

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**SOUTH AFRICAN
POSTBANK BILL**

[B 14—2009]

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

[B 14A—2009]

ISBN 978-1-77037-689-2

No. of copies printed 800

AMENDMENTS AGREED TO

SOUTH AFRICAN POSTBANK BILL

[B 14—2009]

ARRANGEMENT OF SECTIONS

1. On page 2, in line 17, to omit “Value” up to and including “laws” and to substitute “Exemption from tax liability”.
2. On page 2, in line 26, to omit “Persons disqualified from membership of Board” and to substitute “Disclosure and disqualification from membership of Board”.
3. On page 2, in line 27, to omit “and removal”.
4. On page 3, after line 14, to insert:
 25. Intervention by Minister
5. On page 3, in line 15, after “Regulations”, to insert “and policy”.
6. On page 3, after line 18, to insert:
 29. Offences
7. On page 3, in line 24, to omit “Schedule 2”.

CLAUSE 1

1. On page 3, in line 28, to omit “otherwise”.
2. On page 3, in line 28, after “indicates”, to insert:

otherwise, any word or expression to which a meaning has been ascribed in section 1 of the Public Finance Management Act, bears the meaning so ascribed, and
3. On page 3, after line 32, to insert the following definition:

“family member” in relation to any person, means his or her parent, sibling, child, including an adopted child or a step-child, or spouse (whether by statutory, customary or religious law), and including a life-partner, who is a person living with that person as if they were married to each other;
4. On page 3, after line 43, to insert the following definition:

“Registrar of Banks” means the Registrar of Banks designated as such under section 4 of the Banks Act;
5. On page 3, in line 48, to omit “25” and to substitute “26”.

CLAUSE 2

1. On page 4, in line 7, to omit “and”.
2. On page 4, from line 8, to omit paragraph (c) and to substitute:

- (c) expanding the range of banking services and developing into a bank of first choice, in particular to the rural and lower income markets as well as communities that have little or no access to commercial banking services or facilities;
- (d) promoting universal and affordable access to banking services;
- (e) ensuring that the rates and charges of the Company take into consideration the needs of the people in the lower income market; and
- (f) ensuring lending to rural and lower income markets.

CLAUSE 3

1. On page 4, from line 16, to omit subsection (2) and to substitute:
 - (2) Notwithstanding section 32 of the Companies Act and section 37 of the Banks Act, the Post Office shall, upon incorporation of the Company, be the sole member and shareholder of the Company.
2. On page 4, in line 21, to omit “or a person delegated by the Minister”.

CLAUSE 4

1. On page 4, after line 36, to add the following subsections:
 - (3) Notwithstanding section 43 of the Banks Act, the Post Office is not required to register as a controlling company of the Company, and the appointment of the Board of the Post Office is not subject to the approval of the Registrar of Banks.
 - (4) The Company shall not expand the scope of its banking and investment activities which exist when this Act takes effect until it is registered as a bank in terms of the Banks Act, and any such additional business activity is approved by the Registrar of Banks.
 - (5) In approving any additional business activity as contemplated in subsection (4), the Registrar of Banks shall take into account the objects of this Act and any policy made by the Minister in terms of section 26(2).

CLAUSE 7

1. On page 5, in line 7, to omit “Schedule 1” and to substitute “compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995)”.

CLAUSE 8

Clause rejected.

New Clause

1. That the following be a new clause to follow clause 7:

Exemption from tax liability

8. The transfer of the business of the former Postbank, referred to in section 7, attracts no tax liability of whatever nature.

CLAUSE 9

1. On page 5, in line 20, to omit “subsection (3)” and to substitute:

sections 4(4) and 26(2) and (3), and subsection (3)
2. On page 5, in line 21, to omit “includes” and to substitute “include”.
3. On page 5, from line 28, to omit paragraphs (e), (f) and (g) and to substitute:
 - (e) conclude joint ventures and other commercial agreements with third parties in order to promote and advance its business;
 - (f) render any or all of its services through the physical assets, systems, employees and general infrastructure of the Post Office;
 - (g) invest money in accordance with an investment policy made by the Minister, with the concurrence of the Minister of Finance;
 - (h) borrow money, other than for temporary interbank borrowing, in accordance with a borrowing policy made by the Minister with the concurrence of the Minister of Finance; and
 - (i) lend money in accordance with a lending policy made by the Minister, with the concurrence of the Minister of Finance.
4. On page 5, after line 37, to add the following subsection:
 - (3) (a) The Company must comply with policy made by the Minister in terms of section 26(2).
 - (b) Any decision taken by the Board which is in conflict with a policy contemplated in paragraph (a) is of no force and effect.

