

REPUBLIC OF SOUTH AFRICA

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# SOUTH AFRICAN POSTBANK BILL

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*(As introduced in the National Assembly (proposed section 75) (Explanatory summary of  
Bill published in Government Gazette No. 32673 of 6 November 2009))  
(The English text is the official text of the Bill)*

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(MINISTER OF COMMUNICATIONS)

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# BILL

**To provide for the incorporation of the Postbank Division of the South African Post Office; to provide for the transfer of the enterprise of that Division to the postbank company; to provide for the governance and functions of the postbank company; and to provide for matters connected therewith.**

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

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### INTERPRETATION AND OBJECT OF ACT

#### Definitions

|    |   |    |
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| 1. | In this Act, unless the context otherwise indicates—  |    |
|    | “ <b>Banks Act</b> ” means the Banks Act, 1990 (Act No. 94 of 1990);  |    |
|    | “ <b>Board</b> ” means the board of directors of the Company;   | 30 |
|    | “ <b>Companies Act</b> ” means the Companies Act, 1973 (Act No. 61 of 1973);  |    |
|    | “ <b>Company</b> ” means South African Postbank Limited contemplated in section 3;  |    |
|    | “ <b>former Postbank</b> ” means the Postbank referred to in section 51 of the Postal Services Act, 1998 (Act No. 124 of 1998), as it existed as a division of the Post Office immediately prior to the repeal of that section; | 35 |
|    | “ <b>member</b> ” means a member of the Board;  |    |
|    | “ <b>Minister</b> ” means the Minister of Communications;   |    |
|    | “ <b>Post Office</b> ” means South African Post Office Limited established in terms of the Post Office Act;   |    |
|    | “ <b>Post Office Act</b> ” means the Post Office Act, 1958 (Act No. 44 of 1958);  | 40 |
|    | “ <b>Postal Services Act</b> ” means the Postal Services Act, 1998 (Act No. 124 of 1998);   |    |
|    | “ <b>Public Finance Management Act</b> ” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);   |    |
|    | “ <b>Republic</b> ” means the Republic of South Africa;   |    |
|    | “ <b>the business of a bank</b> ” has the meaning ascribed to it in the Banks Act;  | 45 |
|    | “ <b>the business of the former Postbank</b> ” means the rights, obligations, assets and liabilities of the former Postbank contemplated in section 5(1);   |    |
|    | “ <b>this Act</b> ” includes any regulation made under section 25;  |    |
|    | “ <b>transfer date</b> ” means the date determined by the Minister in terms of section 6.   |    |

## Object of Act

2. The object of this Act is to provide for the incorporation of the Postbank Division of the Post Office as a legal person with the aim of—
- (a) conducting the business of a bank that will encourage and attract savings amongst the people of the Republic; 5
  - (b) rendering transactional services and lending facilities through, amongst others, existing infrastructure of the Post Office; and
  - (c) developing into a bank of first choice, in particular to communities that have little or no access to commercial banking services or facilities.

## CHAPTER II 10

### INCORPORATION AND TRANSFER OF ENTERPRISE

#### Incorporation

3. (1) The Minister must take the necessary action for the formation and incorporation of a public company with a share capital and for a certificate to commence business to be issued to the Company in terms of the Companies Act. 15
- (2) The Post Office shall, upon incorporation of the Company, be the sole member and shareholder of the Company.
- (3) The name of the Company is the “South African Postbank Limited” and no person may carry on any business or be registered with that name or with a name that is similar to “Postbank”. 20
- (4) The Minister or a person delegated by the Minister must, on behalf of the Post Office, sign the memorandum and articles of association and all other documents necessary for the formation and incorporation of the Company.
- (5) The Registrar of Companies must—
- (a) register the memorandum and articles of association as signed in terms of subsection (4); 25
  - (b) incorporate the Company as a public company under the name “South African Postbank Limited”; and
  - (c) with the concurrence of the Minister, issue to the Company a certificate to commence business. 30
- (6) No fee is payable in respect of the incorporation of the Company.

