

South Africa

South African Post Office SOC Ltd Act, 2011

Act 22 of 2011

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South African Post Office SOC Ltd Act, 2011

Act 22 of 2011

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(English text signed by the President)

ACT

To provide for the continued corporate existence of the South African Post Office and its subsidiaries; to provide for its governance and staff; and to provide for matters connected therewith.

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

1. Definitions

In this Act, unless the context indicates otherwise—

“**Board**” means the Board contemplated in section 8;

“**Companies Act**” means the Companies Act, 2008 ([Act No. 71 of 2008](#));

“**Department**” means the Department of Communications;

“**executive member**” means the chief executive officer, the chief financial officer or the chief operating officer of the Board appointed in terms of section 16;

“**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;

“**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;

“**member**” means an executive or non-executive member of the Board;

“**Minister**” means the Minister charged with the administration of the Department;

“**Postal Services Act**” means the Postal Services Act, 1998 ([Act No. 124 of 1998](#));

“**Postbank**” means the 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](#));

“**Post Office**” means the South African Post Office SOC Ltd established in terms of the Post Office Act;

“**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](#));

“**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).

2. Objects of Act

The objects of this Act are to—

- (a) provide for the continued existence of the South African Post Office SOC Ltd;
- (b) provide for the governance of the Post Office;
- (c) ensure the provision of universal, accessible, reliable and affordable postal services;
- (d) ensure the provision of a wide range of postal services in the interest of the economic growth and the development of the Republic; and
- (e) encourage the development of human resources and capacity-building within the postal industry, especially among historically disadvantaged groups.

3. Continued existence of Post Office

- (1) The South African Post Office SOC Ltd, 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.
- (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;
 - (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); or
 - (f) the continued existence of any subsidiary of the Post Office.
- (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 of incorporation 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 incorporation 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 after consultation with the Minister of Finance:
 - (i) The alienation or encumbrance by the Post Office, otherwise than in the normal course 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 after consultation with the Minister of Finance.

4. Duties of Post Office

- (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.

5. Powers of Post Office

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;
- (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;
- (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;
- (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;
- (h) establish subsidiaries under section 22.

6. Performance agreement of Post Office and subsidiaries

- (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).

7. Government support to Post Office and loans by Post Office and subsidiaries

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

- (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.

8. Board of Post Office

- (1) The Board of the Post Office is responsible for managing the affairs of the Post Office.
- (2) The Board consists of—
 - (a) not more than 11 non-executive members appointed in terms of section 11, one of whom must be the managing director of the Postbank by virtue of his or her office; and
 - (b) three executive members appointed in terms of section 16.
- (3) The Chairperson and Deputy Chairperson must be appointed by the Minister from the non-executive members of the Board.
- (4) The Board may designate any other non-executive member to act as chairperson if both the Chairperson and Deputy Chairperson are absent or unable to perform their functions.
- (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.

9. Functions of Board

The Board—

- (a) must give effect to the corporate plan of the Post Office contemplated in section 52 of the Public Finance Management Act in order to achieve the objectives of the Post Office;
- (b) is the accounting authority of the Post Office;
- (c) takes decisions on behalf of the Post Office and gives effect to those decisions;
- (d) provides guidance and gives instructions to the chief executive officer concerning the exercise of the functions of the Post Office;
- (e) must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Post Office; and
- (f) generally, must refer to the Minister any matter that may adversely affect the functioning of the Post Office.

10. Disqualification from membership of Board, and disclosure

- (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 [\(1\)\(a\)](#), [\(b\)](#) or [\(g\)](#) 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 [\(a\)](#).

11. Appointment of non-executive members of Board

- (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.

12. Resignation, removal from office and vacancies

- (1) A non-executive member of the Board may resign by giving to the Minister—
 - (a) one month's written notice; or
 - (b) less than one month's written notice, with the approval of the Minister.
- (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 memorandum of incorporation 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.
- (3) Any member of the Board must vacate the office if he or she becomes disqualified from membership of the Board in terms of section [10](#).

13. Fiduciary duties of Board members

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.

14. Procedures at meetings, and committees of Board

- (1)
 - (a) The Board determines its procedures at meetings.
 - (b) Seventy per cent 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.
- (2)
 - (a) The Board may appoint one or more committees with the concurrence of the Minister, but must appoint the following committees:
 - (i) Remuneration and Performance Committee;

- (ii) Human Resources and Transformation Committee; and
 - (iii) Audit Committee.
- (b) Committees that exist when this Act takes effect, continue to exist for a period of six months after the commencement.
- (3) The Board must—
 - (a) assign members of the Board to serve on a committee, based on their knowledge and skills;
 - (b) determine the—
 - (i) terms of reference of a committee;
 - (ii) composition of a committee;
 - (iii) tenure of members of a committee;
 - (iv) reporting mechanisms of a committee; and
 - (v) method and reasons for removal of a member from a committee.
- (4) Non-executive members of the Board must make up the majority of the members of a committee.
- (5) The Board may appoint any person with particular knowledge, expertise or qualifications to assist a committee in the performance of its functions.
- (6) Unless specially delegated by the Board, a committee has no decision-making powers, and can only make recommendations to the Board.
- (7) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures.
- (8) Each committee must be chaired by a non-executive member of the Board.

