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DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 2031

20 April 2022

**DEPARTMENT OF COMMUNICATIONS AND DIGITAL
TECHNOLOGIES****SOUTH AFRICAN POST OFFICE SOC LTD AMENDMENT BILL, 2021**

The Minister of Communications and Digital Technologies would like to solicit written comments and inputs from members of the public on the Amendments to the South African Post Office Act of 2011, Act No 22 of 2011.

The South African Post Office Amendment Bill provides:

- (a) for the revised duties and expand on the mandate of the South African Post Office as provided for in this Act and the Postal Services Act of 1998;
- (b) for the repurposing of the Post Office infrastructure so as to provide diversified and expanded services and exploit the infrastructure capacity to extract value and forge partnerships with other stakeholders;
- (c) for the revised governance structure of South African Post Office;
- (d) for the establishment, appointment and functions of the Stamp Advisory Committee; and to provide for matters connected therewith.

Interested persons are invited to provide substantive written comments, within 30 calendar days of the date of publication, addressed to:

The Director-General: Department of Communications and Digital Technologies
For the attention of: Ms Dimakatso Mojela, Director: ICT Policy Branch
Block A3, First Floor, iParioli Office Park, 1166 Park Street, Hatfield, Pretoria
Private BagX860, Pretoria, 0001
012 427 8106

Comments received after the closing date may be disregarded.



Hon Khumbudzo Ntshavheni, MP
Minister of Communications and Digital Technologies
Date: 28 March 2022

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POST OFFICE SOC LTD AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75 Bill); explanatory
summary of Bill published in Government Gazette No. 46250 of 20 April 2022)
(The English text is the official text of the Bill)

(MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES)

[B —2022]

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 South African Post Office SOC Ltd Act, 2011, so as to provide for the revised duties and expand on the mandate of the South African Post Office as provided for in this Act and the Postal Services Act, 1998; provide for the repurposing of the Post Office infrastructure so as to provide diversified and expanded services and exploit the infrastructure capacity to extract value and forge partnerships with other stakeholders; to provide for the revised governance structure of South African Post Office; to provide for the establishment, appointment and functions of the Stamp Advisory Committee; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 22 of 2011, as amended by section 1 of Act 38 of 2013

1. Section 1 of the South African Post Office SOC Ltd Act, 2011 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the substitution for the definition of Department of the following definition:

" **'Department'** means the **[Department of Communications]** department responsible for communications and digital technologies services;"

- (b) by the insertion after the definition of "family member" of the following definition:

"financial services" means financial services which includes amongst others, money transfer and remittance, payment, and prepaid services, tickets sale and any other financial services the Minister may determine from time to time;

- (c) by the insertion after the definition of "Public Finance Management Act" of the following definitions:

"Services points" means any infrastructure where the post office services can be accessed from;

" **'Stamp Advisory Committee'** means the Stamp Advisory Committee established by section 14A(1);"

"universal postal services" means services provided for under section 16 and schedule 1 and 2 of the Postal Services Act;" and

Amendment of section 2 of Act 22 of 2011

Objects of the Act

2. Section 2 of the Principal Act is hereby amended by the deletion of the word **[and]** at the end of paragraph (d) and by the addition of the following paragraphs:

"(f) expand the objects and mandate of the post office to include services that respond to the needs of the users and customers; and

Amendment of section 4 of Act 22 of 2011

Duties and mandate of the Post Office

3. Section 4 of the principal Act is hereby amended as follows:

(a) by the substitution for the heading of the following heading:

"Duties and mandate of the Post Office";

(b) by the deletion in subsection (1) of the word "and" at the end of paragraph(k);

(c) by the substitution in subsection (1) for paragraph (l) of the following paragraph:

"(l) ensure compliance with international commitments relevant to the postal and related industries in the provision of postal.

courier and other related services to the extent that is permitted by domestic laws; and

(d) by the addition after paragraph (l) of the following paragraphs:

