

REPUBLIC OF SOUTH AFRICA

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# POSTAL SERVICES AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 42027  
of 9 November 2018)  
(The English text is the official text of the Bill)*

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(MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES)

**[B 45—2018]**

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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 amend the Postal Services Act, 1998, so as to amend and insert certain definitions; to add a number of objects; to substitute “Regulator” for “Authority” wherever it appears in the Act, to provide for the regulation of the sector, particularly the private operators and extra-territorial offices of exchange; to ensure the contribution of private operators to the universal postal services; to provide for a new licensing framework for the sector that encourages participation by SMMEs; to provide for the repositioning of the South African Post Office to take advantage of the new opportunities imposed by digital technologies; to provide for the contribution by the South African Post Office to e-Government by providing services for different governments departments and e-commerce platform; to provide for the national addressing policy approach for the assignment of physical addresses to rural and traditional communities and the development, maintenance and management of a National Address Database for the Republic; to provide for a clear process for the approval of annual and commemorative stamps; to provide for a clear process for the development of philatelic products; and to provide for matters connected therewith.

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

### **Amendment of section 1 of Act 124 of 1998, as amended by section 1 of Act 33 of 2001, section 1 of Act 22 of 2006 and section 31 of Act 22 of 2011**

1. Section 1 of the Postal Services Act, 1998 (Act No. 124 of 1998) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “courier service” of the following definitions:

“ ‘**address**’ means an unambiguous specification of a point of service delivery as defined in the South African National Standards (SANS) 1883-1;  
‘**Authority**’ means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);  
‘**Committee**’ means Stamp Advisory Committee of the postal company;”

- (b) by the deletion of the definition of “courier service”;
- (c) by the insertion before the definition of “Department ” of the follows definition:  
     “**‘day’** means any day excluding a public holiday and a weekend;”;
- (d) by the substitution for the definition of “Department” of the following definition: 5  
     “**‘Department’** means the Department [of Communications] responsible for telecommunications and postal services;”;
- (e) by the insertion after the definition of “Department” of the following definition: 10  
     “**‘designated operator’** means an operator determined by the Minister in consultation with the Authority to provide universal postal services in terms of section 24A;”;
- (f) by the insertion after the definition of “Director-General” of the following definition: 15  
     “**‘extra-territorial office of exchange’** means an office or facility established and operated by a licensed foreign operator in the Republic;”;
- (g) by the substitution for the definition of “postal authority” of the following definition: 20  
     “**‘foreign operator’** means any duly constituted postal operator of any foreign country or place;”;
- (h) by the substitution for the definition of “letter” of the following definition: 25  
     “**‘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 with the following dimensions: length 458 mm, width 324 mm, thickness 100 mm, cylinders having a maximum length of 458 mm and 100 mm thickness a mass of up to one kilogram;” 30
- (i) by the insertion after the definition of “letter” of the following definition:  
     “**‘licence’** means licence to provide reserved or unreserved postal services issued by the Authority under this Act;”;
- (j) by the substitution for the definition of “money order” of the following definition: 35  
     “**‘money order’** means a money order issued in terms of this Act or by any [postal authority] foreign operator for payment in terms of this Act;”;
- (k) by the insertion after the definition of “money order” of the following definitions: 40  
     “**‘National Address Database’** data sets as defined in the Spatial Infrastructure Act, 2003 (Act No. 54 of 2003);  
     “**‘organ of state’** means an organ of state as defined in section 239 of the Constitution;” 45
- (l) by the deletion of the definition of “National Savings Certificate”
- (m) by the insertion before the definition of “postage” of the following definition:  
     “**‘person’** means a natural or juristic person;”;
- (n) by the deletion of the definition of “postal authority”;
- (o) by the substitution for the definition of “postal company” of the following definition: 50  
     “**‘postal company’** means the [postal company contemplated in section 3(1) of the Post Office Act, 1958 (Act No. 44 of 1958)] South African Post Office SOC Ltd contemplated in section 3(1) of the South African Post Office SOC Ltd Act, 2011 (Act No. 22 of 2011);” 55
- (p) by the substitution for the definition of “postal order” of the following definition:  
     “**‘postal order’** means a postal order issued under this Act or by any [postal authority] foreign operator for payment under this Act;”;
- (q) by the substitution for the definition of the “postal services” of the following definition: 60  
     “**‘postal service’** means a reserved postal service or an unreserved postal services as [contemplated in Schedule 1 and Schedule 2, respectively] defined in this Act;”;