15. Delegation and assignment of functions by Board

- (1) The Board may, by resolution passed by 75 per cent of its members—
 - (a) delegate any of its powers and assign any of its duties to any member of the Board or any committee established in terms of section 14, the chief executive officer, the chief financial officer, the chief operating officer or any employee of the Post Office; and
 - (b) amend or revoke such delegation or assignment.
- (2) Notwithstanding a delegation or assignment contemplated in subsection (1), the Board is not divested of any power or duty so delegated or assigned.
- (3)
 - (a) Any delegation or assignment contemplated in subsection (1)—
 - (i) may be made subject to such conditions as the Board may determine; and
 - (ii) must be communicated to the delegatee or assignee in writing.
 - (b) The written communication contemplated in paragraph (a)(ii) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the power may be exercised or the duty must be performed.
- (4) The Board may not delegate—
 - (a) the power to appoint the chief executive officer, chief financial officer or chief operating officer; and

- (b) its role in deciding on—
 - (i) the appointment of the chief executive officer, chief financial officer or chief operating officer;
 - (ii) the mandate and strategic plan of the Post Office.

16. Appointment of chief executive officer, chief financial officer and chief operating officer

- (1) The Board must, with the approval of the Minister, appoint a chief executive officer, chief financial officer and chief operating officer to ensure that the Post Office meets its objects.
- (2) The Board must invite applications for the posts of chief executive officer, chief financial officer and chief operating officer by publishing advertisements in the media.
- (3) A person appointed as chief executive officer, chief financial officer or chief operating officer must—
 - (a) have the qualifications or experience relevant to the functions of the Post Office; and
 - (b) not be disqualified as contemplated in section [10](#).

17. Conditions of appointment of chief executive officer, chief financial officer and chief operating officer

- (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.
- (2) The chief executive officer, chief financial officer and chief operating officer are appointed for a term not exceeding five years and may, subject to the approval of the Minister, be reappointed for one additional term not exceeding five years.
- (3) The chief executive officer, chief financial officer and chief operating officer hold office on terms and conditions determined by the Board, with the concurrence of the Minister.
- (4) The chief executive officer, chief financial officer and chief operating officer are members of the Board by virtue of their office.
- (5) The chief executive officer, chief financial officer and chief operating officer are entitled to a remuneration package determined by the Board with the concurrence of the Minister, the Minister acting after consultation with the Minister of Finance.
- (6) The chief executive officer, chief financial officer and chief operating officer are accountable to the Board.

18. Termination of employment of chief executive officer, chief financial officer and chief operating officer

- (1) The Board must, with the approval 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—
 - (a) for misconduct, which includes any act or failure to act contemplated in section [12\(2\)](#); or
 - (b) for failing to perform the duties connected with that office diligently.
- (2) The Board may suspend the services of the chief executive officer, chief financial officer or chief operating officer pending the finding of any misconduct proceedings against him or her, during which period the chief executive officer, chief financial officer or chief operating officer is also suspended as an executive member of the Board.

- (3) The chief executive officer, chief financial officer or chief operating officer must vacate the office if he or she becomes disqualified from membership of the Board in terms of section 10.
- (4) The chief executive officer, chief financial officer and chief operating officer may resign by written notice of at least 30 days to the Chairperson of the Board.

19. Acting chief executive officer, chief financial officer and chief operating officer

- (1) The Board may in writing appoint any senior employee of the Post Office to act as chief executive officer, chief financial officer or chief operating officer when the holder of that office—
 - (a) is temporarily unable to perform the duties connected with that office;
 - (b) has been suspended from office; or
 - (c) has vacated or has been removed from that office and a new chief executive officer, chief financial officer or chief operating officer, as the case may be, has not yet been appointed.
- (2) An acting chief executive officer, acting chief financial officer or acting chief operating officer may exercise all the powers and must perform all the duties of the chief executive officer, chief financial officer or chief operating officer, as the case may be.

20. Delegation by chief executive officer, chief financial officer and chief operating officer

- (1) The chief executive officer, chief financial officer and chief operating officer may delegate to an employee of the Post Office any of his or her powers and assign any of his or her duties.
- (2) Any delegation or assignment contemplated in subsection (1)—
 - (a) may be made subject to such conditions as the Board may determine;
 - (b) must be communicated to the delegatee or assignee in writing;
 - (c) may be amended or withdrawn in writing by the chief executive officer, chief financial officer or chief operating officer, as the case may be; and
 - (d) does not prohibit the holder of the office that made the delegation or assignment from exercising that power or performing that duty.
- (3) Notwithstanding a delegation or assignment contemplated in subsection (1), the chief executive officer, chief financial officer or chief operating officer, as the case may be, is not divested of any power or duty so delegated or assigned.

