

REPUBLIC OF SOUTH AFRICA

**SOUTH AFRICAN POSTBANK
LIMITED BILL**

*(As amended by the Portfolio Committee on Communications (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 14B—2009]

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BILL

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

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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SCHEDULE 1

CHAPTER I 25

INTERPRETATION AND OBJECT OF ACT

Definitions

1.	In this Act, unless the context indicates otherwise, any word or expression to which a meaning has been ascribed in section 1 of the Public Finance Management Act, bears the meaning so ascribed, and—	30
	“ Banks Act ” means the Banks Act, 1990 (Act No. 94 of 1990);	
	“ Board ” means the board of directors of the Company;	
	“ Companies Act ” means the Companies Act, 1973 (Act No. 61 of 1973);	
	“ Company ” means South African Postbank Limited contemplated in section 3;	
	“ family member ” in relation to any person, means his or her parent, sibling, child, including an adopted child or a step-child, or spouse (whether by statutory, customary or religious law), and including a life partner who is a person living with that person as if they were married to each other;	35
	“ former Postbank ” means the Postbank referred to in section 51 of the Postal Services Act, 1998 (Act No. 124 of 1998), as it existed as a division of the Post Office immediately prior to the repeal of that section;	40
	“ member ” means a member of the Board;	
	“ Minister ” means the Minister of Communications;	
	“ Post Office ” means South African Post Office Limited established in terms of the Post Office Act;	45
	“ Post Office Act ” means the Post Office Act, 1958 (Act No. 44 of 1958);	
	“ Postal Services Act ” means the Postal Services Act, 1998 (Act No. 124 of 1998);	
	“ Public Finance Management Act ” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);	
	“ Registrar of Banks ” means the Registrar of Banks designated as such under section 4 of the Banks Act;	50
	“ Republic ” means the Republic of South Africa;	
	“ the business of a bank ” has the meaning ascribed to it in the Banks Act;	

“the business of the former Postbank” means the rights, obligations, assets and liabilities of the former Postbank contemplated in section 5(1);

“this Act” includes any regulation made under section 26;

“transfer date” means the date determined by the Minister in terms of section 6.

Object of Act 5

2. The object of this Act is to provide for the incorporation of the Postbank Division of the Post Office as a legal person with the aim of—

- (a) conducting the business of a bank that will encourage and attract savings amongst the people of the Republic;
- (b) rendering transactional services and lending facilities through, amongst others, existing infrastructure of the Post Office; 10
- (c) expanding the range of banking services and developing into a bank of first choice, in particular to the rural and lower income markets as well as communities that have little or no access to commercial banking services or facilities; 15
- (d) promoting universal and affordable access to banking services;
- (e) ensuring that the rates and charges of the Company take into consideration the needs of the people in the lower income market; and
- (f) ensuring lending to rural and lower income markets.

CHAPTER II 20

INCORPORATION AND TRANSFER OF ENTERPRISE

Incorporation

3. (1) The Minister must take the necessary action for the formation and incorporation of a public company with a share capital and for a certificate to commence business to be issued to the Company in terms of the Companies Act. 25

(2) Notwithstanding section 32 of the Companies Act and section 37 of the Banks Act, the Post Office shall, upon incorporation of the Company, be the sole member and shareholder of the Company.

(3) The name of the Company is the “South African Postbank Limited” and no person may carry on any business or be registered with that name or with a name that is similar to “Postbank”. 30

(4) The Minister must, on behalf of the Post Office, sign the memorandum and articles of association and all other documents necessary for the formation and incorporation of the Company.

(5) The Registrar of Companies must— 35

- (a) register the memorandum and articles of association as signed in terms of subsection (4);
- (b) incorporate the Company as a public company under the name “South African Postbank Limited”; and
- (c) with the concurrence of the Minister, issue to the Company a certificate to commence business. 40

(6) No fee is payable in respect of the incorporation of the Company.