- (r) by the insertion after the definition of “postal service” of the following definition:  
     “**‘postal services operator’** means any person licensed in terms of Chapter III to provide reserved or unreserved postal services;”;
- (s) by the substitution for the definition of “post office” of the following definition: 5  
     “**‘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 10  
     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;] means the Post Office as defined in the South African Post Office SOC Ltd Act, 2011 (Act No. 22 of 2011);”;
- (t) by the insertion after the definition of “post office” of the following definition: 15  
     “**‘Post Office Act’** means the Post and Telecommunications Related Matters Act, 1958 (Act No. 58 of 1958);”;
- (u) by the substitution for the definition for the “reserved postal services” of the 20  
     following definition:  
     “**‘reserved postal services’** means the services [contemplated in Schedule 1] that can only be provided by the designated operator as determined by the Minister in the *Gazette* in consultation with the Authority;”;
- (v) by the insertion after the definition of “this Act” of the following definition: 25  
     “**‘underserviced area’** means the geographically identified area prescribed by the Authority in accordance with this Act;”;
- (w) by the substitution for the definition of “universal postal services” of the following definition: 30  
     “**‘universal postal services’** means [a universal service as defined in a licence issued in terms of section 16] the equitable and accessible provision of minimum range of postal services to all citizens without discrimination and regardless of physical location as prescribed by the Authority;”;
- (x) by the insertion after the definition of “universal postal service” of the following definition: 35  
     “**‘unreserved postal operator’** means an operator licenced to provide unreserved postal services in accordance with this Act;”;
- (y) by the substitution for the definition of “unreserved postal services” of the 40  
     following definition:  
     “**‘unreserved postal services’** means [the services contemplated in schedule 2] the delivery and or courier of all letters, postcards, printed matters, small parcels and other postal articles up to and including 45  
     30kg;”;
- (z) by the insertion after the definition of “unreserved postal services” of the following definition:  
     “**‘value added services’** means services contemplated under section 44A;”;
- (za) by the deletion of the definition of “telecommunication company” 50  
     (zb) by the deletion of the definition of “telecommunications line”.

## Amendment of section 2 of Act 124 of 1998

2. Section 2 of the principal Act is hereby amended by the deletion of “and” at the end of paragraph (q) and by the insertion after paragraph (q) of the following paragraphs: 55
- “(qA) encourage and ensure the expansion of postal services and infrastructure including ICTs, government and value-added services;
- (qB) ensure the establishment of funding mechanisms for universal postal services; and
- (qC) ensure the regulation of extra-territorial offices of exchange;”.

**Amendment of section 15 of Act 124 of 1998, as amended by section 1 of Act 33 of 2003, section 24 of Act 3 of 2006 and section 5 of Act 22 of 2006**

3. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

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

**Amendment of section 16 of Act 124 of 1998, as amended by section 1 of Act 33 of 2003, section 24 of Act 3 of 2006 and section 5 of Act 22 of 2006**

4. Section 16 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

“(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,]** underserved areas with a view to achieving universal postal service.”.

**Substitution of section 20 of Act 124 of 1998**

5. The following section is hereby substituted for section 20 of the principal Act:

**“Prohibition on operating unreserved postal service without [registration certificate] licence**

**20.** No person may operate an unreserved postal service **[contemplated in Schedule 2]**, unless such person is **[registered]** licenced with the **[Regulator]** Authority in terms of this Act and is in possession of a **[registration certificate issued by the Regulator]** licence.”.

**Insertion of section 20A in Act 124 of 1998**

6. The following section is hereby inserted after section 20 of the principal Act:

**“Categories of licences**

**20A.** Upon receipt of an application made in accordance with section 21, the Authority must grant the following licences:

- (a) International operator: licence to provide postal services and operated inbound and outbound deliveries on a world-wide network;
- (b) regional operator: licence to provide postal services across the Southern African Development Community (SADC) region;
- (c) national operator: licence to provide postal services nationally across the country;
- (d) local operator: licence to provide postal services across a particular province, municipality or metropolitan only.”.

**Substitution of section 21 of Act 124 of 1998, as amended by section 24 of Act 3 of 2006**

7. The following section is hereby substituted for section 21 of the principal Act:

**“Application for [registration] licence for unreserved postal services**

**21. (a)** An application for **[registration with the Regulator]** a licence to operate an unreserved postal service must be in the format and in accordance with the procedure prescribed by the **[Regulator]** Authority and must be accompanied by the prescribed **[registration]** application fee.

