

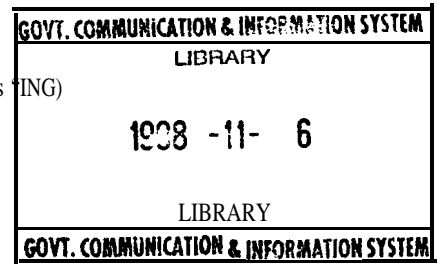
REPUBLIC OF SOUTH AFRICA

POSTAL SERVICES BILL

(As amended by the Portfolio Committee on Communications (National Assembly))

(MINISTER FOR POSTS, TELECOMMUNICATIONS AND BROADCASTING)

[B 97B—98]



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP POSDIENSTE

(Soos gewysig deur die Portefeuljekomitee oor Kommunikasie (Nasionale Vergadering))

(MINISTER VIR POS-, TELEKOMMUNIKASIE- EN UITSAAIWES)

[W 97B—98]

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GENERAL EXPLANATORY NOTE:

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

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To make new provision for the regulation of postal services; for the operational functions of the postal company, including its universal service obligations; for structural matters relating to postal services as well as the operation of the Postbank and National Savings Certificates; and to consolidate certain provisions relating to the postal company and amend or repeal others; 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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CHAPTER I
INTERPRETATION AND OBJECTS OF ACT

Definitions

1. In this Act, unless the context indicates otherwise —
- (i) “courier service” means a service provided by a person licensed or registered to provide such a service in terms of this Act; (viii) 5
 - (ii) “Department” means the Department of Communications; (iv)
 - (iii) “Director-General” means the officer occupying the post with that designation on the fixed establishment of the Department or who acts in that post; (v) 10
 - (iv) “letter” means a letter as defined in Schedule 1; (iii)
 - (v) “mail” means every article collected for conveyance by post and includes loose and individual articles and every mail bag, vessel or conveyance of any kind by which postal articles are carried, whether or not it contains any such articles and every person conveying or delivering mail or postal articles; (xiii) 15
 - (vi) “mail bag” includes any container, bag, box, parcel, basket, envelope or other covering in which postal articles are conveyed, whether or not it contains such articles; (xxii)
 - (vii) “Master” means a Master of the High Court acting within the powers conferred upon him or her by law; (ix) 20
 - (viii) “Minister” means the Minister entrusted with the administration of the Department; (x)
 - (ix) “money order” means a money order issued in terms of this Act or by any postal authority for payment in terms of this Act; (xxv) 25
 - (x) “National Savings Certificate” means any National Savings certificate issued under section 56; (xi)
 - (xi) “officer” includes any person employed by the postal company or in connection with any business of the postal company; (ii)
 - (xii) “postage” means the amount payable for the transmission of postal articles; (xvii) 30
 - (xiii) “postage stamp” or “stamp” means any piece of paper or other substance or material having thereon the stamp, mark or impression of any die, plate, or other instrument made or used in terms of this Act or by any postal authority for the purpose of denoting any postage or other postal fee; (xxiii) 35
 - (xiv) “postal article” means any letter, postcard, reply postcard, letter card, envelope, book, packet, pattern or sample packet or any parcel or other article when in the course of transmission by post, and includes a telegram when conveyed by post; (xxiv) 40
 - (xv) “postal authority” includes any duly constituted postal authority of any foreign country or place; (xv)
 - (xvi) “postal company” means the postal company contemplated in section 3(1) of the Post Office Act, 1958 (Act No. 44 of 1958); (xix)
 - (xvii) “postal order” means a postal order issued under this Act or by any postal authority for payment under this Act; (xxi) 45
 - (xviii) “postal service” means a reserved postal service or an unreserved postal service as contemplated in Schedule 1 and Schedule 2, respectively; (xvi)
 - (xix) “Postbank” means the Postbank referred to in section 51; (xiv) 50
 - (xx) “postmaster” means the officer in charge of a post office; (xx)
 - (xxi) “post office” includes any house, building, room, vehicle, 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 of any postal, savings, money transfer or other service by the postal company and any pillar box or other receptacle provided by or with the approval of the Department or the postal company for the reception of postal articles; (xviii) 55
 - (xxii) “prescribed” means prescribed by regulation under this Act; (xxxii)
 - (xxiii) “regulation” means a regulation made under this Act; (xxvi) 60
 - (xxiv) “Regulator” means the Directorate: Postal Regulation contemplated in section 3; (xxvii)

- (xxv) “reserved postal services” means the services contemplated in Schedule 1; (vi)
- (xxvi) “sender”, in relation to any postal article or telegram, means the person from whom that postal article or telegram purports to have come, unless such person proves that he or she is not the sender thereof; (i) 5
- (xxvii) “telecommunications company” means the telecommunications company contemplated in section 3(1) of the Post Office Act, 1958 (Act No. 44 of 1958); (xxix)
- (xxviii) “telecommunications line” means a telecommunications line as defined in the Post Office Act, 1958 (Act No. 44 of 1958); (xxviii) 10
- (xxix) “this Act” includes the regulations; (vii)
- (xxx) “universal postal service” means a universal service as defined in a licence issued in terms of section 16; (xix)
- (xxxi) “unreserved postal services” means the services contemplated in Schedule 2. (xii) 15

Objects of Act

2. The primary object of this Act is to provide for the regulation and control of postal services in the public interest and for that purpose to—
- (a) promote the universal and affordable provision of postal services;
- (b) promote the provision of a wide range of postal services in the interest of the economic growth and development of the Republic;
- (c) make progress towards the universal provision of postal services;
- (d) encourage investment and innovation in the postal industry;
- (e) promote the development of postal services that are responsive to the needs of users and consumers; 25
- (f) ensure greater access to basic services through the achievement of universal postal service, by providing an acceptable level of effective and regular postal services to all areas including rural areas and small towns where post offices are not sustainable;
- (g) develop greater equity in respect of the distribution of services, particularly within the areas of the historically disadvantaged communities, including rural areas; 30
- (h) ensure that the needs of disabled persons are taken into account in the provision of postal services;
- (i) encourage the development of human resources and capacity building within the postal industry, especially amongst historically disadvantaged groups; 35
- (j) ensure fair competition within the postal industry;
- (k) promote stability in the postal industry;
- (l) protect the interests of postal users and consumers;
- (m) promote the effective maintenance of an efficient system of collecting, sorting, 40 and delivering mail nationwide, in a manner responsive to the needs of all categories of mail users;
- (n) contribute to the community and rural development and education, through actively participating in the development of a citizen’s post office, serving as an interface between Government and community and providing a centre for 45 community activities;
- (o) promote interaction and co-operation with other agencies and local authorities;
- (p) ensure compliance with international commitments;
- (q) promote small, medium and macro-enterprise within the postal industry; and 50
- (r) promote a culture of saving by means of the Postbank.

CHAPTER II

POSTAL REGULATORY

Establishment of Regulator

3. (1) A Regulator to be known as the Directorate: Postal Regulation is hereby established within the Department.

(2) The Regulator and its support staff must operate as a Directorate of the Department and must report to the Minister, through the Director-General.

(3) The Regulator must be impartial in the performance of its functions.

(4) The Regulator must perform its functions in terms of this Act and in accordance with guidelines given to it by the Minister and such policy directions as may be issued by the Minister from time to time by notice in the *Gazette*. 60

(5) A guideline or policy direction issued by the Minister under this section may be amended, withdrawn or substituted by the Minister, and the provisions of this section apply, with the necessary changes, in relation to such an amendment, withdrawal or substitution.

