

LEGAL NOTICE NO. 130 OF 2016

THE ELECTRONIC COMMUNICATIONS ACT, 2013

(At No. 9 of 2013)

THE ELECTRONIC COMMUNICATIONS (IMPORTATION, TYPE APPROBAL AND DISTRIBUTION OF COMMUNICATIONS EQUIPMENT) REGULATION, 2016

(Under Section 40)

In exercise of the powers conferred by Section 40 of The Electronic Communications Act, 2013, the Minister for Information, Communications and Technology makes the following Regulations –

ARRANGEMENT OF REGULATIONS

PART I

PRELIMINARY PROVISIONS

1. Citation and commencement
2. Interpretation
3. Purpose of these Regulations
4. Application of these regulations

PART II

PROCEDURES

5. Equipment subject to type approval
6. Exemption from type approval
7. Application for type approval
8. Evaluation
9. Type acceptance
10. Provisional type approval
11. Final type approval
12. Equipment imported for personal use
13. Type approval certificate

PART III

APPLICABLE STANDARDS

14. Installation of approved equipment
15. Type of Approval Label

PART IV

CONDITIONS FOR IMPORTATION AND DISTRIBUTION

- 16. Conditions for importation and distribution
- 17. Re-exportation of equipment

PART V

TYPE APPROVAL FEES

- 18. Type approval Fees

PART VI

ENFORCEMENT

- 19. Complaint procedure
- 20. Power to inspect
- 21. Revocation of type approval of communications equipment
- 22. Disposal of equipment
- 23. Offences and penalties
- 24. Schedule

PART I

PRELIMINARY PROVISIONS

Citation and commencement

- 1. (1) These Regulations may be cited as The Electronic Communications (Importation, Type Approval and Distribution of Communications Equipment) Regulations, 2016.

(2) These Regulations shall come into force on the date of publication in the Government gazette.

Interpretation

- 2. In these Regulations, unless the context otherwise requires –

“communication equipment” means radio equipment, telecommunications terminal equipment or broadcasting terminal equipment and apparatus;

“national standards” means the standards established by the Swaziland Standards Authority;

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

“personal use” means private individual use, not for commercial gain.

“provisional type approval” means a type approval procedure in terms of regulation 8 of these regulations for equipment to be used for trial, research and demonstrations on a non-commercial basis.

“type acceptance” means the process of evaluating communication equipment or a device or a system, that has been type approved by a recognised foreign national regulatory authority with a view to ensure conformity of such equipment to national standards;

“type approval” and “final type approval” means a process by which communication equipment or a device or system is authorised by the Commission to be used in Swaziland or imported into Swaziland and involves verification of the equipment, device or system’s compliance with the applicable standards and other regulatory requirements.

“type approval certification” means a certificate issued by the Commission confirming compliance of the equipment to the prescribed standards determined by the Commission.

“type approval fees” means fees relating to type approval as set out in the First Schedule of these regulations.

“supplier” means a manufacturer, importer or distributor of equipment registered with the Commission and issued with a General Licence for the Installation and Maintenance, Distribution and Sale of Equipment in terms of the Licensing Regulations made under the Act.

Purpose of these Regulations

3. The purpose of these regulations is to –
 - (a) provide a framework for the type approval of communication equipment, devices and systems;
 - (b) specify the fee framework with respect to equipment type approval;
 - (c) protect the integrity of networks;
 - (d) protect consumers; and
 - (e) avoid harmful interference.

Application of these Regulations

4. (1) These Regulations shall apply to verification, registration, certification, acceptance and authorisation of communications equipment and devices to be used or imported into the Kingdom of Swaziland.
- (2) All equipment that has been type approved in Swaziland prior to the promulgation of these regulations will remain type approved pursuant to these regulations.

PART II

PROCEDURES

Equipment subject to type approval

5. (1) All communications equipment shall prior to its 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 be required to apply to the Commission for approval.
- (3) The Commission shall maintain a list of type approved equipment, which will be available upon request.

(4) Notwithstanding sub-regulation (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.

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

Exemptions from type approval

6. The Commission may, at its discretion, exempt any communications equipment that is temporarily imported into Swaziland for re-export from type approval requirements.