**(b)** The Authority must, where it rejects an application, inform the applicant of the rejection and give reasons for the rejection.

- (c) A licence to provide unreserved postal services may be granted to a—
- (i) citizen of the Republic; and
  - (ii) juristic person registered under the laws of the Republic and has its principal place of business located within the Republic.”.

**Substitution of section 22 of Act 124 of 1998, as amended by section 2 of Act 33 of 2003** 5

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

**“Operators regarded as having been [registered] licenced**

**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,]** unreserved postal service and is registered with the Authority must be regarded as being **[registered]** licenced 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]** licenced in terms of paragraph (a) if that person has failed to apply for **[registration]** a licence to the **[Regulator]** Authority within **[90]** 120 days after the date of commencement of this section or within such extended period as the **[Regulator]** Authority may allow. 15

(c) After receipt of an application in terms of paragraph (b) the **[Regulator]** Authority must, subject to paragraph (d), register the applicant and issue a **[registration certificate]** licence. 20

(d) A person may not be **[registered]** licenced to provide **[a courier service]** unreserved postal services in terms of this section unless that person undertakes— 25

- (i) to receive, collect and deliver items contemplated in **[item 1(b) of Schedule 2]** this Act;
- (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 national and international borders; and 30
- [(iv) to deliver items within the Republic at the latest by 13:00 on the first working day after receipt thereof; and]**
- (v) to clear items through customs, where applicable.”.

**Insertion of sections 22A, 22B, 22C and 22D in Act 124 of 1998** 35

9. The following sections are hereby inserted after section 22 of the principal Act:

**“Licence fees**

**22A.** (1) The Authority must—

- (a) determine licence fees payable for each licence category; and
  - (b) publish such fees in the *Gazette*. 40
- (2) A licence referred to in section 20A will only be granted upon payment of a licence fee determined under subsection (1).
- (3) The Authority must determine licence conditions for each of the licence categories. 45

**Exemptions to postal services** 45

**22B.** The following postal services are exempted from licencing as contemplated in this Act:

- (a) Delivery by an employee of the sender exclusively for the private affairs of the sender;
- (b) unaddressed mail; 50
- (c) an exchange or service of legal process, proceedings, pleadings, affidavits or 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; and
- (f) newspapers and periodicals.

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### **Regulation of extra-territorial offices of exchange**

**22C.** (1) No foreign operator, whether private or public, must establish an extra-territorial office of exchange in the country or use Universal Postal Union forms without having obtained authorisation from the Authority.

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(2) Any foreign operator wishing to establish and operate an extra-territorial office of exchange in the country must apply for authorisation from the Authority in the manner prescribed.

(3) The Authority must, in consultation with the Minister, develop regulations regarding the establishment and registration process of extra-territorial offices of exchange.

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(4) Any mail coming from an extra-territorial office of exchange must be treated as international mail and be charged according to international tariffs by a designated operator.

(5) A postal article originating from a foreign country to be processed through an extra-territorial office of exchange must—

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- (a) be considered commercial cargo upon arrival in the country;
- (b) go through a custom clearance procedure; and
- (c) have all postage and dispatch codes to show which postal operator runs the extra-territorial office of exchange.

(6) Where the incoming postal items from an extra-territorial office of exchange are to be delivered by the designated operator to addresses in the country or elsewhere the following conditions must apply:

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- (a) The postal item must be mailed as either domestic or international mail charged at domestic postage rates or Universal Postal Union terminal dues rates as determined by the postal company.
- (b) the postal company in consultation with the Authority must determine which mail is charged at domestic rates and which mail is charged at Universal Postal Union terminal dues rates; and
- (c) The postal company may enter into a bilateral agreement with the foreign operator where an extra-territorial office of exchange originates to allow for the cooperation with regard to the distribution of mail items emanating from an extra-territorial office of exchange, and such agreement must be concluded in consultation with the Authority.

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(7) An extra-territorial office of exchange is not allowed to use Universal Postal Union forms and documentation for the purposes of providing postal services unless authorised by the Authority in line with the Universal Postal Union rules.

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### **Operators having established extra-territorial offices of exchange**

**22D.** (1) (a) Any foreign operator that has established an extra-territorial office of exchange prior to the commencement of this Act within the Republic, shall be deemed authorised.

