

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POST OFFICE SOC LTD AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75 Bill); explanatory summary
of Bill and prior notice of its introduction published in Government Gazette No. 48149 of
28 February 2023)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES)

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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.

BILL

To amend the South African Post Office SOC Ltd Act, 2011, so as to provide for the revised duties and expand on the mandate of the South African Post Office as provided for in this Act and the Postal Services Act, 1998; provide for the repurposing of the Post Office infrastructure so as to provide diversified and expanded services and exploit the infrastructure capacity to extract value and forge partnerships with other stakeholders; to provide for the revised governance structure of South African Post Office; to provide for the establishment, appointment and functions of the Stamp Advisory Committee; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 22 of 2011, as amended by section 1 of Act 38 of 2013

1. Section 1 of the South African Post Office SOC Ltd Act, 2011 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the substitution for the definition of Department of the following definition:
“**Department**’ means the Department of Communications and Digital Technologies;”;
 - (b) by the insertion after the definition of “family member” of the following definition: 10
“**financial services**’ means financial services which include amongst others, money transfer and remittance, payment, and prepaid services, tickets sale and any other financial services the Minister may determine from time to time;”;
 - (c) by the insertion after the definition of “Public Finance Management Act” of the following definitions: 15
“**services points**’ means any infrastructure where the post office services can be accessed from;
“**Stamp Advisory Committee**’ means the Stamp Advisory Committee established by section 14A(1); 20
“**universal postal services**’ means universal services as defined in the licence issued in terms of section 16 of the Postal Services Act;” and

Amendment of section 2 of Act 22 of 2011

Objects of Act

2. Section 2 of the Principal Act is hereby amended by the deletion of the word **[and]** at the end of paragraph (d), by substitution for a full stop at the end of paragraph (e) of “; and” and by the addition of the following paragraph: 5

“(f) expand the objects and mandate of the Post Office to include services that respond to the needs of the users and customers.”.

Amendment of section 4 of Act 22 of 2011

Duties and mandate of Post Office

3. Section 4 of the principal Act is hereby amended as follows: 10

(a) by the substitution for the heading of the following heading:

“**Duties and mandate of Post Office**”;

(b) by the deletion in subsection (1) of the word “and” at the end of paragraph (k);

(c) by the substitution in subsection (1) for paragraph (l) of the following paragraph: 15

“(l) ensure compliance with international commitments relevant to the postal [industry.] and related industries in the provision of postal, courier and other related services to the extent that is permitted by domestic laws;”; and

(d) by the addition after paragraph (l) of the following paragraphs: 20

“(m) provide logistics and e-commerce services and serve as a logistics partner for e-commerce and other logistics players, including SMMEs and informal traders;

(n) serve as digital hub for businesses and communities;

(o) serve as a Designated Authentication Authority that also fulfils its role as a national Trust Centre in the age of digital identity and services; 25

(p) serve as a hub for government services and other agency services;

(q) provide different services at the post offices and service points based on the needs assessments for a particular area and to ensure the effective usage and enhancement of the retail offerings and services; 30

(r) continuously adjust its business model in line with the technological and industry developments in the provision of postal services and other services and to enhance the provision of Universal Services Obligation; including the roll-out of service points and the use of third-party infrastructure and other related services, subject to the approval of the Minister; 35

(s) ensure the implementation of national address system and development and maintenance of national address database; and

(t) provide any business that is responsive to the needs of users, consumers and citizens and exploit the infrastructure capacity to extract value and forge partnerships with other stakeholders with the approval of the Minister.” 40

Amendment of section 7 of Act 22 of 2011

4. Section 7 of the principal Act is hereby amended— 45

(a) by the substitution for subsection (1) of the following subsection:

“(1) Parliament may fund the normal expenditure of the Post Office to ensure universal postal services and any other social mandate services as determined by the Minister, out of money appropriated for the purpose.”; and 50

(b) by the addition after subsection (4) of the following subsection:

“(5) Government institutions which include national and provincial departments, national and provincial government components and municipalities are encouraged to utilise Post Office infrastructure in the delivery of their services and set aside certain services to be provided by the Post Office to assist in eliminating over-reliance on government 55

funding by the Post Office and ensure efficient utilisation of Post Offices.”.