- “(m) provide logistics and e-commerce services and serve as a logistics partner for e-commerce and other logistics players, including SMMEs and informal traders;
- (n) serve as digital hub for businesses and communities;
- (o) serve as a Designated Authentication Authority that also fulfils its role as a national Trust Centre in the age of digital identity and services;
- (p) serve as a hub for government services and other agency services
- (q) provide different services at the post office and service points based on the needs assessments for a particular area and to ensure the effective usage and enhancement of the retail offering and services;
- (r) charge different fees for different services and areas, subject to the approval of the Authority;
- (s) continuously adjust its business model in line with the technological and industry developments in the provision of postal services and other services and to enhance the provision of Universal Services Obligation; including the roll-out of service points and the use of third-party infrastructure and other related services subject to the approval of the Minister;

- (t) ensure the implementation of national address system and development and maintenance of national address database;
and
- (u) provide any business that is responsive to the needs of users, consumers and citizens and exploit the infrastructure capacity to extract value and forge partnerships with other stakeholders with the approval of the Minister”;

Amendment of section 7 of Act 22 of 2011

4. Section 7 of the principal Act is hereby amended: —

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

“(1) Parliament may fund the normal expenditure of the Post Office to ensure universal postal services and the achievement of its mandate, out of money appropriated for the purpose.”

(b) by the addition after subsection (4) of the following subsection:

“(5) Government institutions which include national and provincial departments, national and provincial government components and municipalities are encouraged to utilise services offerings by Post Office and its infrastructure in the delivery of their services and set-aside certain services to be provided by the Post Office to assist in eliminating over-reliance on government funding by the Post Office.”.

Amendment of section 8 of Act 22 of 2011, as amended by section 3 of act 38 of 2013

5. Section 8 of the principal Act is hereby amended: —
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) The Board consists of —
- (a) not more than **[10]** nine and not less than five non-executive members appointed in terms of section 11; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) The Chairperson **[and Deputy Chairperson]** must be appointed by the Minister from the nonexecutive members of the Board.”;
- (c) by the substitution of for subsection (4) of the following subsection:
- “(4) The Board may designate any other non-executive member to act as chairperson if **[both]** the Chairperson **[and Deputy Chairperson are]** is absent or unable to perform **[their]** his or her functions.”; and
- (d) by the deletion of subsections (5) and (6).

Amendment of section 11 of Act 22 of 2011, as amended by section 4 of Act 38 of 2013

6. Section 11 of the principal Act is hereby amended: —

(a) by the substitution in subsection (1) for the words following paragraph(b) of the following words:

“to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as members of the Board [**, with due regard to section 8 (5)**].”

(a) by the deletion in subsection (4) of paragraph (a) (vi).

(d) by the deletion in subsection (4) of paragraph (c);

(e) by the substitution in subsection (7) for paragraph(a) of the following paragraph:

“(a) The Minister must appoint [—]

[(i) two non-executive members of the Board from suitable persons nominated by trade unions contemplated in subsection (1) (b); and

ii] the [other] non-executive members of the Board from suitable persons as contemplated in subsection (4).

(f) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) Any vacancy occurring in the Board in terms of section 12, must be filled **[in the manner provided for in this section]** with suitable persons in a transparent manner determined by the Minister in terms of this Act.

(g) by the substitution in subsection (9) for paragraph (a) of the following paragraph:

“A non-executive member of the Board —

(a) holds office for a period not exceeding three years, subject to review at the annual general meeting and the Minister may after due process has been followed remove the Board member for any reason as provided for under this Act at the annual general meeting and in accordance with the assessment report provided by the Board.”.

Amendment of section 12 of Act 22 of 2011

7. Section 12 of the principal Act is hereby amended by the deletion in subsection (2) of paragraph (f).

Insertion of sections 14A to 14F in Act 22 of 2011**Stamp Advisory Committee**

8. The following sections are hereby inserted after section 14 of the principal Act:

“Appointment and composition of Stamp Advisory Committee

14A. (1) The Minister, must establish a Stamp Advisory Committee and appoint not more than 9 persons as members of the Stamp Advisory Committee.