CLAUSE 12

1. On page 6, from line 9, to omit subsection (1) and to substitute:
 - (1) The Board is made up of—
 - (a) seven non-executive members appointed from among the persons nominated in terms of section 14(1)(a);
 - (b) two other non-executive members appointed from among the persons nominated by the Post Office in terms of section 14(1)(b); and
 - (c) the managing director, who is an executive member of the Board.
2. On page 6, in line 19, after “The” to insert “non-executive”.
3. On page 6, in line 21, to omit “Members” and to substitute “The non-executive members”.
4. On page 6, after line 22, to add the following paragraph:
 - (c) The Minister must appoint at least five non-executive members of the first Board of the Company for a period not exceeding three years.

CLAUSE 13

1. On page 6, in line 26, to omit “**Persons disqualified from membership of Board**” and to substitute “**Disclosure and disqualification from membership of Board**”

2. On page 6, in line 33, after “republic” to insert “or”.
3. On page 6, in line 40, to omit “or”.
4. On page 6, in line 42, after “misconduct” to insert “; or”.
5. On page 6, after line 42, to add the following:
 - (g) has any direct or indirect interest in conflict with the business of the Company.

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

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

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

(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 declare that fact to the Minister and the Board; or
 - (ii) direct or indirect interest contemplated in subsection (1)(g), the member must immediately declare that fact to the Minister and the Board.

CLAUSE 14

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause to follow clause 13:

Appointment of members of Board

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

- (a) by notice in at least two national newspapers and in the *Gazette*, invite interested persons, within the period and in the manner determined in the notice, to submit the names of persons envisaged in section 12(1)(a) that are fit and proper persons to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act; and
- (b) in writing invite the Post Office, acting with the concurrence of the Registrar of Banks, to submit the names of persons envisaged in section 12(1)(b) that are fit and proper persons to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act.

(2) The Minister must 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) In establishing a nomination committee, the Minister must ensure that the committee broadly reflects the race and gender composition of the Republic.

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

- (a) the proven skills, knowledge 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;
- (b) the need for representation of historically disadvantaged persons;
- (c) generally, whether the persons nominated represent a sufficient spread of qualifications, expertise and experience to ensure the efficient and effective functioning of the Company;
- (d) with the concurrence of the Registrar of Banks, whether a candidate is a fit and proper person to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act; and
- (e) whether a candidate has any direct or indirect interest in conflict with the business of the Company as contemplated in section 13(1)(g).

(5)(a) Nominations of suitable persons as contemplated in subsections (1)(b) or (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 subsections (1)(b) or (4), the Minister may, with the concurrence of the Minister of Finance and the Post Office, identify and appoint the required number of further members.

(6) (a) The Minister must, within 30 days after consensus has been reached with the Minister of Finance and the Post Office regarding the appointment of members as contemplated in section 10(2)—

- (i) designate the non-executive members of the Board from suitable persons nominated by the Post Office as contemplated in subsection (1)(b); and
- (ii) appoint the other non-executive members of the Board from suitable persons nominated as contemplated in subsection (4).

(b) The Minister must cause the names of the members appointed and the date of commencement of their terms of office to be published by notice in the *Gazette*.

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

- (a) is appointed according to the terms and conditions determined by the Minister;
- (b) must be paid from the revenue of the Company such remuneration and allowances as the Minister determines, taking into consideration any prescriptions or guidelines issued by the Minister for the Public Service and Administration and the National Treasury; and
- (c) is appointed on a part-time basis.

(8) (a) Any vacancy occurring in the Board must be filled in the same way as the departing member was appointed to the Board.

(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 five years.

CLAUSE 15

1. On page 7, from line 31, to omit subsection (2) and to substitute:

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

- (a) acted in conflict with this Act;
- (b) refuses or fails to make a declaration contemplated in section 13(3)(b) or refuses or fails to make a disclosure as contemplated in section 16(2);
- (c) after having been appointed, acquires any direct or indirect interest contemplated in section 13(3)(b)(ii), read with section 13(1)(g);
- (d) neglected to properly perform the functions of his or her office;
- (e) in accordance with the Banks Act and after the Registrar of Banks has informed the Minister, is no longer a fit and proper person to hold that appointment; or
- (f) is absent from three consecutive Board meetings without prior leave of the Chairperson.

CLAUSE 16

1. On page 7, from line 42, to omit paragraphs (a), (b), (c) and (d) and to substitute:
 - (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 Company or conclude any business with the Company; 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.
2. On page 8, in line 2, to omit “an” and insert “and”.
3. On page 8, from line 25, to omit subsection (2) and to substitute:

(2) A member of the Board must make full and immediate disclosure to the Board of any direct or indirect interest contemplated in subsection (1).

CLAUSE 17

1. On page 8, in line 29, to omit the heading and to substitute:

Procedures at meetings, and committees of Board
2. On page 8, in line 30, to insert the following subsection:
 - (1) (a) The Board determines its procedures at meetings.
 - (b) Seventy percent of serving members constitutes a quorum at any meeting of the Board.
 - (c) A decision taken by the Board or an act performed under that decision is not invalid merely by reason of—
 - (i) any irregularity in the appointment of a member;
 - (ii) a vacancy in the Board; or
 - (iii) the fact that any person not entitled to sit as a member sat as such at the time when the decision was taken,
 provided such decision was taken by a majority of the members present at the time and entitled so to sit, and those members at the time constituted a quorum.

