

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 312

Cape Town

19 June 1991

No. 13310

## THE PRESIDENCY

No. 1345

19 June 1991

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 85 of 1991: Post Office Amendment Act, 1991.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

## GENERAL EXPLANATORY NOTE:

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

\_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Post Office Act, 1958, so as to delete, define or further define certain expressions; to provide for the incorporation of a postal company and a telecommunications company and for the powers of such companies; to provide for the transfer of the postal enterprise to the postal company and of the telecommunications enterprise to the telecommunications company; to provide for the conditions of service and pensions of persons transferred to or employed by the postal company or the telecommunications company; to provide for the control of the Post Office Savings Bank by the postal company; to further regulate matters in connection with the Post Office Savings Bank; and to increase the fines which may be imposed under the Act; and to provide for matters connected therewith.

*(English text signed by the State President.)*  
*(Assented to 5 June 1991.)*

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

Amendment of section 1 of Act 44 of 1958, as amended by section 1 of Act 56 of 1973, section 1 of Act 13 of 1974, section 1 of Act 113 of 1976, section 1 of Act 1 of 1978 and  
 5 section 1 of Act 37 of 1984

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

- (a) by the substitution for the definition of "Bank" of the following definition:  
 10 "Bank" means the South African Reserve Bank referred to in the definition of **["the bank"]** 'Bank' in section 1 of the South African Reserve Bank Act, **[1944 (Act No. 29 of 1944)]** 1989 (Act No. 90 of 1989);"
- (b) by the insertion after the definition of "Bank" of the following definitions:  
 15 "chief actuary" means the chief actuary as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);  
 "Companies Act" means the Companies Act, 1973 (Act No. 71 of 1973);"
- (c) by the insertion after the definition of "department" of the following definition:  
 20 "excluded commitments" means any—
- (a) public stock and bonds issued in terms of section 121 (1) (b) before the repeal of that section by the Post Office Amendment Act, 1991; and  
 (b) loan and other financing and related agreements entered into by the department, but excluding those made by the State to the department in terms of the Exchequer Act, 1975 (Act No. 66 of 1975), in respect of which the Minister with the approval of the Minister of Finance  
 25 decides that the State will continue to be liable after the transfer date concerned;"

- (d) by the deletion of the definition of "Fund";
- (e) by the deletion of the definition of "imprisonment";
- (f) by the substitution for the definition of "Minister" of the following definition:
- 5 "Minister" means the Minister of **[Posts and Telecommunications]** Mineral and Energy Affairs and Public Enterprises;"
- (g) by the substitution for the definition of "officer" of the following definition: "officer" includes any person in the service or employed in connection with any business of the department or any successor company;"
- 10 (h) by the insertion after the definition of "postal authority" of the following definitions:
- "postal company" means the company incorporated as contemplated in section 3 (1) to conduct a postal service;
- 15 'postal employer' means the postal company or a subsidiary of that company, as the case may be;
- 'postal enterprise' means all the assets, liabilities, rights and obligations, including any claim to copyright, trade marks and patentable inventions but excluding rights and obligations in terms of excluded commitments, of the State which relate to or are connected with the conduct of the postal service by the department, as determined by the Minister;"
- 20 (i) by the insertion after the definition of "postal order" of the following definitions:
- "postal pension fund" means the pension fund established in terms of section 9;
- 25 'postal service' means the affairs which the Postmaster-General or, subsequent to the postal transfer date, the postal company is entitled to conduct in terms of Chapters III, IV and V, including the exclusive privilege of receiving, collecting, dispatching, conveying and delivering letters and of performing all incidental services;
- 30 'postal transfer date' means the date determined by the Minister in terms of section 4 (1) (a) in respect of the postal enterprise;"
- (j) by the substitution for the definition of "post office" of the following definition:
- 35 "post office" includes any house, building, room, carriage, place or structure where postal articles are received, sorted, delivered, made up or dispatched or which is used for any other purpose in connection with the rendering or operation of any postal, telecommunications, savings, money transfer or other service by the department or any successor company or officers thereof and any pillar box or other receptacle provided by or with the approval of the department or a successor company for the reception of postal articles for transmission;"
- 40 (k) by the deletion of the definition of "Post Office Appropriation Act";
- (l) by the insertion before the definition of "prescribed" of the following definition:
- 45 "'Post Office Service Act' means the Post Office Service Act, 1974 (Act No. 66 of 1974), and the regulations made thereunder;"
- (m) by the substitution for the definition of "railway" of the following definition:
- 50 "'railway' includes any tramway, whether the means of traction be animal or steam power, electricity or other motive force, but does not include the railway lines of the South African **[Railways and Harbours Administration]** Rail Commuter Corporation Limited referred to in section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), or Transnet Limited, a company formed under section 2 of the said Act or a wholly-owned subsidiary of Transnet Limited established under section 32 (1) of that Act with reference to a business unit acquired by such wholly-owned subsidiary in terms of paragraph (b) of the said section 32 (1);"
- 55 (n) by the deletion of the definition of "Republic";
- (o) by the insertion after the definition of "sender" of the following definition:
- 60 "'successor company' means a company incorporated as contemplated in section 3 (1);"

- (p) by the insertion after the definition of "telecommunications" of the following definitions:
- "telecommunications company" means the company incorporated as contemplated in section 3 (1) to conduct a telecommunications service;
- 5 "telecommunications employer" means the telecommunications company or a subsidiary of that company, as the case may be;
- "telecommunications enterprise" means all the assets, liabilities, rights and obligations, including any claim to copyright, trademarks and patentable inventions but excluding rights and obligations in terms of excluded commitments, of the State which relate to or are connected with the conduct of the telecommunications service by the department, as determined by the Minister;"
- 10 (q) by the insertion after the definition of "telecommunications line" of the following definitions:
- 15 "telecommunications pension fund" means the pension fund established in terms of section 9;
- "telecommunications service" means the affairs which the Postmaster-General or, subsequent to the telecommunications transfer date, the telecommunications company is entitled to conduct in terms of Chapter VI;
- 20 "telecommunications transfer date" means the date determined by the Minister in terms of section 4 (1) (b) in respect of the telecommunications enterprise;"
- (r) by the substitution for the definition of "telegram" of the following definition:
- 25 "telegram" means any communication in written form or information in the form of an image transmitted by the department or any successor company over a telecommunications line and delivered in any such form, or intended to be thus transmitted and delivered or delivered from any post office or intended to be thus delivered as a communication or as information transmitted either wholly or partially over a telecommunications line;" and
- 30 (s) by the insertion after the definition of "this Act" of the following definition:
- "transfer date" means a date of transfer contemplated in section 4 (1);"

35 **Amendment of section 2 of Act 44 of 1958, as amended by section 55 of Act 66 of 1974 and section 2 of Act 113 of 1976**

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

- 40 "(2) The Postmaster-General shall have the supervision and control of all persons in the service of the department and all [post offices and other] offices or workplaces of the department and all [postal, telecommunications, savings, money transfer and other] services and activities which the department may render or undertake [in terms of this Act], and may issue such instructions as he may deem necessary for the conduct and guidance of officers of the department
- 45 in carrying out the provisions of this Act."

**Amendment of section 2B of Act 44 of 1958, as inserted by section 3 of Act 113 of 1976 and amended by section 1 of Act 27 of 1983, section 2 of Act 37 of 1984 and section 1 of Act 7 of 1986**

3. Section 2B of the principal Act is hereby amended—

- 50 (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- 5 “(a) establish, maintain, reorganize or abolish divisions, branches, offices or other work-places of the department, [postal, telecommunications, savings or money transfer services] reorganize the department and transfer any function of the department to or take over any function from any other department of State [the administration of the territory of South West Africa] or any body;”;
- (b) by the deletion of paragraphs (b), (c), (d), (e) and (f) of subsection (1);
- (c) by the substitution for paragraph (g) of subsection (1) of the following paragraph:
- 10 “(g) determine the hours during which [postal, telecommunications, savings, money transfer and other] services are to be rendered by the department and the hours during which the public shall have access to [post offices or other] work-places of the department for the purpose of utilizing the services referred to, and may determine different hours in respect of different services and different [post offices and other] work-places;”;
- 15 (d) by the deletion of paragraphs (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v) and (w) of subsection (1);
- (e) by the addition to subsection (1) of the following paragraph:
- 20 “(x) perform any function assigned to him under section 90A.”; and
- (f) by the deletion of subsections (3), (3A) and (4).

#### Repeal of section 2C of Act 44 of 1958, as inserted by section 3 of Act 113 of 1976

4. Section 2C of the principal Act is hereby repealed.

#### Insertion of Chapter 1A and sections 3 to 6 in Act 44 of 1958

- 25 5. The following heading and sections are hereby inserted in the principal Act after section 2D:

#### “CHAPTER 1A

#### SUCCESSOR COMPANIES

##### Incorporation of successor companies

- 30 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 public companies, namely, a postal company to conduct a postal service and a telecommunications company to conduct a telecommunications service,
- 35 which companies shall bear names approved by the Minister, and the issue to each 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 Postmaster-General—
- 40 (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;
- 45 (b) shall occupy the post of director of a successor company until the date immediately preceding the transfer date concerned.
- (4) Each successor company—
- (a) shall upon incorporation issue one share with a nominal value of one rand to the State;
- 50 (b) shall in its memorandum of association *inter alia* provide that that successor 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;

(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 course 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) shall have articles of association providing *inter alia* that—

(i) the directors, with the exception of the managing director, shall fulfil a non-executive function;

(ii) the affairs of the company shall be managed by a management board appointed in terms of the articles of association;

(iii) one of the directors shall be appointed as managing director as well as chairman of the management board;

(iv) no person, except the State, shall, whether directly or indirectly, hold any shares in the company;

(d) shall, apart from the shares referred to in subsection (4) (a) and sections 5 (1) and 12U (4) (a), not issue any shares.

