

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
SOUTH AFRICAN POST
OFFICE BILL**

[B 2—2010]

*(As agreed to by the Portfolio Committee on Communications
(National Assembly))*

[B 2A—2010]

ISBN 978-1-77037-839-1

No. of copies printed 800

AMENDMENTS AGREED

SOUTH AFRICAN POST OFFICE BILL
[B 2—2010]

ARRANGEMENT OF SECTIONS

1. On page 2, in line 5, to omit “Purpose” and to substitute “Objects”.
2. On page 2, in line 7, to omit “4. Separation of accounts”.
3. On page 2, in line 10, after “Office”, to add “and subsidiaries”.
4. On page 2, in line 11, after the second “Office”, to add “and subsidiaries”.
5. On page 2, in line 14, to omit “Persons disqualified from membership of Board” and to substitute “Disqualification from membership of Board, and disclosure”.
6. On page 2, in line 17, to omit “Fiduciary duties and disclosure” and to substitute “Fiduciary duties of Board members”.
7. On page 2, in line 18, to omit “Committees of Board” and to substitute “Procedures at meetings, and committees of Board”.
8. On page 2, in line 29, to omit “Staff” and to substitute “Personnel”.
9. On page 2, after line 29, to insert “23. Subsidiaries and accountability”.
10. On page 3, in line 8, after “Regulations”, to insert “and policy”.

CLAUSE 1

1. On page 3, in line 15, to omit “1973 (Act No. 61 of 1973)” and to substitute “2008 (Act No. 71 of 2008)”.
2. On page 3, from line 17, to omit the definition of “Director-General”.
3. On page 3, from line 21, to omit the definition of “family member” and to substitute:

“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;
4. On page 3, after line 31, to insert the following definitions:

“Postbank” means 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);
5. On page 3, in line 32, to omit “Limited” and to substitute “SOC Ltd”.
6. On page 3, in line 33, to omit “, and any of its subsidiary companies”.

7. On page 3, after line 36, to insert the following definition:
 - “**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
 - (e) any other subsidiary of the Post Office established under section 22(1).
8. On page 3, from line 37, to omit the definition of “**reserved postal services**”.
9. On page 3, from line 39, to omit the definition of “**unreserved postal services**”.

CLAUSE 2

1. On page 3, in line 41, to omit “**Purpose**” and to substitute “**Objects**”.
2. On page 3, in line 42 to omit “The purpose of this Act is to”, and to substitute “The objects of this Act are to”.
3. On page 3, in line 43, to omit “Limited” and to substitute “SOC Ltd”.
4. On page 3, from line 45, to omit paragraph (c).

CLAUSE 3

1. On page 3, in line 54, to omit “Limited” and to substitute “SOC Ltd”.
2. On page 4, in line 6, to omit “or”.
3. On page 4, in line 8, after “(1),” to insert “; or”.
4. On page 4, after line 8, to add the following paragraph:
 - (f) the continued existence of any subsidiary of the Post Office.
5. On page 4, in line 12, to omit “and articles of association” and to substitute “of incorporation”.
6. On page 4, in line 22, to omit “of association” and to substitute “of incorporation”.
7. On page 4, in line 26, to omit “with the concurrence of” and to substitute “after consultation with”.
8. On page 4, from line 38, to omit “with the concurrence of” and to substitute “, after consultation with”.

CLAUSE 4

Clause rejected.

CLAUSE 5

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

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:

- (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 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;
- (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;
- (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.

(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.

CLAUSE 6

1. On page 5, after line 36, to add the following paragraph:

(h) establish subsidiaries under section 22.

2. On page 5, from line 37, to omit subsection (2).

CLAUSE 7

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

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.

(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.

(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).

CLAUSE 8

1. On page 5, in line 46, after the second “**Post Office**”, to add “**and subsidiaries**”.

2. On page 5, from line 47, to omit subsection (1) and to substitute:

(1) Parliament may fund the normal expenditure of the Post Office out of money appropriated for the purpose.