Composition of Regulator 5

4. (1) The Regulator consists of two persons, of whom—
- (a) one must be the most senior officer in the Postal Policy Division of the Department, who must be designated the Chairperson of the Regulator, or, subject to subsection (2), an officer acting in his or her position; and
 - (b) the other must be a fit and proper person with appropriate qualifications appointed by the Minister for a period of not more than five years, 10
- (2) Notwithstanding subsection (1), the Minister may at any time designate an officer in the Department as an alternate member of the Regulator to perform the functions of a member when such member is not available to perform those functions.

Termination of membership 15

5. (1) A member of the Regulator appointed by the Minister in terms of section 4(1)(b), whose term of office has expired, is eligible for reappointment.

(2) If there are sound reasons for doing so, the Minister may at any time terminate a member's appointment in accordance with the procedures applicable to State employees. 20

Co-opting of persons

6. The Regulator may co-opt any person with the relevant expertise or qualifications to assist the Regulator in the consideration of a particular matter.

Staff

7. The staff required for the proper performance of the functions of the Regulator and administration of this Act, must be designated by the Director-General from persons who are or must become employees of the Department 25

General functions of Regulator

8. (1) The Regulator must—
- (a) exercise regulatory functions in respect of the reserved and unreserved postal services; 30
 - (b) ensure that the provisions of this Act and the terms and conditions contained in any licence are complied with;
 - (c) promote the interests of users of postal services in respect of the cost of reserved services, the continuity of postal services and the quality thereof; 35
 - (d) ensure that all reasonable requests for postal services are satisfied;
 - (e) promote and encourage the expansion of postal services;
 - (f) promote a universal postal service that will ensure equal access for all citizens to a basic letter service—
 - (i) that is reasonably accessible to all people in the country regardless of physical location; 40
 - (ii) at a uniform rate of postage;
 - (iii) at an affordable price; and
 - (iv) that offers a reliable service;
 - (g) regulate the issue of postage stamps including definitive, commemorative and special issues of such stamps and any other philatelic items, 45
- (2) The Regulator may—

- (a) send persons to attend conferences and meetings relating to postal services matters where appropriate, and, in the case of international conferences and meetings, subject to approval by the Minister; and
 - (b) carry on all such other activities as may be necessary or expedient for the performance of its functions in terms of this Act. 5
- (3) No member of the Regulator or staff of the Department, including an inspector appointed in terms of section 27, may disclose any information regarding any matter **which** may come to his or her knowledge in the performance of any function in terms of this Act except in so far as such person may be required to do so by law or by an order of a competent court. 10

Meetings of Regulator

- 9.(1) Meetings of the Regulator must be convened by the Chairperson at the time and venue to be determined by him and may be adjourned, whether for an indefinite time or until a particular time, if circumstances so warrant.
- (2) Meetings of the Regulator must be convened for the consideration of— 15
- (a) applications for any licence or registration required in terms of this Act;
 - (b) reports submitted by the independent monitor in terms of this Act;
 - (c) reports submitted by an inspector in terms of this Act;
 - (d) representations made by any person who has been summoned to appear before the Regulator in terms of section 12; 20
 - (e) matters referred by the Minister to the Regulator for consideration;
 - (f) representations by the holder of a licence;
 - (g) complaints against a licence holder where the customer's complaints to the licence holder were not satisfactorily resolved;
 - (h) other matters which the Regulator regards as necessary to consider in terms of this Act. 25

Attendance of meetings of Regulator

- 10.(1) Subject to subsection (2), the meetings of the Regulator must be open to the public.
- (2) Where the Regulator is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other lawful reason, the Regulator may— 30
- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; or
 - (b) prohibit or restrict the publication of evidence given, whether in public or private, before the Regulator or documents provided to the Regulator. 35

Minutes of meetings of Regulator

- 11.(1) Minutes of the proceedings of meetings of the Regulator must be kept.
- (2) Subject to section 10(2), any person may obtain copies of the minutes contemplated in subsection (1) or of any part thereof against payment of the prescribed fee. 40

Notice to appear at meeting of Regulator

- 12.(1)** The Chairperson may, by way of written notice, cause any person who might be affected by the investigation of a particular matter, to be present at a meeting of the Regulator. 45
- (2) A person who has received a notice in terms of subsection (1), must personally appear before the Regulator on the date and at the time and place set out in the notice.
- (3) The Department may on recommendation of the Regulator pay a witness who has received a notice in terms of subsection (1) such reasonable expenses as may be incurred by him or her for appearance at a meeting of the Regulator. 50

Procedure at hearing

13. The Regulator may determine the procedure for hearings and meetings of the Regulator.

Annual report by Regulator

14. An annual report on the activities of the Regulator must be included in the report 5 on the activities of the Department prepared by the Director-General in terms of section 120A of the Post Office Act, 1958 (Act No. 44 of 1953).

CHAPTER III

REGULATION OF POSTAL SERVICES

Prohibition on operating reserved postal service without licence 10

15. (1) Subject to the provisions of this Act, no person may operate a reserved postal service except under and in accordance with a licence issued to that person in terms of this Chapter.

(2) A licence confers on the holder the privileges and subjects him or her to the obligations referred to in this Act or specified in the licence. 15

(3) The Minister may by notice in the *Gazette* make such amendments as may be necessary from time to time to the Schedules but may not, in so doing, cause any activity falling under unreserved postal services to fall under reserved postal services.

Applications for licences

16. (1) Any person may, subject to the provisions of subsection (2), make application 20 to the Regulator for a licence in the manner prescribed.

(2) Subject to subsections (3) and (5), no application may be entertained to provide a reserved postal service unless such application is lodged pursuant to and in accordance with an invitation issued by the Minister in the *Gazette*.

(3) At the date of commencement of this section the postal company must be regarded 25 as having applied for a licence in terms of this Act and the Minister must grant the application and issue such licence to the postal company with a period of validity of 25 years from the date of commencement of this section.

(4) (a) A reserved postal service of the postal company contemplated in this section, excluding a courier service in respect whereof the postal company must be licensed or 30 registered separately, may be provided by a wholly-owned subsidiary of the postal company, without such subsidiary being required to hold a licence in terms of this Act if—

(i) such subsidiary complies with the terms and conditions of the licence held by the postal company; and 35

(ii) such subsidiary is registered by the postal company with the Regulator.

(b) Any service of the postal company contemplated in this section may be provided on an agency or franchise basis without such agent or franchisee being required to hold a licence in terms of this Act if—

(i) such agent or franchisee complies with the terms and conditions of the licence 40 held by the postal company; and

(ii) such agent or franchisee is registered by the postal company with the Regulator.

(5) (a) Any person who, immediately before the date of commencement of this section provided a courier service of a type contemplated in Schedule 1, must be 45 regarded as being licensed to provide such a courier service, subject to paragraph (b).

(b) A person may not be regarded as being licensed in terms of paragraph (a) if that person has failed to apply to the Minister through the Regulator for such a licence within 90 days after the date of commencement of this section or within such extended period 50 as the Regulator may allow.

(c) After receipt of an application in terms of paragraph (b) the Minister must, subject to paragraph (d), grant the application and thereafter the Regulator must issue a licence to the applicant.

(d) A person may not be licensed to provide a courier service in terms of this subsection unless that person undertakes—

- (i) to receive, collect and deliver items contemplated in item 1(a) of Schedule 1;
- (ii) to track and trace the whereabouts of any item received or collected for delivery by such person's business undertaking;
- (iii) to deliver items within a definite time, in the case of deliveries across international borders;
- (iv) to deliver items within the Republic on the date of receipt thereof or at the latest by 13:00 on the next working day; or
- (v) to clear items through customs, where applicable.