(5) Notwithstanding the provisions of the Companies Act, the postal company and the telecommunications company shall each not have more than one member.

(6) The powers and duties of the State as a member and shareholder of each 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.

#### Transfer of postal enterprise and telecommunications enterprise to successor companies

4. (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 exclusive 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 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 shall likewise be determined, regard being had to the obligations imposed upon the postal company and the telecommunications company by section 12U.

(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 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.
- 5
- (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 of a certificate by the Minister 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 may deem necessary in or on any relevant register, title deed or other document in his office or laid before him, in order to effect the transfer in the name of the company concerned.
- 10
- (4) (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 Postmaster-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.
- 15
- (b) The registrar as referred to in subsection (3) (b) shall, on submission to him of a certificate by the Minister of Public Works and Land Affairs that a servitude, other real right or lease has passed in terms of paragraph (a) or that a servitude exists over State land which has passed in terms of subsection (3) (a), free of charge make such entries and endorsements as he may deem necessary in or on any relevant register, title deed or other document in his office or laid before him, in order to—
- 20
- (i) register the passing of the servitude, other real right or lease to the company concerned in terms of paragraph (a); or
- (ii) confirm the existence of the servitude in favour of any other person, over the State land which has so passed.
- 25
- (5) The Minister shall in all litigation whatsoever, including arbitrations, to which the Minister is a party, be substituted as the party to the suit—
- 30
- (a) by the postal company with effect from the postal transfer date in the case of litigation pertaining to the postal enterprise;
- (b) by the telecommunications company with effect from the telecommunications transfer date in the case of litigation pertaining to the telecommunications enterprise.
- 35
- (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.
- 40
- (7) The Registrar of Trade Marks shall make such entries, notes and endorsements as he may deem necessary in or on any relevant register, certificate or other document in his office or submitted to him 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 such information or document as he may deem necessary for such purpose.
- 45
- (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.
- 50
- (9) (a) Each successor company may establish subsidiary companies of which the successor company shall be the sole member and share-
- 55
- 60

holder 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 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 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).

#### Shareholding in successor companies

5. (1) As a consideration for the transfer contemplated in section 4(1) each successor company shall, in addition to the share referred to in section 3 (4) (a), issue such shares in those companies 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 company, shall be equal to the net asset value of the enterprise concerned.

(2) The shares issued in terms of subsection (1) shall be allotted and issued at the time and on the conditions which the Minister with the concurrence of the Minister of Finance may determine.

(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.

(4) Any dividends received by the State in respect of shares in a successor company shall be paid into the State Revenue Fund.

(5) No stamp duty shall be paid by a successor company in respect of the issue of shares to the State in terms of this Act.

(6) No money shall be paid by a successor company in terms of section 63 or 75 of the Companies Act in respect of the creation of, or any increase in, the capital of such a company.

(7) The State may not alienate any shares or rights to shares in a successor company, and a successor company may not issue shares in such company to any person other than the State."

#### Substitution of section 7 of Act 44 of 1958

6. The following section is hereby substituted for section 7 of the principal Act:

##### "Powers of successor companies

7. (1) (a) The postal company shall, subject to the provisions of any other law, from the postal transfer date have the exclusive power to conduct the postal service, but the approval of the Minister shall, subject to the provisions of subsection (3), be required for—

(i) the determination of the fees, rates or charges levied by the postal company in respect of the postal service;

(ii) the determination of the hours during which postal, savings, money transfer and other services shall be rendered by the postal company and the hours during which the public shall have access to post offices and other work places of the postal company for the purpose of utilizing the said services;

- (iii) the imposition of any onerous conditions in connection with the provision of the postal service;
- (iv) the termination of the provision of a postal service in any area where the service was provided by the department immediately prior to the postal transfer date.
- 5
- (b) Any person who performs an act which under paragraph (a) is the exclusive privilege of the postal company with regard to the receipt, collecting, dispatching, conveying and delivering of letters and the performance of incidental services, or who sends, tenders or delivers any letter to be dealt with contrary to this section, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 in respect of every letter received, collected, dispatched, conveyed, tendered or delivered.
- 10
- (c) Nothing in this subsection contained shall extend to any letter—
- 15
- (a) sent or conveyed to or from any post office;
- (b) exceeding the dimensions prescribed for letters;
- (c) containing process of or proceedings or pleadings in any court of justice or affidavits or depositions;
- 20
- (d) exclusively concerning goods sent and to be delivered therewith; or
- (e) sent by any person exclusively concerning his private affairs or the private affairs of the bearer or the receiver:
- Provided that no person shall collect any such letter for the purpose of sending it either by post or otherwise.
- 25
- (2) The telecommunications company shall, subject to the provisions of any other law, have the exclusive power to conduct the telecommunications service, but the approval of the Minister shall, subject to the provisions of subsection (3), be required for—
- 30
- (a) the determination of the fees, rates or charges levied by the telecommunications company in respect of the telecommunications service;
- (b) the determination of the hours during which telecommunications and other services shall be rendered by the telecommunications company and the hours during which the public shall have access to post offices or other work places of the telecommunications company for the purpose of utilizing the said services;
- 35
- (c) the imposition of any onerous conditions in connection with the provision of the telecommunications service;
- (d) the termination of the provision of a telecommunications service in any area where, or to any subscriber to whom, the service was provided by the department immediately prior to the telecommunications transfer date.
- 40
- (3) The Minister may, notwithstanding the provisions of subsections (1) and (2), authorize the postal company or the telecommunications company to exercise any power referred to in subsection (1) or (2) in all cases or in cases of a particular category or in cases where particular circumstances apply, without the approval of the Minister.
- 45
- (4) The postal company or the telecommunications company may, in exercising a power referred to in subsection (1) or (2), determine different fees, rates or charges in respect of different services or services rendered in different areas or under different circumstances, or may determine special fees, rates or charges which may be higher or lower than the normal tariffs, rates or charges, or may exempt particular users or prospective users of services in extraordinary or in specific circumstances from any of the prescribed fees, rates or charges.
- 50
- 55
- (5) Any fees, rates or charges determined under subsections (1) and (2) and any alteration thereof shall be published by the Minister by notice in the *Gazette*."

**Insertion of Chapter 1B and sections 8 to 10E in Act 44 of 1958**

7. The following heading and sections are hereby inserted in the principal Act after section 7:

**“CHAPTER 1B****5 STAFF AND PENSION MATTERS****Transfer to successor company**

8. (1) Any officer or employee of the department performing functions pertaining to the postal service or the telecommunications service, and who—

10 (a) elects to become an employee of a successor company, shall, if he notifies the department in writing of his election prior to the applicable transfer date, notwithstanding the provisions of the Post Office Service Act and without interrupting his service, from the postal transfer date or the telecommunications transfer date, as the case may be, become an employee in a similar post in the postal company or the telecommunications company, respectively, subject to conditions of employment which shall not be less favourable than those applicable to him on the date immediately preceding the applicable transfer date;

15 (b) does not in terms of paragraph (a) elect to become an employee of a successor company, shall, notwithstanding the provisions of the Post Office Service Act, but subject to the conditions determined by the Staff Management Board referred to in section 4 of the Post Office Service Act with the concurrence of the Minister, from the postal transfer date or the telecommunications transfer date, as the case may be, be seconded to the postal company or the telecommunications company, respectively, there to perform services in a post similar to the post occupied by him in the department, but such officer or employee shall while he is so seconded remain subject to the laws governing officers and employees of the department.

20 (2) If, for the purposes of subsection (1), the question arises whether any person performs functions pertaining to the postal service or the telecommunications service, such question shall be decided by the Postmaster-General, and his decision shall be final.

25 (3) If any person seconded in terms of subsection (1) (b), after the applicable transfer date elects to become an employee of the successor company to which he has been seconded, he shall, notwithstanding the provisions of the Post Office Service Act, and without interrupting his service, from a date determined by the successor company concerned after consultation with the chief actuary, become an employee of that company in a post similar to the post occupied by him while being so seconded, subject to the conditions of service of that company: Provided that where such election is made more than one year after the applicable transfer date, the successor company concerned shall not be obliged to employ such officer or employee.

30 (4) For the purposes of the provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), it shall be deemed that no change of employer took place when employment is taken up at a successor company by officers and employees in terms of subsections (1) and (3) and that the position of 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 any office as contemplated in Schedule 7 to the Income Tax Act, 1962, shall remain unchanged.

35 (5) When any officer or employee of the department becomes an employee of a successor company in terms of subsection (1) or (3)—

40 (a) he shall retain all vacation and sick leave which on the date immediately preceding his employment by the successor company

stands to his credit with the department, including all monetary benefits attached thereto;

- 5 (b) any disciplinary steps instituted or contemplated against such officer or employee in respect of alleged misconduct or improper conduct committed prior to his employment by the successor company, shall be disposed of or instituted in terms of the laws applicable to him before such employment;
- 10 (c) he shall cease to be a member of any pension fund to which he was in terms of section 44 of the Post Office Service Act compelled to belong on the date immediately preceding the date of his employment by the successor company concerned, and shall have no claim against the pension fund concerned;
- 15 (d) he shall become a member of the postal pension fund in the case of the postal company or of the telecommunications pension fund in the case of the telecommunications company as from the date of his employment by the successor company concerned;
- 20 (e) the pension fund referred to in paragraph (c) shall pay to the postal pension fund or the telecommunications pension fund, as the case may be, an amount, whether in cash or in specie, equal to the percentage funding multiplied by the actuarial liability of the fund in respect of that officer or employee on the date of his employment by the successor company concerned, plus interest thereon calculated at the bank rate from that date until the date of payment thereof, and any claim which that pension fund may have against such officer or
- 25 employee shall pass to the postal pension fund or the telecommunications pension fund, as the case may be.