21. Personnel of Post Office

- (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) The chief executive officer must determine and supply each employee with a copy of the code of conduct, applicable to all members of staff of the Post Office and justiciable for purposes of disciplinary proceedings, to ensure—
 - (a) compliance with applicable laws;
 - (b) the effective, efficient and economical use of the Post Office's resources; and
 - (c) the promotion and maintenance of a high standard of professional ethics.
- (4) Personnel may be transferred or seconded to the Post Office from the public service subject to the provisions of the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)).
- (5) Every employee required by the Post Office to do so must, before performing the functions of his or her post, take an oath or make an affirmation before a justice of the peace in the form set out in Schedule 1.

22. Subsidiaries and accountability

- (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.

23. Application of Public Finance Management Act

- (1) The Post Office is subject to the Public Finance Management Act.
- (2) The Board must ensure that the provisions of the Public Finance Management Act, in particular sections 52 (submission of annual budget and corporate plan) and 55 (annual reporting on financial affairs), are duly complied with.
- (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.
- (4) The Board must submit such other accounts, reports and statements as the Minister or the Minister of Finance, or both, may require.

24. Investigation of Post Office

- (1) The Minister may appoint a person to investigate the affairs or financial position of the Post Office and compliance by the Post Office with this Act and may recover from the Post Office the fees and disbursements incurred by that person during the investigation.
- (2) The Post Office or an employee of the Post Office must, for the purposes of subsection (1), provide the Minister or a person authorised by the Minister with such data, information, books, accounts, documents and assets of the Post Office as the Minister or the authorised person may require.

25. Intervention by Minister

- (1) The Minister may direct the Post Office to take any action specified by the Minister if the Post Office —
 - (a) is in financial difficulty or is being mismanaged;
 - (b) fails to perform its functions effectively or efficiently;
 - (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act or the Postal Services Act; or
 - (d) has failed to comply with any law or any policy envisaged in this Act.
- (2) A directive contemplated in subsection (1) must state—
 - (a) the reason for issuing the directive;
 - (b) the steps which must be taken to remedy the situation; and
 - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
- (3) If the Post Office fails to comply with the directive contemplated in subsection (1) within the stated period, the Minister may—
 - (a) after having given the Post Office a reasonable opportunity to be heard; and
 - (b) after having afforded the Post Office 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.
- (4) If the Minister appoints an administrator in terms of subsection (3)—
 - (a) the administrator may do anything which the Post Office might otherwise be empowered or required to do by or under this Act, to the exclusion of the Post Office;
 - (b) the Board may not, while the administrator is responsible for the relevant function, exercise any of its powers or perform any of its duties relating to that function;
 - (c) an employee or a contractor of the Post Office must comply with a directive given by the administrator.
- (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.
- (6) Once the Minister is satisfied that the Post Office is able to perform its functions effectively, the Minister must terminate the appointment of the administrator.

- (7) (a) Notwithstanding subsection (3), the Minister may dissolve the Board if the Minister, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently.
- (b) The Minister may dissolve the Board only—
 - (i) after having given the Board a reasonable opportunity to be heard; and
 - (ii) after having afforded the Board a hearing on any submissions received.
- (c) If the Minister dissolves the Board, the Minister—
 - (i) may appoint an administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and
 - (ii) must, as soon as it is feasible but not later than three months after the dissolution of the Board, replace the members of the Board in the same way as the way in which they were appointed.
- (8) (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 (7)(c)(ii).
- (9) 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.

26. Limitation of liability

Neither the Post Office nor any employee of the Post Office is liable for any damage or loss caused by—

- (a) the exercise of a power or the performance of a duty under this Act or the Postal Services Act; or
- (b) the failure to exercise a power or perform a duty under this Act or the Postal Services Act,

unless the exercise of or failure to exercise the power, or performance of or failure to perform the duty, was unlawful, grossly negligent or in bad faith.

27. Application of Companies Act to Post Office

- (1) The provisions of the Companies Act apply to the Post Office, subject to subsection (2).
- (2) Notwithstanding sections 5(4) and 9 of the Companies Act, a provision of the Companies Act does not apply to the Post Office in circumstances where—
 - (a) because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or inapplicable; or
 - (b) the Minister of Trade and Industry has issued a declaration under section 28 with regard to the provision.

28. Certain provisions of Companies Act may be declared inapplicable to Post Office

- (1) (a) Notwithstanding section 9 of the Companies Act, the Minister may request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Post Office.
- (b) The request must be fully motivated by the Post Office.
- (2) (a) The Companies and Intellectual Property Commission must publish particulars about the request and the motivation contemplated in subsection (1) by notice in the *Gazette*.

- (b) In such notice, the Commission must invite interested persons to submit representations to a person named in the notice within the period stipulated in that notice.
- (3) (a) After having considered the representations contemplated in subsection (2), if any, the Minister of Trade and Industry may, by notice in the *Gazette*, declare the whole or any part of the provision concerned to be inapplicable to the Post Office with effect from the date stipulated in that notice.
- (b) The Minister of Trade and Industry may only issue the declaration if satisfied on reasonable grounds that the inapplicability of that provision to the Post Office—
 - (i) will contribute to the efficiency of the Post Office;
 - (ii) will not reduce or limit the accountability of the Post Office as a public entity or reduce the transparency of its functioning and operations; and
 - (iii) will not be prejudicial to the rights, interests or claims of the creditors or employees of the Post Office or to the rights or interests of any other person.