(6) If it appears to the Regulator that the postal company or any other holder of a licence is taking or intends taking any action which has given or is likely to give an undue advantage to themselves or any other person or category of persons, the Regulator may, after having given the licensee an opportunity to be heard, direct the licensee in writing to cease or refrain from taking such action, as the case may be.

(7) The postal company and any other holder of a licence must comply with the conditions specified in the licence in question relating to the provision of postal services in areas and to communities which are not served or adequately served by postal services, with a view to achieving universal postal service.

(8) In the licence to be issued to the postal company in terms of subsection (3), there must be specified in respect of reserved postal services rendered by the postal company a fixed period or from time to time any extended period, during which no person other than the postal company may be licensed to provide a similar service: Provided that nothing contained in this subsection may be regarded as limiting the powers vested in the Minister by subsection (2) and that any such period must be reviewed every three years.

(9) The licences contemplated in subsections (3) and (5) must be granted on terms and conditions consistent with the objects of this Act to be determined by the Minister and stated in the licence.

(10) The Minister must make known the terms and conditions contemplated in subsection (8) by notice in the *Gazette*.

Duration of licence

17. Subject to section 16(7), a licence issued in terms of this Act is valid for the period prescribed or for such shorter period as may be determined by the Regulator in any particular case and stipulated in the licence at the time of issue thereof.

Renewal of licence

18. (1) A licensee may, during the prescribed period, apply for the renewal of his or her licence.

(2) If the requirements of subsection (1) have been complied with, a licence continues to be valid until such time as a decision has been made regarding the application for its renewal.

Application and licence fees

19. (1) The prescribed application fee, if any, must accompany an application for a licence in terms of this Act.

(2) Every holder of a licence must, at the prescribed time, pay to the Department the licence fee specified in the licence or where no such fee is so specified, the prescribed licence fee.

(3) A licence holder who fails to pay the licence fee contemplated in subsection (2) on the due date is liable to pay a penalty in the prescribed amount, in addition to such licence fee.

Prohibition on operating unreserved postal service without registration certificate

20. No person may operate an unreserved postal service contemplated in Schedule 2, 55

unless such person is registered with the Regulator in terms of this Act and is in possession of a registration certificate issued by the Regulator.

Application for registration

21. An application for registration with the Regulator to operate an unreserved postal service must be in the format and in accordance with the procedure prescribed by the Minister on the recommendation of the Regulator and must be accompanied by the prescribed registration fee. 5

Operators regarded as having been registered

22. (a) Any person who, immediately before the date of commencement of this section provided a postal service in respect of items contemplated in Schedule 2, including a courier service, must be regarded as being registered to provide an unreserved postal service or an unreserved courier service, as the case may be, subject to paragraph (b). 10

(b) A person may not be regarded as being registered in terms of paragraph (a) if that person has failed to apply for registration to the Regulator within 90 days after the date of commencement of this section or within such extended period as the Regulator may allow. 15

(c) After receipt of an application in terms of paragraph (b) the Regulator must, subject to paragraph (d), register the applicant and issue a registration certificate.

(d) A person may not be registered to provide a courier service in terms of this section unless that person undertakes— 20

(i) to receive, collect and deliver items contemplated in item 1(b) of Schedule 2; or

(ii) to render any service contemplated in subparagraphs (ii) to (v) of section 16(5)(d), in respect of items contemplated in item 1(b) of Schedule 2. 25

Production of licences and registration certificates

23. Every person who is required to possess a licence or a registration certificate must produce such licence or registration certificate for inspection on demand by any member of the South African Police Service or by any officer of the Department duly authorised by the Regulator to make such demand. 30

Suspension or cancellation of licence or registration certificate

24. (1) Notwithstanding anything to the contrary contained in this Act, the Regulator may after written notice to the holder of a licence or registration certificate and after due enquiry, suspend or cancel any licence or registration certificate issued under this Act, if the holder has contravened the terms and conditions of the licence or certificate or the provisions of this Act. 35

(2) The holder of a licence or registration certificate is not upon the suspension or cancellation of his or her licence or registration certificate entitled to a refund of any fees paid in respect of such licence or registration certificate.

(3) A person whose licence or registration certificate has been suspended in terms of subsection (1) must, during the period of suspension, be regarded, for the purposes of this Act, as not being the holder of such licence or registration certificate. 40

(4) Any person who is aggrieved by the suspension or cancellation of his or her licence or registration certificate in terms of subsection (1) has, in addition to any right to review by the court, the right to appeal to the Minister against such suspension or cancellation and the Minister may either confirm the suspension or cancellation or direct the Regulator to restore the licence or registration certificate to the person concerned. 45

Production of books and records

25. The Regulator may by notice in writing direct a licensee or a registered unreserved postal service operator to produce such accounts, records and other documents or information specified in such notice as the Regulator may reasonably require to ensure compliance with the provisions of this Act. 50

Appointment of independent monitor

26. (1) The Director-General must in consultation with the Regulator appoint an independent monitor to monitor the quality of postal services rendered by the postal service operator, to report to the Regulator on its findings and to make recommendations to the Regulator on measures to be taken to improve the quality of service. 5

(2) The independent monitor must receive the remuneration determined by the Minister in consultation with the Minister of Finance and must be paid out of money appropriated by Parliament or that purpose.

(3) The Regulator may determine the type of postal services and operators of postal services to be monitored. 10

Appointment of inspectors

27. (1) The Regulator may, in consultation with the Director-General, appoint any employee of the Department as an inspector.

(2) An inspector must be provided with a certificate of appointment signed by or on behalf of the Chairperson of the Regulator in which it is stated that he or she has been appointed an inspector in terms of this Act. 15

(3) When an inspector performs any function in terms of this Act, he or she must have such certificate of appointment in his or her possession and must produce it at the request of any person affected by the performance of that function.

Powers of inspectors

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28. (1) An inspector appointed in terms of section 27 may, in order to determine whether the provisions of this Act or the terms and conditions of any licence are being complied with, at any reasonable time and without prior notice, on the authority of a warrant, enter any premises and—

(a) inspect and make copies of or extracts from books, records or other documents; 25

(b) demand the production of and inspect the relevant licence or registration certificate; and

(c) inspect any facilities on the premises which are relevant to the investigation.

(2) A warrant contemplated in subsection (1) must be issued by a judge or magistrate who has jurisdiction in the area where the premises in question are situated, and may only be issued if it appears from information on oath that there are reasonable grounds for believing that the provisions of this Act or the terms and conditions of any licence are being contravened on those premises.

(3) No person may— 35

(a) fail to comply with a demand contemplated in subsection (1)(b);

(b) hinder or obstruct an inspector in the performance of his or her functions in terms of this section;

(c) falsely hold himself or herself out as an inspector.

CHAPTER IV

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POSTAL COMPANY AND POSTAL SERVICES**Subsidy to postal company**

29. (1) The Minister may, in consultation with the Minister of Finance, out of money appropriated by Parliament for the purpose, grant an annual subsidy to the postal company in respect of normal expenditure. 45

(2) A request for a subsidy must be submitted by the postal company to the Minister by a date determined by the Minister in order for it to be subjected to the evaluation process for inclusion in the annual compilation and exposition of the Government's expenditure proposals for appropriation purposes.

(3) The payment of subsidies must be for such purposes and period and subject to such conditions as the Minister may determine in consultation with the Minister of Finance. 50

Fees and charges for postal services

30. (1) Subject to the approval of the Minister, the Regulator, in consultation with the postal company or, where applicable, any other licensee, may determine the fees and charges payable in respect of the provision of a postal service by the postal company or where applicable, by such other licensee. 5

(2) The manner of determining fees and charges in respect of reserved postal services must be prescribed.