(2) The Stamp Advisory Committee consists of—

(a) two members appointed from the non-executive members of the Board;

(b) one representative from departments responsible for communications and digital technologies, arts, sports and culture and basic education;
and

(c) not more than four persons appointed on the basis of their knowledge, experience and expertise in the areas referred to in subsection (8).

(3) The Minister must appoint a non-executive member contemplated in subsection (2)(a) as Chairperson of the Stamp Advisory Committee.

(4) For the purposes of appointing the persons contemplated in subsection (2)(c), the Minister must, by notice in the *Gazette* and in two

national newspapers published ,an invitation to the public to submit nominations for membership of the Stamp Advisory Committee.

(5) The notice contemplated in subsection (4) must specify a period of at least 30 days for nominations to be submitted to the Minister.

(6) The Minister must appoint a panel to consider the nominations received in terms of subsection (5).

(7) The panel must compile a shortlist of not more than 8 candidates to be considered by the Minister and the Board for appointment as members of the Stamp Advisory Committee.

(8) The panel must ensure that the candidates—

(a) are representative of the South African society and represent the public and private sectors, academic or research institutions, non-governmental organisations and philately organisations; and

(b) have appropriate expertise in the areas of—

(i) arts and culture;

(ii) marketing;

(iii) environmental development;

(iv) education;

(v) history;

(vi) graphic design; or

(vii) any other field of expertise relevant to stamp design.

(9) The Minister and the Board must ensure that the members contemplated in subsection (2)(c) represent a sufficient spread of skills, knowledge, qualifications and expertise referred to in subsection (8).

(10) The Minister must, within 30 days after appointing the members, publish a notice in the *Gazette* containing the names of the persons appointed as members of the Stamp Advisory Committee.

(11) A member of the Stamp Advisory Committee contemplated in subsection (2)(c)—

(a) holds office for a period not exceeding three years;

(b) may be reappointed after his or her term of office has expired, but may not serve for more than two consecutive terms;

(c) is appointed on a part-time basis; and

(d) must be paid from the revenue of the Post Office such remuneration and such allowances as may be determined by the Minister with the concurrence of the Minister of Finance.

(12) A member of the Stamp Advisory Committee contemplated in subsection (2)(c) may resign by giving 30 days written notice to the Minister through the Board.

(13) The Stamp Advisory Committee that exists immediately before the South African Post Office SOC Ltd Amendment Act takes effect continues to exist for a period of six months or for such period until the new committee is established and members are appointed.

(14) The members appointed under subsection (2) (a) and (b) will be serving for a period of three years as long as they are under the employ of the organisation that has nominated them or any period as provided by the respective organisation.

(15) The organisations referred to in subsection (2) must inform the Minister when a member that has been appointed can no longer serve in the committee and provide a substitute for that member..

Functions of Stamp Advisory Committee

14B. The Stamp Advisory Committee must—

- (a) advise the Board on the implementation, monitoring and evaluation of a philatelic strategy;
- (b) provide the Board with advice on events and themes that may be celebrated on stamps and ensure that selection of themes reflects the broad spectrum of South African culture, history, environment economic and social development;
- (c) assist in identifying, articulating and prioritising themes for the annual stamp programme and commemorative stamps and make recommendations to the Board; and
- (d) encourage and facilitate stakeholder participation in the development of themes for the annual stamp programme.

Disqualification from membership of Stamp Advisory Committee

14C. A person may not be appointed as a member of the Stamp Advisory Committee contemplated in section 14A (2)(c) or remain a member if he or she—

- (a) is not a South African or permanent resident of the Republic;

- (b) is an unrehabilitated insolvent;
- (c) has been declared mentally ill by a competent court;
- (d) has at any time been convicted of an offence involving dishonesty whether in the Republic or elsewhere; or
- (e) has been removed from office on account of misconduct.

