

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POST OFFICE SOC LTD AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36665 of 12 July 2013)
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 24—2013]

ISBN 978-1-77597-027-9

No. of copies printed 1 800

Amendment of section 3 of Act 22 of 2011

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The South African Post Office SOC Ltd, the postal company contemplated in section 3 of the **[Post Office Act] Post and Telecommunication-related Matters Act**, continues to exist as a public company, notwithstanding the repeal by this Act of provisions in the **[Post Office Act] Post and Telecommunication-related Matters Act** relating to the postal company.”. 5

Amendment of section 8 of Act 22 of 2011

3. Section 8 of the principal Act is hereby amended— 10

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) not more than **[11] 10** 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**];” 15

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

“(5) The Board must upon invitation by the Minister nominate **[non-executive members of the Board] persons** for appointment to the Board of the Postbank, as contemplated in section 14(1)(b) of the Postbank Act.”; and 20

(c) by the substitution for subsection (6) of the following subsection:

“(6) **[The] If any** non-executive members of the Board **are** appointed to the Board of the Postbank **[are]**, such members are accountable to the Board of the **[Post Office] Postbank** in respect of their functions performed as Board members of the Postbank.”. 25

Amendment of section 11 of Act 22 of 2011

4. Section 11 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(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 section 44(2)(d) of the Banks Act, 1990 (Act No. 94 of 1990)[, **for purposes of section 8(5)**]; and” 30

Insertion of sections 21A to 21I in Act 22 of 2011

5. The following sections are hereby inserted after section 21 of the principal Act:

“**Continued existence of Post Office Retirement Fund** 35

21A. The Post Office Retirement Fund continues to exist, despite the repeal of the provisions relating to such fund in the Post and Telecommunication-related Matters Act.

Rules of Post Office Retirement Fund

21B. (1) The control and management of the Post Office Retirement Fund, the conditions for admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the Post Office, the benefits due to members and other beneficiaries, and the manner in which the rules may be amended, must be governed by the rules, subject to subsection (2). 40 45

(2) The rules of the Post Office Retirement Fund including any amendment, substitution or repeal thereof must be made by the Post Office Retirement Fund subject to the approval of the Minister granted with the concurrence of the Minister of Finance.

(3) Any amendment, substitution or repeal of the rules of the Post Office Retirement Fund must be published by the Minister in the *Gazette* within 30 days of approval as contemplated in subsection (2). 50

(4) The rules bind the Post Office Retirement Fund, its members and beneficiaries as well as the Post Office.

Actuarial valuation of Post Office Retirement Fund

21C. (1) The Post Office Retirement Fund appoints an actuary in terms of the rules.

(2) The Post Office Retirement Fund must be valued by an actuary at intervals not exceeding three years.

(3) The actuary referred to in subsection (1) must submit a report that complies with the requirements set out in section 16(7) of the Pension Fund Act, 1956 (Act No. 24 of 1956), to the Minister and Minister of Finance.

(4) A copy of the report referred to in subsection (3) must be submitted by the actuary to the Post Office.

(5) In compliance with the requirements of section 16(7) of the Pension Funds Act, 1956, the actuary shall calculate, and mention in his or her report, what amounts are necessary to maintain the Post Office Retirement Fund in a sound financial position.

(6) The Post Office guarantees the financial obligations of the Post Office Retirement Fund.

Prohibition against cession, encumbrance or attachment of pension benefits

21D. (1) No pension or lump sum from the Post Office Retirement Fund, or right to such a benefit, or right in respect of contributions made by, or on behalf of a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, except in terms of a court order made in accordance with the provisions of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), or a decree for the dissolution of a customary marriage.

(2) In the event of a member or other beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the Post Office Retirement Fund in its discretion: Provided that the fund may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of a member or other beneficiary or to a curator for such dependant or dependants.

(3) Notwithstanding subsections (1) and (2), the Post Office Retirement Fund may on the date of a member's retirement or the date on which he or she ceases to be a member of the fund, deduct—

(a) any amount due to the Post Office Retirement Fund in respect of a loan granted by the fund in terms of its rules to a member or beneficiary, from any benefit to which the member or beneficiary is entitled in terms of such rules;

(b) any amount due by a member to the Post Office or a subsidiary of the Post Office in respect of—

(i) any loan granted by the Post Office or a subsidiary of the Post Office to such member at his or her request;

(ii) any amount for which the Post Office is liable in terms of a guarantee furnished in respect of a loan granted by some other person to the member for the purchase of land or a dwelling or the erection, alteration, improvement, maintenance or repair of a dwelling for occupation by the member or a dependant of the member;

(iii) compensation (including the legal costs recoverable from the member in a matter contemplated in subparagraph (ii)) in respect of any damage caused to the Post Office or a subsidiary of the Post Office, by reason of any theft, dishonesty, fraud, misconduct or negligence by the member;

(iv) any other written agreement between the member and the Post Office or a subsidiary of the Post Office in respect of a study bursary or training of the member; or