Registration as Bank

4. (1) Notwithstanding section 15 of the Banks Act, the Company must be regarded as having been authorised to form a company in terms of the Companies Act. 45

(2) The Company must be registered as a bank after it has satisfied the requirements of the Banks Act.

(3) Notwithstanding section 43 of the Banks Act, the Post Office is not required to register as a controlling company of the Company, and the appointment of the Board of the Post Office is not subject to the approval of the Registrar of Banks. 50

(4) The Company shall not expand the scope of its banking and investment activities which exist when this Act takes effect until it is registered as a bank in terms of the Banks Act, and any such additional business activity is approved by the Registrar of Banks.

(5) In approving any additional business activity as contemplated in subsection (4), the Registrar of Banks shall take into account the objects of this Act and any policy made by the Minister in terms of section 26(2).

Determination of extent of business to be transferred

5. (1) The rights and obligations, assets and liabilities of the former Postbank, including all deposits and investments held by the former Postbank or held with other financial institutions and all rights flowing from financial instruments held by the former Postbank, must be transferred to the Company. 5

(2) (a) The extent of the business of the former Postbank must be determined by the Post Office and audited by an auditor registered as such in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005), and appointed by the Minister. 10

(b) The auditor may not be associated with either the Post Office or the Company.

(3) The auditor must, upon the audit contemplated in subsection (2)(a)—

(a) attach a monetary value to the business of the former Postbank; and

(b) report the value thus determined to the Minister. 15

Determination of transfer date of enterprise

6. As soon as possible after a certificate to commence business has been issued to the Company, as contemplated in section 3, the Minister must by notice in the *Gazette* determine the transfer date of the enterprise of the former Postbank to the Company.

Transfer of enterprise of former Postbank to Company, vesting and consequence thereof 20

7. On the transfer date—

(a) the management, control and operation of the former Postbank are transferred to the Company;

(b) the business of the former Postbank vests in the Company; 25

(c) subject to compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995), personnel of the former Postbank is transferred to the Company;

(d) anything done by or on behalf of the former Postbank must be regarded as having been done by the Company.

Exemption from tax liability 30

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

CHAPTER III

POWERS AND DUTIES OF COMPANY

Powers and duties of Company 35

9. (1) Subject to sections 4(4) and 26(2) and (3), and subsection (3), the Company has the powers to enable it to realise the object referred to in section 2, which include the power to—

(a) purchase or acquire any movable and immovable property;

(b) manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way deal with all of its assets; 40

(c) operate its business, products or services as set out in the articles;

(d) raise funds;

(e) conclude joint ventures and other commercial agreements with third parties in order to promote and advance its business; 45

(f) render any or all of its services through the physical assets, systems, employees and general infrastructure of the Post Office;

(g) invest money in accordance with an investment policy made by the Minister, with the concurrence of the Minister of Finance; 50

- (h) borrow money, other than for temporary interbank borrowing, in accordance with a borrowing policy made by the Minister with the concurrence of the Minister of Finance; and
 - (i) lend money in accordance with a lending policy made by the Minister, with the concurrence of the Minister of Finance. 5
- (2) (a) The Company and the Post Office must, with the concurrence of the Minister and the Minister of Finance, conclude an agreement which governs cooperation between the Company and the Post Office.
- (b) Such agreement must include, amongst others, terms and conditions relating to the utilisation by the Company of infrastructure of the Post Office, envisaged in section 2. 10
- (3) (a) The Company must comply with policy made by the Minister in terms of section 26(2).
- (b) Any decision taken by the Board which is in conflict with a policy contemplated in paragraph (a) is of no force and effect.

