REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POST OFFICE SOC LTD BILL

(As amended by the Portfolio Committee on Communications (National Assembly))
(Introduced as South African Post Office Bill)
(The English text is the official text of the Bill)

(MINISTER OF COMMUNICATIONS)

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To 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:—

ARRANGEMENT OF SECTIONS

Definitions

1. 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).

Objects of Act

2. 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.

Continued existence of Post Office

3. (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— 5

(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; 10

(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. 15

(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— 20

(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 25

(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— 30

(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; 35

(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; 40

(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. 45

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: 50

(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; 55

(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.

Powers of Post Office

5. 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.

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).

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

7. (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.

Board of Post Office

8. (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.

Functions of Board

9. 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.

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)*, *(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)*.

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.

Resignation, removal from office and vacancies

12. (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.

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.

Procedures at meetings, and committees of Board

14. (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. 5

(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. 10

(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; 15

(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 20

(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. 25

(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. 30

Delegation and assignment of functions by Board

15. (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 35

(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)— 40

(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. 45

(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; 50

(ii) the mandate and strategic plan of the Post Office.

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

16. (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. 55

(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.

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

17. (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.

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

18. (1) 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—

(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.

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

19. (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.

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

20. (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.

Personnel of Post Office

21. (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.

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.

Application of Public Finance Management Act

23. (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.

Investigation of Post Office

24. (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.

Intervention by Minister

25. (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.

Limitation of liability

26. 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.

Application of Companies Act to Post Office

27. (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.

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

28. (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.

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*.

Offences and penalties

30. (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.

Repeal and amendment of laws

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

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*. 5

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

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	1. Amendment of section 1— *(a)* by the substitution for the definition of **"postal company"** of the following definition: " **'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;"; *(b)* by the deletion of the definition of **"postal enterprise"**; *(c)* by the deletion of the definition of **"railway"**; *(d)* by the substitution for the definition of **"successor company"** of the following definition: " **'successor company'** means **[a]** the telecommunications company incorporated as contemplated in section 3(1), and for the purposes of the definition of "officer", and section 5, Chapter 1B 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: **"Incorporation of successor [companies]** company **3.** (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]**

Act No. and Year	Short Title	Extent of amendment or repeal
		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 telecommunications company]** to conduct the telecommunications service;

Act No. and Year	Short Title	Extent of amendment or repeal
		[(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 that the company retains 50 per cent or less of the voting shares of the subsidiary;** ***(dd)* the merger of the company with another company or the entering into of a partnership or joint venture by the company;** ***(c)* must have articles of association providing, amongst other things in the case of the postal company, that the affairs 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.**

Act No. and Year	Short Title	Extent of amendment or repeal
		(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]** the 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.

Act No. and Year	Short Title	Extent of amendment or repeal
		(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]**.

Act No. and Year	Short Title	Extent of amendment or repeal
		[*(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:

Act No. and Year	Short Title	Extent of amendment or repeal
		"(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).".

Act No. and Year	Short Title	Extent of amendment or repeal
		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: **"Order of transmission of [telegrams] <u>telephonic communications</u>** **89.** (1) **[Telegrams and telephonic]** <u>Telephonic</u> 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: **"Unauthorized use of words [“Post Office”, “mail”,] “yellow page directory”, “telex directory”, “telephone directory”, etc.** **99.** Any person who without the authority of **[the postal company**

Act No. and Year	Short Title	Extent of amendment or repeal
		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.".

Act No. and Year	Short Title	Extent of amendment or repeal
		12. Substitution for section 102 of the following section: **"Personating officers of [department, postal company or] telecommunications company with fraudulent intent** **102.** 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: **"Divulging contents of [telegrams or] telephonic communications** **105.** 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 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 he may acquire of the contents thereof;]**

Act No. and Year	Short Title	Extent of amendment or repeal
		(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: **"In criminal proceedings, etc., property [in postal articles, money, money orders, etc.,] may be laid in [postal company or] telecommunications company** **112.** 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—

Act No. and Year	Short Title	Extent of amendment or repeal
		[*(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:
		"Nonliability of [postal company and] telecommunications company
		115. 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, nondelivery, nontransmission or loss, whether negligent or otherwise, in respect of

Act No. and Year	Short Title	Extent of amendment or repeal
		[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, 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 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 or her 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: "**Officers to take oath or make affirmation** **121.** 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: "**Short title** **123.** This Act shall be called the Post **[Office]** and Telecommunication-related Matters Act, 1958.".

Act No. and Year	Short Title	Extent of amendment or repeal
		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 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
Act No. 124 of 1998	Postal Services Act	1. Substitution in section 1 for the definition of **"postal company"** of the following definition: " **'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. Deletion of section 29.