- (v) any other amounts due by a member to the Post Office or a subsidiary of the Post Office, from any benefit payable to the member or a beneficiary in terms of the rules of the Post Office Retirement Fund, and pay such amount to the Post Office or a subsidiary of the Post Office; 5
- (c) any amount which the Post Office Retirement Fund, the Post Office or a subsidiary of the Post Office has paid or will pay by an arrangement with, or on behalf of, a member or beneficiary in respect of—
 - (i) such member's or beneficiary's subscription to a medical scheme registered otherwise than provisionally in terms of the Medical Schemes Act, 1998 (Act No. 131 of 1998); or 10
 - (ii) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), or the Short-term Insurance Act, 1998 (Act No. 53 of 1998), from any benefit to which the member or beneficiary is entitled in terms of the rules of the Post Office Retirement Fund and pay such amount, if due, to the Post Office, medical scheme or insurer, as the case may be. 15

Insolvency of beneficiary

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21E. (1) If the estate of any person (hereafter referred to as the beneficiary) in receipt of a benefit from the Post Office Retirement Fund is sequestrated or surrendered or assigned for the benefit of his or her creditors, payment of such benefit may forthwith be discontinued, and may thereafter in the discretion of the Post Office Retirement Fund in whole or in part be paid to or for the benefit of all or any of the following persons, namely: 25

- (a) the beneficiary, his 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; or 30
- (b) child, including an adopted child or a step-child or, failing a spouse or child, to any other family member dependent upon the beneficiary: 30

Provided that if the payment is made to the beneficiary, it must be for his or her own personal use and, notwithstanding anything to the contrary contained in any law relating to insolvency, such payment must not in any way be attached or appropriated by the trustee of his or her insolvent estate or by his or her creditors. 35

(2) If payment of a benefit has been discontinued under this section, such pension must revive on the rehabilitation of the beneficiary or on the sequestration of his or her estate being set aside or the claims of his or her creditors being satisfied, and he or she must receive such benefit at the same rate and subject to the same conditions as before the sequestration, surrender or assignment, together with any arrears that may be due. 40

Registration of Post Office Retirement Fund under Pension Funds Act

21F. (1) The Registrar of Pension Funds may at the request of the Post Office Retirement Fund, subject to the approval of the Minister, after consultation with the Minister of Finance, register the Post Office Retirement Fund in terms of section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and may, for the purposes of such request, regard the Post Office Retirement Fund as a "pension fund organisation" as defined in section 1 of the Pension Funds Act, 1956. 45

- (2) From the date of such registration—
 - (a) the whole of the Pension Funds Act, 1956, applies to the Fund;
 - (b) sections 21C(1), (2), (3), (4) and (5), 21D and 21E cease to apply to the Post Office Retirement Fund; and 55
 - (c) the Post Office Retirement Fund, for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), may not be regarded as a pension fund as defined in paragraph (a) of the definition of "pension fund" in section 1 of the Income Tax Act, 1962. 55

Membership of employees of subsidiary companies

21G. (1) If the Post Office establishes a subsidiary, an employee of the Post Office who is transferred or seconded to such subsidiary company continues to enjoy membership of the Post Office Retirement Fund.

(2) Any employee employed by a subsidiary after the date of its establishment, becomes a member of the Post Office Retirement Fund or, if the subsidiary company makes use of another pension fund, the other fund.

Taxation

21H. (1) Notwithstanding the repeal of section 8 of the Post and Telecommunication-related Matters Act by section 5 of the South African Post Office SOC Ltd Amendment Act, 2013, the following rights and benefits contemplated in subsection 8(4) of the Post and Telecommunication-related Matters Act continue to exist as if those sections have not been repealed.

(2) For the purposes of the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962) (as amended from time to time), it is deemed that no change of employer took place when employment was taken up at the Post Office or subsidiary of the Post Office by officers and employees of the then Department of Posts and Telecommunications and that the position of the officers and employees in respect of the phasing in of any tax levied on benefits or advantages derived by reason of employment or the holding of office as contemplated in Schedule 7 to the Income Tax Act, 1962, remains unchanged.

Payment of pension interest upon divorce or dissolution of customary marriage

21I. (1) The Post Office Retirement Fund must reduce a member's pension interest by any amount assigned from the member's pension interest to the member's former spouse in terms of a decree of divorce granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), or a decree for the dissolution of a customary marriage.

(2) (a) Subject to paragraph (j), for purposes of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of a member's pension interest assigned to the member's former spouse in terms of a decree of divorce or a decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or the decree for the dissolution of a customary marriage is granted.

(b) The amount of the member's pension interest in the Post Office Retirement Fund must be determined and the amount of the member's pension interest that is assigned to the former spouse must be calculated by the Post Office Retirement Fund in accordance with the rules as at the date of the decree of divorce or the decree for the dissolution of a customary marriage.

(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the rules by any amount of the member's pension interest which, in a previous divorce or a previous dissolution of a customary marriage, was paid over or awarded to another party.