CHAPTER IV 15

CONTROL AND MANAGEMENT OF COMPANY

Control of Company by Board

10. (1) The Company is controlled by a board of directors.
- (2) The members of the Board are appointed or reappointed by the Minister, with the concurrence of the Minister of Finance and the Post Office. 20

Functions of Board

11. The Board—
- (a) must give effect to the corporate plan of the Company as contemplated in section 52 of the Public Finance Management Act in order to achieve the objectives of the Company; 25
 - (b) is the accounting authority of the Company;
 - (c) provides guidance to the managing director and personnel of the Company concerning the exercise of the functions of the Company;
 - (d) must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Company; and 30
 - (e) generally, must refer to the Minister any matter that may adversely affect the functioning of the Company.

Composition of Board

12. (1) The Board is made up of— 35
- (a) seven non-executive members appointed from among the persons nominated in terms of section 14(1)(a);
 - (b) two other non-executive members appointed from among the persons nominated by the Post Office in terms of section 14(1)(b); and
 - (c) the managing director, who is an executive member of the Board. 40
- (2) The members of the Board must be persons who—
- (a) are committed to fairness, openness and accountability; and
 - (b) when viewed collectively—
 - (i) are representative of a broad cross-section of the population of the Republic; and 45
 - (ii) possess suitable qualifications, expertise and experience in the field of banking, finance and economics, or any other relevant qualifications, expertise and experience.
- (3) (a) The non-executive members of the Board must be appointed for a period not exceeding five years. 50
- (b) The non-executive members of the Board may be re-appointed for one further term not exceeding five years.
- (c) The Minister must appoint at least five non-executive members of the first Board of the Company for a period not exceeding three years.

- (4) The Minister must appoint a Chairperson from amongst the members of the Board.
 (5) The Board may designate any other non-executive member to act as Chairperson if the Chairperson is absent or unable to perform any function.

Disclosure and disqualification from membership of Board

- 13.** (1) No person may be appointed as a Board member or remain a member of the Board if he or she— 5
- (a) is a member of Parliament, any provincial legislature or any municipal council;
 - (b) is an unrehabilitated insolvent;
 - (c) has been declared by a court to be mentally ill or disordered; 10
 - (d) has at any time been convicted, whether in the Republic or elsewhere, of—
 - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or
 - (ii) an offence under this Act; 15
 - (e) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine;
 - (f) has at any time been removed from an office of trust on account of misconduct; or 20
 - (g) has any direct or indirect interest in conflict with the business of the Company.
- (2) A person who is subject to a disqualification contemplated in subsection (1)(a), (1)(b) or (1)(g) may be nominated for appointment as a Board member, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification. 25
- (3) (a) A person nominated for appointment as a member of the Board must, before appointment and upon a request from the Minister, submit to the Minister a written statement containing—
- (i) a full disclosure of all his or her financial interests; and
 - (ii) a declaration that he or she has no direct or indirect interests that are in conflict with the business of the Company as contemplated in subsection (1)(g). 30
- (b) If, after appointment, a member of the Board acquires any—
- (i) further financial interest contemplated in paragraph (a)(i), the member must immediately in writing declare that fact to the Minister and the Board; or
 - (ii) direct or indirect interest contemplated in subsection (1)(g), the member must immediately declare that fact to the Minister and the Board. 35

Appointment of members of Board

- 14.** (1) For the purpose of appointing the non-executive members of the Board, the Minister must—
- (a) by notice in at least two national newspapers and in the *Gazette*, invite interested persons, within the period and in the manner determined in the notice, to submit the names of persons envisaged in section 12(1)(a) that are fit and proper persons to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act; and 40
 - (b) in writing invite the Post Office, acting with the concurrence of the Registrar of Banks, to submit the names of persons envisaged in section 12(1)(b) that are fit and proper persons to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act. 45
- (2) The Minister must appoint a nomination committee to make recommendations to the Minister for the appointment of the non-executive members of the Board contemplated in subsection (1)(a). 50
- (3) In establishing a nomination committee, the Minister must ensure that the committee broadly reflects the race and gender composition of the Republic.
- (4) The nomination committee, in making a recommendation to the Minister, must consider— 55
- (a) the proven skills, knowledge and experience of a candidate in areas of—
 - (i) financial management;
 - (ii) project management;
 - (iii) governance compliance;