Amendment of section 8 of Act 22 of 2011, as amended by section 3 of act 38 of 2013

5. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 5
 - “(2) The Board consists of—
 - (a) not more than **[10]** nine and not less than five non-executive members appointed in terms of section 11; and”;
 - (b) by the substitution for subsection (3) of the following subsection: 10
 - “(3) The Chairperson **[and Deputy Chairperson]** must be appointed by the Minister from the non-executive members of the Board.”;
 - (c) by the substitution for subsection (4) of the following subsection:
 - “(4) The Board may designate any other non-executive member to act as chairperson if **[both]** the Chairperson **[and Deputy Chairperson are]** is absent or unable to perform [their] his or her functions.”; and 15
 - (d) by the deletion of subsections (5) and (6).

Amendment of section 9 of Act 22 of 2011, as amended by section 3 of act 38 of 2013

6. Section 9 of the principal Act is hereby amended by the insertion after paragraph (a) of the following paragraph:
- “(aA) must develop a credit plan facility wherein— 20
 - (i) the Post Office shall enter into an agreement and negotiate payment arrangements with its creditors; and
 - (ii) such plan must include evaluation of the Post Office debts, source funding either from the fiscus or in the market and appropriate steps to cancel ever green contracts;” 25

Amendment of section 11 of Act 22 of 2011, as amended by section 4 of Act 38 of 2013

7. Section 11 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words following paragraph (b) of the following words: 30
 - “to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as members of the Board **[, with due regard to section 8(5)].**”
 - (b) by the deletion in subsection (4) of paragraph (a)(vi);
 - (c) by the deletion in subsection (4) of paragraph (c); and 35
 - (d) by the substitution in subsection (7) for paragraph (a) of the following paragraph:
 - “(a) The Minister must appoint—
 - (i) two non-executive members of the Board from suitable persons nominated by trade unions contemplated in subsection (1)(b) with required skills, knowledge, qualifications and experience as contemplated in subsection (4); and 40
 - (ii) the other non-executive members of the Board from suitable persons as contemplated in subsection (4).”.

Amendment of section 12 of Act 22 of 2011 45

8. Section 12 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 - “(e) neglected to properly perform the functions of his or her office and based on negative assessment during annual general meetings;” 50
 - and
 - (b) by the deletion in subsection (2) of paragraph (f).

Insertion of sections 14A to 14F in Act 22 of 2011

9. The following sections are hereby inserted after section 14 of the principal Act:

“Appointment and composition of Stamp Advisory Committee

- 14A.** (1) The Minister must establish a Stamp Advisory Committee and appoint not more than nine persons as members of the Stamp Advisory Committee. 5
- (2) The Stamp Advisory Committee consists of—
- (a) two members appointed from the non-executive members of the Board;
- (b) one representative from departments responsible for communications and digital technologies, arts, sports and culture and basic education; and 10
- (c) not more than four persons appointed on the basis of their knowledge, experience and expertise in the areas referred to in subsection (8).
- (3) The Minister must appoint a non-executive member contemplated in subsection (2)(a) as Chairperson of the Stamp Advisory Committee. 15
- (4) For the purposes of appointing the persons contemplated in subsection (2)(c), the Minister must, by notice in the *Gazette* and in two national newspapers published, an invitation to the public to submit nominations for membership of the Stamp Advisory Committee. 20
- (5) The notice contemplated in subsection (4) must specify a period of at least 30 days for nominations to be submitted to the Minister.
- (6) The Minister must appoint a panel to consider the nominations received in terms of subsection (5). 25
- (7) The panel must compile a shortlist of not more than 8 candidates to be considered by the Minister and the Board for appointment as members of the Stamp Advisory Committee.
- (8) The panel must ensure that the candidates—
- (a) are representative of the South African society and represent the public and private sectors, academic or research institutions, non-governmental organisations and philately organisations; and 30
- (b) have appropriate expertise in the areas of—
- (i) arts and culture;
- (ii) marketing;
- (iii) environmental development; 35
- (iv) education;
- (v) history;
- (vi) graphic design; or
- (vii) any other field of expertise relevant to stamp design.
- (9) The Minister and the Board must ensure that the members contemplated in subsection (2)(c) represent a sufficient spread of skills, knowledge, qualifications and expertise referred to in subsection (8). 40
- (10) The Minister must, within 30 days after appointing the members, publish a notice in the *Gazette* containing the names of the persons appointed as members of the Stamp Advisory Committee. 45
- (11) A member of the Stamp Advisory Committee contemplated in subsection (2)(c)—
- (a) holds office for a period not exceeding three years;
- (b) may be reappointed after his or her term of office has expired, but may not serve for more than two consecutive terms; 50
- (c) is appointed on a part-time basis; and
- (d) must be paid from the revenue of the Post Office such remuneration and such allowances as may be determined by the Minister with the concurrence of the Minister of Finance.
- (12) A member of the Stamp Advisory Committee contemplated in subsection (2)(c) may resign by giving 30 days written notice to the Minister through the Board. 55