(d) The amount of any pension benefit that is subsequently payable to the member in terms of the rules must be reduced by the equivalent of the amount of the share of the pension interest of the member which—

(i) was deemed to accrue to the member as a benefit in advance of the benefit ordinarily payable in terms of the rules; and

(ii) was assigned to the member's former spouse,

less the amount of any additional voluntary contributions, if any, paid by the member to the Post Office Retirement Fund from time to time, and accumulated over the period from the date on which payment to the former spouse or transfer to the approved Post Office Retirement Fund as referred

to in paragraph (e) took place to the date on which the member first became entitled to a part or the whole of the balance of the benefit, with interest as the Board from time to time deems appropriate.

(e) The Post Office Retirement Fund must, within 45 days of the submission of the court order by the former spouse of a member, request the former spouse to elect whether the amount to be deducted must be—

- (i) paid directly to the former spouse; or
- (ii) transferred to an approved retirement fund on behalf of the former spouse.

(f) The former spouse must, within 120 days of being requested to make a choice—

- (i) inform the Post Office Retirement Fund of the manner in which the amount referred to in paragraph (e) must be dealt with; and
- (ii) if the former spouse chooses that the amount must be paid to the former spouse directly, provide the Post Office Retirement Fund with the details that are necessary to effect the payment; or
- (iii) if the former spouse chooses that the amount must be transferred to an approved pension fund on his or her behalf, provide the Post Office Retirement Fund with the details of that approved retirement fund.

(g) The Post Office Retirement Fund must pay or transfer the amount within 60 days of being informed of the manner in which the amount must be dealt with in accordance with the former spouse's choice.

(h) In the event that the former spouse fails to make a choice or identify the approved retirement fund to which the amount must be transferred within the period referred to in paragraph (f), the Post Office Retirement Fund must pay the amount directly to the former spouse within 30 days of the expiry of that period.

(i) Despite paragraph (h), in the event that the Post Office Retirement Fund cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the Post Office Retirement Fund must retain the amount plus interest in the Post Office Retirement Fund, until such time as details of the manner in which that payment must be effected is made available to the Post Office Retirement Fund by the member, the former spouse or any other person whom the Post Office Retirement Fund is satisfied has the necessary authority and capacity to instruct the Post Office Retirement Fund in that respect.

(j) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a decree for the dissolution of a customary marriage granted prior to the enactment of this subsection must, for purposes of any law other than the Income Tax Act, 1962 (Act No. 58 of 1962), including, but not limited to, section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (i)."

Amendment of laws

6. The law mentioned in Schedule 1 is hereby amended to the extent set out in the third column of that Schedule.

Short Title

7. This Act is called the South African Post Office SOC Ltd Amendment Act, 2013.

SCHEDULE

LAWS AMENDED

Act No. and Year	Short Title	Extent of amendment or Repeal
Act No. 44 of 1958	Post and Telecommunication-Related Matters Act, 1958	<p>1. Amendment of section 1—</p> <p>(a) by the substitution for the definition of “Companies Act” of the following definition:</p> <p>“‘Companies Act’ means the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008);”;</p> <p>(b) by the deletion of the definitions of “postal company”; “postal employer”; “postal pension fund”; “postal service”; and “postal transfer date”;</p> <p>(c) by the substitution for the definition of “successor company” of the following definition:</p> <p>“‘successor company’ means the telecommunications company incorporated as contemplated in section 3(1)[, and for the purpose of the definition of “officer”, and section 5, Chapter 1B and sections 12U and 12W includes the postal company].”.</p> <p>2. Amendment of section 5—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p>“Shareholding in successor [companies] company”</p> <p>(b) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) As a consideration for the transfer contemplated in section 4(1) [each] the successor company shall, in addition to the share referred to in section 3(4)(a), issue such shares in [those companies] the company to the State as the Minister with the concurrence of the Minister of Finance may determine: Provided that the nominal value plus any premium payable in respect of all the shares so issued by [each] the company, shall be equal to the net asset value of the enterprise [concerned].”;</p> <p>(c) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Shares issued in terms of this section shall have such nominal value and shall be issued at such premium, if any, as the Minister with the concurrence of the Minister of Finance may determine and shall be issued as fully paid by the transfer to the successor company [concerned] of assets and liabilities with a net asset value equal to the nominal value of the shares plus any such premium.”;</p>