- (iv) risk management;
 - (v) transformation and diversity equity;
 - (b) the need for representation of historically disadvantaged persons;
 - (c) generally, whether the persons nominated represent a sufficient spread of qualifications, expertise and experience to ensure the efficient and effective functioning of the Company; 5
 - (d) with the concurrence of the Registrar of Banks, whether a candidate is a fit and proper person to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act; and
 - (e) whether a candidate has any direct or indirect interest in conflict with the business of the Company as contemplated in section 13(1)(g). 10
- (5)(a) Nominations of suitable persons as contemplated in subsections (1)(b) or (4) must include at least one and a half times the number of Board members to be appointed.
- (b) If a suitable person or the required number of suitable persons are not nominated as contemplated in subsections (1)(b) or (4), the Minister may, with the concurrence of the Minister of Finance and the Post Office, identify and appoint the required number of further members. 15
- (6) (a) The Minister must, within 30 days after consensus has been reached with the Minister of Finance and the Post Office regarding the appointment of members as contemplated in section 10(2)— 20
- (i) designate the non-executive members of the Board from suitable persons nominated by the Post Office as contemplated in subsection (1)(b); and
 - (ii) appoint the other non-executive members of the Board from suitable persons nominated as contemplated in subsection (4).
- (b) The Minister must cause the names of the members appointed and the date of commencement of their terms of office to be published by notice in the *Gazette*. 25
- (7) A non-executive member of the Board—
- (a) is appointed according to the terms and conditions determined by the Minister;
 - (b) must be paid from the revenue of the Company such remuneration and allowances as the Minister determines, taking into consideration any prescriptions or guidelines issued by the Minister for the Public Service and Administration and the National Treasury; and 30
 - (c) is appointed on a part-time basis.
- (8) (a) Any vacancy occurring in the Board must be filled in the same way as the departing member was appointed to the Board. 35
- (b) Any member appointed under this subsection holds office for the rest of the period of the predecessor's term of office, unless the Minister directs that such member holds office for a longer period which may not exceed one subsequent term of up to five years.

Resignation, removal from office and vacating of office 40

15. (1) A member of the Board may resign by giving to the Minister—
- (a) one month's written notice; or
 - (b) less than one month's written notice, with the approval of the Minister.
- (2) The Minister may, after having afforded the member of the Board concerned a reasonable opportunity to be heard, remove the member from office if that member— 45
- (a) acted in conflict with this Act;
 - (b) refuses or fails to make a declaration contemplated in section 13(3)(b) or refuses or fails to make disclosure as contemplated in section 16(2);
 - (c) after having been appointed, acquires any direct or indirect interest contemplated in section 13(3)(b)(ii), read with section 13(1)(g); 50
 - (d) neglected to properly perform the functions of his or her office;
 - (e) in accordance with the Banks Act and after the Registrar of Banks has informed the Minister, is no longer a fit and proper person to hold that appointment; or
 - (f) is absent from three consecutive Board meetings without prior leave of the Chairperson. 55
- (3) A member of the Board must vacate the office if he or she becomes disqualified from membership of the Board in terms of section 13.