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(b) A foreign operator referred to in paragraph (a) must apply for authorisation to the Authority in the prescribed manner and form within a period of six months or within such extended period as the Authority may allow after the commencement of this Act.

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(2) In the event of the foreign operator failing to apply for authorisation in terms of subsection (1)(b), the Authority must order the foreign operator to cease the operation until they have complied with the relevant order.”.

**Substitution of section 24 of Act 124 of 1998, as amended by section 24 of Act 3 of 2006**

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

**“Suspension or cancellation of licence [or registration certificate]**

24. (1) Notwithstanding anything to the contrary contained in this Act, the [Regulator] Authority 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.

(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].

(4) Any person who is aggrieved by the suspension or cancellation of his or her licence [or registration certificate] in terms of subsection (1) may apply to a court to review a decision of the [Regulator] Authority in terms of this section.”.

**Insertion of section 24A in Act 124 of 1998**

11. The following section is hereby inserted after section 24 of the principal Act:

**“Universal postal services and funding**

24A. (1) The Minister must, in consultation with the Authority, determine operators responsible for universal postal services and such services must be included in the licence.

(2) Universal postal services must be funded from the fund established by the Minister and through appropriation by Parliament.

(3) A holder of a licence granted in terms of this Act to provide postal services must pay, in addition to any other fees contemplated in this Act or any related legislation, the prescribed contributions to the fund referred to in subsection (2), in compliance with legislation that empowers imposition of the levies to fund universal postal services.

(4) The Minister must, in consultation with the Authority, determine—

- (a) the amount to be contributed to the fund by the licensee;
- (b) the dates when such contributions become payable; and
- (c) the manner in which the contributions must be paid.

(5) The operator referred to in subsection (1) is entitled to apply for funding from the fund in the manner prescribed by the fund.”.

**Insertion of sections 29A and 29B in Act 124 of 1998**

12. The following sections are hereby inserted after section 29 of the principal Act:

**“Annual stamp programme**

29A. (1) The postal company in conjunction with the Committee is responsible for developing an annual stamp programme a year prior to its issuing.

(2) A maximum of 15 themes must be submitted to the Minister for consideration and approval through the postal company board.

(3) A final list for the annual stamp programme must consist of not more than 10 themes.



- (4) The process for the development and approval of the annual stamp programme includes—
- (a) advertisement by the postal company in consultation with the Committee for the public or any interested party to make proposals on the themes; 5
  - (b) consideration and evaluation of the proposals by the Committee;
  - (c) recommendation to the postal company board a shortlist of not more than 15 themes by the chairperson of the Committee;
  - (d) approval of the recommended themes by the postal company board and submission to the Minister for approval; 10
  - (e) submission of the approved themes by the Minister to Cabinet for ratification; and
  - (f) overseeing by the postal company in consultation with the Committee of the design, printing and issuing of stamps.
- (5) A final approval of the design of stamps and other philatelic products must be done by the postal company in conjunction with the Committee. 15

### **Commemorative stamps**

- 29B.** (1) Subject to the approval of the Minister, the postal company may, upon request by any person, develop and issue commemorative stamps. 20
- (2) Commemorative stamps for any person must only be issued for the celebration of 50 year and 100 year anniversaries.
- (3) The Minister may, under exceptional circumstances, approve the issuing of commemorative stamps falling outside subsection (2).
- (4) The postal company, in consultation with the Committee, the requesting party or any interested party or institution, must oversee the design, printing and issuing of commemorative stamps. 25
- (5) The postal company must endeavour to use and promote South African businesses in the design and printing of philatelic products.
- (6) Any person requesting the issuing of a commemorative stamp is required to purchase a certain percentage of the stamps issued as determined by the postal company in consultation with the requesting person. 30
- (7) Any profit made from the sale of the commemorative stamps belongs to the postal company and no person, party or institution shall have a claim in the profit from such sales.”. 35

### **Amendment of section 30 of Act 124 of 1998, as amended by section 24 of Act 3 of 2006 and section 6 of Act 22 of 2006**

**13.** Section 30 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) This section does not apply to **[courier services]** unreserved postal services.” 40

### **Substitution of section 30A of Act 124 of 1998, as inserted by section 6 of Act 33 of 2001**

**14.** The following section is hereby substituted for section 30A of the principal Act:

#### **“Insurance of mail and postal articles 45**

**30A.** (a) The postal company **[may]** must provide for the insurance of mail or postal articles subjects to such terms and conditions **[as may be prescribed]** determined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998, and may enter into an agreement with any **[postal authority]** foreign operator for the reciprocal exchange of insured mail or postal articles. 50

(b) Unreserved postal operators must provide for the insurance of mail or postal articles subject to terms and conditions determined in the Short-Term Insurance Act, 1998.”.

