

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN
POSTBANK LIMITED
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Gazette No 46204 of 6 April 2022)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES)

[B 12—2022]

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Amendment of section 2 of Act 9 of 2010

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words: 5
 “The object of this Act is to provide for the incorporation of the Postbank Division of the Post Office as a **[legal person] Company and bank controlling company**, with the aim of the Company—”;
- (b) by the substitution for paragraph (b) of the following paragraph: 10
 “(b) rendering **[transactional] financial and banking services** and lending facilities through, amongst others, **[existing] the infrastructure of the Post Office and any other means of delivery the Company may deem appropriate for its operational needs;**”;
- (c) by the deletion of the word “and” at the end of paragraph (e);
- (d) by the substitution for the full stop at the end of paragraph (f) of ”; and”; and
- (e) by the addition after paragraph (f) of the following paragraph: 15
 “(g) acting as the commercial bank owned by the State to render financial and banking services to the public.”.

Amendment of section 3 of Act 9 of 2010, as amended by section 2 of Act 44 of 2013

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 20
 “(1) The Minister must take the necessary action for the formation and incorporation of a **[public] state-owned company [with a share capital and for a certificate to commence business to be issued to the Company]** and a bank controlling company in terms of the Companies Act.”;
- (b) by the substitution for subsection (2) of the following subsection: 25
 “(2) (a) **[Notwithstanding section 32 of the Companies Act, the Post Office]** The Government shall, upon incorporation of the Company and the bank controlling company, be the **[sole member and]** shareholder of the **[Company] bank controlling company**. 30
 (b) The bank controlling company shall hold 100% shares in the Company on behalf of Government represented by the Minister.
 (c) The bank controlling company shall exercise oversight over the Postbank and ensure that the Company exercises sound risk management and governance practices, in accordance with the Banks Act. 35
 (d) The Minister shall consider and approve any other shareholding with the concurrence of the Minister of Finance and in accordance with the requirements of the Banks Act and the Companies Act.”;
- (c) by the substitution for subsection (3) of the following subsection: 40
 “(3) (a) The name of the Company is **[the “South African] “The Postbank SOC Limited**” and no other person, except the Company, may carry on any business or be registered with that name or with a name that is similar to “The Postbank”.
 (b) The name of the bank controlling company is the South African Postbank SOC Limited and no other entity, other than the Postbank, may carry on any business or be registered with that name or with a name that is similar to “South African Postbank SOC Limited.”; 45
- (d) by the substitution for subsection (4) of the following subsection: 50
 “(4) The Minister must on behalf of **[the Post Office] Government**, sign and file the **[memorandum and articles of association] Memorandum of Incorporation, Notice of Incorporation** and all other documents necessary for the formation and incorporation of the Company and the bank controlling company.”;
- (e) by the substitution for subsection (5) of the following subsection: 55
 “(5) The **[Registrar of Companies] Commissioner** must—
 (a) register the **[memorandum and articles of association] Memorandum of Incorporation** as signed and filed in terms of subsection (4);

- (b) incorporate the Company as a **[public]** state-owned company under the name “[**South African**] The Postbank SOC Limited”; and
- (bA) incorporate the bank controlling company as a company under the name “South African Postbank SOC Limited. 5
- (c) **with the concurrence of the Minister, issue to the Company a certificate to commence business.]**”;
- (f) by the substitution for subsection (6) of the following subsection:
 - “(6) The sole business of the bank controlling company is to act as the controlling company (as defined in section 1(1) of the Banks Act).” 10
- (g) by the addition after subsection (6) of the following subsection:
 - “(7) The Minister must apply to register the bank controlling company in accordance with section 43 of the Banks Act.”