29. Regulations and policy

- (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*.

30. Offences and penalties

- (1) A person commits an offence if he or she—
 - (a) fails to provide access to any books, accounts, documents or assets when required to do so in terms of section 24 or when required by the administrator contemplated in section 25(3);
 - (b) fails to give data or information, or give false or misleading data or information when required to do so in terms of section 24 or when required by the administrator contemplated in section 25(3);
 - (c) fails to comply with a directive issued under section 25(4)(c);
 - (d) intentionally refuses to perform a duty or obstructs any person in the exercise of a power or performance of a duty in terms of this Act;
 - (e) accepts any unauthorised fees or reward, either directly or indirectly as a result of a person's position with the Post Office;
 - (f) uses the name, logo or design of the Post Office without the authorisation of the Post Office; or

- (g) places or maintains or permits to be placed or maintained in, on or near any house, premise, wall, door, window, box, post, pillar or other place belonging to a person or under a person's control the words "Post Office" or any other word or a mark which may imply or may give reasonable cause for believing that house, premises, wall, door, window, box, post, pillar or other place to be a post office.
- (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- (3) Where a person is again convicted for an offence contemplated in subsection (1), he or she is liable to a fine or imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.
- (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.

31. Repeal and amendment of laws

The laws mentioned in Schedule 2 are hereby repealed or amended to the extent set out in the third column of that Schedule.

32. Short title and commencement

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 1 (Section 21(5))

Oath to be taken or affirmation to be made by employees

I (name in full) _____, do solemnly swear/affirm* faithfully in my position as an employee of the Post Office to be honest, trustworthy and fair without respect of persons according to the law and to the best of my knowledge, that I will not contrary to the law or to my duty communicate or divulge the contents of any letter, telegram or official paper of any description or, nor open or detain or cause or suffer to be opened or detained any letter or other postal article or any telegram nor on any account whatever destroy or make away with any letter, telegram or official paper entrusted to my care, that I will give account of any responsibility entrusted to me whenever and wherever such may be required of me.

Signature

Sworn/Affirmed* before me at _____ on the _____ day of _____ 20 _____

Justice of the Peace

*

delete which is not applicable

*

delete which is not applicable

Schedule 2 (Section 31)
Laws repealed or amended

Act No. and year	Short title	Extent of amendment or repeal
Act No. 44 of 1958	Post Office Act, 1958	<p>1. Amendment of section 1—</p> <p>(a) by the substitution for the definition of “postal company” of the following definition:</p> <p style="padding-left: 40px;">“ ‘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.”;</p> <p>(b) by the deletion of the definition of “postal enterprise”;</p> <p>(c) by the deletion of the definition of “railway”;</p> <p>(d) by the substitution for the definition of “successor company” of the following definition:</p> <p style="padding-left: 40px;">“ ‘successor company’ means</p> <p style="padding-left: 40px;">[a] the telecommunications company incorporated as contemplated in section 3(1), and for the purposes of the definition of “officer”,</p>

and section 5, Chapter IB and sections 12U and 12W includes the postal company.”

2. Amendment of Chapter I by the deletion of the heading “POWERS AND RIGHTS OF THE DIRECTOR-GENERAL”.

3. Repeal of section 2.

4. Amendment of Chapter IA by the substitution for the heading of the following heading:

“SUCCESSOR
[COMPANIES]
COMPANY”.

5. Substitution for section 3 of the following section:

**“3. Incorporation
of
successor
[companies]
company**

(1) On
a
date
or
dates
preceding
the
[postal
transfer
date
or
the]
telecommunications
transfer
date[,
as
the
case
may
be],

the
Minister
shall
effect
the
incorporation
in
terms
of
the
Companies
Act
of
[two]
a
public
[companies]
company
namely,
[a
postal
company
to
conduct
a
postal
service
and]
a
telecommunications
company
to
conduct
a
telecommunications
service,
which
[companies]
company
shall
bear
[names]
the
name
approved
by
the
Minister,
and
the
issue
to
[each]
the
company
of
a

certificate
to
commence
business.

[(2) **The
Minister
shall
on
behalf
of
the
State
sign
all
documents
that
are
required
to
be
signed
by
the
promoters
of
the
companies.**

(3) **The
Director-
General
—**

(a) **shall
be
appointed
as
the
first
director
of
each
successor
company
and
shall
in
that
capacity
in
respect
of
each
company
sign
the
documents**

which
are
required
to
be
signed
by
a
director
of
the
company
for
the
purpose
of
incorporation
of
the
company
and
the
issue
to
the
company
of
a
certificate
to
commence
business;

(b) shall
occupy
the
post
of
director
of
a
successor
company
until
the
date
immediately
preceding
the
transfer
date
concerned.]

