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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF TELECOMMUNICATIONS AND POSTAL SERVICES**

NO. 1255

10 NOVEMBER 2017

**DEPARTMENT OF TELECOMMUNICATIONS & POSTAL SERVICES****POSTAL SERVICES AMENDMENT BILL, 2017**

The Minister of Telecommunications and Postal Services would like to solicit written comments from members of the public on the Amendment of the Postal Services Act, 1998 (Act No. 124 of 1998). The Postal Services Act Amendment was done in accordance with the National Integrated ICT Policy White Paper of 2016.

The Amendment Bill provides: for the clear provisions for universal services and access to postal services and funding mechanism for Universal Services Obligations; address transformation of the postal sector by ensuring efficient and effective regulation of the sector, particularly the unreserved postal services (private operators) and Extra-Territorial Offices of Exchange (ETOE's); provide for the new licensing framework, particularly in the unreserved market and to encourage participation of the SMMEs; reposition and encourage the South African Post Office (SAPO) to take advantage of ICTs and E-commerce and expand on its service offering to create more revenue generating streams for its viability and financial sustainability; to provide for the national addressing legislative framework for the assignment of addresses in the rural and traditional communities and the development and maintenance of national address database by SAPO and to provide for the clear process in the development of philatelic products (stamps).

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

The Director-General: Department of Telecommunications and Postal Services  
For attention: Ms. M Masemola, The Acting Deputy Director-General, ICT Policy and Strategy Development  
Block A3, First Floor, iParioli Office Park, 1166 Park Street, Hatfield, Pretoria  
Private Bag X860, Pretoria, 0001  
[psamendmentbill@dtps.gov.za](mailto:psamendmentbill@dtps.gov.za); Tel 012 427 8169 / 8000

Comments received after the closing date may be disregarded.



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**Dr Siyabonga Cyprian Cwele, MP**  
**Minister of Telecommunications and Postal Services**

**REPUBLIC OF SOUTH AFRICA**

**POSTAL SERVICES AMENDMENT BILL**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary  
of Bill published in Government Gazette No. 41246 of 10 November 2017)  
(The English text is the official text of the Bill)*

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**(MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES)**

**[B—2017]**

**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.
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**BILL**

To amend the Postal Services Act, 1998, so as to amend and insert certain definitions; to substitute the word regulator for authority wherever it appears in the Act, to provide for the regulation of the reserved and unreserved postal services, to provide for the regulation of extra-territorial offices of exchange; to provide for a new licensing framework; to provide for the national addressing policy approach for the assignment of addresses in the rural and traditional communities and the development and maintenance of national address database, to provide for the clear process in the development of philatelic products, to add a number of objects; to provide for the expansion of services by SAPO creating new generating revenue streams; to amend and repeal certain sections in line with the ICASA Amendment Act, the Post and Telecommunications Related Matters Act, the South African Postbank Limited Act and the South African Post Office SOC Ltd Act; 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 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 postal service delivery where people reside or businesses are located;"

" '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:

" 'days' means any days excluding public holidays and weekends;"

(d) by the substitution for the definition of "**Department**" of the following definition:

" 'Department' means the Department [**of Communications**] of Telecommunications and Postal Services;"

(e) by the insertion before the definition of "Director-General" of the following definition:

" 'designated operator' means an operator determined by the Minister in consultation with the Authority to provide universal postal services in terms of section 16A of the Act;";

- (f) by the insertion after the definition of "Director-General" of the following definitions:

" 'extra-territorial offices of exchange' means an office or facility established and operated by a licenced foreign operator in the Republic;";

" 'foreign operator' means any duly constituted postal operator of any foreign country or place;";

- (g) by the insertion after the definition of "letter" of the following definition:

" 'license' means license to provide reserved or unreserved postal services issued by the Authority under this Act;";

- (h) by the substitution of the definition of "money order" of the following:

" 'money order' means is money order issued in terms of this Act or by any [postal authority] foreign operator for payment of in terms of this Act;";

- (i) by the insertion after the definition of "money order" of the following definition:

" 'National Address Database' means an official database repository for all addresses in the Republic;";

- (j) by the deletion of the definition of "National Savings Certificate";

- (k) by the insertion before the definition of "postage" of the following definition:

" 'person' means a natural or juristic person;"



- (l) by the deletion of the definition of **"postal authority"**;
- (m) by the substitution for the definition of **"postal company"** of the following definition:

