
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
NOTICE 154 OF 2016



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

REGULATIONS ON PROCESSES AND PROCEDURES IN TERMS OF THE
ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005)

The Independent Communications Authority of South Africa hereby amends the Processes and Procedures Regulations for Individual Licences, 2010 (Notice No. 522) of 2010 to the extent reflected in the schedule.

A handwritten signature in black ink, appearing to read 'Batyi', written on a light-colored background.

NOMVUYISO BATYI
COUNCILLOR: ICASA

ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)**REGULATIONS**

The Independent Communications Authority of South Africa has, under section 5(7) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended, made the regulations in the schedule.

SCHEDULE**1. Definitions**

In these regulations “the Regulations” means the regulations published by Government Notice No. 33293, as amended by Government Notice No R. 522 of 14 June 2010.

2. Amendment of regulation 5 of the Regulations

2.1 The following subregulation is hereby inserted in the Regulations, after subregulation (1):

“(1A) Applicants must submit at least five (5) hard copies when filing/submitting an application or registration notice, and must further provide one (1) electronic copy of the documents submitted.

2.2 The following subregulation is hereby inserted in the Regulations, after subregulation (5):

“(5A) The Authority will not consider any application if the applicant is in arrears with respect to any fees prescribed by the Authority or legislated in terms of the Act.”

2.3 Regulation 5 of the Regulations is hereby amended by the substitution for subregulation (6) of the following subregulation:

“(6) The Authority will not consider any document where the applicant fails to comply with subregulations (1A), (1), (2) and (3)”.

3. Amendment of regulation 11 of the Regulations

3.1 Regulation 11 of the Regulations is hereby amended by the addition of the following words:

Application to transfer *or to transfer control* of an individual Licence (Section 13 of the Act)"

3.2 Regulation 11 of the Regulations is hereby amended by the addition of the following subregulation:

(4) "A licence transfer or licence transfer of control application will be evaluated on the basis of the following criteria:

- a. promotion of competition in the ICT sector
- b. interests of consumers; and
- c. equity ownership by HDP's."

3.3 Regulation 11 of the Regulations is hereby amended by the addition of the following subregulation:

“(3) The Authority will not consider an application if the licensee is in arrears with respect to any fees prescribed by the Authority or legislated in terms of the Act”.

4. Insertion of regulation 15 in the Regulations

“15. Publication of the notice for online application process”

The Authority may by means of an Invitation to Apply (ITA), published in the Government Gazette, allow applicants to lodge applications through an online application process on the date to be determined by the Authority.”

5. Insertion of regulation 16 in the Regulations

“16. Contraventions

Any contravention to the Regulations, will result in the Authority not considering the application in terms of the Regulations until such time the applicant remedies the contravention.”

6. Short Title and Commencement

These regulations are called the Amendment Individual Processes and Procedures Regulations 2015 and will come into operation upon publication in the Government Gazette.

7. Substitution of Form C of the Regulations

The following Form of Schedule 1 is hereby substituted for Form C of the Regulations:

“FORM C

APPLICATION TO AMEND AN INDIVIDUAL LICENCE (Regulation 9)

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Note:

- (a) *Applicants must refer to the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the Act”) and any regulations published under that Act with regard to the requirements to be fulfilled by applicants.*
- (b) *Information required in terms of this Form which does not fit into the space provided may be included in an appendix attached to the Form. Each appendix must be numbered with reference to the relevant part of the Form.*
- (c) *Where any information in this Form does not apply to the applicant, the applicant must indicate that the relevant information is not applicable.*

1. PARTICULARS OF LICENCE	
1.1	Licence number:
1.2	Nature of services authorised to be provided in terms of the Licence:
1.3	Attach a copy of the Licence that is the subject of this application. The copy of the Licence must be marked clearly as Appendix 1.3 of FORM C .

2. PARTICULARS OF APPLICANT (LICENSEE)	
2.1	Full name of applicant:
2.2	Designated Contact person:
2.3	Applicant's street address:
2.4	Applicant's principal place of business (if different from street address):
2.5	Applicant's postal address:
2.6	Applicant's Telephone number/s:
2.7	Applicants mobile number/s
2.8	Applicant's Telefax number/s:
2.9	E-mail address of designated contact person:

3. PROPOSED AMENDMENT TO THE LICENCE
3.1 Set out the proposed amendment/s.
3.2 Set out the reasons for the proposed amendment/s to the Licence. If the amendment is with regard to programming, please attach a research undertaken supporting the proposed amendment.
3.3 Explain the implications (if any) of the proposed amendment/s, with specific reference <i>inter alia</i> to the provisions of section 10(1) (a), (b), (c), (d) and (f) of the Act:

4. RADIO FREQUENCY SPECTRUM

4.1 Indicate whether the applicant holds a radio frequency spectrum Licence. If so, provide details thereof and attach a copy of the radio frequency spectrum Licence marked clearly as **Appendix 4.1 of FORM C**:

4.2 In the event that an amendment to the applicant's radio frequency spectrum Licence is necessary, provide details of such an amendment. A separate application to amend the applicant's radio frequency spectrum Licence must be submitted to the Authority in this regard at the same time as this application.