Disclosure and fiduciary duties of Board members

- 16.** (1) In addition to any other applicable legislation, the following shall apply to members of the Board:
- (a) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect interest. 5
 - (b) A member of the Board or his or her family member, business partner or associate, or an organisation or enterprise in which a member of the Board or his or her family member, business partner or associate has a direct or indirect interest, may not— 10
 - (i) offer goods or services to the Company or conclude any business with the Company; or
 - (ii) make improper use, in any manner whatsoever, of the position of a Board member or of any information acquired by a Board member by virtue of his or her position as a Board member. 15
 - (c) a member of the Board must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting their scope, must— 20
 - (i) take reasonable steps to inform himself or herself about the Company, its business and activities and the circumstances in which it operates; 20
 - (ii) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions; 25
 - (iii) regularly attend Board meetings;
 - (iv) exercise an active and independent discretion with respect to all matters to be decided by the Board;
 - (v) exercise due diligence in the performance of his or her functions as a member; 30
 - (vi) comply with any internal code of conduct that the Company may establish for Board members;
 - (vii) not engage in any activity that may undermine the integrity of the Company;
 - (viii) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member; 35
 - (ix) treat any confidential matters relating to the Company, obtained in his or her capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Company or as required as part of that person's official functions as a member of the Board. 40
- (2) A member of the Board must make full and immediate disclosure to the Board of any direct or indirect interest contemplated in subsection (1).

Procedures at meetings, and committees of Board

- 17.** (1) (a) The Board determines its procedures at meetings.
- (b) Seventy percent of serving members constitutes a quorum at any meeting of the Board. 45
- (c) A decision taken by the Board or an act performed under that decision is not invalid merely by reason of—
- (i) any irregularity in the appointment of a member;
 - (ii) a vacancy in the Board; or 50
 - (iii) the fact that any person not entitled to sit as a member sat as such at the time when the decision was taken,
- provided such decision was taken by a majority of the members present at the time and entitled so to sit, and those members at the time constituted a quorum.
- (2) The Board may establish one or more committees to assist it in the performance of its functions. 55
- (3) The Board must—
- (a) assign members of the Board to serve on a committee, based on their knowledge and skills; and
 - (b) determine the— 60
 - (i) terms of reference of a committee;
 - (ii) composition of a committee;
 - (iii) tenure of members on a committee;
 - (iv) reporting mechanisms of a committee; and
 - (v) method and reasons for removal of a member from a committee. 65

- (4) The Board may appoint any person with particular knowledge, expertise or qualifications to assist a committee in the performance of its functions.
- (5) Unless specially delegated by the Board, a committee has no decision-making powers and can only make recommendations to the Board.
- (6) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures. 5
- (7) Each committee must be chaired by a non-executive member of the Board.

Appointment of managing director

- 18.** (1) The Board must, with the approval of the Minister, appoint a managing director who must perform any work incidental to the functions of the Company and ensure that the Company meets its objects. 10
- (2) The Board must invite applications for the posts of managing director by publishing advertisements in the media.
- (3) A person appointed as managing director—
- (a) must have the qualifications or experience relevant to the functions of the Company; 15
 - (b) must not be disqualified as contemplated in section 13; and
 - (c) is a member of the Board by virtue of the office.

Conditions of appointment of managing director

- 19.** (1) (a) The appointment of the managing director is subject to the conclusion of a performance contract entered into between the Board and the managing director. 20
- (b) The performance contract must be reviewed annually.
- (2) The managing director holds office on the terms and conditions determined by the Board, with the concurrence of the Minister.
- (3) The managing director is entitled to a remuneration package determined by the Board with the concurrence of the Minister and the Minister of Finance. 25
- (4) The managing director is accountable to the Board.

Personnel of Company

- 20.** (1) The work relating to the functions of the Company is performed by—
- (a) persons transferred to the Company as provided for in section 7(c); and 30
 - (b) such persons as the managing director may, with the concurrence of the Board, appoint.
- (2) The Board must determine the structure or organogram of the Company and the conditions of service, remuneration and service benefits of the personnel of the Company after consultation with the managing director and with the concurrence of the Minister and the Minister of Finance. 35

CHAPTER V

FUNDS AND FINANCIAL ACCOUNTS OF COMPANY

Annual report

- 21.** (1) The Company must annually, not later than five months after the end of its financial year, submit to the Minister a report on all its activities during the previous year. 40
- (2) The annual report must be tabled in Parliament within 30 days after it was received by the Minister, if Parliament is then in session, or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session. 45

Funds of Company

- 22.** The funds of the Company consist of—
- (a) capital vested in the Company by virtue of section 7;
 - (b) funds derived from its operating activities;
 - (c) money appropriated by Parliament; and 50
 - (d) moneys lawfully received from any other source.