**" '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 referred to in section 3(1) of the South African Post Office SOC Ltd Act, 2011;"**

- (n) by the substitution for the definition of the **"postal services"** of the following definition:

**" 'postal services' means [a reserved postal services or an unreserved postal services as contemplated in Schedule 1 and Schedule 2 respectively] the collection, delivery and courier of all letters, postcard, bulk mail, printed matter, package and parcels weighing up to 30 kg, issuing of stamp, money order, assignment of physical address and address boxes, and other postal articles that falls within the reserved postal services and unreserved postal services as contemplated in the Act;"**

- (o) 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 and/or unreserved postal services;"**

- (p) by the insertion after the definition of **"post office"** of the following definition:

**" 'Post Office Act' means Post and Telecommunications Related Matters Act, 1958;"**

- (q) by the substitution of the definition of the **"post office"** of the following definition:

**" 'Post Office' [includes any house, building, room, vehicle, place or structure where postal articles are received, sorted, delivered, made up of dispatched or which is used for any other purpose in connection with the rendering of any postal, savings, money transfer or other service by the postal company and any pillar box or other receptacle provided by or with the approval of the Department or the postal company for the reception of postal articles.] means Post Office as defined in the South African Post Office SOC Ltd Act, 2011;"**

- (r) by the substitution for the definition of the **"reserved postal services"** of the follows definition:

**" 'reserved postal services' means [the services contemplated in **schedule 1**] the services that can only be provided by the designated operator as determined by the Minister in the Gazette in consultation with the Authority:"**

- (s) by the insertion after the definition of **" this Act"** of the following definition:

**" 'underserviced area' means the geographically identified areas prescribed by the Authority in accordance with this Act;"**

- (t) by the substitution for the definition of the **"universal postal services"** of the following definition:

**" 'universal postal services' means [a universal services 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;";

- (u) by the insertion after the definition of "**universal postal service**" of the following definition:

" 'unreserved postal operator' means an operator licenced to provide unreserved postal services in accordance with this Act;";

- (v) by the substitution for the definition of the "**unreserved postal services**" of the following definition:

" 'unreserved postal services' means [the services contemplated in schedule 2] the delivery and or courier of all letters, postcards, printed matters, small parcel and other postal articles that falls outside the ambit of the reserved postal services up to 30 kilogram;";

- (w) by the insertion after the definition of "**unreserved postal services**" of the following definition:

" 'value added services' means those services contemplated under section 44A of this Act;";

- (x) by the deletion of the definition of "**telecommunication company**";

- (y) 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 the insertion after paragraph (q) of the following paragraphs:

"(qA) encourage and ensure the expansion of postal services and infrastructure including ICTs, government and value added services;  
(qB) ensure the establishment of funding mechanism for universal services;  
and  
(qC) ensure the regulation of extra-territorial offices of exchange;"; and

**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—

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

"(3) (a) The Minister must [may] by notice in the Gazette [make such amendments as may be necessary from time to time to the Schedules] declare certain services to fall under the reserved area on such terms and conditions as determined by the Minister but may not, in so doing, cause any activity falling under unreserved postal services to fall under reserved postal services.

(b) The reserved services contemplated in paragraph (a) must be reviewed every five years or such shorter period as the Minister may determine."; and

(b) by the addition of the following subsection:

"(4) Such services referred to in subsection (3) must be contained in the licence issued to the universal services provider by the Authority as a licence condition."

**Insertion of sections 15A, 15B and 15C of Act 124 of 1998**

4. The following sections are hereby inserted after section 15 of the principal Act:

**"Categories of licences**

15A. Upon receipt of an application made in accordance with section 16(1), the Authority must grant the following licences:

- (a) International operators: licence to provide postal services and operates inbound and or outbound deliveries on a world-wide network;
- (b) Regional Operators: licence to provide postal services across the Southern African Development Community (SADC) region;
- (c) National operators: licence to provide postal services nationally across the country;
- (d) Local operators: licence to provide postal services across a particular province, municipality or Metropolitan only.

**License fees**

15B. (1) The Authority must determine licence fees payable for each licence category and must publish such fees in the *Gazette*.

(2) A licence referred to in section 15A must only be granted upon payment of a licence fee.