CLAUSE 19

1. On page 9, in line 6, to omit “in consultation with” and to substitute “with the concurrence of”.

CLAUSE 20

1. On page 9, from line 13, to omit paragraph (b) and to substitute:

(b) such persons as the managing director may, with the concurrence of the Board, appoint.
2. On page 9, from line 15, to omit subsection (2) and to substitute:

(2) The Board must determine the structure or organogram of the Company and the conditions of service, remuneration and service benefits of the personnel of the Company after consultation with the managing director and with the concurrence of the Minister and the Minister of Finance.

INSERTION OF HEADING AFTER CLAUSE 20

1. On page 9, after line 17, to insert the following heading:

CHAPTER V

FUNDS AND FINANCIAL ACCOUNTS OF COMPANY

CLAUSE 21

1. On page 9, in line 19, to omit “six” and to substitute “five”.

OMISSION OF HEADING

1. On page 9, in lines 25 and 26, to omit the heading.

NEW CLAUSE

That the following be a new clause to follow clause 24:

Intervention by Minister

- 25.** (1) The Minister may, with the concurrence of the Minister of Finance, direct the Company to take any action specified by the Minister if the Company—
- (a) 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
 - (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 nature of the deficiency;
 - (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 Company fails to remedy the situation within the stated period, the Minister may, with the concurrence of the Minister of Finance—

- (a) after having afforded the Company a reasonable opportunity to be heard; and
- (b) after having afforded the Company 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 Company.

(4) If the Minister appoints an administrator in terms of subsection (3)—

- (a) the administrator may do anything which the Board might otherwise be empowered or required to do by or under this Act, to the exclusion of the Board;
- (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 Company must comply with a directive given by the administrator.

(5) The Minister must—

- (a) review the performance of the Company 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 Company is able to perform its functions effectively, the Minister must terminate the appointment of the administrator.

(7) (a) Notwithstanding this section, 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 exercise the power only—

- (i) after having afforded 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 six months after the dissolution of the Board, replace the members of the Board in the same way as they were appointed.

(8) (a) The costs associated with the appointment of an administrator shall be for the account of the Company.

(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.

CLAUSE 25

1. On page 9, in line 42, after “**Regulations**”, to insert “**and policy**”.
2. On page 9, from line 43, to omit the words preceding paragraph (a) and to substitute:
 - (1) The Minister may, after consultation with the Minister of Finance, make regulations regarding—
3. On page 10, after line 3, to add the following subsections:
 - (2) The Minister must make policies on matters referred to in section 9(1)(g), (h) and (i) within six months after the commencement of this Act, and may make any additional policies on matters of national policy applicable to the Company, 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 the concurrence of the Minister of Finance;
 - (b) obtain Cabinet approval;
 - (c) table the policy in the National Assembly at least 30 days before publishing the final version of the policy in terms of paragraph (d); and
 - (d) publish the final version of the policy in the *Gazette*.

CLAUSE 26

1. On page 10, in line 7, to omit “incapable of being applied” and to substitute “inapplicable”.
2. On page 10, in line 8, to omit “25” and to substitute “28”.

CLAUSE 27

1. On page 10, in line 29, to omit “26” and to substitute “30”.

NEW CLAUSE

1. That the following be a new clause to follow clause 27:

Offences

29. (1) Any member who fails to comply with section 13(3)(b)(i) or (ii) or 16(2), or who contravenes section 16(1)(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.
- (2) Any person referred to in section 16(1)(b) who contravenes that section, or any former member who contravened that section while being a member, or any person, other than a member of the Board, referred to in section 16(1)(b) who contravened that section during the tenure of a former member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment.

CLAUSE 28

Clause rejected.

NEW CLAUSE

1. That the following be a new clause to follow clause 27:

Transitional provisions

30. Notwithstanding the repeal of sections 51(1), (3) and (4), 52, 53, 55 and 58 of the Postal Services Act by section 31, until the Company is registered as a bank as contemplated in section 4(2), the former Postbank continues to function without any interruption, as if those sections have not been repealed.

CLAUSE 29

1. On page 10, in line 39, to omit “Schedule 2” and to substitute “Schedule 1”.

CLAUSE 30

1. On page 10, in line 42, after “Postbank” to insert “Limited”.
2. On page 10, in line 43, to omit “Minister” and to substitute “President”.

SCHEDULE 1

1. Schedule 1 rejected.

SCHEDULE 2

1. On page 12, in the first line, to omit “**SCHEDULE 2**” and to substitute “**SCHEDULE 1**”.
2. On page 12, in the second line, to omit “**29**” and to substitute “**31**”.
3. On page 12, in the fifth line, to omit “(2),”.