Removal from the Stamp Advisory Committee

14D. The Minister may remove a member of the Stamp Advisory Committee contemplated in section 14A (2) from office—

- (a) on account of misconduct;
- (b) on account of inability to perform the duties of that member's office effectively;
- (c) if the member is absent from three consecutive meetings of the Stamp Advisory Committee without the prior permission of the chairperson, except on good cause shown; or
- (d) if the member has engaged in conduct, which brings or may bring the Stamp Advisory Committee or the activities of the Stamp Advisory Committee into disrepute or threatens the integrity of the Stamp Advisory Committee.

Vacancies in Stamp Advisory Committee

14E. (1) A member of the Stamp Advisory Committee vacates office if that member—

- (a) tenders resignation in terms of section 14A(12) and such resignation takes effect;
- (b) becomes subject to a disqualification referred to in section 14C; or
- (c) is removed from office in terms of section 14D.

(2) (a) If a member of the Stamp Advisory Committee dies or vacates his or her office before the expiration of his or her term of office, the Minister must appoint another person to hold office for the unexpired portion of the period for which that person's predecessor was appointed.

(b) In making an appointment in terms of paragraph (a), the Minister must comply with section 14A.

Meetings and recommendations by Stamp Advisory Committee

14F. (1) The Stamp Advisory Committee—

- (a) must meet at least four times a year; and
- (b) may determine its own procedures to be followed at its meetings.

(2) (a) A quorum for a meeting of the Stamp Advisory Committee is the majority of the total number of the members, which is 50% plus one.

(b) A decision by the majority of the members present at a meeting of the Stamp Advisory Committee constitutes a decision of the Stamp Advisory Committee..

(c) The decision of the Stamp Advisory Committee in relation to the stamp programme and commemorative stamps must be submitted to the Board for consideration and submission to the Minister for final approval.”

Amendment of section 17 of Act 22 of 2011

9. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“ (1) The appointment of the chief executive officer, **[chief financial officer and chief operating officer]** is subject to the conclusion of an annual performance agreement with the **[Post Office] Board**.”.

Amendment of section 25 of Act 22 of 2011

10. Section 25 of the principal Act is hereby amended —

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The Minister may direct the **[Post Office] Board** to take any action specified by the Minister if the Post Office —”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) If the **[Post Office] Board** fails to comply with the directive contemplated in subsection (1) within the stated period, the Minister may—

- (a) after having given the **[Post Office] Board** a reasonable opportunity to be heard; and
- (b) after having afforded the **[Post Office] Board** a hearing on any submissions received, replace the members of the Board **[in the same manner as the departing members have been appointed]** or, where circumstances so require, appoint a person as an administrator to take over the relevant function of the **[Post Office] Board.**”;
- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
- “(a) the administrator may do anything which the **[Post Office] Board** might otherwise be empowered or required to do by or under this Act **[, to the exclusion of the Post Office;]**.”;
- (d) by the deletion of subsection (4) (b);
- (e) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
- “(b) within **[six] 12** months of appointing the administrator, table a report on his or her findings in the National Assembly.”; and
- (f) by the substitution in subsection (7) (c) for subparagraph (ii) of the following subparagraph:
- (ii) must, as soon as it is feasible but not later than **[three] twelve** months after the dissolution of the Board, replace the members of the Board **[in the same way in which they were appointed]** in accordance with section 11 of this Act.”.

Short title and commencement

11. This Act is called the South African Post Office SOC Ltd Amendment Act, 2021, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POST OFFICE
SOC LTD AMENDMENT BILL, 2021****1. OBJECTS OF THE BILL**

The Bill seeks to amend the South African Post Office SOC Ltd Act, 2011, so as to provide for the revised duties and expand on the mandate of the South African Post Office as provided for in this Act and the Postal Services Act, 1998; repurpose the Post Office infrastructure to provide diversified and expanded services and exploit the Post Office infrastructure capacity to extract value and forge relations with other stakeholders; to provide for the revised governance structure of South African Post Office; to provide for the appointment and functions of the Stamp Advisory Committee; and to provide for matters connected therewith.