Act No. and Year	Short Title	Extent of amendment or Repeal
		<p>(d) by the substitution for subsection (4) of the following subsection: “(4) Any dividends received by the State in respect of shares in [a] <u>the</u> successor company shall be paid into the State Revenue Fund.”;</p> <p>(e) by the substitution for subsection (5) of the following subsection: “(5) No stamp duty shall be paid by [a] <u>the</u> successor company in respect of the issue of shares to the State in terms of this Act.”; and</p> <p>(f) by the substitution for subsection (6) of the following subsection: “(6) No money shall be paid by [a] <u>the</u> successor company in terms of section [63 or 75] 13 or 16 of the Companies Act in respect of the creation of, or any increase in, the capital of such a company.”.</p> <p>3. The repeal of sections 8 and 8A.</p> <p>4. The substitution for section 9 of the following section: “Establishment of pension [funds] fund</p> <p>9. (1) From the date of commencement of the Post Office Amendment Act, 1991, there [are] <u>is</u> hereby established [a postal pension fund and] a telecommunications pension fund. (2) [Both the]The [funds] <u>fund</u> referred to in subsection (1) shall be <u>a</u> juristic person[s].”.</p> <p>5. The substitution for section 10 of the following section: “Pension statutes</p> <p>10. (1) The control and management of the [postal pension fund and the] telecommunications pension fund, the conditions for admission to and termination of membership of [each] <u>the</u> fund, the amount and nature of contributions by members and contributions and other payments by the [postal employer or the] telecommunications employer, the benefits due to members and other beneficiaries, and the manner in which the statutes may be amended, shall be governed by the statutes of [each] <u>the</u> fund[, as the case may be]. (2) The statutes of [each] <u>the</u> fund shall be published by the Minister in the <i>Gazette</i> and shall come into operation on the [postal transfer date in the case of the postal pension fund and on the] telecommunications transfer date [in the case of the telecommunications pension fund].</p>

Act No. and Year	Short Title	Extent of amendment or Repeal
		<p>(3) Until the date of registration of the [postal pension fund and the] telecommunications pension fund, [as the case may be,] in terms of section 10D, any amendment of the statutes of the pension fund [concerned] shall be subject to the approval of the Minister granted with the concurrence of the Minister of Finance.</p> <p>(4) The statutes of the [postal pension fund and the] telecommunications pension fund shall be binding on [each] the fund as well as the [postal employer and the] telecommunications employer, [as the case may be,] and on the members and beneficiaries of [each] the fund.”.</p> <p>6. Amendment of section 10A—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“Actuarial evaluation of pension [funds] fund</p> <p style="padding-left: 40px;">10A. (1) The [postal pension fund and the] telecommunications pension fund shall [each] be valued by an actuary, appointed by the Minister, within three years from the date on which the fund [concerned] was established, and thereafter [each] the fund shall be valued by such actuary at intervals not exceeding three years, as the Minister may determine.”;</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p style="padding-left: 40px;">“(3) A copy of the report shall be submitted by the actuary to the employer [concerned].”; and</p> <p>(c) by the deletion of subsections 5, 6 and 7.</p> <p>7. Substitution for section 10B of the following section:</p> <p style="padding-left: 40px;">“Pension benefits may not be ceded, encumbered or attached</p> <p style="padding-left: 40px;">10B. (1) No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of, a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, <u>except in terms of a court order made in accordance with the provisions of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), or a decree for the dissolution of a customary marriage</u>, and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund</p>

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		<p>[concerned] in its discretion: Provided that the pension fund [concerned] may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a curator for such dependant or dependants.</p> <p>(2) Notwithstanding the provisions of subsection (1), the pension fund [concerned] may on the date of a member's retirement or the date on which he ceases to be a member of the fund, deduct—</p> <p>(a) any amount due to that fund in respect of a loan granted by that fund in terms of its statutes to a member or beneficiary, from any benefit to which the member or beneficiary is entitled in terms of such statutes;</p> <p>(b) any amount due by a member to his employer in respect of—</p> <p>(i) any loan granted by the employer to such member at his request;</p> <p>(ii) any amount for which the employer is liable in terms of a guarantee furnished in respect of a loan granted by some other person to the member for the purchase of land or a dwelling or the erection, alteration, improvement, maintenance or repair of a dwelling for occupation by the member or a dependant of the member;</p> <p>(iii) compensation (including the legal costs recoverable from the member in a matter contemplated in subparagraph (ii)) in respect of any damage caused to the employer, by reason of any theft, dishonesty, fraud, misconduct or negligence by the member;</p> <p>(iv) any other written agreement between the member and the employer in respect of a study bursary, training of the member or the military service obligations of the member,</p> <p>from any benefit payable to the member or a beneficiary in terms of the statutes of that fund, and pay such amount to the employer [concerned];</p> <p>(c) any amount which such fund or the employer has paid or will pay by an arrangement with, or on behalf of, a member or beneficiary in respect of—</p> <p>(i) such member's or beneficiary's subscription to a medical scheme registered otherwise than provisionally in terms of the Medical Schemes Act, [1967 (Act No. 72 of 1967)] 1998 (Act No. 131 1998);</p> <p>(ii) any insurance premium payable by such member or beneficiary to an</p>