#### Registration as Bank

4. (1) Notwithstanding section 15 of the Banks Act, the Company must be regarded as having been authorised to form a company in terms of the Companies Act.
- (2) The Company must be registered as a bank after it has satisfied the requirements of the Banks Act. 35

#### Determination of extent of business to be transferred

5. (1) The rights and obligations, assets and liabilities of the former Postbank, including all deposits and investments held by the former Postbank or held with other financial institutions and all rights flowing from financial instruments held by the former Postbank, must be transferred to the Company. 40
- (2) (a) The extent of the business of the former Postbank must be determined by the Post Office and audited by an auditor registered as such in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005), and appointed by the Minister.
- (b) The auditor may not be associated with either the Post Office or the Company. 45
- (3) The auditor must, upon the audit contemplated in subsection (2)(a)—
- (a) attach a monetary value to the business of the former Postbank; and
  - (b) report the value thus determined to the Minister.

#### Determination of transfer date of enterprise

6. As soon as possible after a certificate to commence business has been issued to the Company, as contemplated in section 3, the Minister must by notice in the *Gazette* determine the transfer date of the enterprise of the former Postbank to the Company. 50

## **Transfer of enterprise of former Postbank to Company, vesting and consequence thereof**

- 7.** On the transfer date—
- (a) the management, control and operation of the former Postbank are transferred to the Company; 5
  - (b) the business of the former Postbank vests in the Company;
  - (c) subject to Schedule 1, personnel of the former Postbank is transferred to the Company;
  - (d) anything done by or on behalf of the former Postbank must be regarded as having been done by the Company. 10

## **Value of business of former Postbank for purposes of finance laws**

- 8.** For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), and any other law falling under the administration of the Minister of Finance, the business of the former Postbank must be regarded as having been acquired by the Company at a price equivalent to the value determined by the Minister, with the concurrence of the Minister of Finance. 15

## **CHAPTER III**

### **POWERS AND DUTIES OF COMPANY**

#### **Powers and duties of Company**

- 9.** (1) Subject to subsection (3), the Company has the powers to enable it to realise the object referred to in section 2, which includes the power to— 20
- (a) purchase or acquire any movable and immovable property;
  - (b) manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way deal with all of its assets; 25
  - (c) operate its business, products or services as set out in the articles;
  - (d) raise funds;
  - (e) invest money;
  - (f) conclude joint ventures and other commercial agreements with third parties in order to promote and advance its business; and 30
  - (g) render any or all of its services through the physical assets, systems, employees and general infrastructure of the Post Office.
- (2) (a) The Company and the Post Office must, with the concurrence of the Minister and the Minister of Finance, conclude an agreement which governs cooperation between the Company and the Post Office. 35
- (b) Such agreement must include, amongst others, terms and conditions relating to the utilisation by the Company of infrastructure of the Post Office, envisaged in section 2.

## **CHAPTER IV**

### **CONTROL AND MANAGEMENT OF COMPANY**

#### **Control of Company by Board** 40

- 10.** (1) The Company is controlled by a board of directors.
- (2) The members of the Board are appointed or reappointed by the Minister, with the concurrence of the Minister of Finance and the Post Office.

#### **Functions of Board**

- 11.** The Board— 45
- (a) must give effect to the corporate plan of the Company as contemplated in section 52 of the Public Finance Management Act in order to achieve the objectives of the Company;
  - (b) is the accounting authority of the Company;

- (c) provides guidance to the managing director and personnel of the Company concerning the exercise of the functions of the Company;
- (d) must notify the Minister immediately of any matter that may prevent or materially affect the achievement of the objects or financial targets of the Company; and
- (e) generally, must refer to the Minister any matter that may adversely affect the functioning of the Company.