(13) The Stamp Advisory Committee that exists immediately before the South African Post Office SOC Ltd Amendment Act takes effect continues to exist for a period of six months or for such period until the new committee is established and members are appointed.

(14) The members appointed under subsection (2)(a) and (b) will be serving for a period of three years as long as they are under the employ of the organisation that has nominated them or any period as provided by the respective organisation.

(15) The organisations referred to in subsection (2) must inform the Minister when a member that has been appointed can no longer serve in the committee and provide a substitute for that member.

Functions of Stamp Advisory Committee

14B. The Stamp Advisory Committee must—

- (a) advise the Board on the implementation, monitoring and evaluation of a philatelic strategy;
- (b) provide the Board with advice on events and themes that may be celebrated on stamps and ensure that selection of themes reflects the broad spectrum of South African culture, history, environment economic and social development;
- (c) assist in identifying, articulating and prioritising themes for the annual stamp programme and commemorative stamps and make recommendations to the Board; and
- (d) encourage and facilitate stakeholder participation in the development of themes for the annual stamp programme.

Disqualification from membership of Stamp Advisory Committee

14C. A person may not be appointed as a member of the Stamp Advisory Committee contemplated in section 14A(2)(c) or remain a member if he or she—

- (a) is not a South African or permanent resident of the Republic;
- (b) is an unrehabilitated insolvent;
- (c) has been declared mentally ill by a competent court;
- (d) has at any time been convicted of an offence involving dishonesty whether in the Republic or elsewhere; or
- (e) has been removed from office on account of misconduct.

Removal from Stamp Advisory Committee

14D. The Minister may remove a member of the Stamp Advisory Committee contemplated in section 14A(2) from office—

- (a) on account of misconduct;
- (b) on account of inability to perform the duties of that member's office effectively;
- (c) if the member is absent from three consecutive meetings of the Stamp Advisory Committee without the prior permission of the chairperson, except on good cause shown; or
- (d) if the member has engaged in conduct, which brings or may bring the Stamp Advisory Committee or the activities of the Stamp Advisory Committee into disrepute or threatens the integrity of the Stamp Advisory Committee.

Vacancies in Stamp Advisory Committee

14E. (1) A member of the Stamp Advisory Committee vacates office if that member—

- (a) tenders resignation in terms of section 14A(12) and such resignation takes effect;
- (b) becomes subject to a disqualification referred to in section 14C; or
- (c) is removed from office in terms of section 14D.

(2)(a) If a member of the Stamp Advisory Committee dies or vacates his or her office before the expiration of his or her term of office, the Minister must appoint another person to hold office for the unexpired portion of the period for which that person's predecessor was appointed.

(b) In making an appointment in terms of paragraph (a), the Minister must comply with section 14A. 5

Meetings and recommendations by Stamp Advisory Committee

14F. (1) The Stamp Advisory Committee—

(a) must meet at least four times a year; and 10

(b) must determine its own procedures to be followed at its meetings.

(2)(a) A quorum for a meeting of the Stamp Advisory Committee is the majority of the total number of the members, which is 50% plus one.

(b) A decision by the majority of the members present at a meeting of the Stamp Advisory Committee constitutes a decision of the Stamp Advisory Committee. 15

(c) The decision of the Stamp Advisory Committee in relation to the stamp programme and commemorative stamps must be submitted to the Board for consideration and submission to the Minister for final approval.”.