(3) In exercising a power under subsection (1) the Regulator may, subject to the approval of the Minister, determine different fees and charges in respect of different services, or services rendered in different areas or circumstances or may determine special fees and charges which may be higher or lower than the normal fees and charges, and may exempt particular users or prospective users of services in specific circumstances from any of the prescribed fees and charges. 10

(4) Fees and charges determined in terms of this section must be published in the *Gazette* by the Regulator and may not come into force until 60 days after such publication. 15

(5) This section does not apply to courier services,

Postage

31. (1) Subject to section 30, there must be paid on every article for transmission by post, such postage and other sums as may be prescribed, or determined by the postal company. 20

(2) Save as is otherwise prescribed or determined by the postal company, the postage and any fees which may be payable in respect of any postal article posted within the Republic must be prepaid by means of postage stamps issued for the Republic by the postal company and not previously used, obliterated or defaced, and in default thereof there is payable in money upon every such postal article, at the time of or after delivery thereof, an amount prescribed or so determined. 25

letters to take precedence

32. Whenever the dispatch or delivery of letters from a post office is likely to 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. 30

When postal articles regarded as being in course of transmission or to have been posted or delivered

33. For the purposes of this Act— 35

(a) a postal article shall be deemed to be in the course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;

(b) the placing of a postal article of any description in a pillar box or other receptacle provided for this purpose by or with the approval of the postal company, or the delivery of a postal article to a postman or other person authorised to receive postal articles of that description for the post, must be regarded as being delivery to a post office; 40

(c) the delivery of a postal article at the house or office of the person to whom the article is addressed, or to his or her servant or agent or other person considered to be authorised to receive the article according to the usual manner of delivering that person's postal articles, or at the address specified on such article, must be regarded as being delivery to the person to whom the article is addressed; 45

(d) delivery into a private box or private bag must be regarded as being in all respects equivalent to personal delivery to the addressee. 50

Articles regarded as having been posted in contravention of Act

34. A postal article received in a post office must be regarded as having been posted in contravention of this Act—

- (a) if the postage stamps thereon have been previously used, obliterated or defaced; or
- (b) if it is posted or contains anything in fraud of or contrary to the provisions of this Act or any other law.

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Postal articles to be sent to returned letter office for disposal

35. (1) Subject to subsection (2), any postal article –

- (u) which is without address or bears an illegible address or is otherwise undeliverable; or
- (b) acceptance of which is refused by the person to whom it is addressed; or
- (c) which has been posted or is reasonably suspected to have been posted in contravention of this Act or any other law,

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must be sent to the office known as the returned letter office and dealt with as may be determined by the postal company.

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(2) Any postal article contemplated in subsection (1)(a) or (b)—

- (a) other than a letter or parcel, and which—
 - (i) does not bear on the outside thereof the name and address of the sender;
 - (ii) is of little value or importance;
 - (iii) does not contain any money, documents or valuable articles; and
 - (iv) has not been posted by a government department; and
- (b) any postal article contemplated in subsection (1)(c),

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may, according to the postal company's direction, be destroyed or disposed of in some other manner;

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(3) Any postal article contemplated in subsection (1)(a) or (b) which bears on the outside thereof the name and address of the sender, may be returned to him or her or delivered to him or her direct.

Articles subject to customs duty

36. Any postal article containing or suspected of containing an enclosure upon which customs duty is payable must be dealt with as determined by the postal company, subject to any law relating to customs.

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Articles other than letters may be examined

37. Any postal article, other than a letter, may, without opening, be examined by means of detection devices in order to ascertain whether that article may be transmitted at the rate of postage pre-paid thereon or whether it has been posted in contravention of this Act.

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Treatment of unclaimed letters in returned letter office

38. (1) Subject to subsection (2), any postal article originally posted within the Republic and which is sent to the returned letter office in terms of section 35, may be opened by an officer designated for that purpose by the postal company and unless it contains any valuable or saleable enclosure or has been posted in contravention of this Act or any other law or with intent to evade payment of the postage chargeable thereon, it must be returned to the sender thereof if his or her name and address are known, and may, if the sender refuses to receive it or if his or her name and address are not known be destroyed or disposed of as determined by the postal company.

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(2) Any postal article referred to in subsection (1) the name and address of the sender of which are known but which is of little value or importance, which does not contain any documents, has not been transmitted by registered post and has not been posted by a government department, may, after it has been retained for the period determined by the postal company, be destroyed or disposed of in any other manner determined by the postal company.

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Unclaimed articles of value and articles posted in contravention of Act

39. (1) Every postal article opened under this Act which contains any valuable or saleable enclosure, must be safely kept and a record thereof and of its contents must be made and preserved.

(2) The postal company must, unless any such postal article or the contents thereof has been posted in contravention of this Act or any other law or with intent to evade payment of the postage chargeable thereon, cause a notice declaring that it has in its possession that article and stating the contents thereof to be sent to the person to whom the article is addressed or, if he or she cannot be found, to the sender thereof. 5

(3) Upon application by the person to whom the notice has been sent, the postal company must cause such postal article and its contents to be delivered to any such person upon payment of all charges due thereon. 10

(4) If no application is made within three months after the sending of any notice in terms of subsection (2), or if the postal article in question or the contents thereof have been posted in contravention of this Act or any other law or with intent to evade payment of any charge payable thereon, such article and its contents must (without affecting the liability to any penalty or punishment to which the sender may be subject) be destroyed, sold or otherwise disposed of as the postal company may determine. 15

(5) The proceeds of the sale of any postal article or the contents thereof as aforesaid, as well as any such contents consisting of money or any order or security for money, must be paid into and form part of the postal revenue. 20

(6) Any such order or security for money must, for the purpose of procuring payment, be regarded as being the property of the postal company.

Delay in transmission, in return to sender or delivery to any person other than addressee of article prohibited 25

40. Save as expressly provided in this Act, no postal article may be delayed in transmission or returned to the sender or be delivered to any person not named in the address thereof, except with the consent in writing of the addressee or on the special authority of the postal company.

Articles addressed to insolvent persons 30

41. Whenever any person has been declared insolvent by a competent court the postal company must, if that court so orders, and for so long as may be specified in the order, cause all postal articles addressed to such person to be delivered to the person named in the order.

Articles addressed to deceased persons 35

42. Postal articles addressed to deceased persons may be delivered to the executors or administrators of the estates of those deceased persons on production of letters of administration, at the address indicated thereon.

Detention of postal articles on order of court

43. On the order of a competent court, the postal company may detain or delay all postal articles addressed to a person (whether under his or her own or under a fictitious or assumed name) or his or her agent or representative, or to any address of any such person, agent or representative without the name of any person appearing thereon, and all such postal articles may be opened and returned to the senders thereof or otherwise disposed of in the manner provided for in the court order. 45

Arrangements and agreement to convey postal articles

44. The postal company may make arrangements and enter into agreements with any person to convey postal articles either by land, air or sea.

Compensation

45. (1) The postal company may—

- (a) if any unauthorised person obtains payment of any deposit by fraudulent means, make good the loss or any portion thereof;
- (b) subject to any prescribed requirements and limitations, pay compensation for the loss of or damage to any postal article or the contents thereof whether conveyed by the postal company or by any mail carrier.

(2) Where the postal company has by virtue of subsection (1) paid any amount in respect of loss caused by the commission of an offence, it must, for purposes of section 300 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), be regarded as having suffered, as the result of the commission of such offence, loss of property belonging to it to the extent of the amount so paid.