### Composition of Board

- 12.** (1) The Board consists of not more than 15 members, the majority of whom must be non-executive members.
- (2) The members of the Board must be persons who—
- (a) are committed to fairness, openness and accountability; and
  - (b) when viewed collectively—
    - (i) are representative of a broad cross-section of the population of the Republic; and
    - (ii) possess suitable qualifications, expertise and experience in the field of banking, finance and economics, or any other relevant qualifications, expertise and experience.
- (3) (a) The members of the Board must be appointed for a period not exceeding five years.
- (b) Members of the Board may be re-appointed for one further term not exceeding five years.
- (4) The Minister must appoint a Chairperson from amongst the members of the Board.
- (5) The Board may designate any other non-executive member to act as Chairperson if the Chairperson is absent or unable to perform any function.

### Persons disqualified from membership of Board

- 13.** No person may be appointed as a Board member or remain a member of the Board if he or she—
- (a) is a member of Parliament, any provincial legislature or any municipal council;
  - (b) is an unrehabilitated insolvent;
  - (c) has been declared by a court to be mentally ill or disordered;
  - (d) has at any time been convicted, whether in the Republic elsewhere, of—
    - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any other offence involving dishonesty; or
    - (ii) an offence under this Act;
  - (e) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine; or
  - (f) has at any time been removed from an office of trust on account of misconduct.

### Appointment of members of Board

- 14.** (1) For the purpose of appointing the members of the Board, the Minister must, by notice in at least two national newspapers and in the *Gazette*, invite interested persons to submit, within the period and in the manner mentioned in the notice, the names of person fit to be appointed as members of the Board.
- (2) The Minister must appoint a nomination committee to make recommendations to the Minister for the appointment of members of the Board.
- (3) In establishing a nomination committee, the Minister must ensure that the committee is broadly representative of the various racial groups and geographic areas of the Republic and that both males and females are represented.
- (4) The nomination committee, in making a recommendation to the Minister, must consider—
- (a) the proven skills, knowledge and experience of a candidate in areas of—
    - (i) financial management;
    - (ii) project management;

- (iii) governance compliance;
  - (iv) risk management;
  - (v) transformation and diversity equity;
  - (b) the need for representation of historically disadvantaged persons; and
  - (c) generally, whether the persons nominated represent a sufficient spread of qualifications, expertise and experience to ensure the efficient and effective functioning of the Company. 5
- (5) If a suitable person or the required number of suitable persons are not nominated as contemplated in subsection (4), the Minister may, with the concurrence of the Minister of Finance and the Post Office, identify and appoint the required number of further members. 10
- (6) (a) The Minister must, within 30 days after consensus has been reached with the Minister of Finance and the Post Office regarding the appointment of members, appoint the members.
- (b) The Minister must cause the names of the members appointed and the date of commencement of their terms of office to be published by notice in the *Gazette*. 15
- (7) A non-executive member of the Board—
- (a) is appointed according to the terms and conditions determined by the Minister;
  - (b) must be paid from the revenue of the Company such remuneration and allowances as the Minister determines, taking into consideration any prescriptions or guidelines issued by the Minister for the Public Service and Administration and the National Treasury; and 20
  - (c) is appointed on a part-time basis.
- (8) Any vacancy occurring in the Board must be filled in the same way as the departing member was appointed to the Board. 25

#### **Resignation, removal from office and vacating of office**

15. (1) A member of the Board may resign by giving to the Minister—
- (a) one month's written notice; or
  - (b) less than one month's written notice, with the approval of the Minister. 30
- (2) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister must remove a member of the Board from office if that member—
- (a) acted in conflict with this Act;
  - (b) failed to disclose an interest or withdraw from a meeting as required by section 16; or 35
  - (c) neglected to properly perform the functions of his or her office.
- (3) A member of the Board must vacate the office if he or she becomes disqualified from membership of the Board in terms of section 13.