3. On page 5, from line 54, to omit subsections (3) and (4) and to substitute:

(3) The payment of financial support is subject to the appropriation made by Parliament and must be for such purposes and periods and subject to such conditions as the Minister may determine, after consultation with the Minister of Finance.

(4) (a) The Post Office and its subsidiaries may not borrow money without the prior written approval of the Minister, granted after consultation with the Minister of Finance.

(b) Any decision to borrow money taken without such approval is of no force and effect.

CLAUSE 9

1. On page 6, in line 7, to omit “13” and to substitute “11”.

2. On page 6, after line 15, to add the following subsections:

(5) The Board must upon invitation by the Minister nominate non-executive members of the Board for appointment to the Board of the Postbank, as contemplated in section 14(1)(b) of the Postbank Act.

(6) The non-executive members of the Board appointed to the Board of the Postbank are accountable to the Board of the Post Office in respect of their functions performed as Board members of the Postbank.

CLAUSE 11

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Disqualification from membership of Board, and disclosure

10. (1) A person may not be appointed as a Board member or remain a member of the Board if he or she—

- (a) is a member of Parliament, any provincial legislature or any municipal council;
- (b) is an unrehabilitated insolvent;
- (c) has been declared by a court to be mentally ill or disordered;
- (d) has at any time been convicted, whether in the Republic or elsewhere, of—
 - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or
 - (ii) an offence under this Act;
- (e) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine;
- (f) has at any time been removed from an office of trust on account of misconduct;
- (g) has any direct or indirect interest in conflict with the business of the Post Office; or
- (h) is not a South African citizen.

(2) A person who is subject to a disqualification contemplated in subsection (1)(a), (1)(b) or (1)(g) may be nominated for appointment as a Board member, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification.

(3) (a) A person nominated for appointment as a member of the Board must, before appointment and upon a request from the Minister, submit to the Minister a written statement containing—

- (i) a full disclosure of all his or her financial interests; and
- (ii) a declaration that he or she has no direct or indirect interests that are in conflict with the business of the Post Office as contemplated in subsection (1)(g) or section 13.

(b) If, after appointment, a member of the Board acquires any—

- (i) further financial interest contemplated in paragraph (a)(i), the member must immediately in writing disclose that fact to the Minister and the Board; or
- (ii) direct or indirect interest contemplated in subsection (1)(g) or section 13, the member must immediately declare that fact to the Minister and the Board.

(4) (a) Any member of the Board of the Post Office referred to in section 3(2)(c) must as soon as possible after the commencement of this Act, but not later than three months thereafter, submit to the Minister and the Board a written statement containing the disclosure and declaration referred to in subsection (3)(a).

(b) If a member of the Board of the Post Office, referred to in

paragraph (a), has any direct or indirect interest in conflict with the business of the Post Office as contemplated in subsection (1)(g) or section 13, when this Act commences, the member must as soon as possible after making the statement contemplated in paragraph (a), but not later than six months after the commencement of this Act, divest himself or herself of that interest.

(c) Subsection (3)(b) also applies to a Board member referred to in paragraph (a).

CLAUSE 12

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Appointment of non-executive members of Board

11. (1) For the purposes of appointing the non-executive members of the Board, the Minister must—

- (a) by notice in at least two newspapers and in the *Gazette* invite interested persons; and
- (b) in writing invite trade unions recognised by the Post Office, 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).

(2) The Minister may appoint a nomination committee to make recommendations to the Minister for the appointment of the non-executive members of the Board contemplated in subsection (1)(a).

(3) If a nomination committee is established, the Minister must—

- (a) ensure that the committee is broadly representative of the various racial groups and geographic areas of the Republic and that both males and females are represented; and
- (b) ensure that the committee members have the necessary skills, knowledge, qualifications and experience to serve on the committee.