Amendment of section 9 of Act 9 of 2010, as amended by section 5 of Act 44 of 2013

4. Section 9 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 15

“(a) The Company, the bank controlling company and the Post Office must, with the concurrence of the Minister and the Minister of Finance, conclude an agreement which governs cooperation between the Company, the bank controlling company and the Post Office.” 20

Amendment of section 10 of Act 9 of 2010

5. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 - “(2) The members of the Board are appointed or reappointed by the Minister, with the concurrence of the Minister of Finance [and the Post Office], and the concurrence shall be deemed to have been granted, should such a response not be forthcoming within 30 days from the receipt of the request by the Minister of Finance.” 25
- (b) by the addition after subsection (2) of the following subsections:
 - “(3) The members of the Board of the Company are also the members of the Board of the bank controlling company. 30
 - “(4) The Board must exercise control over the Company.
 - “(5) The members of the Board are appointed or reappointed by the Minister in the same manner contemplated in section 12(1) and in accordance with the requirements of the Banks Act. 35
 - “(6) The Board of the bank controlling company shall be the same as the one serving on the Company.”

Amendment of section 12 of Act 9 of 2010

6. Section 12 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40
 - “(a) [seven] not less than five and not more than nine non-executive members appointed from among the persons nominated in terms of section 14(1)(a); and”;
- (b) by the deletion in subsection (1) of paragraph (b); 45
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 - “(c) the [managing director] chief executive officer and the chief financial officer, who [is an] are executive [member] members of the Board by virtue of office that they hold.” 50
- (d) by the substitution for subsection (2) by the deletion of the word “and” at the end of paragraph (a);
- (e) by the substitution in subsection (2)(b) for the full stop at the end of subparagraph (ii) of the word “; and” and the addition of the following paragraph: 55
 - “(c) are determined to be fit and proper persons in terms of section 1(1A) of the Banks Act.”

Amendment of section 14 of Act 9 of 2010, as amended by section 7 of Act 44 of 2013

7. Section 14 of the principal Act is hereby amended—
- (a) by the deletion of subsection (1)(b);
 - (b) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) If a suitable person or the required number of suitable persons are not nominated as contemplated in subsections (1)(b) or (4), the Minister may, with the concurrence of the Minister of Finance **[and the Post Office]**, identify and appoint the required number of further members.”;
 - (c) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) The Minister must, within 30 days after **[consensus] concurrence** has been reached with the Minister of Finance **[and the Post Office]** regarding the appointment of members as contemplated in section 10(2)—”;
 - (d) by the deletion of subsection (6)(a)(i); and
 - (e) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) Any vacancy occurring in the Board must be filled in the same way as the departing members was appointed **[to the Board]**.”.

Insertion of section 15A in Act 9 of 2010

8. The following section is hereby inserted in the principal Act, after section 15:

“Functions of bank controlling company

- 15A.** (1) The bank controlling company will be the controlling company for the Company.
- (2) The bank controlling company shall itself not conduct any operating activities of its own, other than ownership of the Company.
- (3) The bank controlling company will hold 100% shares of the Company.
- (4) The bank controlling company shall exercise additional oversight over the bank, ensuring that the bank operating company exercises sound risk management and governance practices, in accordance with the South African Reserve Bank requirements as provided for in the Banks Act.”.

Amendment of section 18 of Act 9 of 2010, as amended by section 9 of Act 44 of 2013

9. Section 18 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:

“Appointment of [managing director] chief executive officer and chief financial officer”;
 - (b) by the substitution in subsection (1) of the following subsection:

“(1) (a) The Board must, with the approval of the Minister, appoint a **[managing director] chief executive officer** who **[must perform any work incidental to the functions of]** shall have the overall responsibility for implementation of the Board’s strategy for the Company and **[ensure that the] management of the day-to-day affairs of the Company [meet its objects]** and any other functions as delegated by the Board from time to time.

(b) The Board, with the concurrence of the Minister, shall appoint the chief financial officer who shall assist the chief executive officer and the Board with discharging their responsibilities over the financial affairs of the Company and any other functions as may be delegated from time to time.

(c) The chief executive officer and the chief financial officer shall be appointed for a term not exceeding five years, which appointment may, with the approval of the Minister, be renewed for another term based on performance.”;