#### **Disclosure and fiduciary duties of Board members**

16. (1) In addition to any other applicable legislation, the following shall apply to members of the Board: 40
- (a) A member of the Board must, upon appointment, submit to the Minister and the Board a written statement in which it is declared whether or not that member has any direct or indirect financial interest which could reasonably be expected to compromise the Board in the performance of its functions; 45
  - (b) a member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, life partner, business partner or associate has a direct or indirect financial interest;
  - (c) if a member of the Board acquires an interest that could reasonably be expected to be an interest contemplated in this section, he or she must immediately in writing declare that fact to the Board; 50
  - (d) if an organisation or enterprise in which a member of the Board has an interest contemplated in this section is requested to offer its services to the company, or is in the process of concluding any agreement with the Company, the organisation or enterprise must immediately, in writing, declare the member's interest to the Board; 55

- (e) a member of the Board must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting their scope, must—
- (i) take reasonable steps to inform himself or herself about the Company, its business and activities and the circumstances in which it operates; 5
  - (ii) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed decisions;
  - (iii) regularly attend all Board meetings; 10
  - (iv) exercise an active and independent discretion with respect to all matters to be decided by the Board;
  - (v) exercise due diligence in the performance of his or her functions as a member;
  - (vi) comply with any internal code of conduct that the Company may establish for Board members; 15
  - (vii) not engage in any activity that may undermine the integrity of the Company;
  - (viii) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member; 20
  - (ix) treat any confidential matters relating to the Company, obtained in his or her capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the Company or as required as part of that person's official functions as a member of the Board.
- (2) Any member who fails to comply with any fiduciary duty referred to in subsection (1), or any former member who failed to comply with such fiduciary duty while being a member, commits an offence and is liable on conviction to a fine or to imprisonment not exceeding five years or to both a fine and such imprisonment. 25

### **Committees of Board**

17. (1) The Board may establish one or more committees to assist it in the performance of its functions. 30
- (2) The Board must—
- (a) assign members of the Board to serve on a committee, based on their knowledge and skills; and
  - (b) determine the— 35
    - (i) terms of reference of a committee;
    - (ii) composition of a committee;
    - (iii) tenure of members on a committee;
    - (iv) reporting mechanisms of a committee; and
    - (v) method and reasons for removal of a member from a committee. 40
- (3) The Board may appoint any person with particular knowledge, expertise or qualifications to assist a committee in the performance of its functions.
- (4) Unless specially delegated by the Board, a committee has no decision-making powers and can only make recommendations to the Board.
- (5) A committee must meet as often as is necessary in order to carry out its functions and may determine its own procedures. 45
- (6) Each committee must be chaired by a non-executive member of the Board.

### **Appointment of managing director**

18. (1) The Board must, with the approval of the Minister, appoint a managing director who must perform any work incidental to the functions of the Company and ensure that the Company meets its objects. 50
- (2) The Board must invite applications for the posts of managing director by publishing advertisements in the media.
- (3) A person appointed as managing director—
- (a) must have the qualifications or experience relevant to the functions of the Company; 55
  - (b) must not be disqualified as contemplated in section 13; and
  - (c) is a member of the Board by virtue of the office.

### Conditions of appointment of managing director

- 19.** (1) (a) The appointment of the managing director is subject to the conclusion of a performance contract entered into between the Board and the managing director.  
 (b) The performance contract must be reviewed annually.  
 (2) The managing director holds office on the terms and conditions determined by the Board, in consultation with the Minister. 5  
 (3) The managing director is entitled to a remuneration package determined by the Board with the concurrence of the Minister and the Minister of Finance.  
 (4) The managing director is accountable to the Board.

### Personnel of Company 10

- 20.** (1) The work relating to the functions of the Company is performed by—  
 (a) persons transferred to the Company as provided for in section 7(c); and  
 (b) such persons as the Board may, with the concurrence of the managing director of the Company, appoint.  
 (2) The Board must determine the conditions of service, remuneration and service benefits of the personnel of the Company after consultation with the managing director and with the concurrence of the Minister of Finance. 15

### Annual report

- 21.** (1) The Company must annually, not later than six months after the end of its financial year, submit to the Minister a report on all its activities during the previous year. 20  
 (2) The annual report must be tabled in Parliament within 30 days after it was received by the Minister, if Parliament is then in session, or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

## CHAPTER V 25

### FUNDS AND FINANCIAL ACCOUNTS OF COMPANY

#### Funds of Company

- 22.** The funds of the Company consist of—  
 (a) capital vested in the Company by virtue of section 7;  
 (b) funds derived from its operating activities; 30  
 (c) money appropriated by Parliament; and  
 (d) moneys lawfully received from any other source.