(4) The Minister and, if applicable, the nomination committee in making a recommendation to the Minister, must consider—

- (a) the proven skills, knowledge, qualifications and experience of a candidate in areas of—
 - (i) financial management;
 - (ii) project management;
 - (iii) governance compliance;
 - (iv) risk management;
 - (v) transformation and diversity equity;
 - (vi) banking business;
 - (vii) postal services and postal service management; or
 - (viii) any other field of expertise relevant to the Post Office;
- (b) the need for representation of historically disadvantaged persons;
- (c) the requirement that some members of the Board must be fit and proper persons to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act, 1990 (Act No. 94 of 1990), for purposes of section 8(5); and
- (d) whether a candidate has any direct or indirect interest in conflict with the business of the Post Office as contemplated in section 10(1)(g).

(5) The Minister must ensure that the non-executive members of the Board represent a sufficient spread of skills, knowledge,

qualifications and experience to enable the Post Office to function efficiently and effectively.

(6) (a) Nominations of suitable persons as contemplated in subsection (4) must include at least one and a half times the number of Board members to be appointed.

(b) If a suitable person or the required number of suitable persons are not nominated as contemplated in subsection (1)(b) and (4), the Minister may call for further nominations in the manner set out in subsection (1).

(7) (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); and

(ii) the other non-executive members of the Board from suitable persons as contemplated in subsection (4).

(b) The Minister must, within 30 days after appointing the members, by notice in the *Gazette* publish the names of the members so appointed and the date of commencement of their terms of office.

(8) (a) Any vacancy occurring in the Board in terms of section 12, must be filled in the manner provided for in this section.

(b) Any member appointed under this subsection holds office for the rest of the period of the predecessor's term of office, unless the Minister directs that such member holds office for a longer period, which may not exceed one subsequent term of up to three years.

(9) A non-executive member of the Board—

(a) holds office for a period not exceeding three years;

(b) may be reappointed, but may not serve for more than two terms consecutively, unless otherwise determined by the Minister;

(c) is appointed according to the terms and conditions determined by the Minister;

(d) must be paid from the revenue of the Post Office such remuneration and allowances as may be determined by the Minister, taking into consideration prescriptions and guidelines issued by the Minister for the Public Service and Administration and the National Treasury;

(e) is appointed on a part-time basis.

CLAUSE 13

1. On page 7, from line 53, to omit subsection (2) and to substitute:

(2) The Minister may, after having afforded the member of the Board concerned a reasonable opportunity to be heard, remove the member from office if that member—

(a) acted in conflict with this Act or the articles of association of the Post Office;

(b) refuses or fails to make a disclosure or declaration contemplated in section 10(3)(b);

(c) after having been appointed, acquires any direct or indirect interest contemplated in section 10(3)(b)(ii), read with section 10(1)(g);

(d) is a member of the Board of the Post Office referred to in section 3(2)(c) and—

(i) refuses or fails to submit to the Minister and the Board the written statement contemplated in section 10(4)(a); or

(ii) refuses or fails to divest himself or herself of the interest contemplated in section 10(4)(b)

(e) neglected to properly perform the functions of his or her office;

- (f) is a member of the Board appointed to the Board of the Postbank, and the Registrar of Banks has informed the Minister in accordance with the Banks Act, 1990 (Act No. 94 of 1990), that the member is no longer a fit and proper person to hold that appointment; or
- (g) is absent from three consecutive Board meetings without prior leave of the Chairperson.

CLAUSE 14

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Fiduciary duties of Board members

13. In addition to any other applicable legislation, the following shall apply to members of the Board:

- (a) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect interest.
- (b) A member of the Board or his or her family member, business partner or associate, or an organisation or enterprise in which a member of the Board or his or her family member, business partner or associate has a direct or indirect interest, may not—
 - (i) offer goods or services to the Post Office or conclude any business with the Post Office; or
 - (ii) make improper use, in any manner whatsoever, of the position of a Board member or of any information acquired by a Board member by virtue of his or her position as a Board member.
- (c) A member of the Board must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting their scope, must—
 - (i) take reasonable steps to inform himself or herself about the Post Office, its business and activities and the circumstances in which it operates;
 - (ii) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
 - (iii) regularly attend Board meetings;
 - (iv) exercise an active and independent discretion with respect to all matters to be decided by the Board;
 - (v) exercise due diligence in the performance of his or her functions as a member;
 - (vi) comply with any internal code of conduct that the Post Office may establish for Board members;
 - (vii) not engage in any activity that may undermine the integrity of the Post Office;
 - (viii) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member;

- (ix) treat any confidential matters relating to the Post Office, obtained in his or her capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Post Office or as required as part of that person's official functions as a member of the Board.

