

IN EXERCISE of the powers conferred by sections 27 of the Kenya Information and Communications Act, 1998, the Minister for Information and Communications, in consultation with the Communications Commission of Kenya, makes the following Regulations:—

**THE KENYA INFORMATION AND COMMUNICATIONS
(IMPORTATION, TYPE APPROVAL AND DISTRIBUTION OF
COMMUNICATIONS EQUIPMENT) REGULATIONS, 2010**

1. Citation.

These Regulations may be cited as the Kenya Information and Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2010.

2. Interpretation.

In these Regulations, unless the context otherwise requires—

“communication equipment” means telecommunication equipment, radio communication equipment or broadcasting apparatus;

“national standards” means the Kenya standards established by consensus and approved by the Kenya Bureau of Standards, that provide, for common and repeated use, rules, guidelines or characteristics for products and services and related processes or production methods, aimed at achieving the optimum degree of order in a given context including terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method;

“operating network” means a network that can carry communications traffic in the form of voice or data;

“service provider” means a person providing communication services under the Act;

“type acceptance” means the process of evaluating communications equipment that has been type approved by a recognized foreign national regulatory authority with a view to ensure conformity of such equipment to national standards;

“type approval” means a method of checking the compatibility of communications equipment with any operating communication network and the conformance of

such equipment to national standards.

3. Equipment subject to type approval.

(1) All communications terminals, network equipment and communications equipment to be used for connection or access to the public operating communication networks, wireless communications equipment and radio communications equipment intended to be connected directly or to inter work with a communications network in Kenya to send, process or receive information shall prior to their use be submitted for type approval or type acceptance by the Commission.

(2) The Commission shall grant type approval for each type of equipment once, and subsequent users of the same type of equipment shall not apply to the Commission for approval.

(3) Notwithstanding paragraph (2), where there is a change of model, design or specification of equipment which had been type approved by the Commission, the equipment shall be re-submitted for type approval.

(4) The Commission shall conduct type approval in accordance with the procedures for type approval of communication equipment in Kenya as it publishes from time to time.

4. Application for type acceptance.

A service provider shall submit its application for approval or type acceptance of communications equipment in prescribed forms issued by the Commission.

5. Evaluation.

(1) The Commission may not return to an applicant any samples of equipment and associated literature submitted for the purpose of type approval or acceptance.

(2) The Commission shall evaluate an application and communicate its decision to the applicant within sixty days from the date of receipt of the application.

(3) Where the Commission does not communicate its approval or refusal within the period prescribed in paragraph (2), the Commission shall be deemed to have approved the application.

6. Type acceptance.

(1) The Commission may type accept any equipment that has been granted type

approval from another country or jurisdiction that is recognized by the Commission.

(2) Notwithstanding paragraph (1), an applicant for type acceptance shall submit a sample or samples of the equipment and copies of test results and type approval certificate from that country or jurisdiction at the time of the submission of the application for provisional acceptance.

(3) The Commission may, on its own initiative or upon an application by a service provider, conduct inquiries to determine whether technical standards from other countries or jurisdictions should be recognized in Kenya for purposes of exempting any equipment from type approval or testing requirements.

7. Provisional type approval.

(1) Any person may submit equipment for provisional type approval by the Commission.

(2) Notwithstanding paragraph (1), licensed vendors shall submit equipment intended for commercial purposes for type approval.

(3) Where the Commission has determined that equipment that is the subject of an application for provisional type approval complies with the provisional type approval requirements, the Commission may grant provisional type approval for a period not exceeding six months on such terms and conditions that it may determine.

(4) When granting provisional type approval to equipment, the Commission may, where it considers it necessary, limit the number of units of that equipment that an applicant can hold and utilize until the final type approval is granted.

8. Final type approval.

(1) An application for final type approval shall be made before the expiry of the provisional type approval period and shall indicate the date of grant of provisional approval.

(2) No provisional type approval shall lapse or expire while an application for final type approval is pending at the Commission.

(3) The Commission shall grant final type approval where it is satisfied that the grant of the final type approval-

(a) is in the public interest; and

(b) will not lead to harmful interference to any communications and radio communication network or be a risk to human health or the environment.

(4) The Commission shall inform the applicant in writing of the final type approval of equipment or apparatus.

(5) Where the Commission is of the view that an equipment or apparatus should not be type approved, it shall notify the applicant, in writing, of its decision and state the reasons for the refusal.

(6) The Commission shall, from time to time, publish a list of all type approved equipment.

9. Technical evaluation.

(1) The Commission shall carry out technical evaluation of equipment by document examination and where applicable laboratory testing of equipment sample, and in accordance with the procedures for type approval and acceptance of communication equipment in Kenya which the Commission shall publish from time to time.

(2) The samples of equipment submitted shall be—

(a) in a good working condition;

(b) properly configured for testing and complete with the necessary test adapters; and

(c) clearly marked with the trade name, model and serial number.

(3) Where the Commission requires clarification on the technical details or other specifications of the equipment submitted for type approval or acceptance, it shall notify the applicant and require the applicant to respond in the required manner within the time specified by the Commission.

(4) An application for type approval or type acceptance shall be rejected or deemed to have been rejected by the Commission if the applicant fails to respond within three months from the date of the Commission's request for details or clarifications.

10. Type approval certificate

(1) The Commission shall issue a provisional or final type approval certificate to the successful applicant for a specific model of equipment.

(2) The communication equipment to be sold or used shall be of the same model that was granted the type approval and not modified in any way without the approval of the Commission.

(3) The grant of type approval under this Regulation shall not be construed as a guarantee for the proper functioning, performance or quality of the equipment by the Commission.

(4) A supplier, importer or distributor shall ensure that the approved equipment inter-works properly with the public electronic communication network.