(3) The Authority must determine licence condition for each of the licensee in the licence

**Operators having been licenced or registered**

**15C.** (1) Subject to subsection (2), any operator licenced or registered to provide postal services prior to the commencement of this Act is deemed to have been licenced in terms of this Act.

(2) Such operator must within 120 days after the commencement of this Act or within such extended period as the Authority may allow indicate under which category they wish to be licenced and submit the necessary documents as required by the Authority.

**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**

5. Section 16 of the principal Act is hereby amended by—

(a) 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 communities which are not serviced or adequately serviced by postal service]** underserviced areas with a view of achieving universal postal service."

(b) the substitution for subsection 8 of the following subsection:

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

#### **Insertion of sections 16A and 16B in Act 124 of 1998**

6. The following sections are hereby inserted after section 16 of the principal Act:

#### **"Universal postal services obligation**

**16A. (1) The Minister must in consultation with the Authority determine operator/s responsible for universal postal services and such obligation must be included in the licence.**

**(2) Any operator licenced to provide postal services shall contribute to the universal services obligation through contribution to the fund established by the Minister.**

(3) The Minister must in consultation with the Authority determine the amount to be contributed by licensees to the fund.

**Funding for universal services obligation**

**16B.** (1) Universal services obligation shall be funded from the fund established by the Minister and or through appropriation by Parliament".

(2) The operator referred to section 16A (1) is entitled to apply for funding from the fund in the manner prescribed "

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

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

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



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

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

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

21. An application for the [registration] licence with the [Regulator] Authority to operate unreserved postal services must be in the format and in accordance with the procedure prescribed by the [Regulator] Authority and must be accompanied by the prescribed [registration] fee."

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

9. 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] unreserved postal [service] services [in respect of items contemplated in Schedule 2, including a

**courier 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).

(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]** 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.

(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]** license.

(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—

- (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/or international borders; and
- [(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 and 22C in Act 124 of 1998

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

### "Exemptions to postal services

22A. 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;
- (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;
- (f) newspapers and periodicals.

### Regulation of extra-territorial offices of exchange

22B. (1) No foreign operator, whether private or public must establish an extra-territorial offices of exchange in the country or use

Universal Postal Union forms without having obtained authorisation from the Authority.

(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 office of exchange.

(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 designated operator.

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

(a) be considered commercial cargo upon arrival in the country;

(b) go through custom clearance procedure; and

(c) have all postage and dispatch logos 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:

(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.

(c) The postal company may enter into a bilateral agreement with the foreign operator where an extra-territorial office of exchange originate 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 lodged with the Authority for notification.

(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.

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

**22C.** (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.

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

(2) In the event of the foreign operator failing to apply for authorisation in terms of subsection (1), the Authority must order the foreign

operator to cease their 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**

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

**"Suspension or cancellation of licence [or registration certificate] by the Authority**

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 29A in Act 124 of 1998**

12. The following section is 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 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 ten 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.
- (b) consideration and evaluation of the proposals by the Committee
- (c) recommend 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.
- (e) submission of the approved themes by the Minister to Cabinet for ratification.
- (f) the postal company in consultation with the Committee will oversee the design, printing and issuing of stamps.

(5) Final approval of the design of stamps and other philatelic products must be done by the postal company in conjunction with the Committee.

### **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.

(2) Commemorative stamps for any person must only be issued for the celebration of 50 and 100 years anniversaries.

(3) The Minister may under exceptional circumstances, approve the issuing of commemorative stamp falling outside subsection (2).



(4) The postal company in consultation with the Committee, the requesting party and/ or any interested party or institution must oversee the design, printing and issuing of the commemorative stamps.

(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 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.

(7) Any profit made from the sale of the commemorative stamps belong to the postal company and no person, party or institution shall have a claim in the profit from such sales."

**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."

**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 article**

30. (a) The postal company **[may] must** provide for the insurance of mail or postal article subject to such terms and conditions as may be **[prescribe] agreed with the customer** and may enter into an agreement with any **[postal authority] foreign operator** for the reciprocal exchange of insured mail or postal articles.

(b) Unreserved postal operators must provide for the insurance of mail or postal article subject to terms and conditions as agreed with the customer."

**Insertion of a 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, e-commerce, e-post services, direct marketing, retail services, financial services, agency services, and government services and pay-outs, insured letters and parcels.

(2) The postal company or any of its subsidiaries may share its infrastructure with any service provider on a commercial arrangements basis as part of the new revenue generating stream."