2. SUMMARY OF THE BILL**Clause 1**

Clause 1 provide for the amendment of section 1 to amend and insert number of definitions of words or expressions as used in the legislation for better understanding and interpretation as follows:

"Department" which has been amended to mean means the department responsible for communications and digital technologies services gives effect to the proclamation issued by the President establishing the new Department of Communications and Digital Technologies and moving the function to administer this Act from the Department of Telecommunications and Postal Services.

“financial services” The definition is inserted to ensure the Post Office is enabled to provide financial services but not to be confused with the financial services that are provided for by the Postbank in terms of the Postbank Act. Financial services are aligned to financial services that postal operators, including SAPO, are required to provide by the Universal Postal Union. “financial services” in this regard means financial services which include amongst others, money transfers and remittances, cash on delivery services, payment service, prepaid services, tickets sale and as provided for under section 4.

“Services points” The definition has been inserted to ensure that the post office services may not only provided from the post office infrastructure but also at any points where the post office services can be accessed from.

“Stamp Advisory Committee” This definition is in line with the new insertion that establishes the Stamp Advisory Committee as indicated in clause 14A below giving effect to the National Integrated ICT policy. The Stamp Advisory Committee definition is inserted to mean the “Stamp Advisory Committee established by section 14A (1)”.

“Universal postal services” The definition is inserted in line with the revised objects of the Act and the revised duties and what constitute universal services obligations. The role of any government is to ensure universal access of any services, including postal, financial and courier services, by anyone in the country without discrimination. The Department believes that the Post Office is still the most accessible infrastructure that many, especially in the rural and underserved communities can utilise for their postal and related needs.

Private operators mostly operate in the affluent areas and cherry pick where they could make profit as there is no obligation imposed on them. Their services are not

accessible to many, especially those in the rural and other communities since they still need to travel to town to access the services which becomes even more expensive.

Clause 2

Clause 2 provides for the amendment of section 2 of the Act, to insert new objects under paragraphs "(f) and (g). The objects are expanded to ensure that the Post Office is not only empowered by the legislation to provide basic postal services but is empowered to provide other value-added services to expand on its revenue generating streams and also for SAPO to position itself as a facilitator in the provision of government services as provided in the National Integrated ICT Policy White Paper.

Clause 3

Clause 3 provides for the amendment of section 4 by inserting a number of duties and to expand on the SAPO's mandate as well as to legislate for more services that the SAPO can venture into to ensure relevance and sustainability. These services may include government services, agency, financial, e-commerce, logistics, retail, authentication services, warehousing services, serve as a digital hub for businesses and communities, serve as a logistics partner to other e-commerce providers and any future business that the Post Office may provide that are responsive to the needs of users and consumers subject to the approval of the Minister to exploit their widespread infrastructure and forge partnerships with other stakeholders to ensure financial sustainability.

The current business model and legislated duties of SAPO are no longer financially sustainable as there is over reliance on the mail business that has drastically declined over the years and not sustainable for the organisation. SAPO's legislated mandate is currently limited to the traditional postal services that are provided for under schedule 1 and 2 of the Postal Services Act, 1998 (Act No. 124 of 1998). The services include: all letter mail, postcards, printed matters, small parcels, courier services, provision of post-box and street addresses and issuing of postage stamps. Most of the above services have drastically declined if not all together became redundant and replaced by the emergence of technologies including the 4IR as many customers have adopted the use of technologies.

The intention is to expand on SAPO's legislated mandate to include value added services in line with the White paper, current developments of ICTs and global trends. The revised duties will ensure that the Post Office expand on its business offerings to create more revenue generating streams and encourage the efficient and effective utilisation of the Post Office infrastructure.

