

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

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## **THE PRESIDENCY**

No. 1079

19 December 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 22 of 2011: South African Post Office SOC Ltd Act, 2011.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)*

(Assented to 14 December 2011)

# ACT

**To provide for the continued corporate existence of the South African Post Office and its subsidiaries; to provide for its governance and staff; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## Definitions

1. In this Act, unless the context indicates otherwise— 10
  - “**Board**” means the Board contemplated in section 8;
  - “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);
  - “**Department**” means the Department of Communications;
  - “**executive member**” means the chief executive officer, the chief financial officer or the chief operating officer of the Board appointed in terms of section 16; 15
  - “**family member**”, in relation to any person, means his or her parent, sibling, child, including an adopted child or a step-child, or spouse (whether by statutory, customary or religious law), and including a life partner who is a person living with that person as if they were married to each other;
  - “**financial statements**” means statements consisting of at least a balance sheet, an income statement, a cash-flow statement and other statements that may be prescribed, and includes any notes to these statements; 20
  - “**member**” means an executive or non-executive member of the Board;
  - “**Minister**” means the Minister charged with the administration of the Department; 25
  - “**Postal Services Act**” means the Postal Services Act, 1998 (Act No. 124 of 1998);
  - “**Postbank**” means the South African Postbank Limited, the public company referred to in the Postbank Act;
  - “**Postbank Act**” means the South African Postbank Limited Act, 2010 (Act No. 9 of 2010); 30
  - “**Post Office**” means the South African Post Office SOC Ltd established in terms of the Post Office Act;
  - “**Post Office Act**” means the Post Office Act, 1958 (Act No. 44 of 1958);
  - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 35
  - “**subsidiary**” means—
    - (a) Courier and Freight Group (Pty) Ltd;
    - (b) The Document Exchange (Pty) Ltd;
    - (c) the Postbank;
    - (d) any other company or juristic person which exists when this Act commences, but which is dormant and not deregistered in terms of the Companies Act, and of which the Post Office is the holding company or owner; and 40
    - (e) any other subsidiary of the Post Office established under section 22(1).

## Objects of Act

2. The objects of this Act are to— 45
  - (a) provide for the continued existence of the South African Post Office SOC Ltd;
  - (b) provide for the governance of the Post Office;
  - (c) ensure the provision of universal, accessible, reliable and affordable postal services;
  - (d) ensure the provision of a wide range of postal services in the interest of the economic growth and the development of the Republic; and 50
  - (e) encourage the development of human resources and capacity-building within the postal industry, especially among historically disadvantaged groups.

### Continued existence of Post Office

3. (1) The South African Post Office SOC Ltd, the postal company contemplated in section 3 of the Post Office Act, continues to exist as a public company, notwithstanding the repeal by this Act of provisions in the Post Office Act relating to the postal company.
- (2) The repeal referred to in subsection (1) does not affect— 5
- (a) the shareholding of the State in the Post Office;
  - (b) any rights, assets, liabilities or obligations acquired or incurred by the Post Office before the commencement of this Act;
  - (c) the continued existence of the Board of the Post Office that managed the affairs of the Post Office immediately prior to the commencement of this Act; 10
  - (d) the terms and conditions of service and accrued benefits of Post Office employees;
  - (e) the validity of any act lawfully performed by or on behalf of the Post Office prior to the repeal referred to in subsection (1); or
  - (f) the continued existence of any subsidiary of the Post Office. 15
- (3) The powers and duties of the State as a member and shareholder of the Post Office must be exercised and performed by the Minister.
- (4) (a) Notwithstanding the Companies Act, the Minister exercises the power to add to or alter the memorandum of incorporation of the Post Office.
- (b) Any such addition or alteration— 20
- (i) may not be in conflict with this Act; and
  - (ii) must be aimed at giving effect to the main object of the Post Office, namely to provide a postal service;
  - (iii) must take into account the—
- (aa) developmental role of the Post Office; and 25
  - (bb) promotion of universal access to, and the provision of, an affordable postal service, taking into account the cost of postal services, financial sustainability and the competitiveness of the Post Office.
- (5) The memorandum of incorporation of the Post Office must *inter alia* provide that the Post Office— 30
- (a) shall have as its main object and main business to conduct the postal services;
  - (b) shall not have the power to perform the following acts without the approval of the Minister granted after consultation with the Minister of Finance:
- (i) The alienation or encumbrance by the Post Office, otherwise than in the normal course of its business, of assets of the Post Office with a market value of more than 10 per cent of the market value of all the assets of the Post Office; 35
  - (ii) the cessation or alteration of the main object or main business of the Post Office;
  - (iii) the alienation of shares held by the Post Office in any subsidiary thereof so that the Post Office retains 50 per cent or less of the voting shares of the subsidiary; 40
  - (iv) the merger of the Post Office with another company or the entering into of a partnership or joint venture by the Post Office; and
  - (c) shall not issue any shares except as approved by the Minister after 45 consultation with the Minister of Finance.

