

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 3218

23 May 2025

**ELECTRONIC COMMUNICATIONS ACT, 2005
(ACT NO. 36 OF 2005)****PROPOSED POLICY DIRECTION TO THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

- 1.1 The Minister of Communications and Digital Technologies intends to issue the proposed Policy Direction in the Schedule to the Independent Communications Authority of South Africa in terms of section 3 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).
- 1.2 The objectives of this policy direction are to give effect to existing national and sector policy pertaining to the rollout of broadband and the bridging of the digital divide. In addition, the Minister wishes to give effect to the objectives of the Act, including the objectives to: (i) encourage investment, including strategic infrastructure investment, and innovation in the communications sector; (ii) promote competition within the ICT sector and (iii) promote, facilitate and harmonise the achievement of the objects of legislation related to the Act.
- 1.3 To accomplish these objectives, it is necessary for regulatory certainty and consistency to apply to members of the ICT Sector, including the holders of licences under the Act. Consequently, there is a need to harmonise the requirements and provisions of the Act with other legislation that applies to the recognition of ownership of members of the ICT Sector, including the Amended Broad-Based Black Economic Empowerment (B-BBEE) ICT Sector Code.
- 1.4 The achievement of these objectives will require ICASA to implement certain amendments to regulations promulgated by it in order to meet the imperatives of other national laws.
- 1.5 Interested persons are invited to provide written comments on the proposed Policy direction, within 30 working days of the date of publication, addressed to –

The Director-General, Department of Communications and Digital Technologies For attention: Mr. A Mmoto, Chief Director
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2. An interested person making a written submission is deemed to have consented to its disclosure to a requester, except if otherwise requested by such interested person based on one of the grounds for refusal of access to records as provided in the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

3. Comments received after the closing date may be disregarded.



MR. SOLLY MALATSI, MP
MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES
DATE: 21 May 2025

SCHEDULE

PROPOSED POLICY DIRECTION TO THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ON BROAD-BASED BLACK ECONOMIC EMPOWERMENT

1. Background

- 1.1 The purpose of this policy direction is to clarify the Department of Communications and Digital Technologies' position on broad-based black economic empowerment including the recognition of equity equivalent investment programmes.
- 1.2 This is part of an initiative to significantly expand access to broadband connectivity to poor South Africans and people living in remote parts of the country.
- 1.3 World Bank research shows that, on average, every 10% increase in broadband penetration results in 1.21% GDP growth in middle income countries such as South Africa. Broadband access makes it easier for people to start businesses, grow businesses, seek employment, work remotely, and market goods and services. Giving millions of South Africans access to broadband would therefore constitute one of the biggest empowerment programmes the South African government has ever undertaken.
- 1.4 The focus of this policy direction is on lowering regulatory hurdles to investment in reliable broadband and ensuring access to the internet. This is in line with the Broad-Based Black Economic Empowerment Codes of Good Practice which recognise that the global nature of multinational corporations' operations may constrain their ability to comply with equity ownership requirements. Equity equivalent investment programmes, recognised in the Amended Broad-Based Black Economic Empowerment (B-BBEE) ICT Sector Code published in Government Notice No. 1387, Government Gazette No. 40407 of 07 November 2016 (ICT Sector Code) and other sector codes, provide an avenue for factoring in alternative ways for multinational companies to make an impact on South Africa's socio-economic development.
- 1.5 Policy clarity on the recognition of equity equivalent investment programmes has long been sought by multinational operators in the ICT industry. This will provide the certainty necessary to attract increased investment in ICT and accelerate universal internet access.

2. Broad-Based Black Economic Empowerment Framework

- 2.1 Section 9(2)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (ECA) provides that individual licences must include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 30%, or such other conditions or higher percentage as may be prescribed under section 4(3)(k) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (ICASA Act).
- 2.2 Section 4(3)(k) of the ICASA Act provides that the Authority may make regulations on empowerment requirements to promote broad-based black economic empowerment. Broad-based black economic empowerment has the meaning assigned to it in the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) (B-BBEE Act).
- 2.3 The Authority has opted to prescribe regulations on empowerment requirements to promote broad-based black economic empowerment under section 4(3)(k) of the ICASA Act and published the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG) and the Application of the ICT Sector Code in General Notice No. 170, Government Gazette No. 44382 of 31 March 2021, as amended.
- 2.4 The use of the word 'or' in section 9(2)(b) of the ECA is peremptory, and therefore the requirement for equity ownership by historically disadvantaged groups is replaced by the option of adopting regulations prescribed under section 4(3)(k) of the ICASA Act.
- 2.5 In addition, the B-BBEE Act provides in section 10 that every organ of state and public entity must apply any relevant code of good practice issued in terms of the B-BBEE Act in determining qualification

criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law. It further provides that an enterprise in a sector in respect of which a sector Code of Good Practice has been issued, may only be measured for compliance with the requirements of broad-based black economic empowerment in accordance with that code.

- 2.6 It follows that enterprises in the ICT sector may only be measured for compliance with the requirements of broad-based black economic empowerment in accordance with the Amended Broad-Based Black Economic Empowerment (B-BBEE) ICT Sector Code.
- 2.7 The Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG) and the Application of the ICT Sector Code contradict the legal framework for broad-based black economic empowerment by prescribing equity ownership requirements by historically disadvantaged groups and black people and do not recognise compliance with the ICT Sector Code in respects other than ownership.
- 2.8 The broad-based black economic empowerment status level of an entity is the accepted method to measure overall performance against the ICT Sector Code and promotes broad-based black economic empowerment, including through equity equivalent investment programmes.

3. Policy Direction

- 3.1 The Authority is hereby directed, in terms of section 3(2) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) to urgently consider alignment of the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG) and the Application of the ICT Sector Code, with the Amended Broad-Based Black Economic Empowerment (B-BBEE) ICT Sector Code.