

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. of 2018)
(The English text is the official text of the Bill)*

(MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES)

[B—2018]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Postal Services Act, 1998, so as to amend and insert certain definitions; to add a number of objects; to substitute the word regulator for authority wherever it appears in the Act, to provide for the regulation of the sector, particularly the private operators and extra-territorial offices of exchange; to ensure the contribution of private operators to the universal postal services; to provide for a new licensing framework for the sector that encourages participation by SMMEs; to provide for the repositioning of South African Post Office to take advantage of the new opportunities imposed by digital technologies, to provide for the contribution by South African Post Office to e-Government by providing services for different governments departments and e-commerce platform; to provide for the national addressing policy approach for the assignment of physical addresses to rural and traditional communities and the development, maintenance and management of national address database for the Republic; to provide for a clear process for the approval of annual and commemorative stamps; and to provide for a clear process for the development of philatelic products; 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 service delivery as defined in the South African National Standards (SANS) 1883-1".

(b) by the insertion after the definition of "**address**" of the following definitions:

" '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);"

(c) by the insertion after the definition of "**Authority**" of the following definitions:

" 'Committee' means Stamp Advisory Committee of the postal company;"

(d) by the deletion of the definition of "**courier service**";

(e) by the insertion before the definition of "**Department**" of the follows definition:

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

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

" 'Department' means the Department **[of Communications]** responsible for telecommunications and postal services;"

- (g) 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 24A;"

- (h) 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 licensed foreign operator in the Republic;"

- (i) by the substitution of the definition of "**postal authority**" of the following:

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

- (j) by the substitution of the definition of letter of the following :

" 'letter' means any form of written communication of other document, article or object that is directed to a specific person or persons or specific address and is to be conveyed other than by electronic means and includes a parcel, package or wrapper containing any such communication or article conforming to the with the following dimensions: length 458 mm, width 324 mm, thickness 100 mm,

Cylinders having a maximum length of 458 mm and 100 mm thickness
a mass of up to one kilogram;;

(k) by the insertion after the definition of "**letter**" of the following definition:

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

(l) by the substitution of the definition of "**money order**" of the following:

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

(m) 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 and includes data sets as defined in
the Spatial Infrastructure Act, 2003 (Act No. 54 of 2003);;

(n) by the insertion after the definition of "**National Address**" of the following
definition:

" '**organ of state**' means an organ of state as defined in section 239 of
the Constitution;;

(o) by the deletion of the definition of "**National Savings Certificate**";

(p) by the insertion before the definition of "**postage**" of the following definition:

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

(q) by the deletion of the definition of "**postal authority**";

(r) 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 contemplated in section 3(1) of the South African Post Office SOC Ltd Act, 2011(Act No 22 of 2011)";

(s) by the substitution of the definition of **"postal order"** of the following:

" **'postal order'** means a postal order issued under this Act or by any **[postal authority] foreign operator** for payment under this Act";

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

" **'postal service'** means a reserved postal service or an unreserved postal services as **[contemplated in Schedule 1 and Schedule 2 respectively]** reserved postal service or unreserved postal service as defined in this Act";

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

" **'postal services operator'** means any person licensed in terms of Chapter (III) to provide reserved or unreserved postal services";

(v) 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 the Post Office as defined in the South African Post Office SOC Ltd Act, 2011 (Act No 22 of 2011);";

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

" 'Post Office Act' means the Post and Telecommunications Related Matters Act, 1958 (Act No 58 of 1958);";

(x) 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] that can only be provided by the designated operator as determined by the Minister in the Gazette in consultation with the Authority;";

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

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

(z) 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;";

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

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

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

" 'unreserved postal services' [the services contemplated in schedule 2] means the delivery and or courier of all letters, postcards, printed matters, small parcels and other postal articles up to and including 30kg;";

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

" 'value added services' means services contemplated under section 44A;";

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

(ze) 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;".

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

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

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

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

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

"(7) The postal company and any other holder of a licence must comply with the conditions specified in the licence in question relating to the provision of postal services in **[areas and to communities which are not served or adequately served by postal service]** underserviced areas with a view of achieving universal postal service."

Substitution of section 20 of Act 124 of 1998

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

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

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

Insertion of section 20A in Act 124 of 1998

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

"Categories of licenses

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

(a) International operator: licence to provide postal services and operates inbound and outbound deliveries on a world-wide network;

- (b) regional operator: licence to provide postal services across the Southern African Development Community (SADC) region;
- (c) national operator: licence to provide postal services nationally across the country;
- (d) local operator: licence to provide postal services across a particular province, municipality or Metropolitan only."