CLAUSE 15

1. On page 8 in line 46, to omit “**Committees of Board**” and to substitute “**Procedures at meetings, and committees of Board**”.
2. On page 8, in line 47, to insert the following subsection:
 - (1) (a) The Board determines its procedures at meetings.
 - (b) Seventy percent of serving members constitutes a quorum at any meeting of the Board.
 - (c) A decision taken by the Board or an act performed under that decision is not invalid merely by reason of—
 - (i) any irregularity in the appointment of a member;
 - (ii) a vacancy in the Board; or
 - (iii) the fact that any person not entitled to sit as a member sat as such at the time when the decision was taken, provided such decision was taken by a majority of the members present at the time and entitled so to sit, and those members at the time constituted a quorum.

CLAUSE 18

1. On page 10, in line 5, to omit “and” and to substitute “, the Minister acting after consultation with”.

CLAUSE 19

1. On page 10, from line 10, to omit the words preceding paragraph (a) and to substitute:

The Board must, with the concurrence of the Minister and subject to compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995), terminate the employment of the chief executive officer, chief financial officer and chief operating officer—

CLAUSE 21

1. On page 10, in line 52, to omit “Post Office’s”.

CLAUSE 22

1. On page 10, in line 53, to omit “**Staff**” and to substitute “**Personnel**”.
2. On page 10, from line 54, to omit subsections (1) and (2) and to substitute:
 - (1) (a) The Board must determine the structure or organogram of the Post Office and the conditions of service, remuneration and service benefits of the personnel of the Post Office after consultation with the chief executive officer and with the concurrence of the Minister, the Minister acting after consultation with the Minister of Finance.

(b) The conditions of service contemplated in paragraph (a) must include—

- (i) in respect of all members of staff, obligations comparable with sections 10(1)(g) and 10(3); and
- (ii) in respect of members of staff in employment at the date of commencement of this Act, obligations comparable with section 10(4).

(2) The work relating to the functions of the Post Office is performed by such persons as the chief executive officer may appoint.

- 3. On page 11, in line 13, to omit “Staff” and to substitute “Personnel”.
- 4. On page 11, in line 15, to omit ”, and the human resource policy contemplated in subsection (2)”.

NEW CLAUSE

- 1. That the following be a new clause:

Subsidiaries and accountability

22. (1) The Post Office may establish subsidiary companies.

(2) Sections 10, 13, 21(1), (2) and (3), 23, 24, 25, 27, 28, and 30 apply with the changes required by the context to any subsidiary of the Post Office.

(3) (a) The Post Office must, before it establishes a subsidiary or revives a dormant subsidiary, submit a feasibility study and business plan of the proposed subsidiary to the Minister for consideration.

(b) The Minister may, subject to section 51(1)(g) of the Public Finance Management Act, after consideration of the feasibility study and business plan and after consultation with the Minister of Finance, approve the establishment of the subsidiary or revival of the dormant subsidiary, as the case may be.

(c) The Minister must, before the approval contemplated in paragraph (b), table the feasibility study and business plan in the National Assembly for consideration.

(4) The Board of any subsidiary is accountable to the Post Office in respect of the performance of its functions.

CLAUSE 23

- 1. On page 11, from line 24, to omit subsection (3) and to substitute:

(3) (a) The Minister must table in Parliament the annual report and financial statements of the Post Office and its subsidiaries, contemplated in section 55 of the Public Finance Management Act—

- (i) within 14 days after receiving the report, if Parliament is in session; or
- (ii) if Parliament is not in session, within 14 days after the commencement of the next Parliamentary session.