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		<p>insurer registered in terms of the [In- surance Act, 1943 (Act No. 27 of 1943)], <u>Long-Term Insurance Act, 1998</u> (Act No. 52 of 1998), or <u>Short-Term Insurance Act, 1998 (Act No. 53 of 1998)</u>,</p> <p>from any benefit to which the member or beneficiary is entitled in terms of the stat- utes of that fund and pay such amount, if due, to such employer, medical scheme or insurer, as the case may be.”.</p> <p>Amendment of section 10C—</p> <p>8. by the substitution for subsection (1) of the following subsection: “(1) If the estate of any person in re- ceipt of a pension from a pension fund referred to in section 9 is sequestrated or surrendered or assigned for the benefit of his creditors, payment of the pension shall forthwith be discontinued, and shall there- after in the discretion of the pension fund [concerned] in whole or in part be paid to or for the benefit of all or any of the fol- lowing persons, namely, the pensioner, his wife or minor child or, failing a wife or minor child, to the mother of an illegiti- mate child or any child, whether legiti- mate, adopted or illegitimate, or to any other relative dependent upon the pen- sioner: Provided that if the payment is made to the pensioner, it shall be for his own personal use and, notwithstanding anything to the contrary contained in any law relating to insolvency, such payment shall not in any way be attached or appro- priated by the trustee of his insolvent es- tate or by his creditors.”.</p> <p>9. The substitution for section 10D of the following section: “Registration of pension [funds] fund</p> <p>10D. (1) The Registrar of Pension Funds may at the request of the [postal pension fund or the] telecommunications pension fund register the pension fund [concerned] in terms of section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and may, for the purposes of such request, regard such pension fund as a “pension fund or- ganization” as defined in section 1 of the said Act.</p> <p>(2) From the date of such registration— (a) the whole of the Pension Funds Act, 1956, shall apply to the pension fund [concerned]; (b) the provisions of sections 10, 10A (1), (2), (3) and (4), 10B and 10C of this Act shall cease to apply to the pension fund [concerned]; and</p>

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		<p>(c) the pension fund [concerned] shall, for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), not be regarded as a pension fund as defined in paragraph (a) of the definition of “pension fund” in section 1 of the said Act.”.</p> <p>10. The substitution for section 10E of the following section:</p> <p><u>“Membership of pension fund by employees of subsidiary [companies] company</u></p> <p>10E. (1) If [a] the successor company establishes a subsidiary company in terms of section 4(9), an employee of the successor company who is transferred or seconded to such subsidiary company, shall continue to enjoy membership of the pension fund [concerned] of which he was a member immediately before the date of his transfer or secondment.</p> <p>(2) Any employee employed by a subsidiary company after the date of its establishment, shall become a member of the [postal pension fund or the] telecommunications pension fund, [as the case may be,] subject to the statutes of [such] the fund.”.</p> <p>11. Insertion of the following section after section 10E:</p> <p><u>“Payment of pension interest upon divorce or dissolution of customary marriage</u></p> <p>10F. (1) The Board must direct the Fund to reduce a member’s pension interest by <u>any amount assigned from the member’s pension interest to the member’s former spouse in terms of a decree of divorce granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), or a decree for the dissolution of a customary marriage.</u></p> <p>(2) (a) <u>Subject to paragraph (j), for purposes of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of a member’s pension interest assigned to the member’s former spouse in terms of a decree of divorce or a decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or the decree for the dissolution of a customary marriage is granted.</u></p> <p>(b) <u>The amount of the member’s pension interest in the Fund must be determined and the amount of the member’s pension interest that is assigned to the former spouse must be calculated by the</u></p>

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		<p>Fund in accordance with the Rules as at the date of the decree of divorce or the decree for the dissolution of a customary marriage.</p> <p>(c) Prior to determining the amount of the member's pension interest that is assigned to the former spouse, the amount of the member's pension interest referred to in paragraph (b) must first be reduced in accordance with the rules by any amount of the member's pension interest which, in a previous divorce or a previous dissolution of a customary marriage, was paid over or awarded to another party.</p> <p>(d) The amount of any pension benefit that is subsequently payable to the member in terms of the Rules will be reduced by the equivalent of the amount of the share of the pension interest of the member which—</p> <p>(i) was deemed to accrue to the member as a benefit in advance of the benefit ordinarily payable in terms of the rules; and</p> <p>(ii) was assigned to the member's former spouse, less the amount of any additional voluntary contributions, if any, paid by the member to the Fund from time to time, and accumulated over the period from the date on which payment to the former spouse or transfer to the approved fund as referred to in paragraph (e) took place to the date on which the member first became entitled to a part or the whole of the balance of the benefit, with interest as the Board from time to time deems appropriate.</p> <p>(e) The Fund must, within 45 days of the submission of the court order by the former spouse of a member, request the former spouse to elect whether the amount to be deducted must be—</p> <p>(i) paid directly to the former spouse; or</p> <p>(ii) transferred to an approved retirement fund on behalf of the former spouse.</p> <p>(f) The former spouse shall, within 120 days of being requested to make a choice—</p> <p>(i) inform the Fund of the manner in which the amount referred to in paragraph (e) must be dealt with; and</p> <p>(ii) if the former spouse chooses that the amount must be paid to the former spouse directly, provide the Fund with the details that are necessary to effect the payment; or</p> <p>(iii) if the former spouse chooses that the amount must be transferred to an approved pension fund on his or her behalf, provide the Fund with the details of that approved retirement fund.</p>