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

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

"Application for [registration] licence for unreserved postal services

21. (a) An application for **[the registration with the Regulator]** a licence 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] application** fee.

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

(c) A licence to provide unreserved postal services may be granted to—

(i) a citizen of the Republic; and

(ii) a juristic person registered under the laws of the Republic and has its principal place of business located within the Republic."

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

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

"Operators regarded as having been [registered] licensed

22. (a) Any person who, immediately before the date of commencement of this section provided **[a postal service in respect of items contemplated in Schedule 2, including a courier service]** unreserved postal service and is registered with the Authority must be regarded as being **[registered] licensed** 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] licensed** 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] licence**.

(d) A person may not be **[registered] licensed** 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 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, 22C and 22D in Act 124 of 1998

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

"Licence fees

22A. (1) The Authority must—

(a) determine licence fees payable for each licence category; and

(b) must publish such fees in the Gazette.

(2) A licence referred to in section 20A will only be granted upon payment of a licence fee determined under subsection (1).

(3) The Authority must determine licence condition for each of the licence category.

Exemptions to postal services

22B. The following postal services are exempted from licensing 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; and

(f) newspapers and periodicals.

Regulation of extra-territorial offices of exchange

22C. (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 codes to show which postal operator runs the extra-territorial office of exchange.

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

(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 and extra-territorial office of exchange and such agreement must be concluded in consultation with the Authority.

(7) 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

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

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

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

foreign operator to cease 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

10. 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 24A in Act 124 of 1998

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

"Universal postal services and funding

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

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

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

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

(a) the amount to be contributed to the fund by the licensee;

(b) the dates when such contributions become payable; and

(c) the manner in which the contributions must be paid.

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

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

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

"Annual stamp programme

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

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

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

(4) The process for the development and approval of the annual stamp programme includes—

- (a) advertisement by the postal company in consultation with the Committee for the public or any interested party to make proposals on the themes.
- (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) A 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 belongs 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

30A. (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]** determined in the Short-Term Insurance Act, 1998 (Act No 53 of 1998) and may enter into an agreement with any **[postal authority]** foreign operator for the reciprocal exchange of insured mail or postal articles.

(b) Unreserved postal operators must provide for the insurance of mail or postal article subject to terms and conditions determined in the Short-Term Insurance Act, 1998 (Act No 53 of 1998).".

Insertion of section 44A in Act 124 of 1998

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

"Provision of Value Added Services and infrastructure sharing

44A. (1) The postal company or any of its subsidiaries may provide value added services including ICTs, electronic-commerce, electronic-post services, electronic mail, direct marketing, retail services, financial services, agency services, government services, insured letters and parcels.

(2) Government departments must ensure that the reserved postal services are rendered by the postal company.

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

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 following words:

"The postal company **[may]** and unreserved postal operators must—...".

Insertion of section 46A in Act 124 of 1998

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

"National addressing

46A. (1) The postal company is responsible for the address production, allocation, assignment and capture in rural and underserved areas in collaboration with organs of state.

(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 the purposes of services including but not limited to postal and basic services.

(4) The postal company must develop, maintain and manage the National Address Database for the Republic.

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

(6) The postal company may enter into a collaborative maintenance agreement with other data custodians as contemplated in section 16 of the Spatial Data infrastructure Act, 2003 (Act No 54 of 2003).

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

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

Repeal of section 50 of Act 124 of 1998

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

Amendment of section 54 of Act 124 of 1998

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

"Transfer of deposits from or to another country

54. The postal company may, in accordance with arrangements made with any **[postal authority]** foreign operator for the transfer from or to the Republic of sums of money standing to the credit of depositors in the Postbank or depositors in a savings bank **[controlled by that postal authority]** and subject to this Act and any regulation made under a law relating to currency and exchanges, place any sum so transferred to the postal company to the credit of a depositor's **[ordinary]** account."

Repeal of sections 56 and 57 of Act 124 of 1998

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

Amendment of section 80 of Act 124 of 1998, as amended by section 8 of Act 33 of 2001, section 24 of Act 3 of 2006 and section 9 of 2006

21. 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.".

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

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

Repeal of Schedules 1 and 2 to Act 124 of 1998

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

Short title and commencement

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