Application for type approval

7. (1) An application for approval of communications equipment shall be submitted in the prescribed forms issued by the Commission and shall be accompanied by –
 - (a) test reports confirming compliance with the relevant standards;
 - (b) technical, physical, operational, installation and user information;
 - (c) software and firmware version numbers for the equipment being type approved;
 - (d) proof of payment of the prescribed type approval fee.
- (2) A test report referred to in sub regulation 7(1)(a) is only valid if –
 - (a) it was prepared for the equipment for which type approval is being applied for;
 - (b) no modifications have been made to the equipment following the completion of the test report;
 - (c) it has been issued by an authorised test laboratory;
 - (d) it has been submitted in full and may not be modified by the applicant; and
 - (e) it is not older than 5 (five) years.
- (3) The Commission will not return any samples of equipment and associated literature submitted for the purpose of type approval or acceptance to the applicant.
- (4) The Commission may, where it deems it necessary, request the applicant to submit additional supporting documents.

Evaluation

8. (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 Swaziland 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 two months from the date of the Commission's request for details or clarifications.

(5) The Commission shall evaluate an application and communicate its decision to the applicant within sixty days from the date of receipt for details or clarifications.

(6) A successful outcome will result in the Commission issuing a type approval certificate, and an unsuccessful outcome will result in the Authority issuing a letter containing reasons for the rejection of the application.

(7) The applicant may, after addressing the issues stipulated in the rejection letter, resubmit its application to the Commission.

(8) The Commission may grant type approval where it is satisfied that the grant of the 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.

Type acceptance

9. (1) The Commission may accept any equipment that has been granted type approval from another country or jurisdiction that is recognised by the Commission, which list of equipment shall be published by the Commission, and may be reviewed from time to time.

(2) Notwithstanding paragraph (1), an applicant for type acceptance shall apply for type acceptance and shall submit –

(a) a sample or samples of the equipment;

(b) copies of test results; and

(c) type approval certificate from that country or jurisdiction as part of an application to the Commission for type acceptance.

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

Provisional type approval

10. (1) The Commission may award an applicant provisional type approval for up to 6 (six) months in the event that the applicant would like to use the communications equipment for –

(a) Trial, research and demonstration on a non-commercial basis;

(b) Test equipment at an authorised testing lab in Swaziland.

- (2) When requesting provisional type approval, the applicant shall submit information regarding –
 - (a) the purpose and duration of the test, trial, research or demonstration;
 - (b) the geographic location of the test, trial, research or demonstration;
 - (c) the number of units to be tested;
 - (d) technical details of the units to be tested;
 - (e) details of the proposed recipients of the units; and
 - (f) proof of payment of the applicable fee.

(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) The applicant shall submit the test, trial, research, or demonstration report to the Commission within 30 days of the lapsing of the period for the provisional type approval.

(5) The communications equipment that is awarded provisional type approval in terms of sub-regulation (1) shall be used exclusively by the applicant and the persons identified as recipients in the application.

(6) 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 utilise.

(7) In the event that the applicant does not wish to apply for final type approval within or after the provisional type approval period, the applicant is obliged to ensure that all units that were deployed or used are withdrawn at the applicant's own costs and within 30 (thirty) days from the lapse of the provisional type approval period.

Final type approval

11. (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 and shall comply with the requirements of sub-regulation 7(1).

(2) A provisional type approval shall not lapse or expire while an application for final type approval is pending at the Commission.

Equipment imported for personal use

12. (1) Equipment imported into Swaziland for personal use by an individual shall be declared at the Swaziland revenue Authority and be subjected to the approval processes of the Commission.

(2) Equipment which does not meet the technical standards shall be confiscated and destroyed.

(3) An individual importing equipment for personal use is limited to 10 (ten) units per year.

Type approval certificate

13. (1) The Commission shall issue a provisional or final type approval certificate to the successful applicant for a specific model of equipment.
- (2) A type approval certificate, excluding a provisional type approval certificate, is valid for an unlimited duration provided that –
- (a) no modifications are made to the equipment with respect to brand, product name, model and function as recorded on the type approval certificate and the type approval register;
 - (b) there are no significant changes to the technical specifications of the equipment and includes, but is not limited to –
 - (i) the operating frequency band;
 - (ii) RF power and technical standards on which basis the equipment was type approved.
- (3) The equipment or apparatus 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.
- (4) 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.
- (5) A supplier shall ensure that the approved equipment works properly with the public electronic communication network, where applicable.
- (6) 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.
- (7) 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.