(6) For the purposes of subsection (5) (e)—

- 30 (a) the actuarial liability of a pension fund in respect of a particular member or group of members of the fund shall be the actuarial liability of the fund in respect of such member or group of members of the fund as determined by the chief actuary and an actuary appointed by the Minister of National Health and Population Development;
- 35 (b) the percentage funding of a pension fund shall be the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund as determined at the time of the most recent actuarial evaluation of the fund or any revision thereof made on the instructions of the Minister of National Health and Population Development;
- 40 (c) the bank rate shall be the rate from time to time determined in terms of section 10 (2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

45 (7) Any staff association recognized by the Minister as contemplated in section 43 (1) (b) of the Post Office Service Act immediately prior to the postal transfer date or the telecommunications transfer date, shall be recognized by the successor company concerned.

#### **Establishment of pension funds**

50 9. (1) From the date of commencement of the Post Office Amendment Act, 1991, there are hereby established a postal pension fund and a telecommunications pension fund.

(2) Both the funds referred to in subsection (1) shall be juristic persons.

#### **Pension statutes**

55 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 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 fund, as the

60 case may be.

(2) The statutes of each fund shall be published by the Minister in the *Gazette* 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.

(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.

(4) The statutes of the postal pension fund and the telecommunications pension fund shall be binding on each fund as well as the postal employer and the telecommunications employer, as the case may be, and on the members and beneficiaries of each fund.

#### Actuarial evaluation of pension funds

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 fund shall be valued by such actuary at intervals not exceeding three years, as the Minister may determine.

(2) The report of the actuary shall comply with the requirements of section 16 (7) of the Pension Funds Act, 1956 (Act No. 24 of 1956), and shall be submitted by the actuary to the Minister and to the Minister of Finance.

(3) A copy of the report shall be submitted by the actuary to the employer concerned.

(4) In addition to complying with the requirements of section 16 (7) of the Pension Funds Act, 1956, the actuary shall calculate, and mention in his report, what amounts are necessary to maintain the pension fund concerned in a sound financial position.

(5) The postal employer and the telecommunications employer shall guarantee the financial obligations of the postal pension fund and the telecommunications pension fund, respectively.

(6) The State shall guarantee the obligations of the postal employer and the telecommunications employer in terms of subsection (5).

(7) (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.

(b) For the purposes of paragraph (a) 'actuarial liability' shall have the meaning assigned to it in section 8 (6) (a).

(c) The rate referred to in paragraph (a) shall not be less than 12 per cent per annum on the outstanding balance.

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

#### Pension benefits may not be ceded, encumbered or attached

10B. 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, and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right

5 thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund 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.

#### Insolvency of pensioner

10 **10C.** (1) If the estate of any person in receipt 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 thereafter 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 following persons, namely, the pensioner, his wife or minor child or, failing a wife or minor child, to the mother of an illegitimate child or any child, whether legitimate, adopted or illegitimate, or to any other relative dependent upon the pensioner: 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 appropriated by the trustee of his insolvent estate or by his creditors.

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25 (2) If payment of a pension has been discontinued under this section, the pension shall revive on the rehabilitation of the pensioner or on the sequestration of his estate being set aside or the claims of his creditors being satisfied, and he shall receive a pension 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.

#### Registration of pension funds

30 **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 organization' as defined in section 1 of the said Act.

35 (2) From the date of such registration—

- 40 (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
- (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.

#### Membership of pension fund by employees of subsidiary companies

45 **10E.** (1) If a 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.

50 (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 fund."

#### Repeal of sections 11, 12 and 12A up to and including 12T of Act 44 of 1958

55 **8.** Sections 11, 12 and 12A up to and including 12T of the principal Act are hereby repealed.

**Insertion of sections 12U and 12V in Act 44 of 1958**

9. The following sections are hereby inserted in the principal Act after section 12T:

**“Loans to postal company and telecommunications company**

5       **12U.** (1) The State shall be deemed, with effect from the postal transfer date, to have lent and advanced to the postal company the amounts which the State owes in terms of excluded commitments entered into by the Postmaster-General in terms of this Act and which pertain to or are connected with the conduct of the postal service by the department.

10       (2) The State shall be deemed with effect from the telecommunications transfer date to have lent and advanced to the telecommunications company the amounts which the State owes in terms of excluded commitments entered into by the Postmaster-General in terms of this Act and which pertain to or are connected with the conduct of the telecommunications service by the department.

15       (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 (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.

20       (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)—

25       (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;

30       (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.

35       (5) For the purposes of the transfer by the department to the postal company and the telecommunications company of obligations in respect of public stock or bonds issued in terms of section 12I (1) (b) before the repeal of that section by the Post Office Amendment Act, 1990—

40       (a) the public stock or bonds shall with effect from such transfer be deemed to be debentures issued by the successor company concerned in terms of the Companies Act;

45       (b) the obligations of the successor company concerned arising from the public stock or bonds referred to in subparagraph (a) shall be guaranteed by the State,

except in so far as the Minister with the concurrence of the Minister of Finance may determine otherwise.

(6) The Minister shall deal with the excluded commitments with the concurrence of the Minister of Finance.

50       **Submission of statements**

55       **12V.** The Minister shall within three months after the end of the financial year of each successor company lay upon the Table in Parliament the audited annual financial statements of the company, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.”

Substitution of section 13 of Act 44 of 1958, as amended by section 3 of Act 56 of 1973, section 7 of Act 113 of 1976 and section 3 of Act 37 of 1984

10. The following section is hereby substituted for section 13 of the principal Act:

**“Rates of postage**

5 13. (1) Subject to the provisions of this Act, there shall be paid on every article for transmission by post, such postage and other sums as may be prescribed by the postal company.

(2) Save as is otherwise prescribed by the postal company, the postage and any fees which may be payable in respect of any postal article posted within the Republic [or in the territory of South West Africa] shall be prepaid by means of postage stamps, issued for the Republic [or for the territory of South West Africa, as the case may be] by the [Postmaster-General] postal company, and not previously used, obliterated or defaced, and in default thereof there shall be payable in money upon every such postal article, at the time of or after delivery thereof, [a prescribed] an amount so prescribed [and any amount so paid in respect of any postal article shall be accounted for as prescribed].

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20 [(4)] (3) In the case of loose postal articles received from masters of vessels, the single rates of postage applicable to articles posted in the [Union] Republic for delivery therein shall be chargeable and may be collected in money on delivery.”.

**Repeal of section 15 of Act 44 of 1958**

11. Section 15 of the principal Act is hereby repealed.

**Substitution of section 19 of Act 44 of 1958**

25 12. The following section is hereby substituted for section 19 of the principal Act:

**“Letters to have precedence over other articles in certain circumstances**

30 19. Whenever in the opinion of the [Postmaster-General] postal company the dispatch or delivery of letters from a post office would be delayed by the dispatch or delivery at the same time of other classes of postal articles, the latter or any of them may, subject to the regulations of the postal company, be detained in such post office for subsequent dispatch or delivery.”.

**Amendment of section 25 of Act 44 of 1958, as substituted by section 7 of Act 56 of 1973**

35 13. Section 25 of the principal Act is hereby amended by the substitution for the words following paragraph (c) of subsection (1) of the following words:

“shall be sent to the office known as the returned letter office and dealt with as may be prescribed by the postal company.”.

**Substitution of section 26 of Act 44 of 1958**

40 14. The following section is hereby substituted for section 26 of the principal Act:

**“Articles subject to customs duty**

45 26. Any postal article containing or suspected of containing an enclosure upon which customs duty is payable shall be dealt with as prescribed by the postal company, subject to any law relating to customs.”.

**Amendment of section 28 of Act 44 of 1958, as substituted by section 8 of Act 56 of 1973**

15. Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

50 “(2) Any postal article referred to in subsection (1) the name and address of the sender of which are known but which, in the opinion of the

5 **[Postmaster-General]** postal company, is of little value or importance, which does not contain any documents, has not been transmitted by registered post and has not been posted upon the public service, may, after it has been retained for the **[prescribed]** period prescribed by the postal company and with due regard to the **[prescribed]** requirements prescribed by that company, be destroyed or disposed of in any other **[prescribed]** manner so prescribed.”.

**Amendment of section 30 of Act 44 of 1958**

16. Section 30 of the principal Act is hereby amended by the substitution for the expression “twenty shillings” of the expression “R10”.

10 **Amendment of section 36 of Act 44 of 1958, as amended by section 9 of Act 113 of 1976**

17. Section 36 of the principal Act is hereby amended by the substitution in subsection (5) for the expression “one hundred pounds” of the expression “R1 000”.

**Amendment of section 40 of Act 44 of 1958**

15 18. Section 40 of the principal Act is hereby amended by the substitution for the expression “fifty pounds” of the expression “R500”.

**Amendment of section 41 of Act 44 of 1958**

19. Section 41 of the principal Act is hereby amended by the substitution in subsection (2) for the expression “one hundred pounds” of the expression “R1 000”.