(3)(a) Any mail carrier must on demand pay to the postal company an amount equal to any amount paid by the postal company by virtue 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 postal company may determine.

(b) Any amount paid in terms of paragraph (a) is recoverable by action in any competent court.

Jurisdiction

46. (1) South African law applies in the case of outgoing postal articles— 20

- (a) conveyed by air, until the aircraft conveying the postal articles touches down on the runway at the first airport in the country of destination or of transit of the postal articles;
- (b) conveyed by ship, until the ship conveying the postal articles enters the territorial waters of the country of destination or of transit of the postal articles; 25
- (c) conveyed by road, until the vehicle conveying the postal articles passes through the first border post along the route to the country of destination of the postal articles.

(2) South African law applies to incoming postal articles— 30

- (a) conveyed by air, from the moment the aircraft conveying the postal articles touches down on the runway of the first airport of arrival in South Africa;
- (b) conveyed by ship, from the moment the ship conveying the postal articles enters South African territorial waters;
- (c) conveyed by road, from the moment the vehicle conveying the postal articles enters South Africa through a border post. 35

CHAPTER V

MONEY TRANSFER SERVICES

Remittance of money through postal company

47. 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 authorise any employee to issue and pay money orders, postal orders and other documents authorised to be used for the purpose of so remitting money. 40

Refusal to issue or pay money orders, postal orders or other documents

48. The postal company may refuse to issue or pay any money order, postal order or other document authorised to be used for the purpose of remitting money through the postal company, in favour of any person in respect of whom a competent court has authorised such refusal and where payment of any such money order, postal order, or other document is so refused. Such money order, postal order, or other document may, if it was issued in the Republic, be returned to the person to whom it was originally issued or otherwise disposed of as the court may determine or, if it was issued outside the Republic, the amount thereof must be returned to the postal authority of the country in which it was issued. 50

Money orders and postal orders regarded as bank notes

49. (1) Any money order, postal order or other document issued under section 47 must be regarded as being 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, 5
- (2) Any unissued postal order must be regarded as money of the postal company. 5

Money remitted through postal company in terms of Post Office Act, 1958

50. Money orders, remitted through the postal company in terms of section 46 of the Post Office Act, 1958 (Act No. 44 of 1958), which were valid immediately prior to the commencement of this Chapter must be regarded as having been transmitted in terms of this Act. 10

CHAPTER VI

POSTBANK AND NATIONAL SAVINGS CERTIFICATES

Operation and control of Postbank

51. (1) The Postbank is operated under the control and management of the postal company. 15
- (2) The postal company must undertake such activities as are customary for a financial institution carrying on the business of accepting deposits.
- (3) The Postbank must be operated, managed and controlled in accordance with this Act.
- (4) Interest on deposits in the Postbank must be paid at a rate determined from time to time by the postal company and the Minister in consultation with the Minister of Finance in the case of each kind of deposit, 20

Deposits in Postbank or National Savings Certificates in name of minors

52. Notwithstanding anything to the contrary contained in any other law, deposits in the Postbank made by or for the benefit of, or any National Savings Certificate issued in favour of, any person under 21 years of age, may be repaid to that person in the prescribed manner in respect of any particular kind of deposit or account in the Postbank. 25

Secrecy

53. (1) No person may, in respect of the transactions of any depositor in the Postbank or any holder of a National Savings Certificate, disclose any information (including the name of any such depositor or holder) which comes to his or her knowledge in the performance of his or her functions in terms of this Act, except— 30
- (a) to an employee appointed by the postal company to assist in carrying out the provisions of this Chapter; 35
- (b) to the Commissioner for Inland Revenue, for the purposes of any law relating to any tax or levy;
- (c) to the Master in relation to the administration of the estate of any deceased depositor in the Postbank or holder of a National Savings Certificate; or 40
- (d) when required by order of a competent court.
- (2) Nothing in this section contained may be regarded as limiting the authority of the auditors of the postal company to require a disclosure of such accounts and documents as may be necessary to enable them to carry out the duties imposed upon them by law.

Transfer of deposits from or to another country

54. The 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 Postbank or depositors in a savings bank controlled by that postal authority and subject to this Act and any regulation made under a law relating to 45

currency and exchanges, place any sum so transferred to the postal company to the credit of a depositor's ordinary account.

Inactive accounts

55. (1) If a balance in an ordinary account has remained unchanged for more than the prescribed period (which may not be shorter than two years), except for the accrual of interest, the postal company may transfer the balance to the revenue of the postal company and utilise it for the purposes of the company.

(2) If the depositor concerned or any person legally competent to claim the balance on his or her behalf applies for the repayment thereof, if an amount for deposit in the ordinary account in question is paid after such transfer, an amount equal to the balance and the interest which would have accrued thereon if it had not been so transferred must be transferred from the revenue of the postal company to the credit of the depositor concerned.

Issue of National Savings Certificates

56. (1) Notwithstanding anything to the contrary contained in any other law, the postal company may from time to time, with the approval of the Minister in the case of each issue, raise money by way of issues of National Savings Certificates.

(2) The conditions upon which National Savings Certificates are issued, shall in the case of each issue be determined by the Minister in consultation with the Minister of Finance and shall be prescribed by regulation.

(3) The terms of any certificate shall not exceed ten years.

(4) On the amount represented by any National Savings Certificate which is not repaid before or on the expiry of the term thereof, interest may be paid from the expiry of such term to the date of repayment, at the rate determined by the Minister in consultation with the Minister of Finance and prescribed by regulation.

(5) The maximum amount which may be held by—

(a) any natural person;

(b) any natural person and, in a case where he or she is liable for the payment of income tax in respect of interest earned by any other natural person on National Savings Certificates, also such other person jointly; and

(c) any body or institution from which investments in National Savings Certificates may be accepted,

in any particular issue, or more than one issue of National Savings Certificates, must be prescribed with the concurrence of the Minister of Finance.

(6) This section must not be so construed as to derogate from the power of the postal company to borrow or raise money under the provisions of any other law.

Regulations regarding National Savings Certificates

57. (1) Subject to section 56, the Minister may make regulations—

(a) as to any matter which in terms of this Act is required or permitted to be prescribed by regulation in respect of National Savings Certificates;

(b) prescribing the procedure which must be observed in the issue of, and the payment of amounts represented by, National Savings Certificates and the forms which must be used in connection therewith;

(c) prescribing in respect of each issue of National Savings Certificates the price of issue, term, units or multiples of units in which certificates may be issued, the rate of interest and times and manner of payment of interest, and, subject to paragraph (d) and subsection (3), the minimum period which must elapse from the date of issue of any certificate before the amount represented by it may be repaid;

(d) as to the circumstances under which and the conditions upon which any National Savings Certificate may be repaid before the expiry of the minimum period prescribed under paragraph (c);

(e) as to the conditions and procedure applying to the transfer of any National Savings Certificate by the holder thereof to another person, the forms to be used in connection with such transfer and the fees payable in respect thereof;

- (f) as to the replacement of any National Savings Certificate which has been lost, destroyed or damaged and the fees payable in respect of any such replacement;
- (g) as to the issue of National Savings Certificates to certain persons or classes of persons;
- (h) as to the purchase of any National Savings Certificate by a trustee on behalf of a beneficiary and by one person in the name of another on particular conditions relating to the repayment of the amount represented by such certificate and compliance with such conditions, and as to limitations and requirements (including different limitations or requirements in respect of different categories of such investments or different categories of such investors) that apply to such purchases; and
- (i) as to, generally, any other matter in respect of which it is necessary or expedient to make regulations in order to achieve the objects of this Act relating to National Savings Certificates.