#### **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 preceding paragraph (10) of the following words:

"The postal company and **[may]** 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 the address production, allocation and assignment in consultation with other key stakeholders as identified by the postal company in the rural, and underserviced areas.

(2) In the production, allocation and assignment of addresses, the postal company must comply with international and National standards on addressing.

(3) The address assigned or confirmed by the postal company is recognised as official address for that household for the purposes of all services.

(4) The postal company must develop, maintain and manage the National Address Database for the Republic in consultation with other stakeholders as identified by the postal company.

(5) The National Address Database developed in terms of subsection (4) is the official address database for the Republic.

(6) All addresses database that prior to the commencement of this Act were developed and maintained by any person other than the postal company must be handed over by such person to the postal company to be incorporated in the National Address Database referred to in (4).

(7) The national address system must be funded through annual subsidy allocation by government or from any other source as determined by the Minister.

(8) The postal company must submit such request for national address system funding through the Minister.

### **Repeal of Sections 50 of Act 124 of 1998**

**18.** Sections 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**

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 of Act 124 of 1998**

20. Sections 56 of the principal Act is hereby repealed.

## **Repeal of sections 57 of Act 124 of 1998**

21. Sections 56 and 57 of the principal Act is 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 and section 9 of 2006**

**22.** Section 80 of the principal Act is hereby amended by—

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

**"Operating of postal services without licence [or registration certificate]."**

(b) the substitution for subsection (1) of the following subsection:

"(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 both a fine and such imprisonment.";

(c) the substitution in subsection (2) for paragraph (c) of the following paragraph:

"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."; and

(d) by the deletion of subsections (3), (4), (5) and (6).

### **Repeal of sections 81, 82 and 83 of Act 124 of 1998**

**23.** Sections 81 of the principal Act is hereby repealed.

### **Repeal of sections 81, 82 and 83 of Act 124 of 1998**

**24.** Sections 82 of the principal Act is hereby repealed.

**Repeal of sections 81, 82 and 83 of Act 124 of 1998**

25. Sections 83 of the principal Act is hereby repealed.

**Amendment of section 84 of the principal Act**

26. Section 84 of the principal Act is hereby amended as follows by substituting of reference to **["the Post Office Act of 1958"]** with "the Post and Telecommunication Related Matters Act, 1958.".

**Amendment of section 85 of the principal Act**

27. Section 85 of the principal Act is hereby amended as follows by substituting of reference to **["the Post Office Act of 1958"]** with "the Post and Telecommunication Related Matters Act, 1958.".

**Repeal of Schedules 1 and 2**

28. Schedules 1 and 2 are hereby repealed.

**Short title and commencement**

29. This Act is called the Postal Services Amendment Act, 2017 and comes into 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, 2017**

### **1. BACKGROUND**

- 1.1 The development within the Postal and ICT Sector globally requires the re-looking into the policies and legislation governing the sector. The Postal Services Act, 1998 (Act No. 124 of 1998) established a framework for the regulation of the Postal Sector in the country after our democratic dispensation.
- 1.2 The changing landscape of the postal sector is influenced by the constantly changing electronic means of communication and embracing ICT's by postal which will ensure the expansion of services that will create new revenue generating streams for the operators, particularly South African Post Office (SAPO). With the global trends, it is important to have legislation and a regulatory regime that will not only enable growth in the sector but regulate them as well. This will assist in ensuring that the postal sector provides effective and efficient service for its clientele.
- 1.3 The new principles introduced include licensing regime as opposed to the current registration regime for unreserved postal operators, regulation of unreserved postal operators and extra-territorial offices of exchange, services expansion by the SAPO to ensure new revenue generating streams, embrace technological advancement in order to grow, diversify and therefore remain relevant and self-sustaining. The Policy also introduces the creation of an ICT development fund to address universal access in the ICT sector, where the Postal sector licensees will also be required to contribute and benefit from the fund.
- 1.4 The policy acknowledges that SAPO, due to its extensive network of postal points of presence and its distribution capacity, has a strategic platform through which citizens and business can access ICTs, government services as well as other services. It proposes that SAPO should maximize the



benefits and impact by introducing new products and services utilizing its country-wide infrastructure.

- 1.5 Among the new concepts introduced is an enabling legislative framework which will empower the Authority to regulate and monitor the establishment of extra territorial offices of exchange which are defined by the Universal Postal Union (UPU) as an office or facility operated by or in connection with a designated operator on the territory of another country for commercial purposes.

