires, training, study visits, inspections, information and communication systems. Test laboratories add additional costs. Part of the resources saved by adjusting the pre-market controls and approvals by implementing a SDoC scheme could be assigned to market surveillance. Part of the funding should come from penalties applied to non-compliant suppliers. However, the mechanism should not have side effects such as compliant suppliers paying for non-compliant suppliers, non-proportionate penalties, excessive controls that unnecessarily drive up payment to labs, etc. A focus on the good actors is necessary for both an efficient protection of the market and for the funding of its authority. This should include review of data on the market (from national statistic offices, Customs data, etc.) including: • Monitoring of accidents (type of equipment, suppliers, etc.); • Follow up of complaints; • Compliance or hazard alert systems; • Relevant information from stakeholders (e.g. consumer protection organizations, etc.); • Information from market surveillance authorities of other countries having regional arrangements (e.g. APEC, EAC, NAFTA, EU, etc.); • Results of previous surveys; • Compliance records of suppliers.
Question 10 What are the prevalent equipment authorisation challenges that may be experienced by manufacturers, distributors, suppliers and retailers post and pre-market surveillance?	ITI opposes pre-export inspections, as they often impede the flow of products from country of origin to the destined country, and lead to delays to market. We believe the proposed Conformity Assessment procedures will provide adequate controls and are sufficient for pre-market surveillance. However, we agree with ICASA's plans to design post market surveillance that provides incentives for compliance and discourages non-compliance. We have proposed a strong post-market surveillance system that is in line with the EU countries best practices and will address the concerns raised by ICASA.