Amendment of section 17 of Act 22 of 2011

10. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) The appointment of the chief executive officer, **[chief financial officer and chief operating officer]** is subject to the conclusion of an annual performance agreement with the **[Post Office] Board**.”.

Amendment of section 25 of Act 22 of 2011 25

11. Section 25 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The Minister may direct the **[Post Office] Board** to take any action specified by the Minister if the Post Office—”; 30

(b) by the substitution for subsection (3) of the following subsection:

“(3) If the **[Post Office] Board** fails to comply with the directive contemplated in subsection (1) within the stated period, the Minister may—

(a) after having given the **[Post Office] Board** a reasonable opportunity to be heard; and 35

(b) after having afforded the **[Post Office] Board** a hearing on any submissions received,

replace the members of the Board **[in the same manner as the departing members have been appointed]** or, where circumstances so require, appoint a person as an administrator to take over the relevant function of the **[Post Office] Board**.”; 40

(c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) the administrator may do anything which the **[Post Office] Board** might otherwise be empowered or required to do by or under this Act **[, to the exclusion of the Post Office];**”; 45

(d) by the deletion of subsection (4)(b);

(e) by the substitution in subsection (5) for paragraph (b) of the following paragraph: 50

“(b) within **[six]** 12 months of appointing the administrator, table a report on his or her findings in the National Assembly.”; and

(f) by the substitution in subsection (7)(c) for subparagraph (ii) of the following subparagraph:

“(ii) must, as soon as it is feasible but not later than **[three]** 12 months after the dissolution of the Board, replace the members of the 55

Board [**in the same way as the way in which they were appointed**] in accordance with section 11.".

Short title and commencement

12. This Act is called the South African Post Office SOC Ltd Amendment Act, 2023, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*. 5

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POST OFFICE SOC LTD AMENDMENT BILL, 2023

1. OBJECTS OF THE BILL

The Bill seeks to amend the South African Post Office SOC Ltd Act, 2011, so as to provide for the revised duties and expand on the mandate of the South African Post Office as provided for in this Act and the Postal Services Act, 1998; repurpose the Post Office infrastructure to provide diversified and expanded services and exploit the Post Office infrastructure capacity to extract value and forge relations with other stakeholders; to provide for the revised governance structure of South African Post Office; to provide for the appointment and functions of the Stamp Advisory Committee; and to provide for matters connected therewith.

2. SUMMARY OF THE BILL

Clause 1

Clause 1 provide for the amendment of section 1 to amend and insert number of definitions of words or expressions as used in the legislation for better understanding and interpretation as follows:

“**Department**” which has been amended to mean the Department of Communications and Digital Technologies gives effect to the proclamation issued by the President establishing the new Department of Communications and Digital Technologies and moving the function to administer this Act from the Department of Telecommunications and Postal Services.

“**financial services**” The definition is inserted to ensure the Post Office is enabled to provide financial services but not to be confused with the financial services that are provided for by the Postbank in terms of the Postbank Act. Financial services are aligned to financial services that postal operators, including SAPO, are required to provide by the Universal Postal Union.

“**financial services**” in this regard means financial services which include amongst others, money transfers and remittances, cash on delivery services, payment service, prepaid services, tickets sale and as provided for under section 4.

“**services points**” The definition has been inserted to ensure that the post office services may not only be provided from the post office infrastructure but also at any points where the post office services can be accessed from.

“**Stamp Advisory Committee**” This definition is in line with the new insertion that establishes the Stamp Advisory Committee as indicated in clause 14A below giving effect to the National Integrated ICT policy. The Stamp Advisory Committee definition is inserted to mean the “Stamp Advisory Committee established by section 14A(1).”

“**Universal postal services**” The definition is inserted in line with the revised objects of the Act and the revised duties and mandate of the Post Office to ensure that the Post Office continue to provide services even in the most deep rural and underservices communities. The Post Office is still the most accessible infrastructure that many, especially in the rural and underserved communities can utilise for their postal and courier services, government services and related services as private operators mostly operate in affluent areas where they could make profit and there is no obligation imposed on them and their services are mostly not accessible to the rural communities since they still need to travel to access the services in towns.”;

What constitute universal services will be provided for in the SAPO licence in line with this Amendment Act.

