

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. 1153

3 December 2010

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

**No. 9 of 2010: South African Postbank Limited Act, 2010.**



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

(English text signed by the President.)  
(Assented to 1 December 2010.)

# ACT

**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:—

## ARRANGEMENTS OF SECTIONS

### *Sections*

<b>CHAPTER I</b>	5
<b>INTERPRETATION AND OBJECT OF ACT</b>	
1. Definitions	
2. Object of Act	
<b>CHAPTER II</b>	
<b>INCORPORATION AND TRANSFER OF ENTERPRISE</b>	10
3. Incorporation	
4. Registration as Bank	
5. Determination of extent of business to be transferred	
6. Determination of transfer date of enterprise	
7. Transfer of enterprise of former Postbank to Company, vesting and consequence thereof	15
8. Exemption from tax liability	
<b>CHAPTER III</b>	
<b>POWERS AND DUTIES OF COMPANY</b>	
9. Powers and duties of Company	20
<b>CHAPTER IV</b>	
<b>CONTROL AND MANAGEMENT OF COMPANY</b>	
10. Control of Company by Board	
11. Functions of Board	
12. Composition of Board	25
13. Disclosure and disqualification from membership of Board	
14. Appointment of members of Board	

- |     |   |   |
|-----|---|---|
| 15. | Resignation, removal from office and vacating of office |   |
| 16. | Disclosure and fiduciary duties of Board members        |   |
| 17. | Committees of Board                                     |   |
| 18. | Appointment of managing director                        |   |
| 19. | Conditions of appointment of managing director          | 5 |
| 20. | Personnel of Company                                    |   |

## CHAPTER V

### FUNDS AND FINANCIAL ACCOUNTS OF COMPANY

- |     |   |    |
|-----|---|----|
| 21. | Annual report   |    |
| 22. | Funds of Company  | 10 |
| 23. | Inspection of accounts and documents of Company by Minister |    |
| 24. | Application of Public Finance Management Act                |    |

## CHAPTER VI

### GENERAL AND MISCELLANEOUS

- |     |   |    |
|-----|---|----|
| 25. | Intervention by Minister  | 15 |
| 26. | Regulations and policy  |    |
| 27. | Non-application of provision of Companies Act                               |    |
| 28. | Certain provisions of Companies Act may be declared inapplicable to Company |    |
| 29. | Offences  | 20 |
| 30. | Transitional provisions   |    |
| 31. | Repeal of laws  |    |
| 32. | Short title and commencement  |    |

## SCHEDULE 1

### CHAPTER I 25

#### INTERPRETATION AND OBJECT OF ACT

##### Definitions

1. In this Act, unless the context indicates otherwise, any word or expression to which a meaning has been ascribed in section 1 of the Public Finance Management Act, bears the meaning so ascribed, and— 30

“**Banks Act**” means the Banks Act, 1990 (Act No. 94 of 1990);

“**Board**” means the board of directors of the Company;

“**Companies Act**” means the Companies Act, 1973 (Act No. 61 of 1973);

“**Company**” means South African Postbank Limited contemplated in section 3;  
 “**family member**” in relation to any person, means his or her parent, sibling, child, 35  
 including an adopted child or a step-child, or spouse (whether by statutory, customary or religious law), and including a life partner who is a person living with that person as if they were married to each other;

“**former Postbank**” 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; 40

“**member**” means a member of the Board;

“**Minister**” means the Minister of Communications;

“**Post Office**” means South African Post Office Limited established in terms of the Post Office Act; 45

“**Post Office Act**” means the Post Office Act, 1958 (Act No. 44 of 1958);

“**Postal Services Act**” means the Postal Services Act, 1998 (Act No. 124 of 1998);

“**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“**Registrar of Banks**” means the Registrar of Banks designated as such under 50  
 section 4 of the Banks Act;

“**Republic**” means the Republic of South Africa;

“**the business of a bank**” has the meaning ascribed to it in the Banks Act;

“the business of the former Postbank” means the rights, obligations, assets and liabilities of the former Postbank contemplated in section 5(1);

“this Act” includes any regulation made under section 26;

“transfer date” means the date determined by the Minister in terms of section 6.

## Object of Act

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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;
- (b) rendering transactional services and lending facilities through, amongst others, existing infrastructure of the Post Office; 10
- (c) expanding the range of banking services and developing into a bank of first choice, in particular to the rural and lower income markets as well as communities that have little or no access to commercial banking services or facilities; 15
- (d) promoting universal and affordable access to banking services;
- (e) ensuring that the rates and charges of the Company take into consideration the needs of the people in the lower income market; and
- (f) ensuring lending to rural and lower income markets.

## CHAPTER II

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### 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. 25

(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.

(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”. 30

(4) 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— 35

- (a) register the memorandum and articles of association as signed in terms of subsection (4);
- (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. 40

(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. 45

(2) The Company must be registered as a bank after it has satisfied the requirements of the Banks Act.

(3) Notwithstanding section 43 of the Banks Act, the Post Office is not required to register as a controlling company of the Company, and the appointment of the Board of the Post Office is not subject to the approval of the Registrar of Banks. 50

(4) The Company shall not expand the scope of its banking and investment activities which exist when this Act takes effect until it is registered as a bank in terms of the Banks Act, and any such additional business activity is approved by the Registrar of Banks.

(5) In approving any additional business activity as contemplated in subsection (4), the Registrar of Banks shall take into account the objects of this Act and any policy made by the Minister in terms of section 26(2).

#### **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. 5

(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. 10

(b) The auditor may not be associated with either the Post Office or the Company.

(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. 15

#### **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.

#### **Transfer of enterprise of former Postbank to Company, vesting and consequence thereof 20**

7. On the transfer date—

(a) the management, control and operation of the former Postbank are transferred to the Company;

(b) the business of the former Postbank vests in the Company; 25

(c) subject to compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995), 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.

#### **Exemption from tax liability 30**

8. The transfer of the business of the former Postbank, referred to in section 7, attracts no tax liability of whatever nature.

### **CHAPTER III**

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

#### **Powers and duties of Company 35**

9. (1) Subject to sections 4(4) and 26(2) and (3), and subsection (3), the Company has the powers to enable it to realise the object referred to in section 2, which include the power to—

(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; 40

(c) operate its business, products or services as set out in the articles;

(d) raise funds;

(e) conclude joint ventures and other commercial agreements with third parties in order to promote and advance its business; 45

(f) render any or all of its services through the physical assets, systems, employees and general infrastructure of the Post Office;

(g) invest money in accordance with an investment policy made by the Minister, with the concurrence of the Minister of Finance; 50