### Duties of Post Office

4. (1) Subject to the Postal Services Act and the licence issued to the Post Office in terms of the said Act, the Post Office must take reasonable measures, within its available resources, to achieve the progressive realisation of the following duties: 50
- (a) Ensure the universal and affordable provision of postal services;
  - (b) ensure the provision of a wide range of affordable postal services in the interest of the economic growth and development of the Republic;
  - (c) be innovative in the provision of postal services;
  - (d) develop postal services that are responsive to the needs of users and 55 consumers;
  - (e) ensure the achievement of universal access to postal services by providing an acceptable level of effective, reliable and regular postal services to all areas, including rural areas and small towns where post offices are not sustainable;

- (f) ensure greater equity in respect of the distribution of services, particularly within the areas of the historically disadvantaged communities, including rural areas;
  - (g) ensure that the needs of disabled persons are taken into account in the provision of postal services; 5
  - (h) ensure the development of human resources and capacity-building within the postal industry, especially amongst historically disadvantaged groups;
  - (i) act in the best interest of postal users and other clients;
  - (j) maintain an effective and efficient system of collecting, sorting and delivering mail nationwide in a manner responsive to the needs of all categories of mail users; 10
  - (k) actively provide and develop a citizens' post office that contributes to community and rural development and education, thereby serving as an interface between government and the community; and
  - (l) ensure compliance with international commitments relevant to the postal industry. 15
- (2) (a) The Post Office and any subsidiary must comply with policy made by the Minister in terms of section 29(2).
- (b) Any decision taken by the Board of the Post Office or by the Board of a subsidiary which is in conflict with a policy contemplated in paragraph (a) is of no force and effect. 20

### **Powers of Post Office**

5. Without derogating from its powers as a company in terms of the Companies Act, but subject to any applicable provisions of the Public Finance Management Act and this Act, the Post Office may—

- (a) purchase or otherwise acquire immovable property and encumber or dispose of such property; 25
- (b) purchase, erect, or cause to be erected, any buildings, installations or plants;
- (c) utilise buildings or facilities for the benefit of the Post Office;
- (d) purchase, hire or otherwise acquire or hold movable property, and let, pledge, encumber or dispose of such property of which it is the owner; 30
- (e) hire services or let its own services or make them otherwise available;
- (f) sell or in any other manner make available to any person for use any patent, licence, concession or right of manufacture or any other right conferring the power to use any information, expertise, process or technology which has been developed by the Post Office and which is the property of the Post Office or which has been acquired by the Post Office from a third party; 35
- (g) acquire patents, licences, concessions, rights of manufacture or other similar rights conferring the power to use any technology, process, expertise or information and use, exercise, develop or grant licences in respect of such rights, concessions, technology, processes, expertise or information, or otherwise exploit it beneficially; 40
- (h) establish subsidiaries under section 22.

### **Performance agreement of Post Office and subsidiaries**

6. (1) The Post Office must annually by a date determined by the Minister conclude a performance agreement with the Minister in terms of which the performance of the functions of the Post Office will be measured for the following year. 45

(2) (a) The Post Office must, after concluding the agreement contemplated in subsection (1), conclude a performance agreement with its subsidiaries in terms of which the performance of the subsidiaries will be measured for the following year.

(b) The Post Office must provide the Minister with copies of such performance agreements. 50

(3) Subsidiaries must on a quarterly basis submit performance reports to the Post Office.

(4) The Post Office must on a quarterly basis submit a performance report to the Minister, which must include the performance reports contemplated in subsection (3). 55