Inspection of financial accounts and documents of Company

23. The Minister or any officer in the public service authorised by the Minister in writing has full access to all the financial accounts and documents of the Company, and the Board must at all times furnish to the Minister or to such officer, as the case may be, all such information as may reasonably be required. 5

Application of Public Finance Management Act

24. The Company is subject to the Public Finance Management Act.

CHAPTER VI

GENERAL AND MISCELLANEOUS

Intervention by Minister 10

25. (1) The Minister may, with the concurrence of the Minister of Finance, direct the Company to take any action specified by the Minister if the Company—
- (a) is being mismanaged;
 - (b) fails to perform its functions effectively or efficiently;
 - (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act; or
 - (d) has failed to comply with any law or any policy envisaged in this Act. 15
- (2) A directive contemplated in subsection (1) must state—
- (a) the nature of the deficiency;
 - (b) the steps which must be taken to remedy the situation; and 20
 - (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.
- (3) If the Company fails to remedy the situation within the stated period, the Minister may, with the concurrence of the Minister of Finance—
- (a) after having afforded the Company a reasonable opportunity to be heard; and 25
 - (b) after having afforded the Company a hearing on any submissions received, replace the members of the Board in the same manner as the departing members have been appointed or, where circumstances so require, appoint a person as an administrator to take over the relevant function of the Company.
- (4) If the Minister appoints an administrator in terms of subsection (3)— 30
- (a) the administrator may do anything which the Board might otherwise be empowered or required to do by or under this Act, to the exclusion of the Board;
 - (b) the Board may not, while the administrator is responsible for the relevant function, exercise any of its powers or perform any of its duties relating to that function; 35
 - (c) an employee or a contractor of the Company must comply with a directive given by the administrator.
- (5) The Minister must—
- (a) review the performance of the Company regularly whilst it is under administration; and 40
 - (b) within six months of appointing the administrator, table a report on his or her findings in the National Assembly.
- (6) Once the Minister is satisfied that the Company is able to perform its functions effectively, the Minister must terminate the appointment of the administrator. 45
- (7) (a) Notwithstanding this section, the Minister may dissolve the Board if the Minister, on good cause shown, loses confidence in the ability of the Board to perform its functions effectively and efficiently.
- (b) The Minister may exercise the power only—
 - (i) after having afforded the Board a reasonable opportunity to be heard; and 50
 - (ii) after having afforded the Board a hearing on any submissions received.
 - (c) If the Minister dissolves the Board, the Minister—
 - (i) may appoint an administrator to take over the functions of the Board and to do anything which the Board might otherwise be empowered or required to do by or under this Act, subject to such conditions as the Minister may determine; and 55

- (ii) must, as soon as it is feasible but not later than six months after the dissolution of the Board, replace the members of the Board in the same way as they were appointed.
- (8) (a) The costs associated with the appointment of an administrator shall be for the account of the Company. 5
- (b) The appointment of the administrator terminates when the Board members have been replaced in terms of subsection (7)(c)(ii).
- (9) Notwithstanding this section, the Minister retains the right at any time to approach a competent court for relief in any matter he or she considers appropriate in furtherance of this Act. 10

Regulations and policy

- 26.** (1) The Minister may, after consultation with the Minister of Finance, make regulations regarding—
- (a) any matter relating to the functioning of the Board that it is necessary to ensure the efficiency and effectiveness in the performance of its functions; and 15
 - (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The Minister must make policies on matters referred to in section 9(1)(g), (h) and (i) within six months after the commencement of this Act, and may make any additional policies on matters of national policy applicable to the Company, consistent with the objects of this Act, and may at any time thereafter amend any such policies made. 20
- (3) When making or amending a policy under subsection (2) the Minister must—
- (a) obtain the concurrence of the Minister of Finance;
 - (b) obtain Cabinet approval; 25
 - (c) table the policy in the National Assembly at least 30 days before publishing the final version of the policy in terms of paragraph (d); and
 - (d) publish the final version of the policy in the *Gazette*.