### Insertion of section 44A in Act 124 of 1998

15. The following section is hereby inserted after section 44 of the principal Act:

#### “Provision of value-added services and infrastructure sharing

**44A.** (1) The postal company or any of its subsidiaries may provide value-added services including ICTs, electronic-commerce, electronic-post services, electronic mail, direct marketing, retail services, financial services, agency services, government services, insured letters and parcels. 5  
(2) Government departments must ensure that the reserved postal services are rendered by the postal company.  
(3) The postal company or any of its subsidiaries may share its infrastructure with any service provider on a commercial arrangement basis as part of the new revenue-generating stream.”. 10

### Amendment of section 45 of Act 124 of 1998

16. Section 45 of the principal Act is hereby amended by substitution in subsection (1) for the words proceeding paragraph (a) of the following words: 15  
“The postal company [**may**] and unreserved postal operators must—”.

### Insertion of section 46A in Act 124 of 1998

17. The following section is hereby inserted after section 46 of the principal Act:

#### “National addressing

**46A.** (1) The postal company is responsible for address production, allocation, assignment and capture in rural and underserved areas in collaboration with organs of state. 20  
(2) In the production, allocation and assignment of addresses, the postal company must comply with international and national standards on addressing. 25  
(3) The address assigned or confirmed by the postal company is recognised as official address for the purposes of services, including but not limited to postal and basic services.  
(4) The postal company must develop, maintain and manage the National Address Database for the Republic. 30  
(5) The National Address Database developed in terms of subsection (4) is the official address database for the Republic.  
(6) The postal company may enter into a collaborative maintenance agreement with other data custodians as contemplated in section 16 of the Spatial Data Infrastructure Act, 2003 (Act No. 54 of 2003). 35  
(7) The national address assignment and database must be funded through annual subsidy allocation from the government or from any other source as determined by the Minister.  
(8) The postal company must submit a request for national address funding through the Minister.”. 40

### Repeal of section 50 of Act 124 of 1998

18. Section 50 of the principal Act is hereby repealed.

### Amendment of section 54 of Act 124 of 1998

19. The following section is hereby substituted for section 54 of the principal Act:

#### “Transfer of deposits from or to another country 45

**54.** The postal company may, in accordance with arrangements made with any [**postal authority,**] foreign operator 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 currency and exchanges, place any sum so transferred to the postal company to the credit of a depositor's **[ordinary]** account.”.

**Repeal of sections 56 and 57 of Act 124 of 1998** 5

20. Sections 56 and 57 of the principal Act are hereby repealed.

**Amendment of section 80 of Act 124 of 1998, as amended by section 8 of Act 33 of 2001, section 24 of Act 3 of 2006**

21. Section 80 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading: 10  
**“Operating of postal services without licence [or registration certificate].”**;
  - (b) by the substitution for subsection (1) of the following subsection: 15  
**“(1) Any person who operates a postal service except in accordance with this Act and 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 five years or to both a fine and such imprisonment.”**; and
  - (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 20  
**“(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.”**.

**Repeal of sections 81, 82, 83, 84, 85, 86 and 87 of Act 124 of 1998** 25

22. Sections 81, 82, 83, 84, 85, 86 and 87 of the principal Act are hereby repealed.

**Repeal of Schedules 1 and 2 to Act 124 of 1998**

23. Schedules 1 and 2 to the principal Act are hereby repealed.

**Short title and commencement**

24. This Act is called the Postal Services Amendment Act, 2018, and comes into 30  
operation on a date to be fixed by the President by proclamation in the *Gazette*.