5. UNDERTAKINGS

5.1 Provide details of undertakings (if any) and other matters which, in the applicant's view, the Authority may need to take into consideration:

5.2 Attach a resolution authorising the person (s) not more than two (2) signing this application. The person (s) must liaise with the Authority during the registration process. The resolution must be marked clearly as **Appendix 5.2 of FORM C**.

The person signing the application on behalf of the applicant must acknowledge as follows:

I acknowledge that the Authority reserves the right to have any Licence amended pursuant to this application set aside, should any material statement made herein, at any time, be found to be false.

Signed

(APPLICANT)

I certify that this declaration was signed and sworn to before me at
.....on the day of 20..., by the
deponent who acknowledged that he/she:

1. knows and understands the contents hereof;
2. has no objection to taking the prescribed oath or affirmation; and
3. considers this oath or affirmation to be truthful and binding on his/her conscience.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

(...end of substitution)"

8. Substitution of Form O of the Regulations

The following Form of Schedule 1 is hereby substituted for Form O of the Regulations:

“FORM O

NOTICE OF CHANGE OF INFORMATION IN RESPECT OF AN INDIVIDUAL LICENCE

(Regulation 14 A)

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Note:

- (a) *Applicants must refer to the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the Act”) and any regulations published under that Act with regard to the requirements to be fulfilled by applicants.*
- (b) *Licensees must refer to the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the Act”) and any regulations published under that Act with regard to the requirements to be fulfilled by licensees.*
- (c) *Information required in terms of this Form which does not fit into the space provided may be included in an appendix attached to the Form. Each appendix must be numbered with reference to the relevant part of the Form.*
- (d) *Where any information in this Form does not apply to the licensee, the licensee must indicate that the relevant information is not applicable.*

1. PARTICULARS OF LICENCE
1.1. Licence number:
1.2. Attach a copy of the licence that is the subject of this notice, marked clearly as Appendix 1.2. of FORM O.

2. CHANGE OF INFORMATION PROVIDED IN THE REGISTER
2.1 Indicate whether the updated information relates to:
2.1.1 Name and contact details of the licensee; and/or:
2.1.2 Nature of the service provided by the licensee:

3. PARTICULARS OF LICENSEE		
3.1. Licensee must provide the information requested in this section even where no change has occurred in relation to the licensee's particulars.		<i>Indicate with an X where there is change</i>
3.2. Full name of licensee:		
3.3. Designated contact person: (1)		
3.4. Designated contact person: (2)		
3.5. Licensee's street address:		

3.6. Licensee's principal place of business (if different from street address):		
3.7. Licensee's postal address:		
3.8. Licensee's telephone number/s:		
3.9. Licensee's mobile number/s:		
3.10. Licensee's telefax number/s:		
3.11. E-mail address of designated contact person: (1)		
3.12. E-mail address of designated contact person: (2)		
3.13. Shareholding (A signed letter with the breakdown of the shareholding structure to be changed as Attach as Appendix 3.13)		

4. NATURE OF THE SERVICES PROVIDED BY THE LICENSEE

Where the nature of the services provided by the licensee in terms of the licence has changed, provide updated information on the nature of the service provided:

5. GENERAL

5.1. Provide details of any matter which, in the licensee's view, the Authority should consider: (e.g. shareholding by HDI/HDG/HDP; women; youth; people with disabilities).

5.2. Attach a resolution authorising the person signing this notice. The resolution must be signed by the contact person as per the licence. The resolution must be clearly as **Appendix 5.2.of FORM O.**

5.3. Notifications for change of name must be accompanied by CIPC registration documents. **Attach as Appendix 5.3 of FORM O**

The person signing the application on behalf of the licensee must acknowledge as follows:

I acknowledge that the Authority reserves the right to have any licence amended pursuant to this notice set aside should any material statement made herein, at any time, be found to be false.