Act No. and Year	Short Title	Extent of amendment or Repeal
		<p><u>(g) The Fund must pay or transfer the amount within 60 days of being informed of the manner in which the amount shall be dealt with in accordance with the former spouse's choice.</u></p> <p><u>(h) In the event that the former spouse fails to make a choice or identify the approved retirement fund to which the amount should be transferred within the period referred to in paragraph (f), the Fund shall pay the amount directly to the former spouse within 30 days of the expiry of that period.</u></p> <p><u>(i) Despite paragraph (h), in the event that the Fund cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the Fund shall retain the amount plus interest as determined by the Board in the Fund, until such time as details of the manner in which that payment must be effected is made available to the Fund by the member, the former spouse or any other person whom the Fund is satisfied has the necessary authority and capacity to instruct the Fund in that respect.</u></p> <p><u>(j) Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a decree for the dissolution of a customary marriage granted prior to the enactment of this subsection shall, for purposes of any law other than the Income Tax Act, 1962 (Act No. 58 of 1962), including, but not limited to, section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (i)."</u></p> <p>12. Amendment of section 12U—</p> <p>(a) by the substitution for the heading of the following heading: "12U. Loans to [postal company and] telecommunications company.";</p> <p>(b) by the deletion of subsection (1);</p> <p>(c) by the substitution for subsection (3) of the following subsection: "(3) The amounts owing to the State by the [postal company and the] telecommunications company, [respectively,] in terms of the excluded commitments contemplated in [subsections (1) and] subsection (2), shall bear interest at the rate at which, and shall be repaid to the State within the period for which, the department borrowed the money in terms of the agreement concerned." ; and</p>

Act No. and Year	Short Title	Extent of amendment or Repeal
		<p>(d) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) For the purposes of the transfer by the department to the [postal company and the] telecommunications company of the loans made to the department by the State in terms of the Exchequer Act, 1975 (Act No. 66 of 1975)—</p> <p>(a) the amount described in section 28 of the Exchequer Act, 1975, as permanent capital, shall notwithstanding the provisions of the said section be deemed to be a loan made by the State to the department which shall be converted on the transfer date [concerned] into ordinary shares held by the State in the successor company [concerned]: Provided that the nominal value and any premium payable in respect of the shares so issued shall be determined by the Minister with the concurrence of the Minister of Finance and shall in the aggregate be equal to the total amount of the permanent capital;</p> <p>(b) the department shall to the extent of such transfer be released from any debt or obligation to the State in respect of such loans.”.</p> <p>13. Substitution for section 12W of the following section:</p> <p>“Financial instruments</p> <p>12W. (1) Subject to the provisions of subsections (2) and (3) and notwithstanding anything to the contrary contained in the Companies Act, [the postal company and] the telecommunications company may, for as long as the majority of their issued equity shares are held by the State, issue stock, securities, bills, promissory notes, debentures, debenture stock, obligations or other financial instruments as proof of a loan of money and may negotiate or have them listed in the same manner and on the same financial markets or on the same stock exchange as is customary in the case of similar financial instruments issued by the State.</p> <p>(2) Financial instruments referred to in subsection (1) shall only be issued with the approval of the Minister.</p> <p>(3) Any financial instruments issued by [a] the successor company before the commencement of this section and which purported to be public stock or bonds issued by the Director-General in terms of section 12I(1)(b), shall be deemed to be financial instruments issued by the company [concerned] in terms of subsection (1).</p>

Act No. and Year	Short Title	Extent of amendment or Repeal
		<p>(4) Public stock or bonds which immediately prior to the deletion of section 12U (5) by the Posts and Telecommunications Acts Amendment Act, 1992, were in terms of the said provision deemed to be debentures issued by the successor company [concerned], shall be deemed to be financial instruments issued by the company [concerned] in terms of subsection (1).</p> <p>(5) The provisions of the Companies Act in respect of debentures shall, subject to subsection (8), not apply to financial instruments referred to in subsections (1), (3) and (4).</p> <p>(6) [A] <u>The</u> successor company may engage in commercial transactions of whatever nature, including repurchase agreements, in respect of its own financial instruments and similar financial instruments issued by the State or other institutions.</p> <p>(7) [A] <u>The</u> successor company shall, as far as possible, keep a register of all financial instruments referred to in subsections (1), (3) and (4).</p> <p>(8) Stock referred to in subsections (1), (3) and (4) may be transferred by means of a securities transfer form in the manner referred to in [section 135] sections 51 and 53 of the Companies Act, and the stock certificate issued by the successor company [concerned] in respect of such transfer shall be <i>prima facie</i> evidence of the right to such stock of the person named therein as the holder of such stock.</p> <p>(9) No levy, tax, stamp duty, fees or other costs of whatever nature shall be payable in respect of the issue or transfer of any financial instrument referred to in subsections (1), (3) and (4).</p> <p>(10) No provision of this section shall be construed as derogating from the powers of [a] <u>the</u> successor company in terms of its memorandum of [association or its articles] incorporation and under the provisions of the Companies Act, to issue, negotiate or list any financial instrument as proof of the loan of money.”.</p>