List of equipment

14. (1) The Commission shall from time to time publish a list of prohibited equipment.
- (2) A person shall not supply, import or distribute for use any equipment that is not on the list or that is prohibited by the Commission.

Type approval label

15. (1) A type approval label shall be affixed to all communications terminal or network equipment.
- (2) Every supplier 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 or approved by the Commission containing –
- (a) the logo of the Commission, or a recognised authority as may be specified by the Commission;
 - (b) the type of equipment; and

- (c) the alphanumeric identification of the equipment.

PART III

CONDITIONS FOR IMPORTATION AND DISTRIBUTION

Conditions for importation and distribution

16. (1) A person shall not supply, import or distribute radio communications equipment unless that person has a licence granted by the Commission as specified in Section 41(1) of the Act.
- (2) A licensed supplier 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 Swaziland any type approved terminal equipment where the equipment is solely for personal use.
- (4) A person shall not sell communications equipment at a place other than a shop or a distribution centre of a licensed supplier.

Re-exportation of equipment

17. (1) A supplier who intends 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 communications equipment under this regulation, the supplier shall furnish or cause to be furnished to the Commission full particulars of the respective equipment and the business the supplier is involved in.
- (3) A supplier who imports and repackages equipment for re-exportation or transshipment, communications equipment imported without a permit issued under paragraph (1) commits an offence.

PART IV

TYPE APPROVAL FEES

Type Approval Fees

18. (1) The Commission shall charge type approval fees in terms of the Schedule of these Regulations.
- (2) Type approval fees are payable upfront and are non-refundable.
- (3) The Commission may amend the Schedule annually by notice published in the Government Gazette.

PART V

ENFORCEMENT

Complaint procedure

19. (1) A 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 communication equipment does not confirm to these regulations and that the communication equipment 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.

Power to inspect

- 20. An authorised officer of the Commission may at reasonable times enter premises on which a supplier is keeping communications equipment for the purpose of inspecting the equipment.

Revocation of type approval of communication equipment

- 21. (1) The Commission may, on its own motion or upon a complaint by any person, conduct investigations regarding the operation or use of communications equipment that has been granted provisional or final type approval and may revoke the type approval where it is satisfied that –
 - (a) Any of the conditions of sub regulation 10(2) are violated or
 - (b) The holder of a final or provisional type approval certificate has violated its conditions; or
 - (c) The communications equipment is causing or is likely to cause harmful interference to communications network or is at risk to human health or the environment.

(2) All equipment that is subject of a revoked type approval certificate shall be withdrawn from the market at the cost of the supplier responsible for placing the equipment in the market within thirty (30) days of the notification date.

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

Disposal of equipment

- 22. (1) The communications equipment which has been submitted to the Commission 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.

Offences and penalties

- 23. A person who deals in or uses equipment without type approval or acceptance in accordance with these Regulations commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20,000) or to two years imprisonment.

SCHEDULE**EQUIPMENT TYPE APPROVAL FEES****1. APPLICATION FEES**

	FEE (EMALANGENI)
TELECOMMUNICATIONS TERMINAL EQUIPMENT (TTE)	4000 (FOUR THOUSAND)
RADIO EQUIPMENT (RF)	4000 (FOUR THOUSAND)
UNTESTED VARIANT	2000 (TWO THOUSAND)
TESTED VARIANT	2000 (TWO THOUSAND)
BADGE ENGINEERING	4000 (FOUR THOUSAND)
LABELS (PACKETS OF 500)	500 (FIVE HUNDRED)
PROVISIONAL TYPE APPROVAL	2000 (TWO THOUSAND)

2. MISCELLANEOUS FEES

	FEE (EMALANGENI)
ADMINISTRATIVE MODIFICATIONS TO CERTIFICATE (E.G TRANSFER, NAME CHANGE ADDRESS CHANGE)	500 (FIVE HUNDRED)
RE-ISSUE OF ORIGIN CERTIFICATE FOR APPROVED EQUIPMENT	250 (TWO HUNDRED AND FIFTY)
ADMINISTRATIVE AND TECHNICAL MODIFICATIONS	500 (FIVE HUNDRED)

DUMISANI NDLANGAMANDLA

MINISTER FOR INFORMATION, COMMUNICATIONS AND TECHNOLOGY