The revised duties also empower the Post Office to be a strategic platform through which citizens and business can access value added services including government services, in line with the ICT White Paper.

The revised duties also empower the SAPO to position itself to be a strategic platform through which citizens and businesses can access value added services including government services in line with the National Integrated ICT Policy White Paper .

The revised mandate empowers SAPO to provide logistics and e-commerce services and serve as a logistics partner for e-commerce and other logistics players, including

SMMEs and informal traders; serve as digital hub for businesses and communities; serve as a Designated Authentication Authority that also fulfils its role as a national Trust Centre in the age of digital identity and services; serve as a hub for government services and other agency services; provide different services at the post office and service points based on the needs assessments for a particular area and to ensure the effective usage and enhancement of the retail offering and services;

The section is further amended to empowers SAPO to continuously adjust its business model in line with the technological and industry developments in the provision of postal services and other services and to enhance the provision of Universal Services Obligation; including the roll-out of service points and the use of third-party infrastructure and other related services subject to the approval of the Minister;

The section is further amended to provide for SAPO to charge different fees for different services and in certain areas with the approval of the Regulator. This is to ensure that the SAPO is able to recover costs of providing services and not operate at a loss.

Furthermore, the amendment allows the Post Office to differentiate its service offerings at different post offices and service points based on the needs assessment for a particular area. This is also to ensure the effective and efficient usage and enhancement of services offerings by SAPO to communities.

Clause 4

Clause 4 provides for the amendment of section 7 to make it clear that the normal expenditure of the post office to ensure universal postal services as required and any services to achieve its mandate may be funded by Parliament out of money appropriated for the purpose. This is to ensure funding is only provided for services that SAPO is required to provide as part of their social even though they are not financially benefiting the post office.

The provision is further enhanced to encourage all spheres of government to utilise the Post Office infrastructure in the delivery of services wherever possible and to set-aside certain services to be provided by the Post Office. This will assist to ensure essential government services are delivered to communities and also ensure the effective and efficient use of government infrastructure (Post Office).

SAPO is currently entrusted with universal postal services obligation to provide services everywhere in the country even in areas that are not profitable and do not make business sense, whereas other operators cherry pick affluent area that they are guaranteed to make profit. Allowing for the utilisation of SAPO infrastructure to be utilised by governments departments at a fee will offset the losses that they are currently incurring to provided universal services obligation that they are required by law to provide, regardless. This will also ensure that SAPO does not rely of government bailout and subsidy as it is currently the case.

In this regard, SAPO should be seen as an extension arm of the government and as

such should be considered the preferred supplier of certain services, especially in the rural areas where the combination of Post Office services and government services will ensure full government services housed in a single operation.

Clause 5

Clause 5 provide for the amendment of section 8 to reduce the maximum number of non-executive members to the SAPO Board that the Minister can appoint from 10 to 9 and also provide for a minimum of 5.

Governance structure and structural arrangement of the Post Office has been identified as one of the contributors to financial challenges of the post office with excessive number of headcounts.

Given the financial challenges that SAPO is facing, this is to ensure the maximum number of Board members is kept as minimal as possible to ensure savings wherever possible and to do away with any excessive costs. The revised number is also to assist to break the deadlock during the board meetings. The revised number will still be sufficient to ensure the effective functioning of the Board.

Despite the appointment of so many members of the Board, who are deemed qualified and competent to turnaround the financial position of SAPO, SAPO continues to struggle operationally and financially relying on government bailout from time to time. The reduced number of the Board members and provision for a minimum board member with a focused responsibility will contribute to ensuring that any excessive cost no matter how little it is, is eliminated in order to make it more effective and efficient.

The provision for a minimum number of members will also provide leadership without interruptions and ensure that temporary vacancies in the Board (i.e. temporary failure to have a full board appointed) does not invalidate the existence of a Board.