(4) [Each
successor]
The
telecommunications

company

—

- (a) shall upon incorporation issue one share with a nominal value of one rand to the State;
- (b) shall in its memorandum of **[association]** incorporation *inter alia* provide that **[that successor]** the telecommunications company and its subsidiaries
-
- (i) shall have as its main object and main business **[in the case of the postal company to**

conduct
the
postal
service
and
in
the
case
of
the
telecommunica-
company]

to
conduct
the
telecommunica-
service;

[(ii) 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,
namely—

(aa) the
alienation
or
encumbrance
by
the
company,
otherwise
than
in
the
normal
cause

				of its business of assets of the company with a market value of more than 10 per cent of the market value of all the assets of the company
				(bb) the cessation or alteration of the main object or main business of the company
				(cc) the alienation of shares held by the company in any subsidiary thereof so

				<p>that the company retains 50 per cent or less of the voting shares of the subsidiary</p>
			(dd)	<p>the merger of the company with another company or the entering into of a partnership or joint venture by the company</p>
		(c)		<p>must have articles of association providing, amongst other things in the case of the postal company, that the affairs</p>

of
the
company
must
be
managed
by
a
board
of
directors
appointed
in
terms
of
the
articles
of
association;

- (d) shall, apart from the shares referred to in subsection (4) (a) and sections 5(1) and 12U(4) (a), not issue any shares:

Provided that paragraphs (b) (ii), (c) and (d) shall not apply to the telecommunications company.

- | | | | |
|--|--|--|--|
| | | | (5) Notwithstanding the provisions of the Companies Act, the postal company and the telecommunications company may have fewer than seven members.] |
| | | | (6) The powers and duties of the State as a member and shareholder of [each] <u>the</u> successor company shall be exercised and performed by the Minister. |
| | | | [(7) A successor company shall not conduct any business and shall |

**not
acquire
any
assets,
liabilities,
rights
or
obligations
prior
to
the
transfer
date
concerned.]”.**

6. Amendment of section 4—

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

“Transfer of
telecommunications
enterprise
to
successor
company”;
and

- (b) by the substitution for subsections 1, 2 and 3 of the following subsections, respectively:

“(1) On
a
date
determined
by
the
Minister
by
notice
in
the
Gazette—

- (a) **The
postal
enterprise
shall
be
transferred**

to
the
postal
company,
from
which
date
the
postal
company
shall,
subject
to
the
provisions
of
any
other
law,
have
the
power
to
conduct
the
postal
service;]

- (b) the telecommunications enterprise shall be transferred to the telecommunications company, from which date the telecommunications company shall, subject to the provisions of any other law, have the exclusive power

to
conduct
the
telecommunications
service.

- (2) (a) The value of the assets and liabilities of the **[enterprises]** enterprise transferred in terms of subsection (1) shall be determined by the Minister with the concurrence of the Minister of Finance, and the net asset value of **[those enterprises]** the enterprise shall likewise be determined, regard being had to the obligations

imposed upon the **[postal company and the]** telecommunications company by section 12U.

- (b) For the purposes of the Income Tax Act, 1962 ([Act No. 58 of 1962](#)), or any other law in terms of which a tax or levy may be imposed, it shall be deemed that expenses were actually incurred by **[a]** the successor company in

acquiring the assets transferred to it in terms of subsection (1) and that, notwithstanding the provisions of any other law, the expenses concerned, including the cost of the assets, are equal to the value determined in terms of subsection (2) (a).

- (3) (a) In so far as the **[postal enterprise and the]** telecommunications enterprise have the use of

State
land
immediately
prior
to
the
date
referred
to
in
subsection
(1),
such
land
shall
on
the
said
date
pass
to
the
**[postal
company
or
the]**
telecommunications
company,
**[as
the
case
may
be,]**
and
it
shall
be
deemed
that
such
land
was
on
the
said
date
sold
by
the
State
President
in
terms
of
the
provisions
of

the
State
Land
Disposal
Act,
1961
([Act
No.
48
of
1961](#)),
to
the
company
[concerned].

- (b) Notwithstanding the provisions of section 5 of the State Land Disposal Act, 1961, and section 18 of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#)), a registrar as defined in section 102 of the Deeds Registries Act, 1937, shall,

on
submission
to
him
or
her
of
a
certificate
by
the
Ministers
of
Public
Works
and
Land
Affairs
that
State
land
has
passed
in
terms
of
paragraph
(a),
free
of
charge
make
such
entries
and
endorsements
as
he
or
she
may
deem
necessary
in
or
on
any
relevant
register,
title
deed
or
other
document
in
his
or

her
office
or
laid
before
him
or
her,
in
order
to
effect
the
transfer
in
the
name
of
the
company
[concerned].