Clause 2

Clause 2 provides for the amendment of section 2 of the Act, to insert new objects under paragraph (f). The objects are expanded to ensure that the Post Office is not only empowered by the legislation to provide basic postal services but is empowered to provide other value-added services to expand on its revenue

generating streams and also for SAPO to position itself as a facilitator in the provision of government services as provided in the National Integrated ICT Policy White Paper of 2016.

Clause 3

Clause 3 provides for the amendment of section 4 by inserting a number of duties and to expand on the SAPO's mandate as well as to legislate for more services that the SAPO can venture into to ensure relevance and sustainability. These services may include government services, agency, financial, e-commerce, logistics, retail, authentication services, warehousing services, serve as a digital hub for businesses and communities, serve as a logistics partner to other e-commerce providers and any future business that the Post Office may provide that are responsive to the needs of users and consumers subject to the approval of the Minister furthermore the Post Office empowered to exploit their widespread infrastructure and forge partnerships with other stakeholders to ensure financial sustainability.

The current business model and some legislated duties of SAPO are no longer financially viable as there is over reliance on the mail business that has drastically declined over the years and not sustainable for the organisation. SAPO's core legislated mandate is currently limited to the traditional postal services that are provided for under schedule 1 and 2 of the Postal Services Act, 1998 (Act No. 124 of 1998). The services include: all letter mail, postcards, printed matters, small parcels, courier services, provision of post-box and street addresses and issuing of postage stamps. Most of the above services have drastically declined if not all together became redundant and replaced by the emergence of information communication technologies as many customers have adopted the use of technologies.

The intention is to expand on SAPO's legislated mandate to include value added services in line with the White paper, current developments of ICTs and global trends in the sector. The revised duties will ensure that the Post Office expand on its business offerings to create more revenue generating streams and encourage the efficient and effective utilisation of the Post Office infrastructure.

The revised duties also empower the SAPO to position itself and be a strategic platform through which citizens and businesses can access value-added services including government services in line with the National Integrated ICT Policy White Paper.

The revised mandate further empowers SAPO to provide logistics and e-commerce services and serve as a logistics partner for e-commerce and other logistics players, including SMMEs and informal traders; serve as digital hub for businesses and communities; serve as a Designated Authentication Authority that also fulfils its role as a national Trust Centre in the age of digital identity and services; serve as a hub for government services and other agency services.

The section is further amended to empowers SAPO to continuously adjust its business model in line with the technological and industry developments in the provision of postal services and other services and to enhance the provision of Universal Services Obligation; including the roll-out of service points and the use of third-party infrastructure and other related services subject to the approval of the Minister.

Furthermore, the amendment allows the Post Office to differentiate its service offerings at different post offices and service points based on the needs assessment for a particular area. This is also to ensure the effective and efficient usage and enhancement of services offerings by SAPO to communities.

Clause 4

Clause 4 provides for the amendment of section 7 to make it clear that the normal expenditure of the post office to ensure universal postal services as required and any other social services may be funded by Parliament out of money appropriated for that purpose. This is to ensure funding is only provided for services that SAPO is required to provide as part of their social obligation even though they are not financially benefiting the Post Office.

The provision is further enhanced to encourage all spheres of government to utilise the Post Office infrastructure in the delivery of services wherever possible. This will assist to ensure that essential government services are delivered to communities and ensure the effective and efficient use of government infrastructure (Post Office).

SAPO is currently entrusted with universal postal services obligation to provide services everywhere in the country even in areas that are not profitable as part of their USO, whereas other operators cherry pick affluent areas that they are guaranteed to make profit. Allowing for the utilisation of SAPO infrastructure by governments departments at a fee will assist to offset the losses that they are currently incurring from providing universal services obligation that they are required by law to provide, regardless. This will also ensure that SAPO does not rely of government bailout and subsidy as it is currently the case.

In this regard, SAPO should be seen as an extension arm of the government and as such its infrastructure to be utilised as access point for government services especially in the rural and underserved areas where the combination of Post Office services and government services are housed in a single operation.

