

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



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THE PRESIDENCY

No. 54 27 January 2014

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

Act No. 44 of 2013: South African Postbank Limited Amendment Act, 2013



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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.

(English text signed by the President)
(Assented to 23 January 2014)

ACT

To amend the South African Postbank Limited Act, 2010, so as to amend provisions that may negatively affect the operational autonomy and independence of the Office for Banks; to remove any inconsistencies with the Banks 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 9 of 2010

1. Section 1 of the South African Postbank Limited Act, 2010 (Act No. 9 of 2010) (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the substitution for the definition of “Minister” of the following definition: “**Minister**” means the Minister [**of Communications**] responsible for communications;”; and
- (b) by the deletion of the definition of “Registrar of Banks”.

Amendment of section 3 of Act 9 of 2010 10

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Notwithstanding section 32 of the Companies Act [**and section 37 of the Banks Act**], the Post Office shall, upon incorporation of the Company, be the sole member and shareholder of the Company.”. 15

Repeal of section 4 of Act 9 of 2010

3. Section 4 of the principal Act is hereby repealed.

Repeal of section 8 of Act 9 of 2010

4. Section 8 of the principal Act is hereby repealed.

Amendment of section 9 of Act 9 of 2010 20

5. Section 9 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: “(1) The Company has the powers to enable it to realise the object referred to in section 2.”; and
- (b) by the deletion of subsection (3). 25

Amendment of section 13 of Act 9 of 2010

6. Section 13 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) has at any time been removed from an office of trust on account of misconduct; **[or]**”;
 - (b) by the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) has any direct or indirect interest in conflict with the business of the Company; **or**”;
 - (c) by the addition of the following paragraph:

“(h) is not fit and proper to hold the office of a member of the Board of a banking institution as contemplated in the Banks Act.”; and
 - (d) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:

“A person nominated for appointment as a member of the Board must, before appointment **[and upon a request from the Minister]**, submit to the Minister a written statement containing—”

Amendment of section 14 of Act 9 of 2010

7. Section 14 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) by notice in at least two national newspapers and in the *Gazette*, invite interested persons, within the period and in the manner determined in the notice, to submit the names of persons envisaged in section 12(1)(a) **[that are fit and proper persons to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act]**; and

(b) in writing invite the Post Office[, **acting with the concurrence of the Registrar of Banks,**] to submit the names of the persons envisaged in section 12(1)(b) **[that are fit and proper persons to hold the office of a member of the Board of a banking institution, as contemplated in the Banks Act]**.”;
 - (b) by the insertion in subsection (4)(a) after subparagraph (v) of the following word “**and**”;
 - (c) by the addition in subsection (4)(a) of the following subparagraph:

“(vi) **banking experience**.”; and
 - (d) by the deletion in subsection (4) of paragraph (d).

Amendment of section 15 of Act 9 of 2010

8. Section 15 of the principal Act is hereby amended—
- (a) by the addition in subsection (2) after paragraph (d) of the following word:

“**or**”; and
 - (b) by the deletion in subsection (2) of paragraph (e).

Amendment of section 18 of Act 9 of 2010

9. Section 18 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) must have the qualifications or experience relevant to the functions of the Company and must be fit and proper to hold the office of a chief executive officer of a banking institution as contemplated in the Banks Act.”.

Amendment of section 25 of Act 9 of 2010

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

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

“(1) The Minister may, **[with the concurrence of the Minister of Finance]** until such time as the Company is registered as a banking institution in terms of the Banks Act, direct the Company to take any action specified by the Minister if the Company—

- (a) is being mismanaged;
- (b) fails to perform its functions effectively or efficiently;
- (c) has acted unfairly or in a discriminatory or inequitable way towards a person to whom it owes a duty under this Act; or
- (d) has failed to comply with any law or any policy envisaged in this Act.”; and

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

“(3) If the Company fails to remedy the situation within the stated period, the Minister may**[, with the concurrence of the Minister of Finance]**—

- (a) after having afforded the Company a reasonable opportunity to be heard; and
- (b) after having afforded the Company a hearing on any submissions received, replace the members of the Board in the same manner as the departing members have been appointed or, where circumstances so require, appoint a person as an administrator to take over the relevant function of the Company.”.

Amendment of section 26 of Act 9 of 2010

11. Section 26 of the principal Act is hereby amended by the deletion of subsections (2) and (3).

Insertion of section 26A of Act 9 of 2010

12. The following section is hereby inserted in the principal Act, after section 26: 30

“Application of Banks Act

26A. In the event of any conflict between the provisions of the Banks Act and this Act, the provisions of the Banks Act prevail.”.

Substitution of section 30 of Act 9 of 2010

13. The following section is hereby substituted for section 30 of the principal Act: 35

“Transitional provisions

30. (1) Notwithstanding the repeal of sections 51(1), (3) and (4), 52, 53, 55 and 58 of the Postal Services Act by section 31, until the **[Company is registered as a bank as contemplated in section 4(2),]** former Postbank is transferred as contemplated in section 7, the former Postbank continues to function without any interruption, as if those sections have not been repealed. 40

(2) Any exemption under the Banks Act applicable to the former Postbank immediately prior to the transfer date, continues to apply to the Company until such time as the Company is registered as a banking institution in terms of the Banks Act.” 45

Short title

14. This Act is called the South African Postbank Limited Amendment Act, 2013.