Signed (LICENSEE)

I certify that this declaration was signed and sworn to before me aton
the day of 20 ..., by the deponent who acknowledged
that he/she:

- knows and understands the contents hereof;
- has no objection to taking the prescribed oath or affirmation; and
- considers this oath or affirmation to be truthful and binding on his/her conscience.

COMMISSIONER

OF OATHS

Name:

Address:

Capacity:

(...end

of substitution)”

9. Substitution of Form G of the Regulations

The following Form of Schedule 1 is hereby substituted for Form G of the Regulations:

“FORM G

APPLICATION TO TRANSFER OWNERSHIP AND/OR CONTROL OF AN INDIVIDUAL LICENCE

(Regulation 11)

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Note:

- (a) *Applicants must refer to the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the Act”) and any regulations published under that Act with regard to the requirements to be fulfilled by applicants.*
- (b) *Information required in terms of this Form which does not fit into the space provided may be included in an appendix attached to the Form. Each appendix must be numbered with reference to the relevant part of the Form.*
- (c) *Where any information in this Form does not apply to the applicant, the applicant must indicate that the relevant information is not applicable.*

1. PARTICULARS OF LICENCE	
1.1. Licence number/s:	
1.2. Nature of services authorised to be provided in terms of the Licence:	
1.3. Attach a copy or copies of the Licence/s that is the subject of this application. The copy of the Licence must be marked clearly as Appendix 1.3 of FORM G.	

2. PARTICULARS OF THE APPLICANT (LICENSEE)	
2.1. Full name of the applicant:	
2.2. Designated contact person:	
2.3. Applicant's street address:	
2.4. Applicant's principal place of business (if different from street address):	
2.5. Applicant's postal address:	
2.6. Designated contact person's telephone number/s (including mobile):	
2.7. Designated contact person's telefax number/s:	
2.8. E-mail address of designated contact person:	

3. PARTICULARS OF TRANSFEREE	
3.1. Full name of transferee:	
3.2. Designated contact person:	
3.3. Transferee's street address:	
3.4. Transferee's principal place of business (if different from street address):	
3.5. Transferee's postal address:	
3.6. Telephone number/s:	
3.7. Telefax number/s:	
3.8. E-mail address of the designated contact person:	

4. LEGAL FORM OF THE APPLICANT (LICENSEE)	
4.1 Indicate if the applicant is:	
(i) a natural person	
(ii) a partnership	
(iii) a juristic person	
(iv) other (specify)	
4.2 If the applicant is a natural person or a partnership:	
4.2.1 Provide the identity number of the applicants or each partner in the applicant:	
4.2.2 Attach a certified copy of the identity document of the applicant or certified copies of the identity document of each partner in the applicant marked clearly as Appendix 4.2.2 of FORM G , indicating that he or she is a citizen of the Republic, as required by section 5(8) (a) of the Act.	
4.3 If the applicant is a juristic person:	
4.3.1 Indicate the legal form of the applicant (e.g. private company incorporated in terms of the Companies Act, 1973):	
4.3.2 Registration number of applicant:	
4.3.3 Attach certified copies of the applicant's certificate of incorporation and memorandum and articles of association or other constitutive documents of the applicant (e.g. memorandum and articles of association, association agreement, constitution) marked clearly as Appendix 4.3.3 of FORM G , indicating the applicant's compliance with the requirements of section 5(8) (b) of the Act.	

4.4 Where the applicant has been liquidated or sequestrated, provide:	
4.4.1 Liquidator / Executor's postal address:	
4.4.2. Liquidator / Executor's telephone number/s:	
4.4.3. Liquidator/Executor's mobile number/s:	
4.4.4. Liquidator / Executor's telefax number/s:	
4.4.5. Liquidator / Executor's E-mail address:	
4.4.6. Attach an affidavit deposed to by the liquidator or executor, indicating the consent to the transfer of the Licence, marked clearly as Appendix 4.4.5 of FORM G .	