Clause 5

Clause 5 seek to provide for the amendment of section 8 so as to reduce the maximum number of non-executive members to the SAPO Board that the Minister can appoint from 10 to nine and also to provide for a minimum of 5.

Governance structure and structural arrangement of the Post Office has been identified as one of the contributors to financial challenges of the Post Office with excessive number of headcounts.

Given the financial challenges that SAPO is facing, this is to ensure the maximum number of Board members is kept as minimal as possible to ensure savings wherever possible and to do away with any excessive costs. The revised number is also to assist to break the deadlock during the board meetings. The revised number will still be sufficient to ensure the effective functioning of the Board.

The section is also amended to remove the appointment of deputy chairperson of the Board. The role of the deputy chairperson has in the past not been noticeable in relation to other board members and gives an impression that if the Chairperson is not available, the deputy chairperson assumes the responsibility of the chairperson and is not necessary. These amendments therefore give the Minister powers to appoint any member of the Board to be the chairperson at any given time.

The section is also amended to delete subsection (5) and (6) in line with the decision to remove post office board members to be represented in the Postbank Board.

Clause 6

Cause 6 provide for the amendment of section 9 to insert number of functions for the Board to deal with creditors under subparagraph (aA). The section requires the Board to develop a credit plan facility wherein, the Post Office shall negotiate and

enter into payment arrangements with its creditors. The plan shall include evaluating the Post Office debts, source funding either from the fiscus or in the market, negotiate to cancel ever green contracts. Given the debts that SAPO is currently under, it is critical that the Board is empowered to take responsibility and to be able to source funding and enter into payment agreements with the creditors to ensure services are not disrupted.

Clause 7

Clause 7 seeks to provide for the amendment of section 11 so as to delete paragraph (c) in subsection (4) in order to remove the need to have banking business skills to be appointed as board member. This provision was inserted in line with the Post Office as the shareholder of the Postbank in terms of the South African Postbank Act and provision requiring the Post Office Board members to be represented in the Postbank Board. Decision has since been taken that the Post Office will no longer be the shareholder and bank controlling company of the Postbank.

Subsection (7)(a)(i) is also amended to strengthen the provision to ensure that candidates nominated by the Unions to be appointed as board members have the necessary skills as provided for in the Act. The Minister will therefore not be compelled to appoint two nominated union members to the Board if they do not have the required skills as this has been the challenge with nominations from the unions submitting names of people without the necessary skills and insisting on those names.

Clause 8

Clause 8 was further amended to include ground for removal by the Minister based on negative assessment during annual general meeting following Office of the Chief State Law Advisor recommendation that Section 11(8)(a) and 11(9)(a) be deleted. They advised that section 12 be amended to address the ground for removal based on negative assessment of board member during annual general meeting. This is to ensure that Board members consistently perform their duties throughout the year and not relax that they have been appointed for three years.

Clause 9

Clause 9 inserts new sections 14A–F which—

- (a) provide for the appointment of the SAC members by the Minister;
- (b) provide for processes to be followed in the appointment of the SAC members;
- (c) provide for the composition of the SAC;
- (d) provide for eligibility to be appointed;
- (e) provide for functions of the SAC; and
- (f) provide for disqualification and removal.

The current committee was established more than 15 years ago and has been there since because of a legislative vacuum on the appointments, term of office, reappointments, removal etc. Acknowledging the policy and legislative vacuum, the 2016 National Integrated ICT Policy White Paper provided for SAC-related matters and the insertions are in line with the White Paper.

Section 14A is inserted to give the Minister the powers and responsibilities to appoint the members of the SAC, composition of the SAC and the procedure to be followed when appointing those members. The proposal also stipulates that there should be government representation in the committee.

Section 14B clearly provides what is expected of SAC and its members, the role that they play within the broader SAPO structures and their advisory role to the Board and subsequently to the Minister.

Section 14C is inserted outlining who may not be appointed to the SAC. Even though the members of the SAC are not members of the SAPO Board, it is important they also adhere to good governance principles. It is very important that the same governance principles for a specialized committee as a committee reporting to the Board are used and this ensures that good governance principles are complied with by all structure reporting to the Board.

Section 14D is inserted to provide for the manner in which the SAC members can be removed by the Minister.

Section 14E is inserted to provide how members of SAC can vacate office.