## 2. OBJECTS OF THE BILL

The objects of the Bill are 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; to provide for a new licencing framework of the postal operators; to create a new framework for regulation of Extra-Territorial Offices of Exchange to improve the competition provisions; to provide for the national addressing policy approach for the assignment of addresses particularly in the rural areas and the development and maintenance of national address database, to provide for a clear process for the development of philatelic products, to provide for the expansion of services by SAPO creating new generating revenue streams and to provide for matters connected therewith.

## 3. SUMMARY OF THE BILL

### Clause 1

The definitions contained in the Bill are amended, repealed or inserted for better understanding and interpretation as follows:

#### "address"

A new definition of "address" is inserted to "an unambiguous specification of a point of service delivery where people reside or businesses are located". This is to distinguish between post box address which is currently part of the reserved area

and physical address. This is in line with the National Address initiative to ensure that all household and businesses have formal physical addresses.

### **"Authority"**

A new definition of "Authority" is inserted to mean "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)" Postal services Act previously referred to the regulator but the ICASA Act makes reference to the Authority as opposed to regulator and this is to ensure alignment.

### **"courier services"**

"courier services" definition is repealed in line with new licencing framework to distinguish only the reserved and unreserved postal services. The expression "courier services" is defined as part of the two categories of postal services (the reserved and the unreserved).

### **"days"**

The definition of "days" is inserted to mean "any days excluding public holidays and weekends. This is to provide clarity that it only counts working days excluding weekends and holidays.

### **"Department"**

The definition of "department" is amended to means the Department **[of Communications]** of Telecommunications and Postal Services" This is to give effect to the proclamation issued by the President establishing the new Department of Telecommunications and Postal Services and moving of the function to administer this Act from the department of Communications.

### **"designated operator"**

**Definition of 'designated operator'** is inserted to mean "an operator determined by the Minister in consultation with the Authority to provide universal postal services in terms of section 16A of the Act".

The term is defined to ensure that there is a designated operator to provide universal postal services in the country. Currently SAPO is the universal postal service

provider. The term is used to also allow the Minister to designate any operator to provide universal postal services.

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

New definition of Extra-territorial offices of exchange is inserted to mean "an office or facility established and operated by a licenced foreign operator in the Republic"

This is defined in line with the new provisions on the regulation of extra-territorial offices of exchange as provided for in the Integrated ICT White Paper. The definition is aligned to the UPU definition.

### **"Foreign operator"**

The definition of "foreign operator" is inserted to mean "any duly constituted postal operator of any foreign country or place"

The term has been used in the body of the proposed amendments and replaced the term "postal authority".

### **"Licence"**

The definition of "licence" is inserted to mean "license to provide reserved or unreserved postal services issued by the Authority under this Act". This is in line with the new licencing framework and the abolishing of registration regime where unreserved operators were not effectively regulated.

### **"money order"**

The definition of "money order" is amended to mean "money order issued in terms of this Act or by any **[postal authority]** foreign operator for payment of in terms of this Act". The amendment replaces the words "postal authority" with "foreign operator" so as to align the use of terminology Act.

### **"National Address Database"**

The definition of "National Address Database" is inserted to mean "an official database repository for all addresses in the Republic". This is in line with the new section 46A dealing with national address system. It is defined to mean an official database repository for all addresses in the Republic"

**"National Savings Certificate"**

Definition of "National Savings Certificate" is repealed as is longer necessary and section dealing with Savings certificates deleted from this Act and all issues of savings are dealt with in the Postbank Act

**"person"**

The definition of person is inserted to mean "a natural or juristic person". The word is defined as it is used in the Bill to ensure that it includes both natural and juristic person and is aligned to definition provided in other legislation such as the Electronic Communications Act, 2005 (Act No 36 of 2005) (ECA).

**"Postal authority"**

The term "postal authority" is repealed as it is no longer used in the Act and is replaced by the terms "foreign operator".

**"postal company"**

The definition of postal company is amended to mean **"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 referred to in section 3(1) of the South African Post Office SOC Ltd Act, 2011".** This is to align it to the South African Post Office SOC Ltd Act, 2011 to ensure consistency.

