SUBMITTED ELECTRONICALLY

30 January 2019

Subject: **Draft Conformity Assessment Framework For Equipment Authorisation**

Independent Communications Authority of South Africa
FOR ATTENTION:
Mr. Lumkile Qabaka
Private Bag X10,
Highveld Park
0169

Dear Mr. Qabaka,

UL appreciates the opportunity to provide comments on the Independent Communications Authority of South Africa (ICASA) proposed rule outlining "a more robust multilateral Conformity Assessment Framework" for information, communication, and technology (ICT) products that achieve the regulatory objectives of the Electronic Communications Act, 2005.

UL is a premier, global independent safety science company that has championed progress for more than 125 years. Its nearly 16,000 professionals across 44 countries, including South Africa, are guided by the UL mission to promote safe working and living environments for all people. They do so through the application of safety science and hazard-based safety engineering. The application of these principles manifests itself in the evaluation of tens of thousands of products, components, materials, and systems for compliance to specific requirements. UL uses research and standards to continually advance and meet ever-evolving safety needs. We partner with businesses, manufacturers, trade associations and international regulatory authorities to bring solutions to a more complex global supply chain.

UL applauds ICASA's recognition of the important role independent third parties can play in the process of ensuring that covered products fully comply with South Africa's laws and regulations. A conformity assessment framework that aligns with ISO requirements and leverages accredited 3rd party certification bodies is an efficient way to ensure compliance while promoting global trade. UL offers the attached white paper, "Creating an Effective Regulatory Framework for Safety" as well as the "ABC's of Conformity Assessment" by the US National Institute of Standards and Technology as additional resources for ICASA's consideration. UL respectfully submits our thoughts to the specific questions posed by ICASA below.

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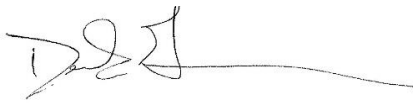
Thank you for your consideration of our position. Please do not hesitate to contact Itani Maligana at +27.10.822.3950 or via email at Itani.Maligana@ul.com if you have any questions regarding UL's comments or if we can provide any additional information.

Sincerely yours,



Derek Greenauer
Director, Global Government Affairs
UL LLC

Attachments

Responses to Issues/Questions Posed by ICASA

1. ***In your view, what are the benefits of having conformity assessment to support the regulations?***

ISO/IEC 170001 defines “conformity assessment” as the "demonstration that specified requirements relating to a product, process, system, person or body are fulfilled". These requirements can be published international standards, country-specific standards or regulations, or basic requirements that a purchaser requires (procurement policies) for a number of attributes including safety, health, security and/or sustainability. UL believes that a robust conformity assessment program offers a number of benefits:

- Engenders confidence in products and services for regulators and purchasers by providing an independent evaluation;
- Reduces costs and raises competitiveness for manufacturers;
- Minimizes government/regulator investment and involvement;
- Provide a uniform basis for trade by assessing the quality and condition of products and services offered for sale

Once the agency determines that there is a need to regulate, industry has to demonstrate compliance, and the agency has to determine how this demonstration will take place. The determination of the method should be based on the objectives and confidence needs of the regulator to fulfill its mission. This will depend on various factors, such as the risks associated with the object of compliance, how likely non-compliance is, what the industry’s track record is, how much trust there is in the supply chain, the societal costs of non-compliance, the agency’s resources and capabilities, among others.

In choosing a conformity assessment approach, UL encourages ICASA to be mindful of the relationship between the type of conformity assessment employed and compliance rates. Consider that the lack of a fully funded market surveillance in a model purely based on a manufacturer’s Self Declaration of Conformance (SDoC) model will likely lead to a high incidence of non-compliant products on the market, which can contribute to health and safety issues and other socio-economic costs. For instance, in Europe, which relies on a true first-party conformity assessment (SDoC) model for consumer products, they have acknowledged the need to “strengthen controls by national authorities and customs officers to prevent unsafe products from being sold to European consumers”:

> “There are still too many unsafe and non-compliant products sold on the EU market: as many as
> 32%of toys, 58% of electronics, 47% of construction products or 40% of personal protective equipment inspected do not meet the requirements for safety or consumer information foreseen in EU legislation. This endangers consumers and puts compliant businesses at a competitive disadvantage”.