[(c) **If
a
particular
piece
of
State
land
was
used
jointly
by
the
postal
enterprise
and
the
telecommunications
enterprise
immediately
prior
to
the
date
mentioned
in
subsection
(1),
and
the
successor
companies
after
that
date
agree**

to divide that piece of land between them without the payment of compensation by one party to the other or without giving anything in exchange therefor, the subdivision of the land concerned shall be exempted from the payment of transfer duty, stamp duty or other fees if, upon the registration of the subdivision, a certificate signed by

the secretaries of both successor companies is submitted in which it is certified that an agreement as contemplated in this paragraph has been concluded.]”;

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

“(a) Any servitude, other real right or lease existing immediately before the date referred to in subsection (1) in favour of the State, the department or the

Director-General and which is exercised in favour of **[the postal enterprise or]** the telecommunications enterprise shall on the said date pass to **[the postal company or]** the telecommunications company[, as the case may be].”;

- (d) by the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph:

“(i) register the passing of the servitude, other real right or lease to the company

		[concerned] in terms of paragraph (a); or”;
	(e)	by the substitution in subsection (4A) for the words “a successor company” of the words “the successor company”, wherever they occur;
	(f)	by the deletion of paragraph (a) of subsection (5); and
	(g)	by the substitution for subsections (6), (7), (8), (9), (10) and (11) of the following subsections, respectively:
	"(6)	The successor company [concerned] may apply for the registration of any registerable right relating to intellectual property or inventions (including the registration as patents of patentable inventions) transferred by the

State
in
terms
of
this
section
to
the
successor
company
[concerned].

- (7) The Registrar of Trade Marks shall make such entries, notes and endorsements as he or she may deem necessary in or on any relevant register, certificate or other document in his or her office or submitted to him or her so as to effect the

transfer
of
trade
marks
to
**[the
postal
company
or]**
the
telecommunications
company
in
terms
of
this
section,
and
may
request
the
[successor]
company
[concerned]
to
submit
or
produce
to
him
or
her
such
information
or
document
as
he
or
she
may
deem
necessary
for
such
purpose.

- (8) If
any
doubt
arises
as
to
whether
anything
for
the

purposes
of
this
Act
pertains
to
or
is
connected
with
**[the
postal
enterprise,]**
the
telecommunications
enterprise,
the
department
or
anyone
else,
the
decision
of
the
Minister
shall
be
conclusive.

- (9) (a) **[Each]**
The
successor
company
may
establish
subsidiary
companies
of
which
the
successor
company
shall
be
the
sole
member
and
shareholder
and
shall
allow
the
assignments,
substitutions
and

transfers contemplated in this section to be made to such subsidiary.

- (b) The provisions of this Act applicable to **[such]** ~~the~~ successor company, shall apply *mutatis mutandis* to the subsidiary thereof while the successor company is the sole member and shareholder of the subsidiary.

- (10) No stamp duty, transfer duty or any other tax or levy shall be

payable
in
respect
of
the
transfer
of
**[the
postal
enterprise
or]**
the
telecommunications
enterprise
in
terms
of
this
section.

- (11) Any officer in the employment of **[a]** the successor company shall be deemed to be an officer in the service of the State for the purposes of section 7 of the State Land Disposal Act, 1961 (Act

No.
48
of
1961),
and
section
24
of
the
Expropriation
Act,
1975
(Act
No.
63
of
1975).”.

7. Deletion of section 7A.
8. Amendment of section 12V by the substitution for the words “each successor company” of the words “the successor company”.
9. Substitution for subsection (1) of section 89 of the following subsection:

**"89. Order
of
transmission
of
[telegrams]
telephonic
communications**

- (1) **[Telegrams
and
telephonic]
Telephonic**
communications
shall
be
sent
for
all
persons
alike,
without
favour
or
preference,
and
shall

			as far as practicable be transmitted in the order in which they are received, but [telegrams and] telephonic communications relating to the preservation of the peace of the Republic or of the adjacent territories or the arrest of criminals or the discovery or prevention of crime or any other matter connected with the administration of justice shall
--	--	--	--

have
precedence
over
all
other
**[telegrams
and]**
telephonic
communications:
Provided
**[that
nothing
in
this
section
contained
shall
be
held
to
prevent
precedence
being
given
to
any
class
of
telegrams
under
such
conditions
and
upon
payment
of
such
special
rates
of
charges
as
may
be
prescribed
by
the
telecommunications
company:
And
provided
further]**
that
no
person
shall
be

permitted
to
occupy
a
telecommunications
line
in
such
a
manner
as
unreasonably
to
impede
the
speedy
transmission
of
other
**[telegrams
and]**
telephonic
communications.”.

10. Deletion of section 90.

11. Substitution for section 99
of the following section:

**"99. Unauthorized
use of
words
[“Post
Office”,
“mail”,]
“yellow
page
directory”,
“telex
directory”,
“telephone
directory”,
etc.**

Any
person
who
without
the
authority
of **[the
postal
company
or]** the
telecommunications

company[,
as the
case
may
be (the
proof
of
which
shall
be on
the
accused)]—

[(a) places
or
maintains
or
suffers
to
be
placed
or
maintained
or
to
remain
in,
on
or
near
any
house,
premises,
wall,
door,
window,
box,
post,
pillar
or
other
place
belonging
to
him
under
his
control
the
words
“Post
Office”
or
any
other
word
or

a
mark
which
may
imply
or
may
give
reasonable
cause
for
believing
that
house,
premises,
wall,
door,
window,
box,
post,
pillar
or
other
place
to
be
a
post
office;