(2) Regulations made under subsection (1) may prescribe as a condition of any particular issue of National Savings Certificates that the rate of interest prescribed by the regulations in relation to the relevant issue of National Savings Certificates, may from time to time be increased or decreased by the Minister by way of an amendment of the regulations,

(3) If any such rate of interest is decreased, any National Savings Certificate affected thereby is, as from the date on which the rate of interest is decreased, repayable at the request of the holder of the relevant National Savings Certificate, together with any interest accrued thereon up to the date of repayment.

(4) Different regulations may be made in respect of different issues of National Savings Certificates.

(5) No regulation may be made under subsection (1)(c), (d) or (g) without the concurrence of the Minister of Finance.

(6) The regulations made under section 77B of the Post Office Act, 1958 (Act No. 44 of 1958), and any regulations made or any act performed by virtue of an authority granted in terms of Chapter V of that Act, which were in force immediately prior to the commencement of this Act, remain in force until repealed under this section.

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

58. The revenue and assets of the postal company and thereafter of the State, serve as security for the repayment of deposits in the Postbank and of the amounts represented by Postbank, National Savings and Union Loan Certificates and for the payment of interest due thereon.

CHAPTER VII

GENERAL PROVISIONS

Electronic mail and addresses

59. Subject to the Telecommunications Act, 1996 (Act No. 103 of 1996), the Postal Company may carry electronic mail, including the Internet, and provide electronic addresses.

Delegation of functions

60. (1) The Regulator may in writing delegate any of its functions in terms of this Act to any person in the service of the Department who is designated in terms of section 7.

(2) The Regulator is not divested of any functions delegated in terms of subsection (1), and may amend or rescind any decision made in terms of such delegation, except where any licensee or any registered unreserved postal service operator will be affected adversely thereby.

(3) The Regulator may not delegate-

- (a) tiny decision regarding the issuing, cancellation or suspension of a licence or registration certificate;
- (b) the power to give advice or any recommendation to the Minister in terms of this Act.

(4) The Minister may, subject to such conditions as he may determine, delegate any power conferred on him or her under this Act, other than a power to be exercised by notice in the *Gazette*, to the Director-General, the Regulator or any other person in the service of the Department, but is not divested of any power so delegated and may rescind or amend any decision made in the exercise of such a power except where any licensee or registered unreserved postal service operator will be affected adversely thereby.

(5) The Minister may not delegate a power conferred on him or her by section 16(3).

Regulations

61. The Minister may, upon the advice of the Regulator, make regulations regarding— 15

- (a) the carrying out of any international postal agreement or international postal arrangement entered into under this Act or by the Government;
- (b) any matter which must or may be prescribed in terms of this Act;
- (c) in general any matter which is necessary or expedient in order to achieve the objects of this Act; and 20
- (d) the conveyance of postal articles, the general powers and duties of conveyers, legal possession or ownership of postal articles for purposes of contravention of this Act, mail fraud, theft and matters incidental thereto. 20

CHAPTER VIII

OFFENCES 25

Failure to produce licence or registration certificate

62. Any postal service operator who refuses or fails to produce a licence or registration certificate for inspection when required to do so in terms of this Act is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment. 30

Failure to produce books and records

63. Any person who fails to comply with a notice in terms of section 25 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Failure to appear at meeting of Regulator 35

64. Any person who, without any reasonable excuse, fails to appear at a meeting of the Regulator after receiving written notice to appear at the meeting is guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Obstructing officer in performance of functions 40

65. Any person who obstructs an inspector or any officer in the performance of his or her functions in terms of this Act is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Forgery of stamps, dies and other articles

66. (1) Any person who—

- (a) makes, alters, imitates or imports or assists in making, altering, imitating or importing any postage stamp, date stamp, card, envelope, 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 postal company or acknowledgement of deposit or any form or paper similar to that used or made for the purposes of the functions of the postal company or by any postal authority, or uses, issues, offers, exposes for sale, sells, deals in, sends by post or disposes of or has in his or her 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 imitation contrary to this section; 5
- (b) engraves or in any matter 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 the functions of the postal company or by any postal authority, or sells, disposes of, purchases, receives, or has in his or her custody or possession any plate or material so engraved or made; 10
- (c) makes or assists in making or has in his or her 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 the functions of the postal company or by any postal authority; 20
- (d) makes or assists in making or has in his or her 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 the functions of the postal company or by any postal authority, or makes, purchases, sells, disposes of or receives or has in his or her custody or possession any paper provided or made for the purpose of being used for any postage stamps or for any other purposes of the functions of the postal company or by any postal authority before the same has been issued for public use; 25
- (e) makes use of any stamp, die, plate or paper engraved or made for the purposes of the functions of the postal company or by any postal authority, or sells, disposes of, purchases, receives or has in his or her custody or possession any such paper or material whatever, bearing an impression or mark of any such stamp, die or plate; or 30
- (f) makes on an 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 the functions of the postal company or by any postal authority or any words, letters, devices 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, is, subject to subsection (2), guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding seven years or to both a fine and such imprisonment and any stamp, die, plate, instrument or material found in the possession of any person in contravention of this section may be seized and forfeited to the State. 40

(2) It is a defence to any charge in terms of subsection (1) to prove on a balance of probabilities that the accused had due authority or lawful excuse to act as he or she did, 50

Illegal practices in connection with postal articles and premises

67. Any person who—

- (a) without due authority places or paints anything whatsoever upon or wilfully injures, disfigures or tampers with any postage or any card, notice or other

property of or used by or on behalf of the postal company or commits a nuisance on or against any post office or against or upon any such card, notice or property;

(b) detains, secretes or keeps any mail or postal article which ought to have been delivered to another person or which has been found by himself or herself or by any other person; or

(c) by false pretence or misstatement induces any officer to deliver to him or her or to any other person any postal article not addressed to or intended for either of them,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment, without prejudice to any right the postal company may have of proceeding civilly against any person convicted under paragraph (a) for compensation for such damage as may have been caused by him or her.

Damage to post office or mail

68. (1) Any person who sends in or with any postal article or puts into or against any post office any fire, match or light or any explosive or dangerous, filthy, noxious or deleterious matter or thing or any matter or thing which is likely to injure or damage any post office, person or mail is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding seven years; or to both a fine and such imprisonment.

(2) Notwithstanding anything to the contrary contained in any law, the postal company may cause any article referred to in subsection (1) or any other postal 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 or she considers to be dangerous or may otherwise dispose thereof.

(3) The postal company may, subject to special precautions determined by it, exempt from the provisions of this section noxious or deleterious matter sent in the interest of public health.

Irregular opening of or tampering with mail

69. Any person who otherwise than in pursuance of his or her duty opens or tampers with or wilfully destroys, makes away with or secretes any mail or postal article or allows any mail or postal article to be opened or tampered with, destroyed, made away with or secreted is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding seven years; or to both a fine and such imprisonment.

Wilfully obstructing or delaying mail

70. Any person who wilfully interferes with the conveyance of any mail or through whose act or neglect the conveyance of any mail is interfered with, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one month for each hour or part of an hour during which the delivery of the mail is delayed in consequence of any such interference or to both a fine and such imprisonment.

Wilful opening or delay of postal article or telegram

71. (1) Any person who wilfully opens any postal article or telegram which he or she knows ought to have been delivered to another person or does any act or thing whereby the due delivery of that article or telegram to such other person is prevented, obstructed or delayed, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) This section does not apply to any person who is the parent or in the position of parent or guardian of the addressee if the addressee is a person under sixteen years of age.

