

REPUBLIC OF SOUTH AFRICA

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# POST OFFICE AMENDMENT BILL

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*(As introduced)*

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(MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING)

[B 12—97]

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REPUBLIEK VAN SUID-AFRIKA

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# POSWYSIGINGSWETS- ONTWERP

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*(Soos ingedien)*

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(MINISTER VIR POS-, TELEKOMMUNIKASIE- EN UITSAAIWESE)

[W 12—97]

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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.
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## **BILL**

**To amend the Post Office Act, 1958, so as to bring it into harmony with the Telecommunications Act, 1996; to make fresh provision for the subsidisation of the postal company; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 3 of Act 44 of 1958, as inserted by section 5 of Act 85 of 1991**

**1.** Section 3 of the Post Office Act, 1958 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the addition to subsection (3) of the following proviso:

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

(b) by the substitution for subsection (5) of the following subsection:

“(5) Notwithstanding the provisions of the Companies Act, the postal company **[and the telecommunications company]** shall **[each]** not have more than one member, and the telecommunications company shall not have more than seven members.” 10

**Amendment of section 5 of Act 44 of 1958, as inserted by section 5 of Act 85 of 1991**

**2.** Section 5 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection: 15

“(7) The State may not alienate any shares or rights to shares in **[a successor company]** the postal company, and **[a successor company]** the postal company may not issue shares in **[such company]** itself to any person other than the State.”.

**Substitution of section 6 of Act 44 of 1958, as inserted by section 5 of Act 101 of 1992**

3. The following section is hereby substituted for section 6 of the principal Act:

**“Subsidy to postal company**

6. (1) During the first five years after the commencement of this section the Minister may, in consultation with the Minister of Finance, out of money appropriated by Parliament for the purpose, grant an annual subsidy to the postal company in respect of normal expenditure. 5

(2) A request for a subsidy shall be submitted by the postal company to the Minister by a date determined by the Minister in order for it to be in time for the evaluation process for inclusion in the annual compilation and exposition of the Government’s expenditure proposals for appropriation purposes. 10

(3) The payment of subsidies shall be for such purposes and period and subject to such conditions as the Minister, with concurrence of the Minister of Finance, may determine.”. 15

**Amendment of section 7 of Act 44 of 1958, as substituted by section 6 of Act 85 of 1991 and amended by section 6 of Act 101 of 1992**

4. Section 7 of the principal Act is hereby amended by the deletion of subsection (2).

**Amendment of section 10A of Act 44 of 1958, as inserted by section 7 of Act 85 of 1991** 20

5. Section 10A of the principal Act is hereby amended—

(a) by the substitution for subsections (5) and (6) of the following subsections, respectively:

“(5) The postal employer [**and the telecommunications employer**] shall guarantee the financial obligations of the postal pension fund [**and the telecommunications pension fund, respectively**]. 25

(6) The State shall guarantee the obligations of the postal employer [**and the telecommunications employer**] in terms of subsection (5).”;

(b) by the substitution in subsection (7) for paragraphs (a) and (d) of the following paragraphs, respectively: 30

“(a) The guarantee of the State in terms of subsection (6) shall be limited to the difference between the amount paid in terms of section 8(5)(e) to the postal pension fund [**or the telecommunications pension fund, as the case may be**] and the amount of the actuarial liability, on the date of employment of an officer or employee by the postal employer [**or the telecommunications employer**], of the pension fund referred to in section 8(5)(c) in respect of those officers or employees of the department who in terms of section 8(5)(d) become members of the postal pension fund [**or the telecommunications pension fund, as the case may be**], plus interest on that amount calculated at the rate which shall, subject to paragraph (c), from time to time be determined by the chief actuary. 35 40

(d) The guarantee of the State in terms of subsection (6) shall decrease to the extent to which the [**companies concerned pay**] postal company pays the amounts plus interest referred to in paragraph (a) to the [**pension funds concerned**] postal pension fund, in terms of [**their**] its obligations under subsection (5) and shall be extinguished when the obligations have been fully discharged.”. 45

**Short title**

6. This Act shall be called the Post Office Amendment Act, 1997. 50

## **MEMORANDUM ON THE OBJECTS OF THE POST OFFICE AMENDMENT BILL**

The Post Office Act, 1958 (Act No. 44 of 1958), provides for only one shareholder in the telecommunications company (Telkom). When Telkom acquires a strategic equity partner, certain amendments to the Post Office Act will have to be effected to enable Telkom to operate as the same company, but with more than one shareholder.

Section 3(4)(b)(ii) of that Act places certain restrictions on the postal company and Telkom regarding the alienation or encumbrance of assets, the transfer of more than 50% of voting shares and mergers with other companies or the entering into partnerships or joint ventures. The Bill seeks to remove these restrictions in the case of Telkom.

Section 3(4)(c) prescribes certain requirements in respect of the Articles of Association of Telkom, which will no longer be appropriate to Telkom when it acquires a strategic equity partner. The Bill accordingly seeks to make the necessary amendment.

Section 3(5) stipulates that Telkom may not have more than one shareholder. This will exclude any strategic equity partner and therefore needs to be amended.

Section 5(7) stipulates that Telkom may not alienate shares or issue shares to any person other than the State. This section is to be amended to free Telkom from this restriction.

Section 6 is to be amended so as to provide afresh for a subsidy by the State in respect of the postal company, while the obligation to fund this subsidy from the dividends paid by Telkom, is to be removed.

Section 7(2) confers certain rights of approval on the Minister, which will have to be deleted in the light of the Telecommunications Act, 1996, which now regulates these matters. This includes the determination of the fees, rates or charges levied by Telkom. In future approval thereof will be granted by the South African Telecommunications Regulatory Authority.

Sections 10(A)(5), (6) and (7) are amended by deletion of references to the telecommunications employer or pension fund.

The Department and the State Law Advisers are of the view that the Bill falls to be dealt with in accordance with the procedure established by section 75 of the Constitution.