20 **Amendment of section 43 of Act 44 of 1958, as amended by section 12 of Act 113 of 1976**

20. Section 43 of the principal Act is hereby amended—  
(a) by the substitution in subsection (2) for the expression “one hundred pounds” of the expression “R1 000”; and  
25 (b) by the substitution in subsection (3) for the expression “twenty pounds” of the expression “R200”.

**Amendment of section 44 of Act 44 of 1958**

21. Section 44 of the principal Act is hereby amended by the substitution in the words following upon paragraph (b) for the expressions “five pounds” and “ten pounds” of the expressions “R50” and “R100”, respectively.

30 **Substitution of section 46 of Act 44 of 1958**

22. The following section is hereby substituted for section 46 of the principal Act:

**“Remittance of money through postal company**

35 46. Money may be remitted through the postal company either within or outside the Republic at rates determined by the postal company, and the postal company may authorize any employee to issue and pay money orders, postal orders and other documents authorized to be used for the purpose of so remitting money.”.

**Substitution of section 47 of Act 44 of 1958**

23. The following section is hereby substituted for section 47 of the principal Act:

40 **“Postal company may refuse to issue or pay money orders, postal orders, etc., to certain persons**

45 47. The **[Postmaster-General]** postal company may refuse to issue or pay any money order, postal order or other document authorized to be used for the purpose of remitting money through the **[department]** postal company, in favour of any person to whom the provisions of section 35

5 apply, and where payment of any such order or other document is refused, such order may, if it was issued in the **[Union] Republic**, be returned to the person to whom it was originally issued or otherwise disposed of as the **[Postmaster-General] postal company** may deem fit, or, if it was issued outside the **[Union] Republic**, the amount thereof shall be returned to the postal authority of the country in which it was issued.”.

**Substitution of section 51 of Act 44 of 1958, as amended by section 16 of Act 113 of 1976**

10 24. The following section is hereby substituted for section 51 of the principal Act:

“Money orders, etc., to be deemed bank notes, etc., in case of forgery or theft, and unissued postal orders deemed money of postal company

15 51. (1) Any money order, postal order or other document issued under section 46 shall be deemed to be a bank note or an order for the payment of money and a valuable security within the meaning of any law relating to forgery or theft.

(2) Any unissued postal order shall be deemed to be money of the **[department] postal company**.”.

20 **Substitution of section 52 of Act 44 of 1958, as substituted by section 5 of Act 37 of 1984**

25 25. The following section is hereby substituted for section 52 of the principal Act:

“Establishment of Post Office Savings Bank

25 52. (1) There is hereby established a **[division of the department under the designation] Post Office Savings Bank** which, subject to and in accordance with the provisions of the regulations and, subject to the provisions of this Act, under the control and management of the **[Postmaster-General] postal company**, shall undertake such activities as are customary for a financial institution carrying on the business of accepting deposits.

30 (2) Interest on deposits in the Post Office Savings Bank shall be paid at a rate determined from time to time by the **[Minister] postal company**, with the concurrence of the Minister of Finance, in the case of each kind of deposit **[and shall in respect of each kind of deposit be calculated and paid in the manner and at the times prescribed by regulation in respect of that kind of deposit]**.”.

**Repeal of section 64 of Act 44 of 1958**

26. Section 64 of the principal Act is hereby repealed.

**Substitution of section 65 of Act 44 of 1958, as substituted by section 5 of Act 13 of 1974 and amended by section 13 of Act 37 of 1984**

40 27. The following section is hereby substituted for section 65 of the principal Act:

“Secrecy

45 65. No person shall, in respect of the transactions of any depositor in the Savings Bank or any holder of a National Savings Certificate, disclose any information (including the name of any such depositor or holder) which came to his knowledge in the performance of his duties and functions in terms of this Act, except—

50 (a) to **[the Postmaster-General or such officers as he may appoint] an employee appointed by the postal company to assist in carrying out the provisions of this [Act] Chapter [relating to the Savings Bank or National Savings Certificates]; [or]**

- (b) to the **[Secretary]** Commissioner for Inland Revenue, for the purposes of any law relating to the **[taxation of incomes]** imposition of any tax or levy; [or]
- 5 (c) to the Master in relation to the administration of the estate of any deceased depositor in the Savings Bank or holder of a National Savings Certificate; or
- (d) when required by order of a competent court:
- 10 Provided that nothing in this section contained shall be deemed to limit the authority of the **[Controller and Auditor-General]** auditors of the successor company to require a disclosure of such accounts and documents as may be necessary to enable **[him]** them to carry out the duties imposed upon **[him]** them by law.”.

**Substitution of section 70 of Act 44 of 1958, as substituted by section 24 of Act 113 of 1976 and amended by section 14 of Act 37 of 1984**

- 15 28. The following section is hereby substituted for section 70 of the principal Act:

**“Transfer of deposits from or to another country**

- 20 70. The **[Postmaster-General]** postal company may in accordance with arrangements made with any postal authority for the transfer from or to the Republic of sums of money standing to the credit of depositors in the Savings Bank or depositors in a savings bank controlled by that postal authority and subject to the provisions of this Act and of any regulation made under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), place any sum so transferred to the **[Savings Bank]** postal company to the credit of a depositor's ordinary account.”.

- 25 **Repeal of section 77B of Act 44 of 1958, as inserted by section 13 of Act 13 of 1974 and amended by section 29 of Act 113 of 1976, section 2 of Act 75 of 1981, section 7 of Act 27 of 1983 and section 17 of Act 37 of 1984**

29. Section 77B of the principal Act is hereby repealed.

- 30 **Substitution of section 77C of Act 44 of 1958, as inserted by section 13 of Act 113 of 1974**

30. The following section is hereby substituted for section 77C of the principal Act:

**“Security for repayment of certain deposits and of amounts represented by certain certificates**

- 35 77C. The revenue and assets of the **[department]** postal company and thereafter the State, shall serve as security for the repayment of deposits in the Savings Bank and of the amounts represented by Savings Bank, National Savings and Union Loan Certificates, and for the payment of interest due thereon.”.

- 40 **Repeal of section 77D of Act 44 of 1958, as inserted by section 13 of Act 13 of 1974 and substituted by section 18 of Act 37 of 1984**

31. Section 77D of the principal Act is hereby repealed.

**Repeal of section 77E of Act 44 of 1958, as inserted by section 31 of Act 113 of 1976 and substituted by section 19 of Act 37 of 1984**

32. Section 77E of the principal Act is hereby repealed.

## Insertion of section 77F in Act 44 of 1958

33. The following section is hereby inserted in the principal Act after section 77E:

**“Loans made from funds of Post Office Savings Bank**

5           **77F.** Money made available by way of loans from the funds of the Post  
Office Savings Bank for use by the department, shall from the telecom-  
munications transfer date be deemed to be owing by the telecommuni-  
cations company to the postal company, which loan shall from the  
10           telecommunications transfer date be deemed to be represented by  
debentures issued for the amount of the loan by the telecommunications  
company in terms of the Companies Act subject to such conditions as the  
Minister with the concurrence of the Minister of Finance may deter-  
mine.”.

Substitution of section 78 of Act 44 of 1958, as substituted by section 33 of Act 113 of 1976 and amended by section 23 of Act 61 of 1982 and section 7 of Act 24 of 1990

15   34. The following section is hereby substituted for section 78 of the principal Act:

**“Telecommunications company to have exclusive privilege in respect of telecommunications**

20           **78.** (1) Subject to the provisions of any other Act of Parliament, the  
**[Postmaster-General] telecommunications company** shall have the exclu-  
sive privilege of constructing, maintaining or using, or of authorizing any  
person to construct, maintain or use, any telecommunications line for the  
sending, conveying, transmitting or receiving of sounds, images, signs,  
signals, communications or other information, and of transmitting tele-  
grams over any such telecommunications line within the Republic or the  
25           territorial waters thereof, and of performing all the incidental services of  
receiving, collecting or delivering telegrams.

**[(1A)] (2)** The **[Postmaster-General] telecommunications company**  
may, on such conditions as **[are prescribed]** it may generally or **[on the**  
30           **conditions which he may]** specially prescribe in any case—

(a) against payment of the **[prescribed rental or any]** rental which **[he]**  
it may **[prescribe]** generally or specially prescribe in any case, lease  
any telecommunications line referred to in subsection (1) to any  
person for use by him, or by any other person, in the manner and for  
the purposes determined by the **[Postmaster-General] telecommu-**  
35           **nications company;**  
(b) against payment of the **[prescribed]** licence fee prescribed by it,  
issue to any person a licence to construct, maintain or so to use any  
such telecommunications line, or to permit any other person so to  
use it.

40           **[(1B)] (3) (a) (i)** The **[Postmaster-General] telecommunications com-**  
**pany** shall not under subsection **[(1A)] (2)** authorize the use of  
a telecommunications line for the transmission of images or  
other visible signs, with or without attendant sounds, except  
with the approval of the Minister responsible for the adminis-  
tration of the Broadcasting Act, 1976 (Act No. 73 of 1976),  
45           granted after consultation with the South African Broadcasting  
Corporation.