Impersonating officer

72. Any person who impersonates or represents himself or herself to be an officer is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

False declarations

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73. Any person who, in appearing before a Regulator or in applying for a licence makes a false statement knowing it to be false, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Offences regarding telegrams

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74. Any person who knowingly sends, delivers or causes to be sent or delivered to any officer for the purpose of being transmitted as a telegram any message or communication which has been wilfully and without due authority altered or which purports to be signed or sent by any other person without that person's consent, or who wrongfully signs any telegram with the name of another person without that person's consent or with the name of some fictitious person or who wilfully and without the consent of the sender alters any telegram or writes, issues or delivers any message or communication which purports to be a telegram received through a telegraph office but which was not so received, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

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20**Divulging contents of telegrams**

75. Any person who, not being a witness in a court of law, without the consent of the sender or addressee or receiver or otherwise than in pursuance of his or her duties, opens or tampers with or divulges the contents or substance of any telegram or discloses its existence otherwise than by delivering it or giving a copy thereof to the person to whom he or she is authorised to deliver it or to give such copy or who maliciously or wilfully misdelivers, puts the incorrect time on, secretes, intercepts, destroys, makes away with, alters or omits to transmit or deliver or presents or delays the delivery or transmission of any telegram or makes use for his or her own purposes of any knowledge he or she may acquire of the contents thereof, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

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30**Attempting to commit or procuring commission of offences**

76. Any person who attempts to commit any offence in terms of this Act or solicits or authorises or endeavors to employ, cause, procure, aid, abet, incite or counsel any other person to commit an offence in terms of this Act, is guilty of an offence and liable to the same punishment as for the actual commission of the offence.

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Penalty for offences for which no special penalty provided

77. Any person who contravenes or fails to comply with any provision of this Act for which no special or other penalty is provided, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

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Evidence in criminal proceedings

78. In any information or complaint as to or any prosecution for any crime or any offence committed in respect of the postal company or of any mail, telegram or any property, money, money order, postal order or other document authorised to be used for the purpose of remitting, paying or depositing money through or with the postal company, as the case may be or with respect to any act, deed, matter or thing which has

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been done or committed with any malicious, injurious or fraudulent intent relating to or concerning the postal company, mail, telegram, property, money, money order, postal order or other document, it is sufficient—

- (a) to allege that any such mail, telegram, property, money, money order, postal order or other document belongs to or is in the lawful possession of the postal company and to put in the same as an exhibit and it is not 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 committed with intent to injure or defraud the postal company, without setting forth its or any other name, addition or description whatsoever; and
- (c) if the offender was an officer, to allege that the offender was an officer at the time of committing of the offence without stating the nature or particulars of his or her employment.

Acceptance of official marks

79. In any proceedings for the recovery of any sum payable in terms of this Act in respect of a postal article—

- (a) the official stamp or mark thereupon denoting the sum due is *prima facie* evidence of the liability of that postal article to the charge specified thereon;
- (b) the production of such postal article having thereon a post office stamp or mark denoting that the article has been refused or that the person to whom the same is addressed is dead or could not be found, is *prima facie* evidence of the fact so denoted.

Operating of postal services without licence or registration certificate

80. (1) Any person who operates a postal service except in terms of this Act in terms of a licence or registration certificate issued to that person in terms of this Act is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) The court convicting such person may, in addition to any penalty that it may impose, order—

- (a) a fine not exceeding R 100 in respect of every letter received, collected, dispatched, conveyed, tendered or delivered;
 - (b) confiscation to the State of any device, apparatus or machine in connection with or by means of which the offence was committed unless it is proved that the apparatus, device or machine in question does not belong to the person so convicted and that its owner was unable to prevent its unlawful use by the person so convicted;
 - (c) the cancellation of any licence or registration certificate held under this Act by the person so convicted and prohibit him or her from holding any licence or registration certificate under this Act for a specific period,
- (3) The Regulator must investigate and adjudicate—
- (a) any alleged contravention of or failure by a licensee or registered unreserved postal service operator to comply with this Act;
 - (b) any failure by a licensee to comply with the relevant terms and conditions of the licence or any agreement for provision of postal services as contemplated in this Act;
 - (c) any failure by the licensee to provide a postal service to any customer where such customer has, after complaint to the licensee, not obtained satisfaction.
- (4) Where the Regulator after investigation, finds that the licensee or the registered unreserved postal service operator has been responsible for a failure or contravention contemplated in subsection (3), the Regulator may—
- (a) direct the licensee or registered unreserved postal service operator to desist from any further failure or contravention;
 - (b) direct the licensee or registered unreserved postal service operator to pay the prescribed fine;

- (c) direct the licensee or registered unreserved postal service operator to take such remedial and other steps as may be determined by the Regulator;
- (d) revoke the licence of the licensee or the registration certificate of the registered unreserved postal service operator
- (5) The provisions of section 24(4) apply to any person affected by an order 5 contemplated in subsection (4) of this section.
- (6) Where the Regulator is satisfied that the failure or contravention in question constitutes an offence, it must refer the record of the investigation to the Attorney - General concerned.

CHAPTER IX

10

REPEAL AND AMENDMENT OF LAWS

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 37 of 1984, section 1 of Act 85 of 1991 and section 3 of Act 101 of 1992

- 81.** Section 1 of the Post Office Act, 1958, is hereby amended— 15
- (a) by the deletion of the following definitions:
- “mail”
- “mailbag”
- “Master”
- “master of any vessel” 20
- “money order”
- “National Savings Certificate”
- “port”
- “postage”
- “ ‘postage stamp’ or ‘stamp’ ” 25
- “postal article”
- “postal authority”
- “postal order”
- “postmaster”
- “post office” 30
- “ ‘Savings Bank’ or ‘Post Office Savings Bank’ ”
- “sender”
- “telegram”
- “vessel”
- (b) by the substitution for “postal service” of the following definition: 35
- “postal service” means the affairs which [the Director-General or, subsequent to the postal transfer date] the postal company is, subject to the Postal Services Act, 1998, entitled to conduct [in terms of Chapters 111, IV and V], including the [exclusive privilege of] receiving, collecting, dispatching, conveying and delivering of letters and [of] the performing of all incidental 40 services.

Amendment of section 3 of Act 44 of 1958, as amended by section 2 of Act 56 of 1973, section 4 of Act 113 of 1976, section 5 of Act 85 of 1991, section 1 of Act 11 of 1997 and section 1 of Act 53 of 1997

- 82.** Section 3 of the Post Office Act, 1958, is hereby amended— 45
- (a) by the substitution in subsection (4) for paragraph (c) of the following paragraph:
- “(c) must have articles of association providing, amongst other things in the case of the postal company, that the affairs of the company must be managed by a board of directors appointed in terms of the articles of association.”; and 50
- (b) by the substitution for subsection (5) of the following subsection:
- “(5) Notwithstanding the provisions of the Companies Act, the postal company [shall not have more than one member] and the telecommunications company may have fewer than seven members.”. 55

Amendment of section 4 of Act 44 of 1958, as amended by section 1 of Act 80 of 1965, section 4 of Act 113 of 1976, section 5 of Act 85 of 1991 and section 12 of Act 129 of 1993

83. Section 4 of the Post Office Act, 1958, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5

“(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;”.