(5) The Commission shall not be liable for interference caused to other equipment, injury, or loss of life, or damage to property, arising as a direct or indirect result of the use of any approved equipment.

(6) Where there is doubt relating to the interpretation of a type approval specification, the method of carrying out the test or the validity of the statements made by the manufacturers of the equipment, the interpretation of the Commission shall be final.

11. Connection of type approved terminals to the public electronic communications network.

(1) A supplier, importer or distributor shall, before selling any communication equipment, ensure that the equipment meets the standards and specifications set out by the Commission and is compatible with the public communications networks.

(2) A service provider shall not connect type approved communication equipment to public networks before the equipment is inspected by the Commission and network operators.

(3) A network operator shall not have the right to refuse connection to type approved equipment.

12. Type approval label for terminal or network equipment.

(1) A service provider shall affix a type approval label in its entire communications terminal or network equipment.

(2) Every supplier, importer or distributor shall ensure that all equipment offered for sale or private use have valid type approval or type acceptance certificates issued by the Commission and is clearly affixed with a type approval label issued by a recognized Commission containing-

(a) the logo of the Commission;

(b) the type of the equipment; and

(c) the alphanumeric identifications of the equipment.

13. Revocation of type approval of device.

(1) The Commission may, on its own motion or upon a complaint by any person, conduct investigations regarding the operation or use of equipment or apparatus that has been granted provisional or final type approval and may revoke the type approval where it is satisfied that-

(a) the holder of a final or provisional type approval certificate has violated its conditions; or

(b) the equipment or apparatus is causing or is likely to cause harmful interference to communications network or is a risk to human health or the environment.

(2) Any person who is aggrieved by the decision of the Commission made under this Regulation may appeal to the Appeals Tribunal.

14. Complaint procedure.

(1) Any person may make a complaint in respect of the working of any equipment that has been type approved or object to the type approval of any equipment by submitting a complaint or objection to the Commission in writing stating-

(a) the name and address of the complainant;

(b) the name and address, if known, of the person against whom the complaint is made; and

(c) the facts, including supporting data, where available, showing that the

apparatus does not conform to these Regulations and that the apparatus may cause harmful interference to communications network or is a risk to human health or the environment.

(2) The Commission shall forward a copy of the complaint or objection to the applicant or holder of a type approval certificate and give the applicant or holder an opportunity to give evidence to rebut the complaint or objection.

(3) The Commission shall consider any complaint or objection received when considering the application for type approval or in evaluating the operation of equipment for that has been granted type approval.

15. Installation of approved equipment.

(1) No person other than a communications technician registered with the relevant regulatory authority shall install type approved equipment.

(2) Notwithstanding paragraph (1), where the installation is done by any other person, the installation shall be certified by a communications engineer registered with the relevant regulatory authority.

16. Exemptions from type approval.

The Commission may, where it deems expedient, exempt any communications equipment that is temporarily imported into Kenya for re-export from type approval requirements.

17. Conditions for importation and distribution.

(1) A person shall not supply, import or distribute electronic communications equipment unless that person has a licence granted by the Commission.

(2) A licensed supplier, importer or distributor of electronic communications equipment shall ensure that-

(a) the equipment is type approved by the Commission; and

(b) customers for radio communications equipment have radio communications licences from the Commission.

(3) Notwithstanding paragraph (1), a person may import into Kenya any type approved terminal electronic communication equipment where the equipment is solely for personal use.

(4) A person shall not sell electronic communication equipment sell at a place other than a shop or a distribution centre of a licensed supplier, importer or distributor.

18. Lists of equipment.

(1) The Commission shall from time to time publish a list of prohibited equipment.

(2) A service provider shall not supply, import or distribute for use any equipment prohibited by the Commission.

19. Re-exportation of equipment.

(1) A supplier, importer or distributor who wishes to import and re-package equipment for re-exportation or transshipment shall apply for a permit from the Commission.

(2) Prior to the importation of any equipment under this regulation, the supplier, importer or distributor shall furnish or cause to be furnished to the Commission full particulars of the respective equipment and the business the supplier, importer or distributor is involved in.

(3) A supplier, importer or distributor who imports and repackages equipment for re-exportation or transshipment, equipment imported without a permit issued under paragraph (1) commits an offence.

20. Capacity of the importer or distributor.

The Commission shall not issue a permit to a supplier, importer or distributor unless the Commission is satisfied that the supplier, importer or distributor -

- (a) is capable of conducting the business;
- (b) has qualified and competent technical and supporting staff;
- (c) has a suitable shop or distribution centre; and
- (d) meets any other criteria determined by the Commission.

21. Import and sale restrictions.

The Commission may in consultation with the relevant Government agencies, restrict the importation or sale within Kenya of any communications or other

apparatus, where it is of the opinion that the equipment or apparatus may cause damage or harmful interference to communications networks or is a risk to human health or the environment.

22. Power to inspect.

An authorized officer of the Commission may at reasonable times enter premises on which a supplier, importer or distributor is keeping imported communications equipment for the purposes of inspecting the equipment.

23. Disposal of equipment.

(1) The equipment which has been brought for type approval and which due to destructive tests or other reasons the Commission determines as not being suitable for return to the applicant, may be destroyed by the Commission after giving thirty days notice for objection to the applicant.

(2) A person who is aggrieved by the decision of the Commission made under this Regulation may appeal to the Tribunal.

24. Offence and Penalty.

(1) A person who deals in or uses equipment without type approval or acceptance in accordance with these Regulations commits an offence.

(2) A person who is convicted of an offence shall on conviction be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

25. Revocation of Part VIII of LN 68 of 2001.

Part VIII of the Kenya Communications Regulations 2001 is revoked.

Dated the 14th April, 2010

*Samuel Poghiso,
Minister for Information and Communications.*