Section 14F provides for the meetings and recommendations by the SAC and its members to the Board and subsequently to the Minister.

Clause 10

Clause 10 seeks to provide for the amendment of section 17(1) to ensure that the performance contract of the Chief Executive Officer (CEO) is concluded with the Board and not the Post Office as the Act currently provides. Reference to the Post Office as the one concluding the performance agreement with the CEO is problematic and creates ambiguity as the CEO reports to the Board and therefore the performance agreement should be concluded with the Board and not the Post Office.

The subsection is further amended to remove references to the CFO and COO as it is only the CEO who is required to conclude the Performance Agreement with the Board and others with the CEO.

Clause 11

Clause 11 seeks to provide for the amendment of section 25(1) and (3) dealing with interventions by the Minister to replace to “Post Office” with “the Board” to make it clear that it is the Board that interacts with and reports to the Minister and also to ensure that the Board is held accountable.

The section is further amended to increase the term of office of the administrator from three months to twelve months and for the Minister to report to the National Assembly within 18 months after the Administrator is appointed. The current timeframe of three months is not reasonable and sufficient to ensure the administrator is able to develop and implement turnaround strategies and plans required in instances where the Board is dissolved. This has been shown with appointment of the previous administrator that the three months period is not sufficient. The Minister will also requires time once the Board has been dissolved to apply his/her mind regarding the appointment of the next Board.

Subsection (4)(b) is deleted as it implies that the Board will still be there even after an administrator is appointed.

3. PARTIES CONSULTED

The South African Post Office Amendment Bill was developed in consultation with SAPO and National Treasury as key stakeholders before it was finalised and processed through government structures.

Furthermore, the Bill was finalised in consultation with the Presidency (Department of Monitoring Evaluation (DPME)) in the development of SEIAS report and signed off and submitted to the Office of the Chief State Law Advisor in keeping with the Cabinet decision of 18 March 2009 for pre-certification.

Consultations were held with ESEID Cluster and Cabinet and the draft Bill was approved for public consultations. The Bill was published for public consultations on 20 April 2022 for the public and stakeholders to provide comments and inputs within 30 days of publication. NEDLAC was also consulted over the Bill.

4. FINANCIAL IMPLICATIONS

The implementation of the Act may have financial implications for government and the South African Post Office SOC Ltd to ensure that the Post Office branches are upgraded to be able to provide services in line with the revised duties.

5. CONSTITUTIONAL IMPLICATIONS

The draft Amendment Bill advances equality, human dignity through access information and to affordable postal, ICTs and government services by all citizens.

6. PARLIAMENTARY PROCEDURE

6.1 The Constitution regulates the manner in which legislation may be enacted by Parliament. It prescribes different procedures for different kinds of Bills. Section 75 of the Constitution deals with ordinary Bills not affecting the provinces and sets out a procedure to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies. Section 76 of the Constitution on the other hand deals with ordinary Bills affecting the provinces and provides for a procedure that must be followed for all the Bills referred to in that section. It is apparent that this Bill must be dealt with by Parliament in terms of procedures set out in Section 75 of the Constitution.

6.2 The Constitutional Court in *Tongoane v Minister of Agriculture and others*¹ (“*Tongoane judgement*”), held that the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 to the Constitution and not on whether any of the provisions of the Bill are incidental to the substance of the Bill.² The Constitutional Court further in the *Tongoane judgement* found:

“[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in Section 76. Whether a Bill is a Section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)–(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.” [Underlining is our emphasis]

6.3 The question that needs to be asked therefore is whether the provisions of the Bill, would in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution, or whether the Bill provides for legislation envisaged in Section 76(3)(a) to (f) of the Constitution.

6.4 The matters covered in the Bill are not listed in either Schedule 4 or 5 to the Constitution. Furthermore, the Bill does not deal with any of those matters listed in Section 76(3)(a) to (f) of the Constitution we are therefore of the view that the procedure to be followed must be the procedure set out in section 75 of the Constitution.

1. CCT 100/09 [2010] ZACC 10.

2. *Tongoane* at paragraph 59.

- 6.5 We are also of the view that it is not necessary to refer this bill to the National House of Traditional and Khoi-San Leadership in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No.3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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