Non-application of provision of Companies Act

- 27.** A provision of the Companies Act does not apply to the Company if— 30
- (a) because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or inapplicable; or
 - (b) the Minister of Trade and Industry has issued a declaration under section 28.

Certain provisions of Companies Act may be declared inapplicable to Company

- 28.** (1) (a) The Minister may request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Company. 35
- (b) The request must be fully motivated by the Company.
- (2) (a) The Registrar of Companies must publish particulars about the request and the motivation contemplated in subsection (1) by notice in the *Gazette*.
- (b) In such notice, the Registrar must invite interested persons to submit representations to a person named in the notice within a period stipulated in that notice. 40
- (3) (a) After having considered the representations contemplated in subsection (2), if any, the Minister of Trade and Industry may, by notice in the *Gazette*, declare the whole or any part of the provision concerned to be inapplicable to the Company with effect from the date stipulated in that notice. 45
- (b) The Minister of Trade and Industry may only issue the declaration if satisfied on reasonable grounds that the inapplicability of that provision to the Company—
- (i) will contribute to the Company's efficiency;
 - (ii) will not reduce or limit the Company's accountability as a public entity or reduce the transparency of its functioning and operations; and 50
 - (iii) will not be prejudicial to the rights, interests or claims of the Company's creditors or employees or to the rights or interests of any other person.
- (4) This section applies with the changes required by the context to the former Postbank functioning as contemplated in section 30.

Offences

29. (1) Any member who fails to comply with section 13(3)(b)(i) or (ii) or 16(2), or who contravenes section 16(1)(c)(vii) or (viii), or any former member who failed to comply with or contravened any of those sections while being a member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment. 5

(2) Any person referred to in section 16(1)(b) who contravenes that section, or any former member who contravened that section while being a member, or any person, other than a member of the Board, referred to in section 16(1)(b) who contravened that section during the tenure of a former member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment. 10

Transitional provisions

30. Notwithstanding the repeal of sections 51(1), (3) and (4), 52, 53, 55 and 58 of the Postal Services Act by section 31, until the Company is registered as a bank as contemplated in section 4(2), the former Postbank continues to function without any interruption, as if those sections have not been repealed. 15

Repeal of laws

31. The laws mentioned in Schedule 1 are hereby repealed to the extent set out in the third column of that Schedule. 20

Short title and commencement

32. This Act is called the South African Postbank Limited Act, 2010, and takes effect on a date determined by the President by notice in the *Gazette*.

SCHEDULE 1*(Section 31)***REPEAL OF LAWS**

No. and year of Law	Short title	Extent of repeal
Act No. 124 of 1998	Postal Services Act, 1998	Sections 51(1), (3) and (4), 52, 53, 55 and 58

5

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

1. OBJECTS OF THE BILL

1.1 The objects of the South African Postbank Limited Bill, 2009, are to provide for the incorporation of the Postbank Division of the South African Post Office; for the transfer of the enterprise of that Division to the Postbank Company; for the governance and functions of the Postbank Company; and for matters connected therewith.

1.2 CHAPTER I

1.2.1 Clause 1

Provides for the definition of words as they will be used in the legislation.

1.2.2 Clause 2

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

- conducting the business of a bank that will encourage and attract savings amongst the people of the Republic;
- rendering transactional services and lending facilities through, amongst others, existing infrastructure of the Post Office;
- developing into a bank of first choice, in particular to rural and lower income markets, as well as to communities that have little or no access to commercial banking services or facilities; and
- providing affordable banking services.