## **EXPLANATORY MEMORANDUM ON THE OBJECTS OF THE POSTAL SERVICES AMENDMENT BILL, 2018**

### **1. OBJECTS OF THE BILL**

- The object of the Bill is to amend the Postal Services Act, 1998 (Act No. 124 of 1998), so as to align the Act with the National Integrated ICT Policy White Paper approved by Cabinet on 28 September 2016 and to provide as follows:
- to provide for the regulation of the sector, particularly the private operators and Extra-territorial Offices of Exchange (ETOE's);
- to ensure the contribution of private operators to the universal postal services; to provide for a new licensing framework for the sector that encourages participation by SMME's;
- to provide for the repositioning of South African Post Office(SAPO), to take advantage of the new opportunities imposed by digital technologies,
- to provide for the contribution by SAPO to e-Government by providing services for different governments Departments and e-commerce platform;
- to provide for the national addressing policy approach for the assignment of physical addresses to rural and traditional communities and the development and maintenance of national address database for the Republic;
- to provide for a clear process for the approval of annual and commemorative stamps;
- to provide for a clear process for the development of philatelic products; and
- to provide for matters connected therewith.

### **2. SUMMARY OF THE BILL**

#### **Clause 1**

Clause 1 substitutes, deletes and adds certain definitions.

#### **Clause 2**

Section 2 is amended to insert new objects that encourage the expansion of postal services and promote the use of ICTs by the Post office while encouraging the provision of government and value added services and to ensure the regulation of extra-territorial offices of exchange. The clause also ensures the establishment of funding mechanism for the Universal Services Obligation.

This is in line with the ICT White Paper policy objectives for the sector where operators, in particular to encourage SAPO to ensure efficiency in its operations through the use of ICTs and develop new revenue streams to ensure sustainability and growth within the sector.

#### **Clause 3**

Section 15(3) is amended to delete reference to Schedules. This is in line with the new definitions of the reserved and unreserved postal services. With the repeal of Schedules 1 and 2 the Minister will now be able to review the reserved and unreserved services without having to amend the law by going through Parliament in order to make such changes. There are limitations to the powers of the Minister in circumstances where he makes changes in the same section 15(3) of the Act.

#### **Clause 4**

Section 16(7) is amended to replace areas and communities which are not serviced or adequately serviced by postal service with “underserviced areas”. This is in line with the new definition of underserviced area.

#### **Clause 5**

Amendment of section 20 to replace words “registered” with “licensed” and “Regulator” with “Authority”, by deleting reference to Schedule 2. This is consequential amendment in line with the new licensing framework provided in this amendment.

#### **Clause 6**

Section 20A is inserted to provide for the categories of licences. The new licensing framework provides categorisation of licences to ensure that even small operators find space within the sector and ensure the development and participation of SMMEs.

#### **Clause 7**

Amendment of section 21 to substitute the word “registered” with “licensed” and “registration” with “licence”. This is a consequential amendment in line with the new licensing framework. The amendment also includes provision dealing with circumstances where the Authority rejects an application for a licence. It further requires the company applying for a licence to comply with other pieces of legislation in the country such as registering under the Companies Act, 2008 (Act No. 71 of 2008).

#### **Clause 8**

Amendment of section 22 to substitute the word “registered” with “licensed” which is a consequential amendment, in line with the new licensing framework. This clause also amends section 22 of the Act by deleting reference to Schedule 2 and the words “courier services and unreserved courier service”. The Integrated ICT White Paper and the existing legislation provide for two postal services categories (i.e. reserved and unreserved), therefore the terms have been deleted and incorporated as part of the unreserved postal services. It also deletes reference to timelines for delivery referred to. Section 22 further deals with the operators that are currently registered by deeming them licensed on condition that they within 120 days or such extended period by the Authority indicate under which category they wish to be licensed and to provide necessary documents as required by the Authority.

#### **Clause 9**

Section 22A is inserted to empower the Authority to determine licence fees and conditions for each of the categories and for such to be published in the Government *Gazette*.

Section 22B is inserted to provide for the exemptions that are not regarded as Postal services and are not subject to registration in terms of the Act.

Section 22C is inserted to provide for the regulation of ETOEs. The provision prohibits the establishment of ETOEs by any foreign operator without authorisation by the Authority. The provision also empowers SAPO to enter into agreement with any foreign operator with regard to the distribution of mail items emanating from an ETOE. The provision is inserted in line with the National ICT White Paper to regulate ETOEs as they are currently not regulated.

Section 22D is inserted to provide for requirements for ETOEs that have already established offices in the country. The provision further requires any ETOE

established before the promulgation of this Act to apply within six months to the Authority for authorisation and empower the Authority to order any ETOE to cease operating if failed to apply or receive such permission to operate.