**"postal service"**

The definition of "postal services" is amended to mean **[a reserved postal services or an unreserved postal services as contemplated in Schedule 1 and Schedule 2 respectively] the collection, delivery and courier of all letters, postcard, bulk mail, printed matter, package and parcels weighing up to 30 kg, issuing of stamp, money order, assignment of physical address and address boxes, and other postal articles that falls within the reserved postal services and unreserved postal services as contemplated in the Act;**

This is in line with the deletion of the schedules and has now been re-defined to incorporate what constitute reserved and unreserved postal services.

**"postal service operator"**

The definition of postal services operator is inserted to mean “any person licensed in terms of Chapter (III) to provide reserved and/or unreserved postal services”

This is in line with the new licensing framework.

### **"Post Office Act"**

The definition of "Post Office is amended to mean Post Office as defined in the South African Post Office SOC Ltd Act, 2011. This is to align it to the definition provided in the South African Post Office SOC Ltd Act, 2011.

### **"reserved postal services"**

The definition of "reserved postal services" is amended to mean “those services that can only be provided by the designated postal operator as determined by the Minister through gazette”. Postal sector is rapidly and constantly changing and some terms need to be defined in line with those new developments.

The definition is a result of the proposed deletion of the Schedules which are prescriptive in terms of what constitute the reserved postal services and to change will require legislative amendments. What constitute reserved postal services will be determined by the Minister in consultation with the Authority.

### **"underserved area"**

The definition of underserved area is amended to mean “the geographically identified areas prescribed by the Authority in accordance with this Act”

This is aligned to other legislation such as the Electronic Communications Act, 2005.

This is in line with the current practice where underserved areas are determined by the Authority and appear in the licence of the South African Post Office.

### **"unreserved postal operator"**

The definition of "Unreserved postal operator" is inserted in line with new section 15A that deals with the new licensing framework providing for different categories of unreserved postal operators licences.

### **"universal postal services"**

The definition of universal postal services is amended to mean “[a universal services 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 determined by the Authority in consultation with the Minister". Postal sector is rapidly and constantly changing and the terms is defined in line with these developments. The definition allows the Authority to constantly study the markets and determine in the license what constitute postal services that should be provided universally regardless of physical location.

#### **"unreserved postal services"**

The definition is inserted means **[the services contemplated in schedule 2]** the delivery and or courier of all letters, postcards, printed matters, small parcel and other postal articles that falls outside the ambit of the reserved postal services up to 30 kilogram". The definition is amended in line with the proposed deletion of the Schedules in the law which are prescriptive.

#### **"value added services"**

The definition of "Value Added Services" is inserted to mean "those services contemplated under section 44A of this Act". This is in line with the new provision on value added services to allow the Post Office to provide other services that are not traditional postal services as defined. This will allow the Post Office to create more revenue streams in line with development within the ICT sector.

#### **"Telecommunications Company"**

The definition is repealed as it is no longer necessary for the purposes of this Act.

#### **"Telecommunications line"**

The definition is repealed as it is no longer necessary for the purposes of this Act.

**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 is amended to delete reference to schedules and this is in line with the new definitions of the reserved and unreserved postal services. This will further empower the Minister to declare certain services through the *Gazette* to fall within the reserved area without having to amend the legislation and for such services to be contained in the licence issued by the Authority as licence condition.

**Clause 4**

Section 15A, B and C are inserted providing for the categories of licenses. The new licensing framework provide categorisation of licenses to ensure that even small operators find space within the sector and ensure the development and participation of SMMEs. The provision further empowers the Authority to determine license fees and conditions for each of the categories and for such to be published in the Government Gazette.

Section 15C deals with the operators that are currently licenced or registered and that they will be deemed to have been licenced and are given 120 days or such extended period by the Authority to indicate under which category do they wish to be licenced and to provide necessary documents as required by the Authority.

**Clause 5**

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

Section 16 (8) is also amended to empower the Minister to review reserved services and exclusivity period through the *Gazette* every five years or such shorter period as determined by the Minister without having to amend the law and in line with the proposed deletion of schedules.

**Clause 6**

Section 16A is inserted to provide for the designation operator/s responsible for the Universal service provision by the Minister in consultation with the Authority. It further provide any licensees to contribute to the universal services fund established by the Minister in terms of the proposed Digital development Fund law and for the Minister to determine the amount to be contributed by licensees in consultation with the Authority. This is in line with the White Paper to ensure that operators either pay or play as part of their universal services obligation.