Amendment of section 5 of Act 44 of 1958, as amended by section 35 of Act 94 of 1974, section 4 of Act 113 of 1976, section 5 of Act 85 of 1991 and section 2 of Act 11 of 1997 10

84. Section 5 of the Post Office Act, 1958, is hereby amended by the deletion of subsection (7).

Amendment of section 12W of Act 44 of 1958, as inserted by section 10 of Act 101 of 1992 and amended by section 3 of Act 35 of 1995 and section 3 of Act 53 of 1997 15

85. Section 12W of the Post Office Act, 1958, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsections (2) and (3) and notwithstanding anything to the contrary contained in the Companies Act, the postal company [may, for so long as all its issued equity shares are held by the State, or] and the telecommunications company may, for as long as the majority of [its] their issued equity shares are held by the State, issue stock, securities, bills, promissory notes, debentures, debenture stock, obligations or other financial instruments as proof of a loan of money and may negotiate or have them listed in the same manner and on the same financial markets or on the same stock exchange as is customary in the case of similar financial instruments issued by the State.”. 20 25

Amendment of section 115 of Act 44 of 1958, as substituted by section 8 of Act 80 of 1965, section 65 of Act 85 of 1991 and section 22 of Act 88 of 1996

86. The following section is hereby substituted for section 115 of the Post Office Act, 1958: 30

“Non-liability of postal company and telecommunications company

115. Save as is otherwise provided in this Act or any other law, the postal company or telecommunications company as the case may be, or any officer or 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 or she is obliged to convey, in terms of this Act [(in this section and in section 115bis referred to as a mail carrier)] or any other law or any employee of a mail carrier shall not be liable 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 under the provisions of this Act or any other law shall, to whomsoever made, discharge the postal company 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, mistake, neglect, loss or delay which may have been committed or have occurred in connection therewith: Provide that nothing in this section contained shall be construed as exempting the postal company or telecommunications company, as the case may be, from liability for damage or loss caused to any person by reason of fraud on the part of an 35 40 45 50

officer in relation to his or her 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 or her duties.”.

Repeal of certain sections of Act 44 of 1958 5

87. Sections 6,7, 11, 12, 13, 19, 22, 24 to 31,33 to 47,51,52, 54,65,70, 76A, 77A, 77B, 77C, 77F, 90A, 91 to 98, 101, 104, 113, 115*bis* and 118 of the Post Office Act, 1958, are hereby repealed.

CHAPTER X

SAVINGS, SHORT TITLE AND COMMENCEMENT 10

Savings

88. Any convention or agreement entered into or in force or any regulation, notice, approval, authority, return, certificate or document issued, made, promulgated, given or granted and any other action taken under any provision repealed by this Act, must be regarded as having been entered into, issued, made, promulgated, given, granted or taken under the corresponding provision of this Act and remains in force until repealed.

Short title and commencement

89. This is the Postal Services Act, 1998, which take effect on the date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

RESERVED POSTAL SERVICES

1. The reserved postal services include—
 - (a) all letters, postcards, printed matter, small parcels and other postal articles subject to the mass and size limitations of paragraph 3; 5
 - (b) issuing of postage stamps; and
 - (c) the provision of roadside collection and address boxes.
2. For the purposes of this Schedule, a letter means any form of written communication or other document, article or object that is directed to a specific person or persons or specific address and is to be conveyed other than by electronic means and includes a parcel, package or wrapper containing any such communication or article conforming to the mass and size limitations set out in paragraph 3. 10
3. The reserved postal services include all items described in paragraphs 1(a) and 2 of a mass up to and including one kilogram as well as dimensions which enable it to fit into a rectangular box with the following dimensions: 15
 - length 458 mm
 - width 324 mm
 - thickness 100 mm

Cylinders having a maximum length of 458 mm and 100 mm thickness and a mass of up to one kilogram are regarded as letters. 20
4. The following exemptions from letter mail apply and are not subject to licensing in terms of this Act:
 - (a) Delivery by an employee of the sender exclusively for the private affairs of the sender;
 - (b) unaddressed mail; 25
 - (c) the exchange or service of legal process, proceedings, pleadings, affidavits or depositions;
 - (d) letters exceeding the stipulated dimensions or mass;
 - (e) occasional letters delivered by an individual not in the business of delivering letters; 30
 - (f) trade announcements, circulars, printed extracts from newspapers, or advertisements which are not addressed to any person;
 - (g) newspapers and periodicals.

SCHEDULE 2**UNRESERVED POSTAL SERVICES**

- I, Unreserved postal services include—
 - (a) all letters, postcards, printed matter, small parcels and other postal articles larger or heavier than the dimensions set out in item 3 of Schedule 1 up to and including thirty kilograms;
 - (b) courier services in respect of items mentioned in paragraph (a); and
 - (c) any other postal service that falls outside the ambit of the reserved services as set out in Schedule 1.
2. The following exemptions apply to unreserved postal services and are not subject to registration in terms of the Act:
 - (a) Delivery by an employee of the sender exclusively for the private affairs of the sender;
 - (b) unaddressed mail;
 - (c) the exchange or service of legal process, proceedings, pleadings, affidavits or 15 depositions;
 - (d) occasional letters delivered by an individual not in the business of delivering letters;
 - (e) trade announcements, circulars, printed extracts from newspapers, or advertisements which are not addressed to any person;
 - (f) newspapers and periodicals.

MEMORANDUM ON THE OBJECTS OF THE POSTAL SERVICES BILL, 1998

Existing legislation regarding postal services was formulated over the past century. This Bill is part of the legislative reform aimed at restructuring and reorganisation of the postal sector. The Postal Services Bill responds to the general policy directives outlined in the White Paper on Postal Policy. The White Paper arises primarily from lessons gained from work over a period of three years, which included an extensive process of public consultation.

A Technical Task Team was appointed in September 1996 to formulate the Postal Policy framework. This resulted in the drafting of a discussion document. A consultative conference was held in Midrand from 21 to 23 November 1996.

The Post Office is active in the communications and distribution market, the retail market and the financial services market. Competition is considered healthy for the development of the sector and the economy, and is to be encouraged subject to the meeting of the requirements of universal service obligations and related regulations. In order to ensure universal service, a set of reserved services has been established, in which the universal service provider receives a degree of monopoly protection. The monopoly service includes all letter mail, the issuing of stamps and roadside letterbox collection. All other services, including parcel and express services, and any future services differing from those defined as reserved, are categorised as non-reserved and are subject to competition and market forces.

The intention of the Bill is to give effect to the legislative principles contained in the White Paper. It seeks to establish an orderly regulatory environment for postal services, to monitor and regulate tariff structures, the provision of universal services and other licence conditions, quality, research, standards and enforcement.

For this purpose the Bill provides for the establishment of a Postal Regulator with its support staff as a Directorate within the Department of Communications. It also provides for the licensing and for the protection of the monopoly of the postal company for such period of time as may be necessary. The White Paper on Postal Policy provides for the monopoly to be reviewed after three years. Operators operating postal services outside of the monopoly and providing services in the unreserved postal services area, including couriers, will be required to register with the Postal Regulator.

A decisive programme for Black Economic Empowerment is to be initiated. The development of human resource capacity is considered an essential component of the postal policy.

The rapid advances made in technology provide both a threat and opportunity to the postal sector. New technology will be incorporated into the Post Office, facilitating the improvement and expansion of service and quality of service offered.

The Bill furthermore provides for a large number of existing sections in the Post Office Act, 1958, relating to the postal company and its operations to be repealed, and where appropriate, to be incorporated in the Postal Services Bill, 1998.

The Postbank provides a unique opportunity to provide savings and banking services to rural communities. The Postbank will be restructured in terms of the White Paper towards an autonomous company owned by the postal company and Government. Proposals regarding the legal framework for the Postbank as the bank of first choice for the lower income group are underway. The Postbank will be used to encourage a culture of saving amongst its target clientele.

Crime can be committed both through and within the postal system. Thus the enforcement provisions in the Bill encompass postal crimes and offences as well as general crimes.

PARLIAMENTARY PROCEDURE

The Department of Communications and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.