5. LEGAL FORM OF TRANSFEREE	
5.1 Indicate if the transferee is:	
(i) a natural person	
(ii) a partnership	
(iii) a juristic person	
(iv) other (specify)	
5.2 If the transferee is a natural person or a partnership:	
5.2.1 Provide the identity number of the transferee or each partner in the transferee:	

5.2.2 Attach a certified copy of the identity document of the transferee or certified copies of the identity document of each partner in the transferee marked clearly as Appendix 5.2.2 of FORM G , indicating that he or she is a citizen of the Republic, as required by section 5(8) (a) of the Act.	
5.3 If the transferee is a juristic person:	
5.3.1. Indicate the legal form of the transferee (e.g. private company incorporated in terms of the Companies Act, 1973):	
5.3.2. CIPC Registration number of transferee:	
5.3.3. Attach certified copies of the transferee's certificate of incorporation and memorandum and articles of association or other constitutive and/or other governing documents of the transferee (e.g. memorandum and articles of association, association agreement, constitution) marked clearly as Appendix 5.3.3 of FORM G , indicating the transferee's compliance with the requirements of section 5(8) (b) of the Act.	
5.4. If the transferee is not a juristic person but intends to operate as one if this application is granted:	
5.4.1. Provide a written undertaking that the transferee will comply with section 5(8) (b) of the Act marked clearly as Appendix 5.4.1 of FORM G .	

6. OWNERSHIP AND MANAGEMENT OF APPLICANT

6.1 Provide details of all ownership interests in the applicant and the identity and address of each holder of an ownership interest in the applicant. Where an applicant is a juristic person, only shareholdings (or equivalent) of 5% or more of the total issued shares (or equivalent) in the applicant are relevant. **Attach as Appendix 6.1 of FORM G**

6.2 Indicate whether the applicant is listed on any stock exchange, and provide details of any such listing: **Attach as Appendix 6.2 of FORM G**

6.3 In respect of each holder of any ownership interest in any person holding an ownership interest in the applicant, provide the details required in 6.1 in respect of each such holder: **Attach as Appendix 6.3 of FORM G**

6.4 Indicate the extent to which any ownership interest referred to above is held by an historically disadvantaged person

6.5. Indicate whether the holder of any ownership interest in the applicant is a foreign citizen or an entity registered or incorporated in any country other than South Africa:

6.6. Indicate whether any person holding an ownership interest in the applicant holds a Licence issued in terms of the Act or holds an ownership interest in any other licensee licensed to provide a service similar to that to which this application relates:

6.7. Provide particulars of any interest held by the applicant in another licensee licensed in terms of the Act:

6.8. Provide details (including name, nationality, identification or passport number, position and address) of each member of the applicant's:

- (i) board of directors or similar body; and
- (ii) senior management.

Attach as Appendix 6.8 of FORM G

7. OWNERSHIP AND MANAGEMENT OF TRANSFEREE

7.1 Provide details of all ownership interests in the transferee and the identity and address of each holder of an ownership interest in the transferee if a natural person. Where a transferee is a juristic person, indicate all the shareholders and the percentage shares held by each shareholder. **Attach as Appendix 7.1 of FORM G**

7.2	Provide a written undertaking indicating the correctness of the information stated in 7.1 signed off by Accounting Officer clearly marked Appendix 7.1 of FORM G.
7.3	Indicate whether the transferee is listed on any stock exchange, and provide details of any such listing.
7.4	Provide a written undertaking indicating the stated in 7.3 signed off by Accounting Officer clearly marked Appendix 7.3 of FORM G.
7.5	In respect of each holder of any ownership interest in any person holding an ownership interest in the transferee, provide the details required in 7.1 in respect of each such holder.
7.6	Provide a written undertaking indicating the stated in 7.5 signed off by Accounting Officer clearly marked Appendix 7.5 of FORM G.
7.7	Indicate the extent to which any ownership interest referred to above is held by historically disadvantaged groups.
7.8	Provide a written undertaking indicating the stated in 7.7 signed off by Accounting Officer clearly marked Appendix 7.7 of FORM G.
7.9	Indicate whether the holder of any ownership interest in the transferee is a foreign citizen or an entity registered or incorporated in any country other than South Africa:
7.10	Provide a written undertaking indicating the stated in 7.9 signed off by Accounting Officer clearly marked Appendix 7.9 of FORM G.
7.11	Indicate whether any person holding an ownership interest in the transferee holds a Licence issued in terms of the Act or holds an ownership interest in any other licensee licensed to provide a service similar to that to which this application relates:
7.12	Provide a written undertaking indicating the stated in 7.11 signed off by Accounting Officer clearly marked Appendix 7.11 of FORM G.
7.13	Provide particulars of any interest held by the transferee in another licensee licensed in terms of the Act:
7.14	Provide a written undertaking indicating the stated in 7.13 signed off by Accounting Officer clearly marked Appendix 7.13 of FORM G.