UL recognizes that ICASA is not proposing a pure SDoC model as spelled out in Table 1, Procedure II, but a hybrid approach that still leverages accredited test labs and certification bodies. UL welcomes this approach.

2. ***Do you see any benefits in risk profiling and the categorization of equipment in carrying out the conformity assessment?***

Yes, UL believes that regulators should conduct a risk assessment that is based on science to aid in choosing a method of conformity assessment that is most appropriate for meeting a regulatory objective. Conformity assessment activities can be undertaken by first, second or third parties according to the relative risk of non-conformity. Some risk factors that regulators should consider include:

- Science based risk of non-conformity to human health, safety and/or security.
- Documented history of non-compliance to requirements of a particular industry.
- Efficacy of recall systems in ridding the market of non-conforming products.
- Existing legal frameworks, particularly as it relates to liability.

There should not be a one-size fits all approach to choosing a conformity assessment method and the most critical factor that decision making process should be a scientifically-based assessment of the risk of failure.

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?***

The Approval Framework includes some critical steps in developing the appropriate conformity assessment frameworks to support regulation. However, UL recommends that throughout the process, greater attention be paid to engaging the public through regular consultation to increase transparency and enhance the overall process. Specifically, the Framework should consider public consultation in the first, third, fourth, and eighth steps. It will be especially important to solicit stakeholder input in a transparent way during the consideration of conformity assessment options.

4. ***Can you suggest an appropriate conformity assessment approach that can address the current Approval Framework challenges?***

UL believes that ICASA can leverage accredited, third party testing, inspection, and certification organizations to efficiently address the challenges that the current Approval Framework faces. In an ideal world, UL believes that ICASA should mirror the conformity assessment protocols employed in other markets such as Japan, Mexico, and the US. As the products that ICASA regulates are globally traded, the risks of non-compliance are not unique to the South African market. Furthermore, by aligning its approach with these other economies, ICASA will be helping to facilitate the trade of compliant products while also taking advantage of the economies of scale provided by an established global network of accredited third-party organizations.

5. ***In South African context, what are the benefits for the Authority collaborating with other regulatory institutions,/organizations/states?***

As mentioned above, UL strongly believes that ICASA should collaborate with regulators in other countries to align both South Africa's requirements as well as its approach to conformity assessment. Harmonizing these requirements and approaches can offer the following benefits:

- Streamlined certification process resulting in in quicker time to market for manufacturers
- Increase certification capacity
- Reduce resources used by the authority to conduct pre and post-market surveillance
- Get additional knowledge from external organizations
- Facilitates trade in compliant products[1]

6. ***Given Table 3, which SDoC scheme/s would best suit the South African market, and why?.***

As stated above, it is difficult to select a scheme for the South African market until a risk assessment has been conducted. That said, for the reasons mentioned in UL's answers to questions four and five, UL believes that as defined in Table 3, SDoC I is likely the best suited approach for the South African market. This scheme is most similar to the programs operated in other countries (ANATEL in Brazil, FCC in the US, etc…) and provides the necessary level of assurance that products are in compliance.

UL believes that the key attribute that ICASA needs to require, is the use of laboratories that are accredited to ISO/IEC 17025, at a minimum. Additionally, we encourage ICASA to leverage the use of international certification bodies that are accredited to ISO/IEC 17065 as a way to ease the burden on ICASA.

7. ***In your definition/understanding, what ICT equipment can be classified as low risk and may be considered for equipment authorization exemption?***

Per UL's response to a similar question during ICASA's public consultation in 2016, there are a number of cases where an exemption is warranted.