Act No. and Year	Short Title	Extent of amendment or repeal
		3. Insertion of the following sections after section 32: "**Order of transmission of telegrams** **32A.** (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. **Telegrams which must be refused transmission** **32B.** Any telegram which contains anything in its contents, address or signature of a blasphemous, indecent, obscene, offensive or libellous nature or anything repugnant to law or decency, must be refused transmission.".

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POST OFFICE SOC LTD BILL, 2010

1. BACKGROUND

1.1 The South African Post Office Limited ("the Post Office") was established in terms of the Post Office Act, 1958 (Act No. 44 of 1958), which governed both the post and telecommunications services. In 1991 the Post Office Amendment Act, 1991 (Act No. 85 of 1991), separated the historically combined post and telecommunication services provided through a state department and created two separate independent companies.

1.2 As a legal entity, the Post Office is not only obliged to balance revenue and expenditure, but also to make profit. The Post Office is responsible for meeting its universal service obligations and for shouldering all of its obligations and liabilities. The company is given a high level of managerial autonomy and flexibility.

1.3 Despite the high level of managerial and organisational autonomy and flexibility, the postal company is accountable to government; operates within the Postal Services Act, 1998 (Act No. 124 of 1998); and is subject to regulatory oversight by the Independent Communications Authority of South Africa (ICASA).

1.4 As a public entity the finances of the Post Office are governed by the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999). The Minister of Communications is responsible for oversight in relation to financial issues, as the Executive Authority.

1.5 The Post Office has the mandate to provide postal services to all South Africans. With reform in the sector the mandate has been extended to include the use of information and communications technology infrastructure as well as the offering of services other than in the traditional postal services.

2. CURRENT REGULATORY FRAMEWORK

2.1 The White Paper on Postal Policy (1996) provides for guidelines for the structure and management of the Post Office Board.

2.2 The Postal Services Act, 1998, provides for the operational function of the Post Office, and does not deal with matters of shareholder governance explicitly.

2.3 The Post Office Act, 1958, did not address the relationship between government and the Board of Directors, the relationship between the Board and the Executive Management of the Company and how the Board is appointed. Subsequent to that, it became apparent that a new law should be established to deal with matters of corporate governance of the Post Office.

3. OBJECTS OF THE BILL

3.1 The South African Post Office Bill is aimed at providing a comprehensive legal framework addressing corporate governance of the Post Office in a single Act focusing on the Post Office as a legal entity.

3.2 Government has a fundamental obligation to provide universal postal services. The establishment of this legislation will put in place institutional arrangements that best foster efficiency, improve competitiveness and enhance accountability.

4. SUMMARY OF THE BILL

4.1 *Clause 1* contains the definitions used in the Bill.

4.2 *Clause 2* provides for the objects of the Act, which includes the provision of universal, accessible, reliable and affordable postal services and governance of the Post Office.

4.3 *Clause 3* provides for the continued existence of the Post Office and for related transitional matters. It further empowers the Minister to add to or alter the memorandum of incorporation of the Post Office.

4.4 *Clauses 4 and 5* outline the duties and powers of the Post Office.

4.5 *Clause 6* provides for the Post Office annually to conclude a performance agreement with the Minister. The agreement shall amongst others outline how the performance of the Post Office will be measured.

4.6 *Clause 7* empowers the Minister after consultation with the Minister of Finance to annually grant financial support to the Post Office in respect of normal expenditure

from money appropriated by Parliament for the purpose. It further provides for the Post Office to seek approval from the Minister granted after consultation with the Minister of Finance before it can borrow money.

4.7 *Clause 8* makes provision for the Post Office to be governed by a Board of Directors. The Board will consist of three executive members, and not more than 11 non-executive members, one of whom must be the managing director of the Postbank by virtue of his or her office. It further empowers the Minister to appoint the Chairperson and the Deputy Chairperson from amongst the non-executive Board members.

4.8 *Clause 9* outlines the functions of the Board and provides amongst others that the Board must give effect to the corporate plan of the Post Office as contemplated in section 52 of the Public Finance Management Act.

4.9 *Clause 10* provides for the grounds for disqualification from appointment to the Board and the obligation to make full disclosure of certain interests.

4.10 *Clause 11* outlines the procedure to be followed in appointing non-executive members of the Board.

4.11 *Clause 12* makes provision for the procedure to be followed by a member wishing to resign from the Board. It also provides for the circumstances under which the Minister may remove a member from office.

4.12 *Clause 13* sets out the fiduciary duties of the Board.

4.13 *Clause 14* seeks to empower the Board to appoint committees. The Board is also required to appoint committees specified in the clause. It further provides for criteria for the appointment of members to these committees.