(ii) The provisions of subparagraph (i) shall not apply where the  
said Broadcasting Corporation has been authorized to use a  
50           telecommunications line, or in any case in which the images or  
signs, in the opinion of the **[Postmaster-General] telecommuni-**  
**cations company**, fall within a class of images or signs the  
transmission of which is the function of the **[department]**  
**telecommunications company.**

(b) Where the authority of the **[Postmaster-General]** telecommunications company for the use of a telecommunications line is subject to the approval of the Minister responsible for the administration of the Broadcasting Act, 1976 (Act No. 73 of 1976), the said Minister may grant his approval subject to such conditions relating to the said use, and fix such fees in respect thereof, as he may deem fit, and direct that such fees shall be disposed of in the manner determined by him.

5  
10 **[(1C)]** (4) Different rentals or fees may be prescribed or fixed under subsections **[(1A)]** (2) and **[(1B)]** (3) in respect of different categories of telecommunications lines or different systems of telecommunications lines.

15 **[(2)]** (5) No person shall use any telecommunications line for the purpose of transmitting or delivering telegrams or telephonic communications for the public, except under the authority of the **[Postmaster-General]** telecommunications company and on such terms and conditions as **[he]** it may prescribe, and the **[department]** telecommunications company shall have the right **[by means of its officers]** of inspecting all offices which are authorized to accept, transmit or deliver public telegrams or telephonic communications.

20 **[(3)]** (6) This section shall not apply in respect of a telecommunications line—

25 (a) which conforms to the requirements prescribed by **[regulation]** the telecommunications company and which is used exclusively for the conveyance of transmissions, in any broadcasting service, which are received by means of radio, to a receiving apparatus which reproduces such transmissions; or

30 (b) where both the sending or transmission and the receiving of the same sounds, images, signs, signals, communications or other information take place on a single piece of land or on pieces of land which are contiguous to each other and owned by the same person.”

**Substitution of section 79 of Act 44 of 1958, as substituted by section 43 of Act 63 of 1975**

35 35. The following section is hereby substituted for section 79 of the principal Act:

**“Telecommunications company may take over private lines after notice**

40 79. The **[Postmaster-General]** telecommunications company may, subject to an obligation to pay such compensation as may, in the absence of agreement, be determined, *mutatis mutandis*, in accordance with the provisions of sections 12, 14 and 15 of the Expropriation Act, 1975 (Act No. 63 of 1975), after giving six months' notice of **[his]** its intention so to do, take over the whole or any part of any **[telegraph]** telecommunications line or system, not being a system of communication constructed and maintained by the South African **[Railways and Harbours Administration]** Rail Commuter Corporation Limited referred to in section 22 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), or Transnet Limited a company formed under section 2 of the said Act or a wholly-owned subsidiary of Transnet Limited established under section 32 (1) of that Act with reference to a business unit acquired by such wholly-owned subsidiary in terms of paragraph (b) of the said section 32 (1), whether constructed before or after the commencement of this Act, and whether constructed, maintained or operated under any special or general legislative authority or otherwise.”

55 **Substitution of section 80 of Act 44 of 1958, as substituted by section 4 of Act 80 of 1965**

36. The following section is hereby substituted for section 80 of the principal Act:

**“Right of entry and to construct lines across any lands, etc.**

80. The **[Postmaster-General]** telecommunications company may for the purposes of this Act and the conducting of the telecommunications

5 service enter upon any land, including any street, road, footpath or land reserved for public purposes, and any railway, and construct and maintain a **[telegraph]** telecommunications line or any work (including any call office cabinet) upon, under, over, along or across any land, street, road, footpath or waterway or any railway, and alter or remove the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.”.

#### Substitution of section 81 of Act 44 of 1958

37. The following section is hereby substituted for section 81 of the principal Act:

10 “Lines may be laid under streets, etc.

15 81. The **[Postmaster-General]** telecommunications company may after reasonable notice in writing to the local authority or person owning or having the care and management of any street, road or footpath, construct and maintain in the manner specified in that notice any **[telegraph]** telecommunications lines, pipes, tunnels or tubes required for **[telegraphic]** telecommunications purposes under any such street, road or footpath, and may alter or remove the same, and may for such purposes break or open up any street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain or main) for the supply of water, gas or electricity: Provided that the local authority or person to whom any such pipe belongs, or by whom it is used, shall be entitled at all times while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work, and the **[Postmaster-General]** telecommunications company shall pay all reasonable expenses to which any such local authority or person may be put in connection with any alterations or removals under this section or in connection with supervision of work relating to any such alteration.”.

#### Substitution of section 84 of Act 44 of 1958

38. The following section is hereby substituted for section 84 of the principal Act:

30 “Gates in fences

35 84. (1) If any fence erected or to be erected on land over which a **[telegraph]** telecommunications line is constructed or is to be constructed, renders or would render it impossible or inconvenient for the **[Postmaster-General]** telecommunications company to obtain access to that land for any of the purposes of **[this Act]** its functions, the **[Postmaster-General]** telecommunications company may at **[the]** its own expense **[of the department]** erect and maintain gates in that fence and shall provide therefor duplicate keys, one of which shall be handed over to the owner or occupier of the land.

40 (2) Any person intending to erect any such fence shall give not less than six weeks' notice in writing to the **[Postmaster-General]** telecommunications company of his intention.”.

#### Repeal of section 85 of Act 44 of 1958

39. Section 85 of the principal Act is hereby repealed.

#### 45 Substitution of section 88 of Act 44 of 1958

40. The following section is hereby substituted for section 88 of the principal Act:

“Person establishing electrical works to conform to certain requirements of telecommunications company

50 88. (1) Any person who constructs, equips or carries on any railway or works for the supply of light, heat or power by means of electricity, shall conform to the requirements of the **[Postmaster-General]** telecommunications company for the prevention of any **[telegraph]** telecommunica-

5 tions line being injuriously affected thereby, and shall, before commencing the construction of any such railway or works, give one month's notice in writing to the **[Postmaster-General]** telecommunications company of his intention to commence the construction, and shall furnish the **[Postmaster-General]** telecommunications company with a plan of the proposed railway or works, together with particulars showing the manner and position in which the same are intended to be constructed, executed and carried on and such further information relative to the proposed railway or works as the **[Postmaster-General]** telecommunications company may require.

10 (2) If it appears to the **[Postmaster-General]** telecommunications company that the construction, equipment or carrying on of any such railway or works is likely to affect injuriously any **[telegraph]** telecommunications line, or if any **[telegraph]** telecommunications line is injuriously affected by the construction, equipment or carrying on of any such railway or works, the **[Postmaster-General]** telecommunications company shall give reasonable notice of **[his]** its requirements to the person concerned, and any person who, after receiving any such notice, proceeds with or causes to be proceeded with any such construction, equipment or carrying on in contravention of the said requirements, shall be liable to **[a penalty]** the telecommunications company in damages (recoverable by action in a competent court) of **[five pounds]** R50 for every day on which the same is proceeded with or the injurious effect continues, and shall in addition make good any damage or expense which may be caused to the **[department]** telecommunications company by reason of the failure to comply with the **[Postmaster-General's]** telecommunications company's requirements."

**Amendment of section 89 of Act 44 of 1958, as amended by section 34 of Act 113 of 1976**

30 41. Section 89 of the principal Act is hereby amended—

(a) by the substitution for the words preceding the second proviso to subsection (1) of the following words:

35 "Telegrams and telephonic 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 **[and, when so required, telegrams and telephonic communications on the public service]** 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.";

40 and

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(b) by the substitution in subsection (2) for the expression "one hundred pounds" of the expression "R2 000".

**Substitution of section 90 of Act 44 of 1958**

50 42. The following section is hereby substituted for section 90 of the principal Act:

**"Telegrams which may be refused transmission**

90. Any telegram which, in the opinion of the **[Postmaster-General]** postal company or the telecommunications company, contains anything in its contents, address or signature of a blasphemous, indecent, obscene, offensive or libellous nature or anything repugnant to law or decency, shall be refused transmission."

55

**Insertion of section 90A in Act 44 of 1958**

43. The following section is hereby inserted in the principal Act after section 90:

**“Exercise by other persons of powers transferred to successor company**

- 5                   **90A. (1) (a)** Notwithstanding anything to the contrary contained in this  
 Act, the Minister may, after consultation with the successor com-  
 pany concerned, and if it is in the public interest, by notice in the  
*Gazette*, also authorize any other person to exercise any power  
 corresponding with any part of the exclusive power to conduct the  
 10 postal service or the telecommunications service which has in terms  
 of this Act been transferred to the postal company or the telecom-  
 munications company, respectively, on such conditions as the Min-  
 ister may deem fit.
- (b) A notice in terms of paragraph (a) shall come into operation on a  
 date 12 months after publication thereof, unless —
- 15                   (i) the Minister in view of the significance of the power in issue  
 determines a shorter period; or
- (ii) all persons who have been authorized to exercise a power  
 corresponding with a power mentioned in the notice, agree to  
 the commencement thereof on an earlier date to be mentioned  
 20 in the notice.
- (2) Notwithstanding anything to the contrary contained in this Act, the  
 Minister may by notice in the *Gazette* provide that the power of a  
 successor company—
- (a) to grant to any other person the right to exercise a power transferred  
 25 to that company in terms of this Act;
- (b) to determine the conditions subject to which the right granted under  
 paragraph (a) may be exercised;
- (c) to supervise the exercising of the right granted under paragraph (a),  
 shall as from a date mentioned in the notice vest in the Postmaster-  
 30 General.”