The section is also amended to remove the appointment of deputy chairperson of the Board. The role of the deputy chairperson has in the past not been noticeable in relation to other board members and gives an impression that if the Chairperson is not available, the deputy chairperson assumes the responsibility of the chairperson and is not necessary. These amendments therefore give the Minister powers to appoint any member of the Board to be the chairperson at any given time.

The section is also amended to delete subsection (5) and (6) in line with the decision to remove post office board members to be represented in the Postbank Board.

Clause 6

Clause 6 provides for the amendment of section 11 to:-delete subparagraph (c) of subsection (4) to remove the need to have banking business skills as this was made in line with the Post Office as the shareholder of the Postbank and provision requiring the post office Board members to be represented in the Postbank Board.

The section is further amended by the deletion of subparagraph (a)(i) which compels the Minister to appoint two nominated union members to the Board. Experience has shown that a nomination from the union takes longer because, in most cases, the unions submit names of people without the necessary skills and insist on those names. This makes it difficult for the Board to be appointed on time as there is a lot of

unnecessary discourse between unions and the Department to nominate appropriately skilled people. The unions will still be invited to nominate but the Minister will not be compelled to appoint if the nominated person does not have the requisite skills, as provided for in the Act.

Subsection (8) (a) is also amended to provide for the simplified process of filling of vacancy by the Minister due to resignation or disqualification by removing the need for nomination committee in filling of vacant position if the departing member was appointed through the nomination committee. The filling of vacancies after a board member has vacated the position take longer if the nomination committee was used in the appointment of Board members as the Act requires that the Board member should be appointed in the same manner as the departing Board member. This is to ensure the effective processing of filling vacancies created due to resignations or disqualification.

Section 8 is further amended to empower the Minister to review the appointment of any Board member annually at the Annual General Meeting (AGM). In the shareholder's compact and King Report there is a clause that commits the Board to conduct annual performance assessments of each Board member and also the organisation it oversees. Based on those assessments by the Board and presented to the Minister and for any reason as provided for under sections 10 and 13 of the Act, the Minister will now be empowered to initiate removal process of a Board member during the AGM if the assessment report indicates as such. This also makes the Board more effective in executing its fiduciary duties.

Clause 7

Clause 7 provide for the amendment of section 12 by the deletion in of subsection (2) (f). The subsection is no longer necessary in line with the removal of Postbank Board member to be appointed to the Board of the Post Office and vice versa.

Clause 8

Clause 8 provides for the insertion of new sections 14A – E to: (a) provide for the appointment of the Stamp Advisory Committee (SAC) members by the Minister; (b) processes to be followed in the appointment of the SAC members; (c) composition of the SAC; (d) eligibility to be appointed; (e) functions of the SAC; (f) disqualification and removal.

The current committee was established more than 15 years ago and has been there since because of a legislative vacuum on the appointments, term of office, reappointments, removal etc. Acknowledging the policy and legislative vacuum, the 2016 National Integrated ICT Policy White Paper provided for SAC-related matters and the insertions are in line with the White Paper.

Section 14A is inserted to give the Minister the powers and responsibilities to appoint the members of the SAC, composition of the SAC and the procedure to be followed when appointing those members. The proposal also stipulates that there should be government representation in the committee.

Section 14B is inserted outlining who may not be appointed to the SAC. Even though the members of the SAC are not members of the SAPO Board it is important they also adhere to good governance principles. It is very important that we use the same governance principles for a specialized committee as a committee reporting to the Board and this ensures good governance principles are complied with by all structure reporting to the Board.

Section 14C is inserted providing how SAC members can be removed from SAC by the Minister.

Section 14D is inserted providing how members can vacate office.

Section 14E clearly provides what is expected of SAC and its members, the role that they play within the broader SAPO structures and their advisory role to the Board and subsequently to the Minister.