**Clause 7**

Section 16B is inserted providing for the Universal services obligation and empowering the Minister to designate any postal operators to provide universal services and for any postal operator to contribute to the universal services obligation through contribution to the fund established by the Minister in terms of the proposed Digital development Fund to be established. It further provide for the universal postal services obligation to be funded from the fund so established.

**Clause 8**

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 amendments.



**Clause 9**

Amendment of section 21 to substitute the word "registered" with "licenced" and "registration" with "licence". This is a consequential amendment in line with the new licensing framework.

**Clause 10**

Amendment of section 22 to substitute the word "registered" with "licenced" which is a consequential amendment, in line with the new licensing framework.

This clause 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.

**Clause 11****Insertion of section 22A in Act 124 of 1998**

New section 22A 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. This includes:

- (a) Delivery by an employee of the sender exclusively for the private affairs of the sender;
- (b) unaddressed mail;
- (c) the exchange or service of legal process, proceedings, pleadings, affidavits or depositions;
- (d) occasional letters delivered by an individual not in the business of delivering letters;
- (e) trade announcements, circulars, printed extracts from newspapers, or advertisements which are not addressed to any person;
- (f) newspapers and periodicals.

**Clause 12****Insertion of section 22B and C in Act 124 of 1998**

New section 22B and C is inserted to provide for the regulation of extra-territorial offices of exchange (ETOE's).

The provision prohibits the establishment of ETOE's by any foreign operator without authorisation by the Authority. It further requires the foreign operator to apply to the Authority before establishing an ETOE in the country and to deal with ETOE's accordingly through regulations. 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 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.

The provision is inserted in line with the National ICT White Paper to regulate ETOE's as they are currently not regulated

**Clause 13**

Amendment of section 24 (1), (2), (3) and (4) by deleting the words "registration certificate" and this is in line with the new licensing framework which only make reference to licences.

**Clause 14**

New 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 15**

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 16**

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 the Postal operators are obliged to present and provide insurance option for the customer for their 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 17**

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.

**Clause 18**

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 19**

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 UPU Policy. There is currently no person designated for the assignment of addresses, particularly in the rural and informal settlements 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 empowers SAPO to be the custodian of address assignment, particularly in the rural areas and informal settlements. The provision further provided 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

The provision further empowers SAPO to develop and maintain National Address Database where all addresses for residential and businesses in the country will be kept. It further requires any holder of address information to submit to SAPO such information for keeping in the National Address database. This section further provide 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 20**

The provision provide for the repeal of section 50 dealing with Money remitted through postal company in terms of the Post Office Act, 1958. This was a transitional arrangement provision for the Post Office Act of 1958 and has since served its purpose and no longer necessary.

**Clause 21**

This provide for the amendment of section 54 (1) 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 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 22**

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

**Clause 23**

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

**Clause 24**

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 25**

This clause provides for the repeal of sections 81, since it is no longer necessary as the definition of postal services is catered for under section 1.

**Clause 26**

This clause provides for the repeal of section 82 amending the Post Office Act of 1958 dealing with the postal company as it has been covered in the South African Post Office SOC Ltd Act, 2011.

**Clause 27**

This clause provides for the repeal section 83 amending the Post Office Act of 1958 dealing with the transfers to the postal company as it has been substituted by section 31 of South African Post Office Act, 2011.

**Clause 28**

This clause provides for the amendment of section 84 by substituting reference to "Post Office Act of 9158" with "Post and Telecommunication Related Matters Act, 1958 to align with the South African Post Office SOC Ltd Act, 2011.

**29. 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.

### **30. Schedule 2**

Schedule 2 is repealed and aligned with the definition of the unreserved postal services.

### **31. Short title and commencement**

This Act is called Postal Services Amendment Act, 2017, and comes into operation on a date determined by the President by Proclamation in the *Gazette*.

## **4. PARTIES CONSULTED**

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 Africa Post Office (SAPO) as key stakeholder. The Bill was submitted to the Office of the Chief State Law Advisor and pre-certification granted.

Department of Monitoring Evaluation (DPME) has also been consulted in the development of SEIAS report and the provisional approval granted. The Bill was also finalised in consultation with the Economic Sectors, Employment and Infrastructure Development (ESEID) Cluster and approved by Cabinet for Public consultation.

## **5. 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.

**6. 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.

**7. PARLIAMENTARY PROCEDURE**

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.

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