#### **Clause 10**

Amendment of section 24 by deleting the words “registration certificate” this is in line with the new licensing framework which only makes reference to licences.

#### **Clause 11**

Section 24A is inserted to provide for the Minister in consultation with the Authority to designate operator/s responsible for the universal postal service provision.

This clause seeks to provide for the universal postal services to be funded from fund established by Minister or through Parliament. It further provides for all licensees to contribute to the universal services fund established by the Minister, in compliance with the legislation that empowers the imposition of the levies to fund universal services obligations and for the Minister to determine the amount to be contributed by licensees in consultation with the Authority. It also provides for the universal service provider to apply for funding in a manner prescribed by the fund. This is in line with the White Paper Policy to ensure that operators either pay or play as part of their universal services obligation.

#### **Clause 12**

Sections 29A and 29B dealing with the development of Philatelic products is inserted in line with the National Integrated ICT White paper and to provide clear process for the development of annual and commemorative stamps.

The provision empowers the postal company to be the custodian of Philatelic products in the country and to ensure that the postal company derive financial benefit in the development and printing of commemorative stamps which they currently do for organisations and individuals without guarantee that the stamps will sell. The requesting party in terms of this provision will be required to buy a certain percentage of the commemorative stamps developed in their honour.

#### **Clause 13**

Amendment of section 30(5) is a consequential amendment in line with the deletion of courier services and the insertion of the definition of unreserved postal services.

#### **Clause 14**

Amendment of section 30A by replacing the word “may” with “must” and also replacing words “postal authority” with “foreign operator”. This is to ensure that Postal operators are obliged to present and provide insurance option in line with the Short-Term Insurance Act, 1998 (Act No. 53 of 1998) for customers valuables when posting to be protected against any loss or damage that may occur. The amendment is also in line with the deletion of the definition of “postal authority” and insertion of the new definition of the “foreign operator” as defined above.

#### **Clause 15**

New section 44A dealing with the provision of Value Added Services and infrastructure sharing by the postal company is inserted in line with the National Integrated ICT White Paper. The provision is aimed at empowering the postal company to expand its services offerings by providing value added services and create more revenue generating stream. This is also in line with the UPU resolutions that encourage designated postal operators to embrace technology and ensure the provision of 3 dimensions of postal services which include physical,

electronic and financial services. The section further ensures that government departments comply with the law by using the designated postal company for the reserved postal services.

#### **Clause 16**

Amendment of section 45 (1) by substituting the word “may” with “must”. The current provision gives the postal company prerogative to choose whether or not to compensate. The amendment intends to protect consumers by compelling not only the postal company but also the unreserved postal operators to pay compensation for the loss of items posted.

#### **Clause 17**

New section 46A dealing with National Addressing is inserted in line with the National Integrated ICT White Paper Policy. An address is considered a ‘*basic human right*’ and part of a person’s identity by the Universal Postal Union Policy. There is currently a challenge with the assignment of addresses in the rural and underserved areas resulting in some household not having addresses while others having multiple addresses provided by different organisation for the purposes of delivering their services.

The provision gives SAPO the mandate to allocate address in rural and underserved areas on behalf of government. The provision also provides for the address assigned or confirmed by SAPO to be the official address for a particular household and for such addresses to be in line with international and national standards (SANS 1883).

The provision also empowers SAPO in line with the Spatial Infrastructure Act, 2003 (Act No. 54 of 2003) as the data custodian of all address data sets in the Country. This implies that SAPO will capture, manage, integrate, distribute, or use spatial information on behalf of government. This section further provides for the funding of the address assignment and development of database to be from the allocation by government and for SAPO to annually submit through the department the funding request.

#### **Clause 18**

The provision provides for the repeal of section 50 dealing with Money remitted through postal company in terms of the Post Office Act, 1958. Section 46 referred to in the provision was repealed by section 87 of the Postal Services Act, 1998 (Act No. 124 of 1998). This was a transitional arrangement and the provision has since served its purpose and is no longer necessary.

#### **Clause 19**

This clause provides for the amendment of section 54 by substituting the word “postal authority” with “foreign operator” and by deleting “controlled by postal authority” to ensure that the account in which the money is to be deposited does not have to be with the bank that is controlled by the postal operator. This is because some Postbanks, internationally are no longer controlled by the designated postal operators.

