

# Icasa publishes final regulations to transform the ICT sector

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The Independent Communications Authority of South Africa (Icasa) has published final regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDGs) and the Application of the ICT Sector Code (the final regulations).



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The final regulations clarify and expand on, certain key requirements which were contained in draft regulations published in February 2020. We have unpacked some of the key components of the final regulations below.

## What is the overall purpose of the final regulations?

The final regulations are aimed at facilitating transformation and diversity in the ICT sector. Emphasis is placed on promoting broad-based black economic empowerment (B-BBEE), giving attention to the needs of women, and creating opportunities for youth and for persons with disabilities in the ICT sector.

## How do the final regulations impact class licensees?

Class licensees are only required to comply with the 'minimum' B-BBEE contributor status level requirement - i.e. must be at least a Level 4 contributor. However, a class licensee does not need to maintain its Level 4 contributor status. This requirement will only be interrogated by Icas when the class licensee renews, transfers or amends its class licence. There

are no other ownership equity requirements applicable to class licensees.

## How do the Final Regulations impact individual licensees?

The final regulations include ownership requirements relating to both HDGs and black people. A minimum of 30% of the individual licensee's ownership equity must be held by HDGs - the HDG Equity Requirement. The licensee will be required to provide Icasa with proof of its compliance with the HDG Equity Requirement on an annual basis and when making any kind of application pertaining to the licence. The Final Regulations state that this requirement will be determined using the "Flow-Through Principle" (as defined in the B-BBEE Codes).



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In addition to the HDG Requirement, 30% of an individual licensee's ownership equity - as determined using the Flow-Through Principle - must be held by Black people (the Black Equity Requirement).

While the Final Regulations require an individual licensee to comply with both the Black Equity Requirement and the HDG Requirement, the regulations recognise that compliance with the Black Equity Requirement will also constitute compliance with the HDG Equity Requirement.

An individual licensee must also achieve and maintain at least a Level 4 B-BBEE Contributor Status Level. The licensee will, as with the HDG Equity Requirement, be required to provide Icasa with proof of its compliance with the Black Equity Requirement on an annual basis and when making any kind of application pertaining to the licence.

## **How do class licensees and individual licensees prove compliance with the final regulations?**

An individual licensee must prove compliance with the HDG Equity Requirement and the Black Equity Requirement by way of a B-BBEE verification certificate and/or a credible assurance report issued by a SANAS-recognised and accredited verification agency.

Individual licensees and class licensees that are exempted micro-enterprises (EMEs) - i.e. an entity with annual total revenue of R10m or less - or qualifying small enterprises (QSEs) - i.e. an entity with annual total revenue of between R10m and R50m - can provide a sworn affidavit or certificate from the Companies and Intellectual Property Commission to confirm their annual total revenue; B-BBEE Contributor Status Level; and, in the case of individual licensees, compliance with the Black Equity Requirement.

Is there any requirement to notify Icasa or obtain Icasa's approval to transfer a licence or an interest in a licensee to another party?



Peter Greal

Icasa must be notified if a transfer or multiple transfers over a 24-month period result, directly or indirectly, in a decrease in the number of shares held by HDGs or black people in an individual licensee by 5% or more of the issued share capital of the licensee. Further, the notification must be given to Icasa if the rights attaching to the shares held by HDGs or black people are diluted.

Therefore, any direct or indirect transfer of interest - or multiple transfers of interest - in an individual licensee that meets the above criteria will trigger a notification requirement.

### **When do current licensees need to comply with the final regulations?**

Class licensees, EMEs and QSEs have until 31 March 2025 to comply with the Final Regulations. Individual licensees with annual total revenue of R50m or more have until 31 March 2024 to comply with the Final Regulations.

However, during the transitional period, licensees must comply with prescribed B-BBEE requirements - contained in the final regulations - on an annual basis, as well as minimum B-BBEE Contributor Status Levels.