#### Inspection of financial accounts and documents of Company

- 23.** The Minister or any officer in the public service authorised by the Minister in writing has full access to all the financial accounts and documents of the Company, and the Board must at all times furnish to the Minister or to such officer, as the case may be, all such information as may reasonably be required. 35

#### Application of Public Finance Management Act

- 24.** The Company is subject to the Public Finance Management Act.

## CHAPTER VI 40

### GENERAL AND MISCELLANEOUS

#### Regulations

- 25.** The Minister may, on the recommendation of the Board and with the concurrence of the Minister of Finance, make regulations regarding—  
 (a) any matter relating to the functioning of the Board that it is necessary to ensure the efficiency and effectiveness in the performance of its functions; and 45

- (b) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

### **Non-application of provision of Companies Act**

- 26.** A provision of the Companies Act does not apply to the Company if— 5  
 (a) because of any special or contrary arrangement made by this Act, such a provision is clearly inappropriate or incapable of being applied; or  
 (b) the Minister of Trade and Industry has issued a declaration under section 25.

### **Certain provisions of Companies Act may be declared inapplicable to Company**

- 27.** (1) (a) The Minister may request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Company. 10  
 (b) The request must be fully motivated by the Company.  
 (2) (a) The Registrar of Companies must publish particulars about the request and the motivation contemplated in subsection (1) by notice in the *Gazette*.  
 (b) In such notice, the Registrar must invite interested persons to submit representations to a person named in the notice within a period stipulated in that notice. 15  
 (3) (a) After having considered the representations contemplated in subsection (2), if any, the Minister of Trade and Industry may, by notice in the *Gazette*, declare the whole or any part of the provision concerned to be inapplicable to the Company with effect from the date stipulated in that notice. 20  
 (b) The Minister of Trade and Industry may only issue the declaration if satisfied on reasonable grounds that the inapplicability of that provision to the Company—  
 (i) will contribute to the Company's efficiency;  
 (ii) will not reduce or limit the Company's accountability as a public entity or reduce the transparency of its functioning and operations; and 25  
 (iii) will not be prejudicial to the rights, interests or claims of the Company's creditors or employees or to the rights or interests of any other person.  
 (4) This section applies with the changes required by the context to the former Postbank functioning as contemplated in section 26.

### **Transitional provisions** 30

- 28.** Notwithstanding the repeal of sections 51(1), (2), (3) and (4), 52, 53, 55 and 58 of the Postal Services Act by section 29, until the Company is registered as a bank as contemplated in section 4(2), the former Postbank—  
 (a) continues to function without any interruption, as if those sections have not been repealed; and 35  
 (b) must for all purposes be regarded as a legal person authorised to conduct the business of a bank.

### **Repeal of laws**

- 29.** The laws mentioned in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule. 40

### **Short title and commencement**

- 30.** This Act is called the South African Postbank Act, 2010, and takes effect on a date determined by the Minister by notice in the *Gazette*.

