

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



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No. 13310

THE PRESIDENCY

No. 1345

19 June 1991

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

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



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

GENERAL EXPLANATORY NOTE:

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

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

ACT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“CHAPTER 1A

SUCCESSOR COMPANIES

Incorporation of successor companies

- 30 3. (1) On a date or dates preceding the postal transfer date or the telecommunications transfer date, as the case may be, the Minister shall effect the incorporation in terms of the Companies Act of two public companies, namely, a postal company to conduct a postal service and a telecommunications company to conduct a telecommunications service,
- 35 which companies shall bear names approved by the Minister, and the issue to each company of a certificate to commence business.
- (2) The Minister shall on behalf of the State sign all documents that are required to be signed by the promoters of the companies.
- (3) The Postmaster-General—
- 40 (a) shall be appointed as the first director of each successor company and shall in that capacity in respect of each company sign the documents which are required to be signed by a director of the company for the purpose of incorporation of the company and the issue to the company of a certificate to commence business;
- 45 (b) shall occupy the post of director of a successor company until the date immediately preceding the transfer date concerned.
- (4) Each successor company—
- (a) shall upon incorporation issue one share with a nominal value of one rand to the State;
- 50 (b) shall in its memorandum of association *inter alia* provide that that successor company and its subsidiaries—
- (i) shall have as its main object and main business in the case of the postal company to conduct the postal service and in the case of

the telecommunications company to conduct the telecommunications service;

(ii) shall not have the power to perform the following acts without the approval of the Minister granted with the concurrence of the Minister of Finance, namely—

(aa) the alienation or encumbrance by the company otherwise than in the normal course of its business of assets of the company with a market value of more than 10 per cent of the market value of all the assets of the company;

(bb) the cessation or alteration of the main object or main business of the company;

(cc) the alienation of shares held by the company in any subsidiary thereof so that the company retains 50 per cent or less of the voting shares of the subsidiary;

(dd) the merger of the company with another company or the entering into of a partnership or joint venture by the company;

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

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

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

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

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

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

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

(6) The powers and duties of the State as a member and shareholder of each successor company shall be exercised and performed by the Minister.

(7) A successor company shall not conduct any business and shall not acquire any assets, liabilities, rights or obligations prior to the transfer date concerned.

Transfer of postal enterprise and telecommunications enterprise to successor companies

4. (1) On a date determined by the Minister by notice in the *Gazette*—

(a) the postal enterprise shall be transferred to the postal company, from which date the postal company shall, subject to the provisions of any other law, have the exclusive power to conduct the postal service;

(b) the telecommunications enterprise shall be transferred to the telecommunications company, from which date the telecommunications company shall, subject to the provisions of any other law, have the exclusive power to conduct the telecommunications service.

(2) (a) The value of the assets and liabilities of the enterprises transferred in terms of subsection (1) shall be determined by the Minister with the concurrence of the Minister of Finance, and the net asset value of those enterprises shall likewise be determined, regard being had to the obligations imposed upon the postal company and the telecommunications company by section 12U.

(b) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), or any other law in terms of which a tax or levy may be imposed, it shall be deemed that expenses were actually incurred by a successor company in acquiring the assets transferred to it in terms of subsection (1) and that, notwithstanding the provisions of any other law, the expenses concerned, including the cost of the assets, are equal to the value determined in terms of subsection (2) (a).

(3) (a) In so far as the postal enterprise and the telecommunications enterprise have the use of State land immediately prior to the date