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POST OFFICE SOC LTD AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1 The Post Office Pension Fund was established on 1 October 1991 in terms of section 9 of the Post and Telecommunication-related Matters Act, 1958 (Act No. 44 of 1958) (“the PTMA”). It was renamed the Post Office Retirement Fund (PORF) in 2005. It is a juristic person and is managed by a Board of Trustees as a separate legal entity. The PORF must act in accordance with pension-related provisions of the PTMA and is managed and controlled in accordance with pension statutes or rules promulgated under section 10 of the said Act.
- 1.2 It is necessary to transfer the pension-related provisions of the PTMA to the South African Post Office SOC Ltd Act, 2011 (Act No. 22 of 2011) (“the SAPOA”), where it is more suitably placed. The South African Post Office SOC Ltd Amendment Bill, 2013 (“the Bill”), will amend the SAPOA for this purpose.
- 1.3 The rules of the PORF, currently, do not allow a former spouse of a member to claim a portion of a member’s pension interest, in terms of a divorce order or an order for the dissolution of a customary marriage, soon after the divorce order or the order for the dissolution of a customary marriage is granted. The former spouse can only receive a portion of the member’s interest after the exit of the member from the PORF.
- 1.4 The rules of the PORF cannot be amended due to the provision in sections 10B of the PTMA that provides that:
- “10B.—(1) No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of, a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law . . .”*
- 1.5 The Bill will correct this prohibition in order to provide for the implementation of the “clean-break” principle.
- 1.6 The Pension Funds Amendment Act, 2007 (Act No. 11 of 2007), incorporated the “clean-break” principle into the Pension Funds Act, 1956 (Act No. 24 of 1956) (“the PFA”), as section 37D(1)(d), (3)(b), (4) and (5). The “clean-break” principle allows for the non-member spouse to claim and receive a portion of the member’s interest that is assigned in terms of the divorce order or the order for the dissolution of a customary marriage, soon after the divorce order or the order for the dissolution of the customary marriage has been granted. The former spouse does not have to wait until the member exits the pension fund.
- 1.7 A new section 21I is inserted into the SAPOA to give effect to the “clean-break” principle and section 21D is inserted to enable the PORF to amend its rules accordingly.

2. OBJECTS OF THE BILL

The Bill seeks to amend the SAPOA, to achieve the following objectives:

- (a) to update and transfer pension-related provisions of the South African Post Office from the PTMA to the SAPOA;
- (b) to enable the payment of a pension interest to a former spouse of a member on divorce or the dissolution of a customary marriage;
- (c) to improve governance provisions between the Boards of the Post Office and Postbank in the context of the holding company and subsidiary relationship;

- (d) to ensure that members of the Board must be fit and proper persons as contemplated in the Banks Act; and
- (e) to amend the PTMA.

3. CLAUSE BY CLAUSE ANALYSIS

The Bill contains the following clauses:

3.1 *Clause 1*

Clause 1 of the Bill seeks to insert new definitions for “child”, “Post and Telecommunication-related Matters Act”, “Post Office Retirement Fund” and “rules”.

3.2 *Clause 2*

Clause 2 of the Bill seeks to amend section 3 of the Act by substituting Post Office Act for Post and Telecommunication-related Matters Act.

3.3 *Clause 3*

Clause 3 seeks to amend section 8(2)(a), to remove the requirement that the managing director of the Postbank is one of the members of the Board by virtue of his or her office. The fiduciary duties of the managing director of the Postbank should not extend to the entire affairs of the holding company since his or her focus should be on the affairs of the Postbank. Even though the King Code of Governance Principles (King III), Chapter 2, paragraph 144 provides that it is acceptable for a CEO of a subsidiary company to be appointed a director on the holding company board, it also states that the fiduciary duties of the director are to the company to which he or she has been appointed. This amendment is necessary to avoid conflict of interest.

Clause 3 further seeks to amend section 8(5) by removing the requirement that the Board, when recommending persons for appointment to the Board of the Postbank, must nominate non-executive members of the Board of the Post Office. This amendment is required since the appointment criteria for members of the Boards of the Post Office and the Postbank respectively, are different. This is especially so in the context of the fit and proper requirement under the banking legislation that applies to members of the Postbank Board.

Clause 3 further seeks to amend section 8(6) by making it clear that if any non-executive members of the Board are appointed to the Board of the Postbank, such members are accountable to the Board of the Postbank in respect of their functions performed as Board members of the Postbank. This amendment is made in line with King III, Chapter 2, paragraph 142 that provides as follows:

“The holding company must recognise the fiduciary duties of the subsidiary company’s directors and particularly their duty to act in the best interest of the subsidiary company at all times whether or not the director is nominated to the board of the subsidiary company by the holding company.”