Circumstance appropriate to exempt equipment	**Reason**
a) Scientific studies and researches	For temporal and the limited area use only.
b) Sample testing and demonstrations	For temporal and the limited area use only.
c) Operations of specialized agencies	For the limited area use only.
d) Maritime or aeronautical operations	For the limited area use only.
e) Commercial exhibition, but not for marketing	For temporal and the limited area use only.
f) Equipment produced, imported for the purpose of export only	Not for use in South Africa
g) Spare parts, components used for repairs	If the same part is used in certified product

[1] The World Trade Organization (WTO) Technical Barriers to Trade (TBT) Agreement contains obligations regarding conformity assessment procedures and their use in international trade. The TBT Agreement requires, among other things, that conformity assessment procedures not be "prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade". This means "conformity assessment procedures shall not be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

8. ***What are the risks associated with exempting ICT equipment from Approval Framework, and how can they be mitigated or eliminated?***

The main risk that could result exempting certain ICT products from the framework is noncompliance. In addition, as the Internet of Things (IoT) continues to evolve and encompasses more and more types of products in its web, the proliferation of "smart" products is becoming ubiquitous. For issues like cybersecurity, each new device added to a local network creates an entry point to the IoT. As cybersecurity and interoperability challenges become more pervasive with each new connected product, regulators need to assess the threats that seemingly low-risk products now present. Before making a determination on which products to exempt, UL encourages ICASA to consider all of the risks a type of product presents.

9. ***What would you propose the Authority do to effectively execute its responsibilities on market surveillance considering the current fiscal challenges?***

Market surveillance activities are just one part of an effective, conformity assessment approach. As discussed above the level of market surveillance that is needed will depend on the conformity assessment approach selected. If a purely SDoC model is used, the Authority may need to conduct an extensive market surveillance program to ensure products comply with the requirements. Alternatively, if a third-party conformity assessment program is leveraged, the Authority may be able to dedicate fewer resources to market surveillance needs as products on the market have already demonstrated compliance prior to market entry. In this case, a less aggressive course of action could be pursued. Finally, the Authority may choose to fully leverage third parties and ask them to take on the role of conducting market surveillance as key part of the certification program. This approach is used for safety in the US under the Nationally Recognized Testing Laboratories program administered by the US Occupational Safety and Health Administration (OSHA) as well as for energy efficiency programs such as ENERGY STAR. In each case, it is the responsibility of the accredited certification body to ensure that products that had been certified prior to market entry, continue to comply on an annual basis.

Depending on the risks and levels of confidence needed, post-market related costs may be considerably reduced if an agency leverages third-party conformity assessment. For instance, in 2008, OSHA estimated that implementing a first-party system, in lieu of the current use of accredited third parties, would cost the agency approximately $360 million annually, compared to the approximate $1 million annually required to operate the third-party Nationally Recognized Testing Laboratory (NRTL) program. This differences in potential costs to OSHA are largely driven by OSHA having to fund/conduct surveillance activities versus reliance on the third-party certification bodies themselves.

UL recommends that ICASA address aspects of cost in a comprehensive manner. As discussed above, a requirement for independent third-party conformity assessment (which should be based on risks and level of confidence needed), will in general save agencies resources compared to a post-market approach, where the agency has to fully fund market surveillance to ensure that a first-party model can be successful.

10. ***What are the prevalent equipment authorization challenges that may be experienced by manufacturers, distributors, suppliers and retailers post- and pre-market surveillance?***

Though UL is not a manufacturer, distributor, supplier, nor retailer, we work very closely with each of these stakeholders on a number of issues, particularly helping to provide global market access. UL has come to understand that the universal challenge faced by these stakeholders is time to market. Manufacturers, distributors, suppliers and retailers all desire an efficient, harmonized approach to conformity that does not delay conforming products showing up on the market. UL believes that a globally harmonized approach to conformity assessment can help address this challenge as products could be evaluated one time to a common set of requirements by an accredited third-party and that the results of that evaluation would be globally accepted.