(b) places
or
maintains
or
permits
to
be
placed
or
maintained
or
to
remain
on
any
vehicle
or
vessel
the
word
“mail”
or
any
other
word
or
mark

**which
may
imply
or
may
give
reasonable
cause
for
believing
that
such
vehicle
or
vessel
is
used
for
the
conveyance
of
mails;
or]**

- (c) in connection with any publication or proposed publication, or in any invitation, prospectus, order form, notice, invoice or advertisement relating to any publication, uses the words “telephone directory”, “yellow page directory”, “yellow pages”,

“telex
directory”
or
any
other
word
or
a
mark,
in
circumstances
or
in
a
manner
which
may
imply
or
may
give
reasonable
cause
for
believing
that
such
a
publication
or
proposed
publication
is
a
telephone
directory,
yellow
page
directory,
telex
directory
or
other
publication
published
on
the
authority
of
**[the
postal
company
or]**
the

telecommunications
company,

shall
be
guilty
of an
offence
and
liable
on
conviction
to a
fine
not
exceeding
R2
000 or
imprisonment
for a
period
not
exceeding
six
months
or to
both
such
fine
and
such
imprisonment.”.

12. Substitution for section 102
of the following section:

**"102. Personating
officers
of
[department,
postal
company
or]
telecommunications
company
with
fraudulent
intent**

Any
person
who
with
fraudulent
intent

personates
or
represents
himself
or
herself
to be
an
officer
of the
**[department
or the
postal
company
or]**
telecommunications
company,
shall
be
guilty
of an
offence
and
liable
on
conviction
to a
fine
not
exceeding
R4
000 or
imprisonment
for a
period
not
exceeding
12
months
or to
both
such
fine
and
such
imprisonment.”.

13. Substitution for section 105
of the following section:

**"105. Divulging
contents
of
[telegrams
or]**

**telephonic
communications**

Any
officer
who,
not
being a
witness
in a
court
of law,
without
the
consent
of the
sender
**[or
addressee]**
or
receiver,
or
otherwise
than in
pursuance
of his
or her
duties
—

[(a) **opens
or
tampers
with
or
divulges
the
contents
or
substance
of
any
telegram,
or
discloses
its
existence
otherwise
than
by
delivering
it
or
giving
a
copy
thereof**

			<p>to the person to whom he is authorized to deliver it or to give such copy, or who maliciously or wilfully misdelivers, mistimes, secretes, intercepts, destroys, makes away with, alters or omits to transmit or deliver or prevents or delays the delivery or transmission of any telegram or makes use for his own purposes of any knowledge</p>
--	--	--	---

**he
may
acquire
of
the
contents
thereof;]**

- (b) divulges
the
existence,
contents
or
substance
of
any
telephonic
communication
or
maliciously
or
wilfully
intercepts
a
telephonic
communication
or
prevents
or
delays
the
transmission
thereof
or
makes
use
for
his
or
her
own
purposes
of
any
knowledge
he
or
she
may
acquire
of
the
contents
thereof,

shall
be
guilty

of an
offence
and
liable
on
conviction
to a
fine
not
exceeding
R4
000 or
imprisonment
for a
period
not
exceeding
twelve
months
or to
both
such
fine
and
such
imprisonment.”.

14. Substitution for section 112
of the following section:

**"112. In
criminal
proceedings,
etc.,
property
[in
postal
articles,
money,
money
orders,
etc.,]
may
be
laid
in
[postal
company
or]
telecommunications
company**

In any
information

or
complaint
as to
or any
prosecution
for any
crime
or any
offence
committed
in
respect
of the
**[postal
company
or]**
telecommunications
company
or of
any
**[mail,
telegram
or]**
telecommunications
line **[or
any
property,
moneys,
money
order,
postal
order
or
other
document
authorized
to be
used
for the
purpose
of
remitting,
paying
or
depositing
money
through
or
with
the
postal
company
or
telecommunications
company,
as the
case**

may
be], or
with
respect
to any
act,
deed,
matter
or
thing
which
has
been
done
or
committed
with
any
malicious,
injurious
or
fraudulent
intent
relating
to or
concerning
the
[postal
company
or]
telecommunications
company[,
as the
case
may
be],
or any
such
[mail,
telegram,]
telecommunications
line[,
property,
moneys,
money
order,
postal
order
or
other
document],
it shall
be

sufficient

—

[(a) to allege that any such mail, telegram, property, moneys, money order, postal order or other document belongs to or is in the lawful possession of the postal company or telecommunications company, as the case may be, and to put in the same in evidence, and it shall not be necessary to allege or prove

**the
same
to
be
of
any
value;]**

- (b) to
allege
that
any
such
act,
deed,
matter
or
thing
was
done
or
committed
with
intent
to
injure
or
defraud
the
**[postal
company
or]**
telecommunications
company[,
**as
the
case
may
be],**
without
setting
forth
its
or
any
other
name,
addition
or
description
whatsoever;
and
- (c) if
the
offender
be
an

officer,
to
allege
that
the
offender
was
an
officer
of
the
[postal
company
or]
telecommunications
company[,
as
the
case
may
be,]
at
the
time
of
the
committing
of
the
offence
without
stating
the
nature
or
particulars
of
his
employment.”.