3.4 *Clause 4*

Clause 4 of the Bill seeks to amend section 11(4)(c) to ensure that all members of the Board must be fit and proper persons to manage the affairs of the Post Office in its capacity of a controlling company of a bank, as contemplated in section 44 of the Banks Act, 1990 (Act No. 94 of 1990). This amendment is also a consequential amendment following the amendment of section 8(5).

3.5 *Clause 5*

Clause 5 of the Bill seeks to insert the following provisions that are necessary to ensure the continued existence of the PORF and matters relevant thereto:

3.5.1 **Continued existence of Post Office Retirement Fund**

This clause seeks to provide for the continued existence of the PORF. The PORF refers to the retirement fund of the Post Office that was established on 1 October 1991 in terms of section 9 of the PTMA. It is a juristic person and is administered and governed by a Board of Trustees. This clause is necessary to ensure the PORF's continued existence despite the repeal of section 9 of the said Act by this Bill.

3.5.2 **Rules of the Fund**

This clause, read with the definition of Rules seeks to provide for the continued existence of the Statutes or Rules of the PORF made under section 10 of the PTMA, despite the repeal of that section by this Bill. It further provides for the control and management of the Fund, the conditions for admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the Post Office, the benefits due to members and other beneficiaries, and the manner in which the Rules may be amended.

3.5.3 **Actuarial Valuation of the Fund**

This clause is necessary to ensure that the financial sustainability and feasibility of the PORF is adequately and properly measured and monitored. It directs how the required funding level is maintained.

3.5.4 **Prohibition against cession, encumbrance or attachment of pension benefits**

This clause is similar to section 37D of the PFA and is necessary to preserve, protect and safeguard the benefits of the members of the PORF during their membership and when they exit the Fund. It also allows the PORF to make certain lawful and regular deductions from the benefits of the members, when such members cease to be members or when they exit the Fund upon retirement. This clause also enables the PORF to amend its Rules to give effect to the "clean-break" principle.

3.5.5 **Insolvency of a beneficiary**

This clause seeks to protect, preserve and safeguard the benefits of members of the PORF against claims of creditors. This provision ensures that pension benefits may not be attached if a beneficiary becomes insolvent, which benefits revive after rehabilitation, the sequestration being set aside or claims of creditors being satisfied.

3.5.6 **Registration of the Fund under the Pension Fund Act**

This clause is based on section 10D of the PTMA and is necessary to enable the PORF to convert to a private pension fund by registering as such under the PFA, subject to the approval of the Minister of Communications, after consultation with the Minister of Finance. This provision is required since it is foreseen that statutory funds may in future be required to become private funds in terms of the PFA.

3.5.7 **Membership of employees of subsidiary companies**

This clause enables members of the PORF to remain members despite being transferred or seconded to a subsidiary company of the Post Office. It further allows employees of the subsidiary to become members of the Fund if the subsidiary company does not make use of another pension fund.

3.5.8 **Taxation**

This clause ensures that the rights and benefits contemplated in subsection 8(4) of the PTMA in respect of tax continue to exist despite the repeal of that section by this Bill. The tax rights and benefits apply to officers and employees of the then Department of Posts and Telecommunications (now Communications) that were transferred to the Post Office and must continue until all such officers and employees have exited the PORF.

3.5.9 **Payment of pension interest upon divorce or dissolution of customary marriage**

This clause has been proposed by the Constitutional Court of South Africa in the matter of PRP Ngewu to give effect to the “clean-break” principle (7 February 2013, case number 117/11) and is similar to section 24A of the Government Employees Pension Law, 1996 (Proclamation 21 of 1996).

3.6 *Clause 6*

Clause 6 of the Bill provides for the repeal of the law mentioned in Schedule 1 to the Act.

3.7 *Clause 7*

Clause 7 of the Bill contains the short title.

4. ORGANISATIONS AND INSTITUTIONS CONSULTED

The Bill resulted from a consultative process between the Department of Communications, the South African Post Office SOC Ltd and the Post Office Retirement Fund.

5. FINANCIAL IMPLICATIONS

The implementation of the “clean-break” principle is not anticipated to have any new financial implications for government or the South African Post Office SOC Ltd.

6. CONSTITUTIONAL IMPLICATIONS

The amendments in the Bill that seek to provide for the implementation of the “clean-break” principle will address the disparity regarding the implementation of the “clean-break” principle between the PORF and other Pension Funds that are regulated in terms of the PFA. This has been the subject of a constitutional challenge in the High Court case of Mathilda Wiese and the GEPF and others as well as the pending case of PRP Ngewu and the PORF. The Constitutional Court of South Africa postponed the Ngewu case to 07 February 2013 in view of an undertaking by the Minister of Communications to table the amendments contemplated in this Bill in Parliament in the 2012 Legislative Programme.

7. PARLIAMENTARY PROCEDURE

- 7.1. 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.
- 7.2. 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.