**Substitution of section 91 of Act 44 of 1958, as amended by section 36 of Act 113 of 1976**

44. The following section is hereby substituted for section 91 of the principal Act:

**“Forgery, etc., of stamps, dies, etc.**

- 35                   **91.** Any person who, without due authority or lawful excuse (the proof  
 of which shall be upon such person)—
- (a) makes, alters, imitates or imports or assists in making, altering,  
 imitating or importing any postage stamp, date stamp, card, enve-  
 40 lope, wrapper, cover or any money order, postal order or Savings  
 Bank warrant or any other warrant or order for the payment of  
 money through the **[department] postal company** or acknowledgement  
 of deposit or any form or paper similar to that used or made  
**[under the authority or]** for the purposes of **[this Act] the functions**  
 of the postal company or by any postal authority, or uses, issues,  
 45 offers, exposes for sale, sells, deals in, sends by post or disposes of  
 or has in his custody or possession any such stamp, date stamp, card,  
 envelope, wrapper, cover, money order, postal order, Savings Bank  
 warrant or any other warrant or order, acknowledgement of deposit,  
 form or paper, knowing it to have been made or altered or to be an  
 50 imitation contrary to this section;
- (b) engraves or in any manner makes upon any plate or material any  
 stamp or mark or figure or device in imitation of or resembling any  
 stamp or mark or figure or device used or made for the purposes of  
**[this Act] the functions of the postal company** or by any postal  
 55 authority, or sells, disposes of, purchases, receives, or has in his

- 5
- (c) custody or possession any plate or material so engraved or made; makes or assists in making or has in his custody or possession any mould, frame or other instrument having thereon any words, letters, figures, marks, lines or devices peculiar to paper provided, used or made for any postage stamps or for any other purposes of **[this Act]** the functions of the postal company or by any postal authority;
- 10
- (d) makes or assists in making or has in his custody or possession any paper in the substance of which appear any words, letters, figures, marks, lines or devices peculiar to paper provided, used or made for any postage stamps or for any other purposes of **[this Act]** the functions of the postal company or by any postal authority, or makes, purchases, sells, disposes of or receives or has in his custody or possession any paper provided or made for the purpose of being used for any postage stamps or for any other purposes of **[this Act]** the functions of the postal company or by any postal authority before the same has been issued for public use;
- 15
- (e) makes use of any stamp, die, plate or paper engraved or made for the purposes of **[this Act]** the functions of the postal company or by any postal authority, or sells, disposes of, purchases, receives or has in his custody or possession any such paper or material whatever bearing an impression or mark of any such stamp, die or plate; or
- 20
- (f) makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any official stamp or mark used for the purposes of **[this Act]** the functions of the postal company or by any postal authority or any words, letters, device or marks which signify or imply or may reasonably be regarded as signifying or implying that any article bearing such words, letters, device or marks has been in or is entitled to be sent through the post, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years, and any stamp, die, plate, instrument or material found in the possession of any person in contravention of this section shall be seized and forfeited.”.
- 25
- 30

#### Amendment of section 92 of Act 44 of 1958

35 45. Section 92 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who, with intent to defraud—

- 40
- (a) removes from any article sent by post or from any telegram or document used for the purposes of **[this Act]** the functions of the postal company or the telecommunications company, any stamp which has been affixed thereon, or wilfully removes, either really or apparently, from any stamp which has been previously used, any mark or impression which has been made thereon at any post office, or knowingly utters, puts off or uses any stamp or any part of any stamp which has been so removed or from which any such mark or impression has been removed;
- 45
- (b) erases, cuts, scrapes, defaces, obliterates or otherwise discharges or removes from, either really or apparently, or in any manner adds to or alters any mark or impression upon any postal article, money order, postal order, Savings Bank warrant or other warrant or order or acknowledgement of deposit, paper or other material provided, used or made for the purposes of **[this Act]** the functions of the postal company or by any postal authority; or
- 50
- (c) makes, does or practises or is concerned in any other act, contrivance or device for which no specific penalty is provided, or attempts unlawfully to evade payment of any of the rates, fees or duties **[payable]** determined under this Act,
- 55

shall be guilty of an offence and liable on conviction to a fine not exceeding [fifty pounds] R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

**Amendment of section 93 of Act 44 of 1958**

- 5 46. Section 93 of the principal Act is hereby amended by the substitution in the words following paragraph (f) for the expression “fifty pounds” of the expression “R2 000”.

**Amendment of section 94 of Act 44 of 1958**

- 10 47. Section 94 of the principal Act is hereby amended—  
 (a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:  
 “(d) without due authority (the proof of which shall be on such person) places or paints anything whatsoever upon, or wilfully injures, disfigures or tampers with any post office or any card, notice or other property of or used by or on behalf of the [department] postal company or telecommunications company or commits a nuisance on or against any post office or against or upon any such card, notice or property;” and  
 15  
 (b) by the substitution for the words following paragraph (f) of subsection (1) of the following words:  
 20  
 “shall be guilty of an offence and liable on conviction to a fine not exceeding [fifty pounds] R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment, without prejudice to any right the [Postmaster-General] postal company or telecommunications company may have of proceeding civilly against any person convicted under paragraph (d) hereof for compensation for such damage as may have been caused by him.”.  
 25

**Amendment of section 95 of Act 44 of 1958, as substituted by section 37 of Act 113 of 1976**

- 30 48. Section 95 of the principal Act is hereby amended—  
 (a) by the substitution for the words following paragraph (d) of subsection (1) of the following words:  
 “shall be guilty of an offence and liable on conviction to a fine not exceeding [five thousand rand] R28 000 or imprisonment for a period not exceeding seven years or to both such fine and such imprisonment: Provided that the [Postmaster-General] postal company may, subject to special precautions [to be set forth in regulations] determined by it, exempt from the provisions of this section noxious or deleterious matter sent in the interest of public health.”; and  
 35  
 (b) by the substitution for subsection (2) of the following subsection:  
 “(2) Notwithstanding anything to the contrary contained in any law, the [Postmaster-General] postal company or telecommunications company may cause any article referred to in subsection (1) (a) or any postal article of which he suspects that it contains such an article, to be removed at any time by a police official or any person designated by a police official or to be handed over for examination to a police official or such other person, and a police official may destroy or render harmless or cause to be destroyed or rendered harmless any such article or postal article which he considers to be dangerous, or may otherwise dispose thereof.”.  
 40  
 45

**50 Amendment of section 96 of Act 44 of 1958, as substituted by section 38 of Act 113 of 1976**

49. Section 96 of the principal Act is hereby amended by the substitution for the expression “five thousand rand” of the expression “R28 000”.

**Amendment of section 97 of Act 44 of 1958**

- 55 50. Section 97 of the principal Act is hereby amended by the substitution for the expression “five pounds” of the expression “R400”.

**Amendment of section 98 of Act 44 of 1958**

51. Section 98 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the expression “fifty pounds” of the expression “R2 000”; and  
5 (b) by the deletion of subsection (3).

**Amendment of section 99 of Act 44 of 1958, as substituted by section 16 of Act 56 of 1973**

52. Section 99 of the principal Act is hereby amended—

- 10 (a) by the substitution for the words preceding paragraph (a) of the following words:

“Any person who without the authority of the **[Postmaster-General]** postal company or the telecommunications company, as the case may be (the proof of which shall be on the accused)—”; and

- 15 (b) by the substitution for paragraph (c) and the words following thereupon of the following paragraph and words, respectively:

20 “(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 **[department]** postal company or  
25 the telecommunications company,

shall be guilty of an offence and liable on conviction to a fine not exceeding **[one hundred rand]** R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

**30 Repeal of section 100 of Act 44 of 1958, as amended by section 39 of Act 113 of 1976**

53. Section 100 of the principal Act is hereby repealed.

**Amendment of section 101 of Act 44 of 1958, as substituted by section 40 of Act 113 of 1976**

35 54. Section 101 of the principal Act is hereby amended by the substitution in the words following paragraph (c) for the expression “five thousand rand” of the expression “R28 000”.

**Substitution of section 102 of Act 44 of 1958**

55. The following section is hereby substituted for section 102 of the principal Act:

40 **“Personating officers of department, postal company or telecommunications company with fraudulent intent**

45 **102.** Any person who with fraudulent intent personates or represents himself 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 **[one hundred pounds]** R4 000 or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.”.

**Amendment of section 103 of Act 44 of 1958**

56. Section 103 of the principal Act is hereby amended by the substitution for the expression “one hundred pounds” of the expression “R4 000”.

**Amendment of section 104 of Act 44 of 1958**

57. Section 104 of the principal Act is hereby amended by the substitution in the words following paragraph (c) of subsection (1) for the expression "one hundred pounds" of the expression "R4 000".

**5 Amendment of section 105 of Act 44 of 1958, as substituted by section 41 of Act 113 of 1976**

58. Section 105 of the principal Act is hereby amended by the substitution in the words following paragraph (b) for the expression "five hundred rand" of the expression "R4 000".

**10 Substitution of section 106 of Act 44 of 1958**

59. The following section is hereby substituted for section 106 of the principal Act:

**"Erection of telecommunications lines without authority**

15 106. Save as is provided in section 78, any person who without the authority of the **[Postmaster-General]** telecommunications company, erects, maintains or uses any **[telegraph]** telecommunications line, whether constructed before or after the commencement of this Act, shall, if he fails to comply with any notice from the **[Postmaster-General]** telecommunications company to remove that line or to pay such charges, if any, in respect thereof as may from time to time be prescribed, be guilty of an offence and liable on conviction to a fine not exceeding **[five pounds]** R50 for every day during which any such line is or continues to be set up, maintained or used in contravention of the provisions of this Act, and the **[Postmaster-General]** telecommunications company may without compensation take absolute possession of, cut down or destroy the whole or any part of that line or in its discretion put it out of operation by total sealing or partially seal it on condition that such telecommunications line may not be used for the purpose of transmission or reception while it is so partially sealed."

