Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 679 31 January Januarie 2022 No. 45849

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5845

9 771682 584003 45849

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE:

THE GOVERNMENT PRINTING WORKS WILL NOT BE HELD RESPONSIBLE FOR ANY ERRORS THAT MIGHT OCCUR DUE TO THE SUBMISSION OF INCOMPLETE / INCORRECT / ILLEGIBLE COPY.

NO FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.

Contents

No.		Gazette No.	Page No.
GENERAL NOTICES • ALGEMENE KENNISGEWINGS			
Independent Communications Authority of South Africa / Onafhanklike Kommunikasie-owerheid van Suid-Afrika			
793	Electronic Communications Act (36/2005): Explanatory Memorandum on the Amendment of the Processes and Procedures Regulations Class Licences, 2021 as Amended, Regulation 13 ("Form M")	45849	3

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 793 OF 2022

Independent Communications Authority of South Africa
350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion.
Private Bag X10, Highveld Park 0169
Telephone number: (012) 568 3000/1

EXPLANATORY MEMORANDUM ON THE AMENDMENT OF THE PROCESSES AND PROCEDURES REGULATIONS CLASS LICENCES, 2021 AS AMENDED, REGULATION 13 ("FORM M")

1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK

1.1. The Independent Communications Authority of South Africa ("the Authority") has, under section 4 read with section 5 (7) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the ECA"), decided to amend the Regulations regarding the Processes and Procedures for Class Licences ("the Regulations") under Chapter 3 of the Electronic Communications Act, 2005 (No. 36 of 2005).

1.2. The purpose of the amendment is to provide clarity on the Authority's processes and procedures with regards to regulation 13 ("Form M") for Class Licences.

1.3. **Amendment of regulation 13: Licence Exempt Services and Networks**

(a) Regulation 13 is hereby amended by the addition of the following subregulation 13 (3):

(3) A person intending to provide ECS licence exempt services in terms of section 6 of the Act must provide the Authority with a copy of the signed commercial agreement or lease, entered between the registrant and ECS or ECNS licensee (not applicable to PECN), prior to the Authority's consideration of an ECS licence exemption application in terms of Form M."

1.4. In terms of the Act, a reseller is defined as "*a person who -*

(a) acquires, through lease or other commercial arrangement, any electronic communications network service or electronic communications service; and

(b) makes such electronic communications network service or electronic communications service available to subscribers for a fee, whether or not such electronic communications network services or electronic communications services made available by the reseller—

(i) are identical to the electronic communications network service or electronic communications service acquired;

(ii) are packaged, bundled or otherwise re-grouped to form new or varied service offerings;

(iii) are combined, linked or used in connection with electronic communications networks or electronic communications facilities owned by the reseller; or

(iv) add value to such electronic communications network services or electronic communications services, and ''resale'' is construed; accordingly,"

1.5. By definition, a prospective reseller must have a lease or a commercial arrangement with an existing ECS or ECNS licensee.

1.6. The Authority has however noticed that the Regulations did not provide for submission of signed commercial agreement or lease when submitting their registrations for ECS licence exemption required in terms of the Act.

1.7. The reasoning behind the addition of sub-regulation 13 (3) is for the Authority to ensure that persons providing licence exempt services are providing those services in accordance with the Act as well as for the Authority to satisfy itself that resellers provide or intend to provide services obtained from duly licensed entities.

1.8. Therefore, the registration of a reseller, through licence exemption, can only take place if the registrant has entered into a commercial agreement or lease with an ECS or ECNS licensee and the registrant provides the said signed commercial agreement or lease along with the applicable information required in terms of Form M of the Processes and Procedures Regulations.

GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE _____ OF 2022

DRAFT AMENDMENT OF THE CLASS LICENSING PROCESSES AND PROCEDURES REGULATIONS, 2021

LICENCE EXEMPT SERVICES AND NETWORKS (REGULATION 13)

(1) The Independent Communications Authority of South Africa ("the Authority") hereby publishes draft amendments to the Processes and Procedures Regulations for Class Licences, 2021, (Notice No. 144 of 2021) to the extent reflected in the Schedule and invites interested persons to submit written representations on these Draft Amendment Regulations.

(2) A copy of the Draft Regulations will be made available on the Authority's website[1] and the Authority's Library at No. 350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion, (Ground Floor at Block C), between 09h00 and 16h00, Monday to Friday.