- referred to in subsection (1), such land shall on the said date pass to the postal company or the telecommunications company, as the case may be, and it shall be deemed that such land was on the said date sold by the State President in terms of the provisions of the State Land Disposal Act, 1961 (Act No. 48 of 1961), to the company concerned.
- 5
- (b) Notwithstanding the provisions of section 5 of the State Land Disposal Act, 1961, and section 18 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), a registrar as defined in section 102 of the Deeds Registries Act, 1937, shall, on submission to him of a certificate by the Minister of Public Works and Land Affairs that State land has passed in terms of paragraph (a), free of charge make such entries and endorsements as he may deem necessary in or on any relevant register, title deed or other document in his office or laid before him, in order to effect the transfer in the name of the company concerned.
- 10
- (4) (a) Any servitude, other real right or lease existing immediately before the date referred to in subsection (1) in favour of the State, the department or the Postmaster-General and which is exercised in favour of the postal enterprise or the telecommunications enterprise shall on the said date pass to the postal company or the telecommunications company, as the case may be.
- 15
- (b) The registrar as referred to in subsection (3) (b) shall, on submission to him of a certificate by the Minister of Public Works and Land Affairs that a servitude, other real right or lease has passed in terms of paragraph (a) or that a servitude exists over State land which has passed in terms of subsection (3) (a), free of charge make such entries and endorsements as he may deem necessary in or on any relevant register, title deed or other document in his office or laid before him, in order to—
- 20
- (i) register the passing of the servitude, other real right or lease to the company concerned in terms of paragraph (a); or
- (ii) confirm the existence of the servitude in favour of any other person, over the State land which has so passed.
- 25
- (5) The Minister shall in all litigation whatsoever, including arbitrations, to which the Minister is a party, be substituted as the party to the suit—
- 30
- (a) by the postal company with effect from the postal transfer date in the case of litigation pertaining to the postal enterprise;
- (b) by the telecommunications company with effect from the telecommunications transfer date in the case of litigation pertaining to the telecommunications enterprise.
- 35
- (6) The successor company concerned may apply for the registration of any registerable right relating to intellectual property or inventions (including the registration as patents of patentable inventions) transferred by the State in terms of this section to the successor company concerned.
- 40
- (7) The Registrar of Trade Marks shall make such entries, notes and endorsements as he may deem necessary in or on any relevant register, certificate or other document in his office or submitted to him so as to effect the transfer of trade marks to the postal company or the telecommunications company in terms of this section, and may request the successor company concerned to submit or produce to him such information or document as he may deem necessary for such purpose.
- 45
- (8) If any doubt arises as to whether anything for the purposes of this Act pertains to or is connected with the postal enterprise, the telecommunications enterprise, the department or anyone else, the decision of the Minister shall be conclusive.
- 50
- (9) (a) Each successor company may establish subsidiary companies of which the successor company shall be the sole member and share-
- 55
- 60

holder and shall allow the assignments, substitutions and transfers contemplated in this section to be made to such subsidiary.

(b) The provisions of this Act applicable to such successor company, shall apply *mutatis mutandis* to the subsidiary thereof while the successor company is the sole member and shareholder of the subsidiary.

(10) No stamp duty, transfer duty or any other tax or levy shall be payable in respect of the transfer of the postal enterprise or the telecommunications enterprise in terms of this section.

(11) Any officer in the employment of a successor company shall be deemed to be an officer in the service of the State for the purposes of section 7 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), and section 24 of the Expropriation Act, 1975 (Act No. 63 of 1975).

Shareholding in successor companies

5. (1) As a consideration for the transfer contemplated in section 4(1) each successor company shall, in addition to the share referred to in section 3 (4) (a), issue such shares in those companies to the State as the Minister with the concurrence of the Minister of Finance may determine: Provided that the nominal value plus any premium payable in respect of all the shares so issued by each company, shall be equal to the net asset value of the enterprise concerned.

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

(3) Shares issued in terms of this section shall have such nominal value and shall be issued at such premium, if any, as the Minister with the concurrence of the Minister of Finance may determine and shall be issued as fully paid by the transfer to the successor company concerned of assets and liabilities with a net asset value equal to the nominal value of the shares plus any such premium.

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

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

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

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

Substitution of section 7 of Act 44 of 1958

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

"Powers of successor companies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Establishment of pension funds

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

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

Pension statutes

55 10. (1) The control and management of the postal pension fund and the telecommunications pension fund, the conditions for admission to and termination of membership of each fund, the amount and nature of contributions by members and contributions and other payments by the postal employer or the telecommunications employer, the benefits due to members and other beneficiaries, and the manner in which the statutes may be amended, shall be governed by the statutes of each fund, as the

60 case may be.

(2) The statutes of each fund shall be published by the Minister in the *Gazette* and shall come into operation on the postal transfer date in the

case of the postal pension fund and on the telecommunications transfer date in the case of the telecommunications pension fund.

(3) Until the date of registration of the postal pension fund and the telecommunications pension fund, as the case may be, in terms of section 10D, any amendment of the statutes of the pension fund concerned shall be subject to the approval of the Minister granted with the concurrence of the Minister of Finance.

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

Actuarial evaluation of pension funds

10A. (1) The postal pension fund and the telecommunications pension fund shall each be valued by an actuary, appointed by the Minister, within three years from the date on which the fund concerned was established, and thereafter each fund shall be valued by such actuary at intervals not exceeding three years, as the Minister may determine.