20

25

**30 Amendment of section 107 of Act 44 of 1958, as substituted by section 6 of Act 80 of 1965**

60. Section 107 of the principal Act is hereby amended by the substitution for the expression "two hundred rand" of the expression "R4 000".

**Amendment of section 108 of Act 44 of 1958, as substituted by section 17 of Act 56 of 1973**

35 61. Section 108 of the principal Act is hereby amended by the substitution for the expression "fifty rand" of the expression "R500".

**Amendment of section 110 of Act 44 of 1958, as substituted by section 42 of Act 113 of 1976**

40 62. Section 110 of the principal Act is hereby amended by the substitution for the expression "three hundred rand" of the expression "R2 000".

**Repeal of section 111 of Act 44 of 1958, as substituted by section 43 of Act 113 of 1976**

63. Section 111 of the principal Act is hereby repealed.

**Substitution of section 112 of Act 44 of 1958, as amended by section 44 of Act 113 of 1976**

45 64. The following section is hereby substituted for section 112 of the principal Act:

**"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**

- 5 crime or any offence committed in respect of the **[department]** 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 **[department]**  
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 **[department]** postal company or telecommunications  
10 company, as the case may be, or any such mail, telegram, telecommu-  
nications line, property, moneys, money order, postal order or other  
document, it shall be sufficient—
- (a) to allege that any such mail, telegram, property, moneys, money  
order, postal order or other document belongs to or is in the lawful  
15 possession of the **[Postmaster-General]** postal company or telecom-  
munications 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  
20 committed with intent to injure or defraud the **[Postmaster-General]**  
postal company or telecommunications company, as the case may  
be, without setting forth **[his]** 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  
25 of the **[department]** postal company or telecommunications com-  
pany, as the case may be, at the time of the committing of the  
offence without stating the nature or particulars of his employ-  
ment.”.

30 **Substitution of section 115 of Act 44 of 1958, as substituted by section 8 of Act 80 of  
1965**

65. The following section is hereby substituted for section 115 of the principal Act:

**“Non-liability of postal company and telecommunications company**

35 **115.** Save as is otherwise provided in this Act, no legal proceedings  
shall be capable of being instituted against the **[Government or against  
the Postmaster-General]** postal company or telecommunications com-  
pany, as the case may be, or any officer or against 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 is obliged to convey  
40 in terms of this Act (in this section and in section 115bis referred to as a  
mail carrier) or against any employee of a mail carrier by reason of any  
error, default, delay, omission, damage, destruction, non-delivery, non-  
transmission or loss, whether negligent or otherwise, in respect of 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  
45 under the provisions of this Act or any other law shall, to whomsoever  
made, discharge the **[Government, the Postmaster-General]** postal com-  
pany 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,  
50 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 **[Government or the  
Postmaster-General]** postal company or telecommunications company,  
as the case may be, from liability for damage or loss caused to any person  
55 by reason of fraud on the part of an officer in relation to his 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 duties.”.

**Substitution of section 115bis of Act 44 of 1958, as inserted by section 9 of Act 80 of 1965 and amended by section 46 of Act 113 of 1976**

66. The following section is hereby substituted for section 115bis of the principal Act:

- 5                   **“Compensation may be paid in certain cases**
- 115bis.** (1) The **[Postmaster-General]** postal company may—
- (a) if any unauthorized person by fraudulent means obtains payment of any deposit, in **[his]** its discretion make good the loss sustained by the depositor or any portion thereof;
- 10                   (b) in **[his]** its discretion and subject to any requirements and limitations that are prescribed, pay compensation for the loss of or damage to any postal article or the contents thereof whether conveyed by the **[department]** postal company or by any mail carrier.
- (2) Where the **[Postmaster-General]** postal company has by virtue of the provisions of subsection (1) paid any amount in respect of loss caused by the commission of an offence, he shall, for purposes of section **[three hundred and fifty-seven]** 300 of the Criminal Procedure Act, **[1955 (Act No. 56 of 1955) 1977 (Act No. 51 of 1977)]**, be deemed to have suffered, as the result of the commission of such offence, loss of property belonging to him to the extent of the amount so paid.
- 15                   (3) (a) Any mail carrier shall on demand pay to the **[Postmaster-General]** postal company an amount equal to any amount paid by the **[Postmaster-General]** postal company by virtue of the provisions of subsection (1) (b) in respect of any postal article or of the contents thereof lost while in the possession of such carrier or such lesser amount as the **[Postmaster-General]** postal company may in **[his]** its discretion determine.
- 20                   (b) Any amount payable in terms of paragraph (a) shall be recoverable by action in any competent court.”.
- 25

30 **Repeal of section 116 of Act 44 of 1958, as substituted by section 47 of Act 113 of 1976**

67. Section 116 of the principal Act is hereby repealed.

**Substitution of section 118 of Act 44 of 1958, as substituted by section 13 of Act 37 of 1963**

68. The following section is hereby substituted for section 118 of the principal Act:

- 35                   **“Detention of postal articles and telegrams suspected of being concerned with offences and action to be taken in connection therewith**
- 118.** Notwithstanding anything to the contrary in any law contained, any postal article or telegram which is reasonably suspected of containing anything which will afford evidence of the commission of any offence or is reasonably suspected of being sent in order to further the commission of any offence or to prevent the detection of any offence, shall be detained by the officer in charge of any post office **[or telegraph office]** in which it is or through which it passes, and the **[Postmaster-General]** postal company or telecommunications company, as the case may be, may bring the detention of any such postal article or telegram to the notice of an attorney-general or, at the request of an attorney-general, cause any such postal article or telegram to be handed over to any public prosecutor.”.
- 40
- 45

50 **Amendment of section 118A of Act 44 of 1958, as inserted by section 1 of Act 101 of 1972 and amended by section 1 of Act 80 of 1982**

69. Section 118A of the principal Act is hereby amended—

- (a) by the substitution for subparagraph (iii) of paragraph (b) of subsection (2) of the following subparagraph:
- 55                   “(iii) sufficient particulars to identify any postal article or communication involved, including particulars relating to the name and, where known, the address of the person, body or organization concerned, and any number allocated by the **[department]** postal company or telecommu-

nications company, as the case may be, in respect of any telecommunications service involved.”;

(b) by the substitution for subparagraph (i) of paragraph (a) of subsection (6) of the following subparagraph:

5 “(i) return any postal article or telegram intercepted under this section, or cause it to be returned, to the **[department]** postal company or telecommunications company, as the case may be, for transmission to the addressee concerned, if such postal article or telegram, in the opinion of such person, may be so returned without prejudice to the security of the Republic;”;

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

15 “(b) If such person is of the opinion that any postal article or telegram intercepted under this section cannot, without prejudice to the security of the Republic, be returned to the **[department]** postal company or telecommunications company, as the case may be, for transmission to the addressee concerned, such person may dispose of the postal article or telegram in question in such manner as the interests of the security of the Republic may require.”; and

20 (d) by the substitution for subsection (7) of the following subsection:

25 “(7) No officer **[occupying in the department a post of a lower grading than that of the post of Deputy Postmaster-General]** of the postal company or the telecommunications company who is not a member of the management board of the company concerned, shall be authorized under subsection (1) (a) (ii) and no person occupying a post of a lower grading than that of Deputy Director-General in the public service shall be designated under subsection (2) (a).”.

**Substitution of section 119A of Act 44 of 1958, as inserted by section 49 of Act 113 of 1976**

30 70. The following section is hereby substituted for section 119A of the principal Act:

**“Regulations by Minister**

**119A.** The Minister may make regulations with regard to—

- 35 (a) any matter which shall or may be prescribed by him under this Act; and  
 (b) in general, any matter which he deems necessary or expedient in order to achieve the objects of this Act.”.

**Substitution of section 119B of Act 44 of 1958, as inserted by section 49 of Act 113 of 1976**

40 71. The following section is hereby substituted for section 119B of the principal Act:

**“Instructions by Postmaster-General**

**119B.** The Postmaster-General may from time to time issue instructions which shall not be inconsistent with the provisions of this Act, in regard to—

- 45 (a) any matter mentioned in section 2B **[77B, 77E or 119A]**;  
 (b) the operation or administration of any service or activity which the department may perform or undertake in terms of this Act;  
 50 (c) the administration in general of the provisions of this Act and the achievement of the objects thereof in so far as they relate to the functions of the department.”.

**Repeal of section 120 of Act 44 of 1958**

72. Section 120 of the principal Act is hereby repealed.

**Substitution of section 121 of Act 44 of 1958**

55 73. The following section is hereby substituted for section 121 of the principal Act:

**“Officers to take oath or make affirmation**

**121.** Every officer required by the Postmaster-General, postal com-

pany or telecommunications company to do so, shall before exercising the duties of his office take an oath or make an affirmation before a justice of the peace in the form set forth in the First Schedule.”.

Repeal of section 121A of Act 44 of 1958, as inserted by section 18 of Act 56 of 1973

5 74. Section 121A of the principal Act is hereby repealed.

