

ENQUIRIES:	R Stander	DIALLING NO.:	012 422 2840
OUR REF:	Postbank Amendment Bill	E-MAIL:	Retha.Stander@fsca.co.za
DATE:	12 September 2022		

The Chairperson
Portfolio Committee on Communications
c/o Ms H Salie (Committee Secretary)

Per email: hsalie@parliament.gov.za
CC: sapostbankbill@parliament.gov.za

Dear Honourable Maneli

Re: Invitation to furnish the Portfolio Committee on Communications with a written and/or verbal presentation to the Committee on the Postbank Amendment Bill

1. Your letter dated 5 September 2022 refers.
2. Thank you for the invitation and opportunity for the Financial Sector Conduct Authority (FSCA) to comment on the Postbank Amendment Bill (Amendment Bill).
3. The FSCA supports the Amendment Bill and its purpose, namely for the Postbank to become licensed as a bank in terms of the Banks Act, No. 94 of 1990 (Banks Act). The FSCA appreciates the broader objective of the South African Postbank Limited Act, No. 9 of 2010 (Postbank Act) to promote financial inclusion by expanding the range of banking services to rural and lower income markets.
4. Financial inclusion is likewise an object of the Financial Sector Regulation Act, No. 9 of 2017 (FSR Act) in terms of which the FSCA was established. The FSR Act brought the conduct of banks within the regulatory and supervisory ambit of the FSCA's responsibilities. Prior to this, there was no dedicated regulatory oversight over the fair treatment of customers by banks.
5. As a first step in establishing a framework for supervising the conduct of banks, the FSCA published Conduct Standard 3 of 2020 (Banks) (Conduct Standard) in July 2020. The Conduct Standard is applicable to all banks operating in South Africa in relation to their

Executive Committee:

Commissioner: U. Kamlana | **Deputy Commissioners:** A. Ludin | K. Gibson | F. Badat

provision of financial products and financial services. It sets out specific principles and requirements to ensure fair outcomes for customers of banks.

6. Furthermore, the National Treasury is currently developing the Conduct of Financial Institutions (CoFI) Bill which is an overarching piece of financial sector legislation intended to comprehensively regulate the conduct of all financial institutions, including banks in the future. In terms of the CoFI Bill, financial institutions will be required to be licensed by the FSCA irrespective of whether they are also licensed in terms of another financial sector law, for example the Banks Act, the Insurance Act, No. 18 of 2017 and so forth.
7. It is noted that sections 2(b) and 2(g) of the Amendment Bill expand the aims of the Postbank to include the rendering of “financial services”. There is, however, no definition of “financial services” provided for in either the Postbank Act or the Amendment Bill. It must be highlighted that the FSR Act contains a comprehensive definition of “financial services”, which includes a broad range of financial sector activities beyond banking. In addition, “financial services” is defined in the well-established Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS Act). This FAIS Act requires any person rendering financial services to be authorised by the FSCA as a financial services provider. The FAIS Act will be repealed and replaced by the CoFI Act when the CoFI Bill is passed.
8. The FSCA proposes that, if it was not the legislative intent to bring the activities of the Postbank within the ambit of either the FAIS Act or the FSR Act, the reference to “financial services” be deleted from the Bill to avoid future uncertainty or unintended regulatory consequences for the Postbank.
9. However, if it is intended for the Postbank to render financial services as defined in either the FAIS Act or the FSR Act, it would be advisable to include a clear definition of “financial services” in the Amendment Bill. It is noted that “the business of a bank” is defined in the Postbank Act with reference to the Banks Act. Similarly, a definition of “financial services” could possibly be included with reference to either the FAIS Act or the FSR Act, depending on the type and range of financial services envisaged to be rendered by the Postbank.
10. In light of the above, the Committee may wish to consider the following revisions to the Amendment Bill:
 - Clause 1: Insertion in section 1 of the following definition:
“**financial services**’ as defined in the *Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);*” or “**financial services**’ as defined in the *Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);*”

This will depend on which types of financial services it is envisaged that the Postbank will render.

- Clause 3(b): section 3(2)(d):

“(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, the Companies Act and the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017),”

Chapter 11 of the FSR Act provides for requirements for significant owners of financial institutions.

11. If the Postbank will render “financial services” as defined in the FAIS Act, it would be required to be authorised as a financial services provider, unless it obtains an exemption from the FSCA in this regard. However, if the Postbank will render one or more of the activities described in the broader definition of “financial services” contained in the FSR Act, it would not currently be required to be licensed by the FSCA under the FSR Act because the licensing requirements in section 111(1)(b) of the FSR Act are not yet effective.
12. Notwithstanding the above, it must be noted that the Postbank would, upon obtaining its licence as a bank in terms of the Banks Act, be subject to the FSR Act and the Conduct Standard for Banks, as described in paragraph 5 above. This means that it would immediately be subject to supervisory oversight by the FSCA in relation to the fair treatment of its customers. This is important to help ensure the protection of the particularly vulnerable customer base to whom the Postbank would be offering banking products and services.
13. The FSCA is at the Committee’s disposal if further clarity or discussion is required in respect of the contents of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Unathi Kamlana', with a large, sweeping flourish underneath.

**UNATHI KAMLANA
COMMISSIONER
FINANCIAL SECTOR CONDUCT AUTHORITY**