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

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

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

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

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

(7) (a) The guarantee of the State in terms of subsection (6) shall be limited to the difference between the amount paid in terms of section 8 (5) (e) to the postal pension fund or the telecommunications pension fund, as the case may be, and the amount of the actuarial liability on the date of employment of an officer or employee by the postal employer or the telecommunications employer, of the pension fund referred to in section 8 (5) (c) in respect of those officers or employees of the department who in terms of section 8 (5) (d) become members of the postal pension fund or the telecommunications pension fund, as the case may be, plus interest on that amount calculated at the rate which shall subject to paragraph (c) from time to time be determined by the chief actuary.

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

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

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

Pension benefits may not be ceded, encumbered or attached

10B. No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of, a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right

thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund concerned in its discretion: Provided that the pension fund concerned may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a curator for such dependant or dependants.

Insolvency of pensioner

10C. (1) If the estate of any person in receipt of a pension from a pension fund referred to in section 9 is sequestrated or surrendered or assigned for the benefit of his creditors, payment of the pension shall forthwith be discontinued, and shall thereafter in the discretion of the pension fund concerned in whole or in part be paid to or for the benefit of all or any of the following persons, namely, the pensioner, his wife or minor child or, failing a wife or minor child, to the mother of an illegitimate child or any child, whether legitimate, adopted or illegitimate, or to any other relative dependent upon the pensioner: Provided that if the payment is made to the pensioner, it shall be for his own personal use and, notwithstanding anything to the contrary contained in any law relating to insolvency, such payment shall not in any way be attached or appropriated by the trustee of his insolvent estate or by his creditors.

(2) If payment of a pension has been discontinued under this section, the pension shall revive on the rehabilitation of the pensioner or on the sequestration of his estate being set aside or the claims of his creditors being satisfied, and he shall receive a pension at the same rate and subject to the same conditions as before the sequestration, surrender or assignment, together with any arrears that may be due.

Registration of pension funds

10D. (1) The Registrar of Pension Funds may at the request of the postal pension fund or the telecommunications pension fund register the pension fund concerned in terms of section 4 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and may, for the purposes of such request, regard such pension fund as a 'pension fund organization' as defined in section 1 of the said Act.

(2) From the date of such registration—

- (a) the whole of the Pension Funds Act, 1956, shall apply to the pension fund concerned;
- (b) the provisions of sections 10, 10A (1), (2), (3) and (4), 10B and 10C of this Act shall cease to apply to the pension fund concerned; and
- (c) the pension fund concerned shall, for the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), not be regarded as a pension fund as defined in paragraph (a) of the definition of 'pension fund' in section 1 of the said Act.

Membership of pension fund by employees of subsidiary companies

10E. (1) If a successor company establishes a subsidiary company in terms of section 4 (9), an employee of the successor company who is transferred or seconded to such subsidiary company, shall continue to enjoy membership of the pension fund concerned of which he was a member immediately before the date of his transfer or secondment.

(2) Any employee employed by a subsidiary company after the date of its establishment, shall become a member of the postal pension fund or the telecommunications pension fund, as the case may be, subject to the statutes of such fund."

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

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

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

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

“Loans to postal company and telecommunications company

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

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

15 (3) The amounts owing to the State by the postal company and the telecommunications company, respectively, in terms of the excluded commitments contemplated in subsections (1) and (2), shall bear interest at the rate at which, and shall be repaid to the State within the period for which, the department borrowed the money in terms of the agreement concerned.

20 (4) For the purposes of the transfer by the department to the postal company and the telecommunications company of the loans made to the department by the State in terms of the Exchequer Act, 1975 (Act No. 66 of 1975)—

25 (a) the amount described in section 28 of the Exchequer Act, 1975, as permanent capital, shall notwithstanding the provisions of the said section be deemed to be a loan made by the State to the department which shall be converted on the transfer date concerned into ordinary shares held by the State in the successor company concerned: Provided that the nominal value and any premium payable in respect of the shares so issued shall be determined by the Minister with the concurrence of the Minister of Finance and shall in the aggregate be equal to the total amount of the permanent capital;

30 (b) the department shall to the extent of such transfer be released from any debt or obligation to the State in respect of such loans.

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

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

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

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

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

50 **Submission of statements**

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