

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POST OFFICE BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Gazette No. 32887 of 22 January 2010)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 2—2010]

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

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

To provide for the continued corporate existence of the South African Post Office and its subsidiaries; to provide for its governance and staff; to provide for the separation of accounts between reserved and unreserved postal services; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

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| 1. | In this Act, unless the context indicates otherwise— | |
| | “ Board ” means the Board contemplated in section 9; | |
| | “ Companies Act ” means the Companies Act, 1973 (Act No. 61 of 1973); | 15 |
| | “ Department ” means the Department of Communications; | |
| | “ Director-General ” means the Director-General of the Department of Communications; | |
| | “ executive member ” means the chief executive officer, the chief financial officer or the chief operations officer of the Board appointed in terms of section 17; | 20 |
| | “ family member ”, in relation to any person, means his or her parent, sibling, child, including an adopted child, or spouse (whether by statutory, customary or religious law), including 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; | 25 |
| | “ Minister ” means the Minister charged with the administration of the Department; | |
| | “ member ” means an executive or non-executive member of the Board; | 30 |
| | “ Postal Services Act ” means the Postal Services Act, 1998 (Act No. 124 of 1998); | |
| | “ Post Office ” means the South African Post Office Limited established in terms of the Post Office Act, and any of its subsidiary companies; | |
| | “ 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 |
| | “ reserved postal services ” means reserved postal services as defined in section 1 of the Postal Services Act, 1998 (Act No. 124 of 1998); | |
| | “ unreserved postal services ” means unreserved postal services as defined in section 1 of the Postal Services Act, 1998 (Act No. 124 of 1998). | 40 |

Purpose of Act

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| 2. | The purpose of this Act is to— | |
| (a) | provide for the continued existence of the South African Post Office Limited; | |
| (b) | provide for the governance of the Post Office; | |
| (c) | provide for the separation of accounts of the Post Office between reserved and unreserved postal services; | 45 |
| (d) | ensure the provision of universal, accessible, reliable and affordable postal services; | |
| (e) | 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 |
| (f) | encourage the development of human resources and capacity-building within the postal industry, especially among historically disadvantaged groups. | |

Continued existence of Post Office

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| 3. | (1) The South African Post Office Limited, 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. | 55 |
| | (2) The repeal referred to in subsection (1) does not affect— | |
| (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;
 - (d) the terms and conditions of service and accrued benefits of Post Office employees; or
 - (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).
- (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 and articles of association of the Post Office.
- (b) Any such addition or alteration—
- (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
 - (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 association of the Post Office must *inter alia* provide that the Post Office—
- (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 with the concurrence of the Minister of Finance:
 - (i) The alienation or encumbrance by the Post Office, otherwise than in the normal cause 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;
 - (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;
 - (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 with the concurrence of the Minister of Finance.

Separation of accounts

4. The reserved and unreserved postal services of the Post Office must be accounted for in separate sets of financial records and accounts.

Duties of Post Office

5. The Post Office must—
- (a) ensure the universal and affordable provision of postal services;
 - (b) ensure the provision of a wide range of 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 consumers;
 - (e) ensure greater access to basic services through the achievement of universal 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;

- (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; 5
- (k) actively provide and develop a citizens' post office by contributing to community and rural development and education, thereby serving as an interface between government and the community, and provide a centre for community activities; 10
- (l) ensure compliance with international commitments relevant to the postal industry;
- (m) accelerate universal access to postal and other essential services that can be provided using the postal and related information and communication technologies infrastructure. 15

Powers of Post Office

6. (1) 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; 20
- (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; 25
- (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; 30
- (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. 35

(2) (a) Apart from the subsidiary South African Postbank Limited, which is established by separate legislation, the Post Office may establish subsidiary companies of which the Post Office is the sole member and shareholder.

(b) This Act applies with the changes required by the context to any subsidiary of the Post Office while the Post Office is the sole member and shareholder of that subsidiary. 40

Performance agreement of Post Office

7. 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

Government support to Post Office and loans by Post Office

8. (1) The Minister may with the concurrence of the Minister of Finance, out of money appropriated by Parliament for the purpose, annually grant financial support to the Post Office in respect of normal expenditure.

(2) A request for financial support must be prepared by the Post Office by a date determined by the Minister in order for it to be subjected to the evaluation process for inclusion in the annual compilation and exposition of the government's expenditure proposal for appropriation purposes. 50

(3) The payment of financial support must be for such purposes and periods and subject to such conditions as the Minister may determine with the concurrence of the Minister of Finance. 55