7.15	Provide details (including name, nationality, identification or passport number, position and address) of each member of the transferee's: i. board of directors or similar body; and ii. senior management. Attach as Appendix 7.15 of FORM G
8.	SUITABILITY OF TRANSFEREE
8.1	Provide particulars of any Licence held by the transferee in terms of the Act, which has been revoked. Attach as Appendix 8.1 of FORM G
8.2	Provide particulars of any application submitted by the transferee for a Licence in terms of the Act, which was rejected: Attach as Appendix 8.2 of FORM G
8.3	Provide particulars of any application submitted by the transferee for a Licence in terms of the Act which is pending before the Authority: Attach as Appendix 8.3 of FORM G
8.4	Provide details of any action taken in relation to the transferee by the Authority or any other person due to a breach of the Act and related legislation. Attach as Appendix 8.4 of FORM G

8.5	Provide a written undertaking indicating the stated in 8.1, 8.2, 8.3 and 8.4 signed off by Accounting Officer clearly marked Appendix 8.5 of FORM G.
8.6	Provide details of the transferee's 5-year business plan in respect of the application: Attach as Appendix 8.6 of FORM G
8.7	Attach a comprehensive business plan stated in 8.6 clearly marked Appendix 8.7 of Form G.
8.8	Provide separately and mark clearly as Appendix 8.8 of FORM G , copies of the transferee's audited annual financial statements for the previous three years:
8.9	Provide detailed network architecture layout plan and roll-out plans should this application be granted indicating timeframes and roll-out targets clearly marked Appendix 8.9 of FORM G.
8.10	Applicable to Individual ECS/ECNS only: provide detailed proposed commercial agreements to be made available in terms of roaming, interconnection, facilities leasing clearly marked Appendix 8.10 of FORM G

9. OWNERSHIP AND CONTROL BY HISTOICALLY DISADVANTAGED PERSONS, COMPETITION ANALYSIS AND CONSUMER INTEREST

- | | |
|-----|--|
| 9.1 | Provide details of how the parties comply with the 30% ownership and control interest by historically disadvantaged groups clearly marked Appendix 9.1 of FORM G. |
| 9.2 | Provide an independent competition analysis report regarding the impact of this transaction on the relevant market clearly marked Appendix 9.2 of Form G |
| 9.3 | Provide a consumer interest analysis report post the transaction clearly market Appendix 9.3 Form G |

10. REASONS FOR PROPOSED TRANSFER

- | | |
|------|---|
| 10.1 | Provide the detailed reasons for the proposed transfer clearly marked Appendix 10.1 of FORM G. |
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11. APPLICANT'S LICENCE OBLIGATIONS	
11.1	Indicate those obligations of the applicant in terms of the Licence which have been discharged and those which will assumed by the transferee, should this application be granted:
11.2	Provide separately and mark clearly as Appendix 11.2 of FORM G , a written undertaking given by the transferee, through its duly authorised representative, that it will comply with the applicant's Licence obligations in the event of the transfer application being approved by the Authority.
12. UNDERTAKINGS	
12.1	Specify any undertakings which the transferee is prepared to make in order to promote the objects of the Act, should this application be approved by the Authority. Clearly marked as Appendix 12 of FORM G
13. COMPLIANCE WITH CHAPTER 9 OF THE ACT	
<i>This section is only applicable where the Licence to be transferred is in respect a broadcasting service.</i>	
13.1	Indicate whether the transferee is a member of the Advertising Standards Authority or intends to become a member:

13.2 Indicate whether the transferee is a member of a body contemplated in section 54(3) of the Act or intends to become a member:	
13.3 13.3. Indicate whether the transferee is a party, movement, organisation, body or alliance which is of a party-political nature.	
<p>13.4 13.4. Indicate whether the transferee controls a newspaper, and, if so, provide details of:</p> <p>13.4.1 newspaper's circulation figures</p> <p>13.4.2 area in which the newspaper is distributed</p> <p>13.4.3 newspaper's market share.</p>	

14. GENERAL

14.1 Provide details of any other matter of which, in the applicants' view, the Authority should be aware:

14.2 Attach a resolution authorising the persons signing this application to sign this application marked clearly as **Appendix 14.2 of FORM G.**

The persons signing the application on behalf of the applicant and the transferee must acknowledge as follows:

I, the applicant, acknowledge that the Authority reserves the right to have any Licence amended pursuant to this application set aside, should any material statement made herein, at any time, be found to be false.

Signed

(APPLICANT)

I certify that this declaration was signed and sworn to before me at
.....on the day of 20..., by the
deponent who acknowledged that he/she:

1. knows and understands the contents hereof;
2. has no objection to taking the prescribed oath or affirmation; and
3. considers this oath or affirmation to be truthful and binding on his/her conscience.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:

(...end of substitution)"