15. Deletion of section 114.

16. Substitution for section 115
of the following section:

**"115. Nonliability
of
[postal
company
and]
telecommunications
company**

Save
as is
otherwise

provided
in this
Act or
any
other
law,
the
**[postal
company
or]**
telecommunications
company[,
**as the
case
may
be, or
any
officer
or any
person
conveying
postal
articles
in
pursuance
of any
contract
entered
into or
arrangements
made
in
terms
of this
Act or
conveying
mail
which
he or
she is
obliged
to
convey,
in
terms
of this
Act or
any
other
law or
any
employee
of a
mail
carrier]**
shall
not be

		liable by reason of any error, default, delay, omission, damage, destruction, non delivery, non transmission or loss, whether negligent or otherwise, in respect of [any postal article or telegram or by reason of] anything lawfully done under this Act, or any other law, [and bona fide payment of any sum of money under the provisions of this Act or any other law shall, to whomsoever made,
--	--	--

		<p>discharge the postal company or telecommunications company, as the case may be, and the officer by whom any such payment was made, from all liability whatsoever in respect of any such payment, notwithstanding any forgery, fraud, mistake, neglect, loss or delay which may have been committed or have occurred in connection therewith]: Provided that nothing in this section contained shall be</p>
--	--	--

			construed as exempting the [postal company or] telecommunications company[, as the case may be,] from liability for damage or loss caused to any person by reason of fraud on the part of an officer in relation to his <u>or her</u> official duties [or as exempting any mail carrier from liability for damage or loss caused to any person by reason of fraud on the part of such carrier or of
--	--	--	--

any
employee
of
such
carrier
in
relation
to his
or her
duties].”.

17. Deletion of section 119B and 120A.
18. Substitution for section 121 of the following section:

**"121. Officers
to
take
oath
or
make
affirmation**

Every
officer
required
by the
[Director-
General,
postal
company
or]
telecommunications
company
to do
so,
shall
before
exercising
the
duties
of his
or her
office
take an
oath or
make
an
affirmation
before
a
justice
of the
peace

in the
form
set
forth
in the
First
Schedule.”.

19. Substitution for section 123 of the following section:

"123. Short title

This
Act
shall
be
called
the
Post
[Office]
and
Telecommunication-
related
Matters
Act,
1958.”.

20. Substitution for the long title of the following long title:

**" "To provide
for post and
telecommunication-
related matters,
and to provide
for matters
connected
therewith.”.**

21. Substitution for the First Schedule of the following Schedule:

**" First
Schedule
Oath to be
taken or
affirmation
to be**

**made by
employees**

I (name
in full)

do
solemnly
swear/
affirm*
faithfully
in my
position
as an
employee
of the
telecommunications
company
to be
honest,
trustworthy
and fair
without
respect
of
persons
according
to the
law and
to the
best
of my
knowledge,
that I
will not
contrary
to the
law or to
my duty
communicate
or
divulge
any
information
regarding
any
telephone
conversation,
and that
I will give
account
of any
responsibility
entrusted
to me
whenever
and

		<p>wherever such may be required of me.</p> <p>*delete which is not applicable</p> <p>Signature</p> <p>Sworn/ Affirmed* before me at</p> <p>_____</p> <p>on the _____ day of _____ 20 _____</p> <p>JUSTICE OF THE PEACE"</p> <p>*delete which is not applicable</p>
Act No. 124 of 1998	Postal Services Act	<p>1. Substitution in section 1 for the definition of "postal company" of the following definition:</p> <p>"'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;";</p> <p>2. Deletion of section 29.</p> <p>3. Insertion of the following sections after section 32:</p> <p>"32A. Order of transmission</p>

**of
telegrams**

- (1) Telegrams
must
be
sent
for
all
persons
alike,
without
favour
or
preference,
and
must
as
far
as
practicable
be
transmitted
in
the
order
in
which
they
are
received,
but
telegrams
relating
to
the
preservation
of
the
peace
of
the
Republic
or
of
the
adjacent
territories
or
the
arrest
of
criminals
or
the
discovery

or
prevention
of
crime
or
any
other
matter
connected
with
the
administration
of
justice
shall
have
precedence
over
all
other
telegrams.

- (2) Any
person
who
contravenes
this
section
is
guilty
of
an
offence
and
liable
on
conviction
to
a
fine
or
to
imprisonment
for
a
period
not
exceeding
two
years
or
to
both
a
fine
and

such
imprisonment.

**32B. Telegrams
which
must
be
refused
transmission**

Any
telegram
which
contains
anything
in its
contents,
address
or
signature
of a
blasphemous,
indecent,
obscene,
offensive
or
libelous
nature
or
anything
repugnant
to law
or
decency
must
be
refused
transmission.”.