4.14 *Clause 15* empowers the Board to delegate any of its powers and assign any of its duties to any Board member or any of its committees, or to a member of the executive management or any employee of the Post Office.

4.15 *Clause 16* empowers the Board to appoint a chief executive officer, chief financial officer and chief operating officer with the approval of the Minister. It further provides for the procedure to be followed in making the appointments.

4.16 *Clause 17* outlines the conditions for the appointment of chief executive officer, chief financial officer and chief operating officer. These appointments are subject to the conclusion of annual performance contracts with the Post Office. It further provides for their term of office, which is a period not exceeding five years with the possibility of reappointment for one additional term.

4.17 *Clause 18* provides for the circumstances under which the employment of the chief executive officer, chief financial officer and chief operating officer shall be terminated.

4.18 *Clause 19* empowers the Board to appoint any senior employee of the Post Office as acting chief executive officer, acting chief financial officer or acting chief operating officer. The provision also sets out the circumstances under which such appointments may be made.

4.19 *Clause 20* empowers the chief executive officer, chief financial officer and chief operating officer to delegate and assign any of their powers and duties to an employee of the Post Office.

4.20 *Clause 21* empowers the Board to determine the personnel establishment necessary to enable the Post Office to perform its functions.

4.21 *Clause 22* provides for the establishment of subsidiaries of the Post Office and accountability.

4.22 *Clause 23* provides for the application of the Public Finance Management Act to the Post Office.

4.23 *Clause 24* empowers the Minister to appoint a person to investigate the affairs or financial position of the Post Office and compliance by the Post Office with the Act. It further obliges the Post Office or an employee of the Post Office to provide the Minister or a person authorised by the Minister with such information, books, accounts, documents and assets of the Post Office as the Minister or the authorised person may require.

4.24 *Clause 25* authorises the Minister under certain circumstances to issue directives requiring the Post Office to take action specified by the Minister. A directive may for example be issued if the Post Office is in financial difficulty, if it is mismanaged, or if it fails to perform its functions effectively and efficiently. The clause also seeks to empower the Minister to replace the members of the Board or to appoint an administrator to take over certain functions of the Board if the Board fails to comply with the directive. The Minister is also empowered to dissolve the Board if, on good

cause shown, the Minister loses confidence in the ability of the Board to perform its functions effectively and efficiently.

4.25 *Clause 26* provides for the limitation of liability of the Post Office or any of its employees for damage or loss caused in the performance of their functions. The limitation does however not apply in the case of unlawful or grossly negligent action or action taken in bad faith.

4.26 *Clause 27* deals with the application of provisions of the Companies Act, 2008 (Act No. 71 of 2008), to the Post Office.

4.27 *Clause 28* seeks to authorise the Minister to request the Minister of Trade and Industry to declare a provision of the Companies Act to be inapplicable the Post Office. Such declaration may only be issued in circumstances specified in the clause and only if the process provided for in the clause has been followed.

4.28 *Clause 29* empowers the Minister to make certain regulations. This clause also seeks to empower the Minsiter to make policies applicable to the Post Office.

4.29 *Clause 30* creates certain offences and sets out the penalties that may be imposed.

4.30 *Clause 31* provides for the repeal and amendment of laws mentioned in Schedule 2 to the Act.

4.31 *Clause 32* contains the short title and provides for the commencement date of the Act. This Bill was introduced as the South African Post Office Bill but the name was changed by the Portfolio Committee on Communications to South African Post Office SOC Ltd Bill.

5. PARTIES CONSULTED

South Africa Post Office Limited (SAPO), National Treasury, Industrial Strategy Focus Group, Department of Cooperative Governance and Traditional Affairs, Government Communication and Information System (GCIS), Department of Trade and Industry (DTI), Department of Public Enterprises (DPE), Department of Social Development (DSD), Department of Science and Technology (DST), Independent Communications Authority of South Africa (ICASA), South African Social Security Agency (SASSA), all nine provincial departments of local government, Communications Workers Union, Organised Civil Society, Non-Governmental Organisations, Members of the public, National House of Traditional Leaders, Eastern Cape House of Traditional Leaders, North West House of Traditional Leaders.

6. FINANCIAL IMPLICATIONS FOR STATE

Normal costs associated with legislative processes will be incurred. The Bill will have some financial implication on the Post Office due to the revision of *inter alia* its memorandum of incorporation to align it with the Bill. No major financial implications are, however, foreseen for the Post Office as the Bill predominantly captures existing processes, procedures and governance arrangements in statute.

7. IMPLICATIONS FOR PROVINCES

None.

8. PARLIAMENTARY PROCEDURE

8.1. The State Law Advisers and the Department of Communications are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

8.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.