#### **Clause 20**

This clause provides for the repeal of sections 56 and 57, as the Post Office no longer uses savings certificate and savings issues are dealt with in the Postbank’s Act.

**Clause 21**

This clause provides for the amendment of section 80 (1) and 2(c) to delete the words “registration certificate” in line with the new licensing framework.

**Clause 22**

This clause provides for the deletion of sections 81, 82, 83, 84, 85, 86 and 87. The sections are no longer necessary as the amendments have already been effected in the Law specified.

**Clause 23****Schedule 1**

Schedule 1 is repealed and aligned with the definition of the reserved postal services. The postal sector environment is rapidly and constantly changing and the Act should not be prescriptive with regard to the services that are reserved. This will allow the Minister to determine and publish in the *Gazette* services that are reserved and the exclusivity period for such reserved services without having to amend the law.

**Schedule 2**

Schedule 2 is repealed and aligned with the definition of the unreserved postal services. This will allow the Minister to determine and publish in the *Gazette* services that are reserved and the exclusivity period for such reserved services without having to amend the law.

**Clause 24****Short title and commencement**

Clause 24 provides the short title of the bill as well as commencement.

**3. PARTIES CONSULTED**

3.1 During the process of developing the draft Postal Services Amendment Bill, preliminary consultations were done with National Treasury, Independent Communication Authority of South Africa (ICASA) and the South African Post Office (SAPO) as key stakeholder. The Bill was submitted to the Office of the Chief State Law Advisor in keeping with the Cabinet decision of 18 March 2009 and the provisional certification is attached.

3.2 Department of Monitoring Evaluation (DPME) has also been consulted in the development of SEIAS report and the provisional approval form is attached.

The Bill was also finalised in consultation with the Economic Sectors, Employment and Infrastructure Development (ESEID) Cluster and approval was granted for the Bill to be processed to Cabinet. Cabinet approved the Department’s request to conduct public consultation on the 25 October 2017.

3.3 The Department published in the *Gazette* the Postal Services Amendment Bill to solicit public comments on the 10 November 2017.

Comments were received from AfriGis (Pty) Ltd, Afriforum, Anthony Cooper (CSIR), City of Johannesburg, Department of Development Planning, Committee for Spatial Planning (CSI), DHL International (Pty) Ltd, Falcon & Hume Attorneys INC (on behalf of Lightstone Proprietary Limited), Independent Communications Authority of South Africa (ICASA), South African Express Parcel Association (SAEPA), South African Post Office: Philatelic Services and TomTom Africa (Pty) Ltd.



- 3.4 Further consultation meeting with all stakeholders who submitted written comments was held on the 17 January 2018.

#### **4. FINANCIAL IMPLICATIONS**

The Department will be required to establish a Directorate responsible for Postal and ICTs Infrastructure Development to ensure the facilitation and coordination of SAPO Infrastructure development and digitization. The cost of operationalisation of the Directorate will be provided for in the normal budgeting processes, as part of funding the new organisational structure, once approved.

#### **5. CONSTITUTIONAL IMPLICATIONS**

The draft Amendment Bill advances equality, human dignity through access information and to affordable postal, ICTs and government services by all citizens. This will further ensure that all citizens have an officially assigned physical address to be able to participate effectively in the socio-economic activities of the country.

#### **6. PARLIAMENTARY PROCEDURE**

- 6.1 The Department of Telecommunications and Postal Services and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 We have considered the tagging of the Bill in light of Chapter 4 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), which provides for procedures that Bills must follow in Parliament. Section 75 deals with ordinary Bills not affecting provinces.
- 6.3 The Constitutional Court judgement in the case of *Stephen Segopotso Tongoane and Others v Minister for Agriculture and Land Affairs and Others CCT 100/9 2010J ZACC 10* at paragraphs 70 and 72, stated that— “the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence.”
- 6.4 This test compels us to consider the substance, purpose and effect of the subject matter of the proposed Bill. This Bill seeks to amend the Postal Services Act, 1998, so as to align the Act with the National Integrated ICT Policy in order to provide for the regulation of the sector, particularly the private operators and ETOEs and the repositioning of SAPO to take advantage of the new opportunities imposed by digital technologies. These matters do not fall within any of the matters listed in section 76(3) of, or Schedule to, the Constitution. In our view this Bill is therefore an ordinary Bill not affecting the provinces as envisaged in section 75 of the Constitution.
- 6.5 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.





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