[1] http://www.icasa.org.za

(3) Interested persons are invited to make written representations with regard to the Draft Regulations and must be submitted to the Authority by no later than 16h00 on **28 February 2022** electronically (in Microsoft Word) and marked specifically for attention: Mr Peter Mailula. Delivery address: Block B, 350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion. Where possible, written representations should also be emailed to: PMailula@icasa.org.za. Enquiries should be directed to 012 568 -3657; between 09h30 and 16h00, Monday to Friday.

(4) Written representation(s) received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library and such copies will be obtainable upon payment of the prescribed fee.

(5) At the request of any person who submits written representations pursuant to this notice, the Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such presentations or portion (s) thereof.

(6) Persons submitting written presentations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral representations to the Authority.



DR KEABETSWE MODIMOENG
CHAIRPERSON
DATE: 14 / 12 / 2021

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.

1. Definitions

In these regulations "the Regulations" means the regulations published by Government Notice No. R. 526 of 14 June 2010, as amended by Government Notice No. R. 157 of 30 March 2016 and No. R. 144 of 26 March 2021.

2. Amendment of regulation 13 of the Regulations

Regulation 13 of the Regulations is hereby amended by the addition of the following sub-regulation (3):

"(3) A person intending to provide ECS licence exempt services in terms of section 6 of the Act must provide the Authority with a copy of the signed commercial agreement or lease, entered between the registrant and ECS or ECNS licensee (not applicable to PECN), prior to the Authority's consideration of an ECS licence exemption application in terms of Form M."

3. Short Title and Commencement

These Regulations are called the Class Licensing Processes and Procedures Third Amendment Regulations, 2021 and will come into operation upon publication in the Government Gazette.

4. Substitution of Form M of the Regulations

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

"FORM M

LICENCE EXEMPT SERVICES AND NETWORKS

(Regulation 13)

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

Note

(a) Registrant must refer to the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the Act") and any regulations published under the 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 must be attached to the Form as an appendix. 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 in the Form is not applicable.

1. PARTICULARS OF REGISTRANT	
1.1. Full name of the registrant:	
1.2. Designated contact person:	
1.3. Registrant's principal place of business:	

1.4. Registrant's postal address:	
1.5. Registrant's telephone number/s: (including mobile):	
1.6. Registrant's telefax number/s:	
1.7. E-mail address of designated contact person (maximum of two):	

2. **LEGAL FORM OF THE REGISTRANT**	
2.1. Indicate the legal form of the registrant (e.g., private company incorporated in terms of the Companies Act, 2008):	
2.2. Registration number of the registrant:	
2.3. Attach certified copies of identity document/s, the certificate of registration and memorandum and articles of association or other founding documents of the registrant (e.g., memorandum and articles of association, constitution) marked clearly as **Appendix 2.3.** of **FORM M**, indicating the registrant's compliance with the requirements of section 5 (8)(b) of the Act.:	

3. NATURE OF SERVICES TO BE AUTHORISED	
3.1. Indicate if the service to be provided is:	
(i) an electronic communications network service; or	
(ii) an electronic communications service	

3.2. Indicate the form of licence exemption being sought with reference to the categories of licence exemption as set out in the Licence Exempt Regulations.	
3.3. Provide the description of the service to be provided, the manner in which	
it is to be provided and provide a detailed explanation of the purpose for which the service is to be provided.	
3.4. Indicate the geographic area in which the service is to be provided.	
3.5. Provide the Authority with a copy of the signed commercial agreement or lease, entered between the registrant and the ECS or ECNS licensee, (not applicable to PECN). Attach a copy of the agreement marked clearly as **Appendix 3.5 of FORM M**.	

4. RADIO FREQUENCY SPECTRUM
4.1. Indicate if the registrant holds any radio frequency spectrum licence in respect of radio frequency spectrum to be utilised for the purpose of providing the services for which authorisation is sought in terms of this registration. Attach a copy of any such radio frequency spectrum licence marked clearly as **Appendix 4.1 of FORM M.**
4.2. Indicate if the registrant has submitted or intends to apply for a radio frequency spectrum licence for the provision of the services to which this registration relates. Furthermore, indicate the frequency band which is proposed to be utilised for the purpose of providing the service.

5. GENERAL
Attach a resolution authorising the person signing this registration to sign and mark it clearly as **Appendix 5** of **FORM M**.

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

I acknowledge that the Authority reserves the right to have any licence transferred 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

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

This gazette is also available free online at **www.gpwonline.co.za**