**SCHEDULE 1***(Section 7)***TRANSFER OF PERSONNEL AND RELATED MATTERS****Transfer of personnel to Company**

1. At least one month prior to the transfer date the Chief Executive Officer of the Post Office must inform any employee of the Post Office performing functions pertaining to the former Postbank to make an election provided for in item 2. 5
2. An employee contemplated in item 1 who—
- (a) elects in writing addressed to the Chief Executive Officer of the Post Office prior to the transfer date to become an employee of the Company, becomes, without any interruption of service, from the transfer date, an employee in a similar post in the Company, subject to conditions of employment which may not be less favourable than those applicable to him or her on the date immediately preceding the applicable transfer date; 10
  - (b) does not in terms of paragraph (a) elect to become an employee of the Company and is seconded to the Company, there to perform services in a post similar to the post occupied by him or her in the former Postbank, remains, while he or she is so seconded, subject to the laws governing officers and employees of the Post Office. 15
3. If, for the purposes of item 2, the question arises whether any person performs functions pertaining to the former Postbank, such question shall, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), be decided by the Chief Executive Officer of the Post Office. 20
4. If any person seconded in terms of item 2(b) elects to become an employee of the Company, he or she becomes, without interruption of service, from a date determined by the Managing Director of the Company, an employee of the Company in a post similar to the post occupied by him or her while so seconded, subject to the conditions of service of the Company: Provided that where such election is made more than one year after the applicable transfer date, the Company shall not be obliged to employ such employee and he or she remains seconded to the Company. 25 30
5. For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), it is deemed that no change of employer took place when employment is taken up at the Company by employees in terms of item 2 or 4 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, remained unchanged. 35
6. When an employee of the Post Office becomes an employee of the Company in terms of item 2 or 4—
- (a) such employee's salary and salary scale may not be reduced;
  - (b) he or she retains all vacation and sick leave which on the date immediately preceding his employment by the Company stands to his credit with the Post Office, including all monetary benefits attached thereto; 40
  - (c) any other conditions of employment may not be less favourable to him or her than those applicable prior to him or her becoming an employee of the Company; 45
  - (d) he or she remains, notwithstanding any provision to the contrary in any law or in the rules of any pension fund or medical scheme, upon becoming an employee of the Company, a member of that pension fund or medical scheme for all purposes, and the Board must contribute to the said pension fund or medical scheme in respect of that person to the same extent as an employer is required in terms of the laws on and the rules of that pension fund or medical scheme to contribute to that pension fund or medical scheme in respect of an employee who is a member of that fund or medical scheme; 50
  - (e) any enquiry or other action instituted or contemplated in respect of alleged misconduct committed by such employee prior to his or her employment by the Company must be disposed of or instituted by the Company, and the Company must take steps against the employee concerned if he or she is found guilty of misconduct as if he or she were still in the employment of the Post Office. 55

**SCHEDULE 2***(Section 29)***REPEAL OF LAWS**

| <b>No. and year of Law</b> | <b>Short title</b>        | <b>Extent of repeal</b>                             |
|----------------------------|---------------------------|---|
| Act No. 124 of 1998        | Postal Services Act, 1998 | Sections 51(1), (2), (3) and (4), 52, 53, 55 and 58 |

## MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN POSTBANK BILL, 2009

### 1. OBJECTS OF THE BILL

The objects of the South African Postbank Bill, 2009, are to provide for the incorporation of the Postbank Division of the South African Post Office; for the transfer of the enterprise of that Division to the Postbank Company; for the governance and functions of the Postbank Company; and for matters connected therewith.

#### CHAPTER I

##### Clause 1

Provides for the definition of words as they will be used in the legislation.

##### Clause 2

Sets forth the primary objectives of the Bill, including the incorporation of the Postbank Division of the Post Office as a legal person with the aim of—

- conducting the business of a bank that will encourage and attract savings amongst the people of the Republic;
- rendering transactional services and lending facilities through, amongst others, existing infrastructure of the Post Office; and
- developing into a bank of first choice, in particular to communities that have little or no access to commercial banking services or facilities.

#### CHAPTER II

##### Clause 3

Establishes a legal framework for the formation and incorporation of the Company and further provides for the South African Post Office Limited to be sole member and shareholder of the company.

##### Clause 4

Makes provision for the Company to be registered as a bank after it has satisfied the requirements of the Banks Act.

##### Clause 5

Empowers the Post Office to determine the extent of the business to be transferred to the Company and for such business to be audited by a public accountant and auditor appointed by the Minister and for the said auditor to attach a monetary value in determining the extent of the business of the former Postbank.

##### Clause 6

Requires the Minister to determine a date for the transfer of the enterprise from the former Postbank to the Company by notice in the *Gazette*.

##### Clause 7

Makes provisions for the management, control and operation of the former Postbank to be transferred to the Company as well as the business and personnel of the former Postbank.

**Clause 8**

Provides for the value to be placed on the former Postbank for purposes of finance prescripts.