Substitution of certain expressions in Act 44 of 1958

75. The principal Act is hereby amended—

- 10 (a) by the substitution for the expression “telegraph”, wherever it occurs in sections 82, 83, 86, 87, 107 and 108, of the expression “telecommunications”;
- (b) by the substitution for the expressions “Postmaster-General” and “department”, wherever they occur in sections 22 (b), 25 (2) (a), 27 (2), 28 (1), 29, 31, 33, 35, 36 (2), 37, 38, 42, 43 (1), 44, 45A, 76A, 77A, 101, 104 (1) (a) and 116, of the expression “postal company”;
- 15 (c) by the substitution for the expressions “Postmaster-General” and “department”, wherever they occur in section 80A, 80B, 82, 83, 86, 87, 107 and 108, of the expression “telecommunications company”; and
- (d) by the substitution for the expression “Union”, wherever it occurs in sections 33, 36 (2), 39, 40 and 42, of the expression “Republic”.

20 Substitution of First Schedule to Act 44 of 1958, as substituted by section 51 of Act 113 of 1976

76. The following Schedule is hereby substituted for the First Schedule to the principal Act:

“First Schedule

25 OATH TO BE TAKEN OR AFFIRMATION TO BE MADE BY OFFICERS

I (name in full) ..... do solemnly swear/affirm\* faithfully in my position as [a post office] an employee of the post office/postal company/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 the contents of any letter, telegram or official paper of any description or any information regarding any telephone conversation or regarding the transactions of a depositor in the Post Office Savings Bank or the holder of National Savings Certificates, 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.

SO HELP ME GOD.\*

40 Signature .....

Sworn/Affirmed\* before me at .....

in the District of .....

on the ..... day of ..... 19 ....

Justice of the Peace”.

45 \*delete which is not applicable

**Transitional provisions**

77. (1) Anything done by or on behalf of the Minister, the department or the Postmaster-General under any provision of the Post Office Act, 1958, or any other law or any contract entered into by or on behalf of the Minister, the department or the Postmaster-General—

- 5 (a) in connection with the postal enterprise prior to the postal transfer date, shall after that date be deemed to have been done or entered into by the postal company;
- 10 (b) in connection with the telecommunications enterprise before the telecommunications transfer date, shall after that date be deemed to have been done or entered into by the telecommunications company.

(2) Save as is otherwise provided in this Act, any reference in any law to the State, the Republic of South Africa, the Government or the Department of Posts and Telecommunications shall, after the postal transfer date or the telecommunications transfer date, as the case may be, not be construed as a reference to the postal company or the telecommunications company, irrespective of whether the State is the sole member and shareholder of that company.

15 (3) For the purposes of subsections (1) and (2) "department", "Postmaster-General", "postal enterprise", "postal transfer date", "postal company", "telecommunications service", "telecommunications transfer date" and "telecommunications company" shall have the meaning assigned thereto in the Post Office Act, 1958, as amended by this Act.

**Amendment of laws**

78. The laws mentioned in the Schedule are hereby amended to the extent set out in the third column of the Schedule.

**Short title and commencement**

79. (1) This Act shall be called the Post Office Amendment Act, 1991.

(2) Sections 1 (d), 1 (k), 4, 8, 29, 67 and 71 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

30 (3) Sections 10, 11, 22, 23, 24, 25, 26, 27, 28, 30, 31, 44, 48 (a), 51 (b), 66, 72 and 75 (b) shall come into operation on the postal transfer date.

(4) Sections 34, 35, 36, 37, 38, 40, 59 and 75 (c) shall come into operation on the telecommunications transfer date.

35 (5) Sections 2, 3 (a), (b), (d) and (f), 6, 41 (a), 42, 45, 47, 48(b), 52, 53, 55, 63, 64, 65, 68, 69, 70, 73, 76 and 77 shall in so far as they relate to or are connected with—

- (a) the postal enterprise, come into operation on the postal transfer date; or
- (b) the telecommunications enterprise, come into operation on the telecommunications transfer date.

## Schedule

## LAWS AMENDED (SECTION 75)

No. and year of law	Short title	Extent of amendment
Act No. 44 of 1957	Defence Act, 1957	<p>The amendment of section 101 by the substitution for subsection (4) of the following subsection:</p> <p>“(4) In addition to the powers vested in him under any law, the Postmaster-General or the <u>managing director of the telecommunications company as defined in the Post Office Act, 1958 (Act No. 44 of 1958)</u>, may delay the transmission of any <u>[telegraphic or] radio or telegraphic communication, respectively</u>, which in his opinion improperly discloses or deals with information relating to defence the publication of which is prohibited under section 118, and may with the sanction of the Minister or a person acting under his authority refuse to transmit any such communication in whole or in part.”</p>
Act No. 86 of 1968	State Tender Board Act, 1968	<p>The amendment of section 4 by the addition of the following subsection:</p> <p>“(4) (a) <u>With effect from the postal transfer date and the telecommunications transfer date the board shall have no power under this section in respect of any matter transferred to the postal company and the telecommunications company under section 4 of the Post Office Act, 1958 (Act No. 44 of 1958).</u></p> <p>(b) For the purposes of paragraph (a) ‘postal transfer date’, ‘telecommunications transfer date’, ‘postal company’ and ‘telecommunications company’ shall have the meaning assigned thereto in section 1 of the Post Office Act, 1958.”</p>
Act No. 66 of 1974	Post Office Service Act, 1974	<p>1. The amendment of section 1—</p> <p>(a) by the substitution for the definition of “employee” of the following definition:  “‘employee’ means a person who has been appointed permanently in the service of the department, notwithstanding that such appointment may be on probation, in another post on the fixed establishment than a post in the A division or B division referred to in section 3 (2) (b) and includes a person who is employed in the department temporarily or under a special contract, either in a full-time or part-time capacity;”;</p> <p>(b) by the substitution for the definition of “Minister” of the following definition:  “‘Minister’ means the Minister of <u>[Posts and Telecommunications] Mineral and Energy Affairs and Public Enterprises;</u>” and</p> <p>(c) by the substitution for the definition of “officer” of the following definition:  “‘officer’ means any person who has been appointed permanently in the service of the department, notwithstanding that such appointment may be on probation, to a <u>post in the A division or B division referred to in section 3 (2) (b);</u>”</p> <p>2. The amendment of section 3—</p> <p>(a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:  “(b) The posts on the fixed establishment shall be classified in the A division or B division <u>or any other division as the Minister may on the recommendation of the Board, establish by notice in the Gazette, according to the directions of the Board.</u>” and</p>

## Act No. 85, 1991

## POST OFFICE AMENDMENT ACT, 1991

No. and year of law	Short title	Extent of amendment
		<p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The Board may direct that any post included in one division be removed from that division and [either] be included in [the other] another division [or be excluded from both divisions]: Provided that a direction given under this section shall not deprive any officer of any leave or other privilege or right which flowed from the occupancy by him of a post in the [A division or the B] division from which that post has been removed [Provided further that any officer whose post has been excluded from both divisions shall, for purposes of this Act and the Government Service Pension Act, 1973 (Act No. 57 of 1973), be deemed to continue to hold a post in the division in which his post was included immediately before the direction became effective].”</p> <p>3. The amendment of section 4 by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p>“(b) The Board shall consist of the Postmaster-General, who shall be chairman thereof, and [not more than six other] the officers who are members of the Board in terms of the provisions of subsection (2).”</p> <p>4. The amendment of section 5 by the substitution for paragraph (d) of subsection (8) of the following paragraph:</p> <p>“(d) the Treasury or the Minister of Finance, shall be construed as a reference to the Minister of [Posts and Telecommunications] Mineral and Energy Affairs and Public Enterprises or an officer authorized by the said Minister to perform the functions entrusted to the Treasury or the Minister of Finance by any such provision.”</p> <p>5. The amendment of section 6 by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The number of members constituting a quorum at a meeting of the Board shall be [three when the number of members of the Board does not exceed four, and four when the number of members of the Board exceeds four] one more than half the number of members of which the Board consists.”</p>
Act No. 66 of 1975	Exchequer Act, 1975	<p>The insertion of the following section after section 30B:</p> <p>“<b>Authority to fulfil certain obligations of Department of Posts and Telecommunications</b></p> <p><b>30C. (1)</b> The obligations in respect of public stock and bonds of the Department of Posts and Telecommunications which have not been transferred to the postal company or the telecommunications company in terms of section 12U (5) of the Post Office Act, 1958 (Act No. 44 of 1958), may, subject to such terms and conditions as the Minister of Finance may determine, be fulfilled out of money made available for that purpose by the Treasury from the State Revenue Fund.</p> <p>(2) The provisions of sections 20 and 24 shall <i>mutatis mutandis</i> apply in respect of the making available of the money in terms of subsection (1).”</p>
Act No. 74 of 1977	Road Transportation Act, 1977	<p>The amendment of section 1 by the substitution for paragraph (m) of subsection (2) of the following paragraph:</p>

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## POST OFFICE AMENDMENT ACT, 1991

No. and year of law	Short title	Extent of amendment
Act No. 112 of 1984	Forest Act, 1984	<p>“(m) the conveyance, in connection with the performance of his duties, by an employee of the State or a State-aided body or a company of which the State is the sole member and shareholder or a local authority, by means of a motor vehicle of which such employee is the owner and which is used by him in the performance of those duties, of any person in respect of whose conveyance that employee is entitled to receive any reward from the State or such State-aided body or company or local authority;”.</p> <p>The amendment of section 11 by the substitution for subparagraph (i) of paragraph (a) of subsection (2) of the following subparagraph:</p> <p>“(i) grant any right, whether of a permanent or temporary nature, for public purposes to a provincial administration, a local authority, the South African Transport Services, the Department of Posts and Telecommunications, the postal company or the telecommunications company as defined in the Post Office Act, 1958 (Act No. 44 of 1958), the National Transport Commission or any other department of State or statutory body;”.</p>