
GENERAL NOTICES

NOTICE 1453 OF 2009

DEPARTMENT OF COMMUNICATIONS

PUBLICATION OF EXPLANATORY SUMMARY OF SOUTH AFRICAN POSTBANK BILL, 2009

The Minister of Communications intends to introduce the South African Postbank Bill, 2009 in the National Assembly shortly. The explanatory summary of the Bill is hereby published in accordance with Rule 241(1)(c) of the Rules of the National Assembly.

The Bill provides for:

The incorporation of the Postbank Division of the South African Post Office; the transfer of the enterprise of that Division to the Company; the governance and functions of the Company and matters connected therewith.

Copies of the Bill can be obtained from:

1. Government Printers – Pretoria
2. Department of Communications
iParioli Office Park
399 Duncan Street
Hatfield, Pretoria
Telephone (012) 427 8106/ 8000
3. Parliament
90 Plein Street
Cape Town
Telephone (021) 403 3742/ 3713

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POSTBANK BILL, 2009

1. OBJECTS OF THE BILL

The objects of the South African Postbank Bill, 2009 are to:

Provide for the incorporation of the Postbank Division of the South African Post Office; provide for the transfer of the enterprise of that Division to the Company; provide for the governance and functions of the Company and provide for matters connected therewith.

CHAPTER I

Clause 1

Provide for the definitions of words as they will be used in the legislation for better understanding interpretation.

Clause 2

Sets forth the primary objectives of the Bill, including the incorporation of the Postbank Division of the Post Office as a legal person with the aim of—

- conducting the business of a bank that will encourage and attract savings amongst the people of the Republic;
- rendering transactional services and lending facilities through, amongst others, existing infrastructure of the Post Office and
- developing into a bank of first choice, in particular to communities that

have little or no access to commercial banking services or facilities.

CHAPTER II:

Clause 3

Establishes a legal framework for the formation and incorporation of the public Company and further provides for SAPO to be sole member and shareholder of the Company.

Clause 4

Makes provision for the Company to be registered as a bank after it has satisfied the requirements of the Banks Act.

Clause 5

Empowers the Post Office to determine the extent of the business to be transferred to the Company and for such business to be audited by a public accountant and auditor appointed by the Minister and for the said auditor to attach a monetary value in determining the extent of the Business of the former Postbank .

Clause 6

Empowers the Minister to determine a date or dates for the transfer of the enterprise from the former Postbank to the Company by notice in the Gazette.

Clause 7

Makes provisions for the management, control and operation of the former Postbank to be transferred to the Company as well as the business and personnel of the former Postbank.

Clause 8

Empowers the Minister with the concurrence of the Minister of Finance to determine the value of business of former Postbank for purposes of finance prescripts.

CHAPTER III**Clause 9**

Provides for the powers that the Company shall have to enable it to realise its objectives as set out in section 2.

CHAPTER IV**Clause 10**

Provides for the establishment of a Board of Directors that will control and manage the Company.

Clause 11

Outlines the functions of the Board.

Clause 12

Provides for the composition of the Board and their qualifications.

Clause 13

Provides for the disqualification of any person to be appointed as a Board member.

Clause 14

Empowers the Minister to appoint members of the Board and further outlines the process to be followed.

Clause 15

Provides for how the resignations, removal and vacating from office of Board member shall be dealt with.

Clause 16

Places obligation on Board members to disclose their financial interests and fiduciary duties of Board member before and after appointment of Board member.

Clause 17

Empowers the Board to appoint committees necessary to assist in the realisation of the Company's objectives and to delegate any of its powers to such committees.

Clause 18

Empowers the Board to appoint the managing director as the most senior person of the Company subject to the Minister's approval.

Clause 19

Outlines the conditions for the appointment of managing director and the remunerative package as determined by the Board with the concurrence of the Minister and the Minister of Finance.

Clause 20

Makes provisions for the Board with the concurrence of managing director to appoint personnel to perform work related functions and further determines their conditions of service, remuneration and service benefits.

Clause 21

Empowers the Minister to intervene when the Board is unable to perform its functions in terms of this Act and appoint an administrator where necessary.

Clause 22

Provides for limitation of liability unless the Company acted unlawfully, grossly negligently or in bad faith.

Clause 23

Provides for the submission of an annual report by the Company to the Minister.

CHAPTER V**Clause 24**

Provides for what will constitute the Company's funds.

Clause 25

Empowers the Minister or any officer authorised by him or her to inspect financial accounts and documents of the Company and to furnish any such information as and when is required by the Minister.

Clause 26

Provides for the application of the Public Finance Management Act.

CHAPTER VI**Clause 27**

Empowers the Minister(s), on recommendation of the Board to develop regulations with the concurrence of the Minister of Finance.

Clause 28 and 29

Makes provision for the Companies Act to be inapplicable to the Company and empowers the Minister to request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Company.

Clause 30

Provide for the transitional arrangement to allow the former Postbank to continue to function without interruption until certificate in terms of this Act to commence business is issued.

Clause 31

Provides further for the repeal of laws mentioned in Schedule 2 and the extent set out in the third column of that schedule.

Clause 32

Provide for the short title and commencement of this Act.

Schedule 1

Provides for the transfer of personnel to Company as contemplated in section 7 of this Act. It further makes provision for the Chief Executive Officer at least one month prior to the transfer date to inform any employee of the Post Office performing functions pertaining to the former Postbank to make an election in writing to become an employee of the Company or to elect not to become the employee of the Company.

Schedule 2

Provides for the repeal of Sections 51(1), (3) and (4), 52, 53, and 55 of the Postal Services Act, 1998 (Act No. 124 of 1998)

2. PARTIES CONSULTED

South Africa Post Office Limited (SAPO), Postbank, National Treasury, South African Reserve Bank, Industrial Strategy Focus Group, Department of Cooperative Governance and Traditional Affairs, Government Communication and Information Systems (GCIS), Department of Trade and Industry (DTI), Department of Public Enterprise (DPE), Department of Social Development, Department of Science and Technology (DST), Independent Communications Authority of South Africa (ICASA), South African Social Security Agency (SASSA), All 9 Provincial Departments on Local Government Communications Workers Union (CWU), Organised Civil Society, Non-Governmental Organisations, Members of the public through public hearings in all 9 Provinces, National House of Traditional Leaders Eastern Cape House of Traditional Leaders, North West House of Traditional Leaders, Banking Association of South Africa

3. FINANCIAL IMPLICATIONS FOR STATE

Normal communication associated with legislative processes and start-up funds for the company to be catered for in the MTEF.

4. IMPLICATIONS FOR PROVINCES

None

5. PARLIAMENTARY PROCEDURE

5.1. The State Law Advisers and the Department of Communications are of the opinion that this 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 section 76 of the Constitution applies.

5.2 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.