Clause 9

Clause 9 provides for the amendment of section 17(1) to ensure that the performance contract of the Chief Executive Officer (CEO) is concluded with the Board and not the Post Office as the Act currently provide. Reference to the Post Office as the one concluding the performance agreement with the CEO is problematic and creates ambiguity as the CEO reports to the Board and therefore the performance agreement should be concluded with the Board and not the Post Office.

The subsection is further amended to remove references to the CFO and COO as only the CEO conclude the PA with the Board and others with the CEO.

Clause 10

Clause 10 provides for the amendment of section 25 (1) and (3) dealing with interventions by the Minister to replace to “Post Office” with “the Board” to make it clear that it is the Board that interacts with and reports to the Minister and also to ensure that the Board is held accountable.

The section is further amended to remove the restriction whereby the Minister may only replace the removed Board in the same manner as the initial Board was appointed. If the initial Board was appointed using the nomination committee as provided for in the Act, Minister is compelled to follow the same process in replacing the board or member. This lengthy and cumbersome process is now avoided.

The section is further amended to increase the term of office of the administrator from three months to twelve and for the Minister to report to the National Assembly within 18 months after the Administrator is appointed. The current timeframe of three months is not reasonable and sufficient to ensure the administrator is able to develop and implement turnaround strategies and plans required in instances where the Board is dissolved. This has been shown with appointment of the previous administrator that the 3 months period is not sufficient. The Minister will also requires time once the Board has been dissolved to apply his/her mind regarding the appointment of the next Board.

Subsection (4)(b) is deleted as it insinuates that the Board will still be there even after an administrator is appointed and requires that Board, while the administrator is responsible to not interfere.

3. PARTIES CONSULTED

The SAPO Amendment Bill was developed in consultation with SAPO and National Treasury as key stakeholders

Furthermore, the Bill was finalised in consultation with the Presidency (Department of Monitoring Evaluation (DPME)) in the development of SEIAS report and sign off. The Bill will be submitted to the Office of the Chief State Law Advisor in keeping with the Cabinet decision of 18 March 2009 for pre-certification.

The draft Bill was further presented and approved by the ESEID Cluster for submission to Cabinet on 22 July 2021.

4. FINANCIAL IMPLICATIONS

The implementation of the Act may have financial implications for government and the South African Post Office SOC Ltd to ensure that the Post Office branches are upgraded to be able to provide services in line with the revised duties.

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.

6. PARLIAMENTARY PROCEDURE

6.1 The Constitution regulates the manner in which legislation may be enacted by Parliament. It prescribes different procedures for different kinds of Bills. Section 75 of the Constitution deals with ordinary Bills not affecting the provinces and sets out a procedure to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies. Section 76 of the Constitution on the other hand deals with ordinary Bills affecting the provinces and provides for a procedure that must be followed for all the Bills referred to in that section. It is apparent that this Bill must be dealt with by Parliament in terms of procedures set out in Section 75 of the Constitution.

6.2 The Constitutional Court in *Tongoane v Minister of Agriculture and others*¹, held that the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 to the Constitution and not on whether any of the provisions of the Bill are incidental to the substance of the Bill.² The Constitutional Court further in the *Tongane* judgement found:

“[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in Section 76... 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) (a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.” [Underlining is our emphasis]

6.3 The question that needs to be asked therefore is whether the provisions of the Bill, would in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution, or whether the Bill provides for legislation envisaged in Section 76(3)(a) to (f) of the Constitution.

¹ CCT 100/09 [2010] ZACC 10.

² *Tongoane* at paragraph 59.

6.4 The matters covered in the Bill are not listed in either Schedule 4 or 5 to the Constitution. Furthermore, the Bill does not deal with any of those matters listed in Section 76(3)(a) to (f) of the Constitution we are therefore of the view that the procedure to be followed must be the procedure set out in section 75 of the Constitution.

6.5 We are also of the view that it is not necessary to refer this bill to the National House of Traditional and Khoi-San Leadership in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No.3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.