**CHAPTER III**

**Clause 9**

Provides for the powers that the Company shall have to enable it to realise its objectives as set out in section 2.

**CHAPTER IV**

**Clause 10**

Provides for the establishment of a Board of Directors that will control and manage the Company.

**Clause 11**

Outlines the functions of the Board.

**Clause 12**

Provides for the composition of the Board and the qualifications of its members.

**Clause 13**

Provides for the disqualification of any person to be appointed as a Board member.

**Clause 14**

Empowers the Minister to appoint members of the Board and further outlines the process to be followed.

**Clause 15**

Provides for how resignations and removal and vacating from office of Board member shall be dealt with.

**Clause 16**

Places an obligation on Board members to disclose their financial interests and contains the fiduciary duties of Board member before and after appointment as Board member.

**Clause 17**

Empowers the Board to appoint committees necessary to assist in the realisation of the Company's objectives and to delegate any of its powers to such committees.

**Clause 18**

Requires the Board to appoint the managing director as the most senior person of the Company, subject to the Minister's approval.

**Clause 19**

Outlines the conditions for the appointment of managing director and the remunerative package as determined by the Board with the concurrence of the Minister and the Minister of Finance.

**Clause 20**

Makes provisions for the Board with the concurrence of the managing director to appoint personnel to perform work-related functions and to determine their conditions of service, remuneration and service benefits.

**Clause 21**

Provides for the submission of an annual report by the Company to the Minister.

**CHAPTER V****Clause 22**

Provides for what will constitute the Company's funds.

**Clause 23**

Empowers the Minister or any officer authorised by the Minister to inspect financial accounts and documents of the Company.

**Clause 24**

Provides for the application of the Public Finance Management Act.

**CHAPTER VI****Clause 25**

Empowers the Minister, on recommendation of the Board, to develop regulations with the concurrence of the Minister of Finance.

**Clauses 26 and 27**

Makes provision for the non-application of certain provision of the Companies Act and empowers the Minister to request the Minister of Trade and Industry to declare any provision of the Companies Act to be inapplicable to the Company.

**Clause 28**

Provides for the transitional arrangement to allow the former Postbank to continue to function without interruption until the Postbank is registered as a bank.

**Clause 29**

Provides further for the repeal of laws mentioned in Schedule 2 and the extent set out in the third column of that schedule.

**Clause 30**

Provide for the short title and commencement of the Act.

**Schedule 1**

Provides for the transfer of personnel to the Company as contemplated in section 7 of the Act. It further makes provision for the Chief Executive Officer of the Post Office, at least one month prior to the transfer date, to inform any employee of the Post Office performing functions pertaining to the former Postbank to make an election in writing to become an employee of the Company or to elect not to become the employee of the Company.

**Schedule 2**

Provides for the repeal of sections 51(1), (3) and (4), 52, 53 and 55 of the Postal Services Act, 1998 (Act No. 124 of 1998).

**2. PARTIES CONSULTED**

South Africa Post Office Limited (SAPO), Postbank, National Treasury, South African Reserve Bank, Industrial Strategy Focus Group, Department of Cooperative Governance and Traditional Affairs, Government Communication and Information System (GCIS), Department of Trade and Industry (DTI), Department of Public Enterprises (DPE), Department of Social Development, Department of Science and Technology (DST), Independent Communications Authority of South Africa (ICASA), South African Social Security Agency (SASSA), all nine Provincial Departments of Local Government, Communications Workers Union (CWU), Organised Civil Society, Non-Governmental Organisations, members of the public through public hearings in all nine Provinces, National House of Traditional Leaders, Eastern Cape House of Traditional Leaders, North West House of Traditional Leaders, Banking Association of South Africa.

**3. FINANCIAL IMPLICATIONS FOR STATE**

Normal communication associated with legislative processes and start-up funds for the Company to be catered for in the MTEF.

**4. IMPLICATIONS FOR PROVINCES**

None

**5. PARLIAMENTARY PROCEDURE**

- 5.1. The State Law Advisers and the Department of Communications are of the opinion that this 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 section 76 of the Constitution applies.
- 5.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.