(b) The annual report and financial statements must clearly differentiate between the annual report and financial statements of the Post Office and those of its subsidiaries.

CLAUSE 25

- 1. On page 11, in line 47, after “law”, to insert “or any policy envisaged in this Act”.

2. On page 12, after line 12, to insert the following subsection:
 - (5) The Minister must—
 - (a) review the performance of the Post Office regularly whilst it is under administration; and
 - (b) within six months of appointing the administrator, table a report on his or her findings in the National Assembly.

3. On page 12, from line 29, to omit subsection (7) and to substitute:
 - (7) (a) The costs associated with the appointment of an administrator shall be for the account of the Post Office.
 - (b) The appointment of the administrator terminates when the Board members have been replaced in terms of subsection (6)(c)(ii).
 - (8) Notwithstanding this section, the Minister retains the right at any time to approach a competent court for relief in any matter he or she considers appropriate in furtherance of this Act.

CLAUSE 27

1. On page 12, in line 43, to omit “A provision” and to substitute “Notwithstanding sections 5(4) and 9 of the Companies Act, a provision”.
2. On page 12, in line 46, to omit “incapable of being applied” and to substitute “inapplicable”.

Clause 28

1. On page 12, in line 50, to omit “The” and to substitute “Notwithstanding section 9 of the Companies Act, the”.
2. On page 12, in line 53, to omit “Registrar of Companies” and to substitute “Companies and Intellectual Property Commission”.
3. On page 12, in line 55, to omit “Registrar” and to substitute “Commission”.

CLAUSE 29

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Regulations and policy

- 29.** (1) The Minister may make regulations regarding—
 - (a) any matter relating to the functioning of the Board that is necessary to ensure efficiency and effectiveness in the performance of its functions; and
 - (b) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The Minister may make policies on matters of national policy applicable to the Post Office and its subsidiaries, consistent with the objects of this Act, and may at any time thereafter amend any such policies made.

- (3) When making or amending a policy under subsection (2) the Minister must—
- (a) obtain Cabinet approval;
 - (b) table the policy in the National Assembly at least 30 days before publishing the final version of the policy in terms of paragraph (c); and
 - (c) publish the final version of the policy in the *Gazette*.

CLAUSE 30

1. On page 13, after line 46, to add the following subsections:

(4) Any member of the Board who fails to comply with section 10(3)(b)(i) or (ii) or 10(4)(b) or who contravenes section 13(c)(vii) or (viii), or any former member who failed to comply with or contravened any of those sections while being a member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

(5) Any person referred to in section 13(b) who contravenes that section, or any former member of the Board who contravened that section while being a member, or any person, other than a member of the Board, referred to in section 13(b) who contravened that section during the tenure of a former member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

CLAUSE 32

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Short title and commencement

32. This Act is called the South African Post Office SOC Ltd Act, 2011, and takes effect on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 2

1. On page 15, in the third column, from the sixth line, to omit the definition of “**postal company**” and to substitute:

“ ‘**postal company**’ means the South African Post Office SOC Ltd, referred to in section 3(1) of the South African Post Office SOC Ltd Act, 2011;”.

2. On page 16, in the third column, from the fortieth line, to omit “memorandum of association” and to substitute “**memorandum of [association] incorporation**”.
3. On page 18, in the third column, from the second line, to omit subsection (5) and to substitute:

“**[(5) Notwithstanding the provisions of the Companies Act, the postal company and the telecommunications company may have fewer than seven members.]**”.

4. On page 28, in the third column, from the thirty-eighth line, to omit the definition of “**postal company**” and to substitute:

“ ‘postal company’ means the South African Post Office SOC Ltd, referred to in section 3(1) of the South African Post Office SOC Ltd Act, 2011;”.

LONG TITLE

1. On page 2, from the second line of the Long Title, to omit “to provide for the separation of accounts between reserved and unreserved postal services;”.

Printed by Creda Communications

ISBN 978-1-77037-839-1