1.3 CHAPTER II

1.3.1 Clause 3

Establishes a legal framework for the formation and incorporation of the Company and further provides for the South African Post Office Limited to be sole member and shareholder of the company.

1.3.2 Clause 4

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

1.3.3 Clause 5

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

1.3.4 **Clause 6** Requires the Minister to determine a date for the transfer of the enterprise from the former Postbank to the Company by notice in the *Gazette*.

1.3.5 Clause 7

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

1.3.6 Clause 8

Provides for the exemption of the transfer of the business of the former Postbank from tax liability.

1.4 **CHAPTER III**

1.4.1 **Clause 9**

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

1.5 **CHAPTER IV**

1.5.1 **Clause 10**

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

1.5.2 **Clause 11**

Outlines the functions of the Board.

1.5.3 **Clause 12**

Provides for the composition of the Board and the qualifications of its members.

1.5.4 **Clause 13**

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

1.5.5 **Clause 14**

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

1.5.6 **Clause 15**

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

1.5.7 **Clause 16**

Places an obligation on Board members to disclose their interests before and after appointment as Board members and contains the fiduciary duties of Board members.

1.5.8 **Clause 17**

Provides for procedure at meetings and empowers the Board to appoint committees necessary to assist in the realisation of the Company's objectives and to delegate any of its powers to such committees.

1.5.9 **Clause 18**

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

1.5.10 **Clause 19**

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

1.5.11 **Clause 20**

Makes provision for the managing director with the concurrence of the Board to appoint personnel to perform work-related functions. It further provides that the Board must determine the structure or organogram of the Company and the conditions of

service, remuneration and service benefits of personnel, in consultation with the Minister and the Minister of Finance.

1.6 CHAPTER V

1.6.1 Clause 21

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

1.6.2 Clause 22

Provides for what will constitute the Company's funds.

1.6.3 Clause 23

Empowers the Minister or any officer authorised by the Minister to inspect financial accounts and documents of the Company.

1.6.4 Clause 24

Provides for the application of the Public Finance Management Act.

1.7 CHAPTER VI

1.7.1 Clause 25

Provides for the circumstances under which the Minister, with the concurrence of the Minister of Finance, may intervene if the Company fails to perform its functions in terms of this Act. It furthermore empowers the Minister to dissolve the Board, on good cause shown, if the Minister loses confidence in the ability of the Board to perform its functions effectively and efficiently. It also provides for the appointment of an administrator by the Minister, to take over the functions of the Company.

1.7.2 Clause 26

Empowers the Minister to develop regulations, after consultation with the Minister of Finance. It also empowers the Minister to make policies on matters of national interest applicable to the Company. The Minister must act with the concurrence of the Minister of Finance, obtain Cabinet approval, table the policy in the National Assembly and publish the final version of the policy in the *Gazette*.

1.7.3 Clauses 27 and 28

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

1.7.4 Clauses 29

Provides for certain offences.

1.7.4 Clause 30

Provides for the transitional arrangement to allow the former Postbank to continue to function without interruption until the Postbank is registered as a bank.

1.7.5 Clause 30

Provides further for the repeal of laws mentioned in Schedule 1 and the extent set out in the third column of that schedule.

1.7.6 **Clause 31**

Provide for the short title and commencement of the Act.

1.7.7 **Clause 32**

Provide for the short title and commencement of the Act.

1.8 **Schedule 1**

Provides for the repeal of sections 51(1), (3) and (4), 52, 53, 55 and 58 of the Postal Services Act, 1998 (Act No. 124 of 1998).

2. PARTIES CONSULTED

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

3. FINANCIAL IMPLICATIONS FOR STATE

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

4. IMPLICATIONS FOR PROVINCES

None.

5. PARLIAMENTARY PROCEDURE

5.1. The State Law Advisers and the Department of Communications are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.