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GENERAL NOTICE

Communications, Department of

General Notice

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GENERAL NOTICE

NOTICE 984 OF 2009

DEPARTMENT OF COMMUNICATIONS

NOTICE OF INTRODUCTION OF THE SOUTH AFRICAN POSTBANK BILL INTO PARLIAMENT

The Department of Communications intends introducing the South African Postbank Bill into Parliament before end of 2009. Written comments on the proposed Bill must be received within two weeks of the date of publication of this notice (i.e. 07 August 2009) at any of the following addresses:

For attention: Project Manager
Postal Policy Directorate
Department of Communications;

Post to: Private Bag X860
Pretoria
0001

or deliver to: First Floor, Block A3
iParioli Office Park
399 Duncan Street
Hatfield

or fax to: (012) 427 8059

fax 086 6822810

or e-mail to: postbankbill@doc.gov.za

Please note that comments received after the closing date may be disregarded

Ms Dimakatso Mojela can be reached at tel. (012) 427 8106/ 7017 for any enquiries

The Bill and consultation document can be obtained at the Department's website: www.doc.gov.za or at Government Printers.

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN POSTBANK BILL

(As introduced in the National Assembly as section 75 Bill, explanatory summary of Bill published
Gazette No. of 2009)

(The English text of the Bill is the official text of the Bill)

(Minister of Communications)

BILL

To provide for the corporatisation of the Postbank, to provide for the re-naming of the Postbank to South African Postbank and to provide for the regulation and supervision of the business of the South African Postbank and for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

ARRANGEMENTS OF SECTIONS

CHAPTER I: INTERPRETATION AND OBJECTS OF THE ACT

1. Interpretation of terms
2. Objects of the Act

CHAPTER II: ESTABLISHMENT AND TRANSFER OF BUSINESS TO THE BANK

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28. Power of Minister to make regulations on recommendation of the Board
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31. Repeal of laws
32. Short title and date of commencement

CHAPTER 1: DEFINITIONS AND OBJECTS OF THE ACTS

Definitions

1. In this Act, unless the context otherwise indicates—

"**Advance**" means a short term or long term loan made by the Bank to any person in terms of chapter 5;

"**Bank**" means the bank established under this Act, which bank shall assume and conduct the business of the former Postbank;

"**Banks Act**" means the Banks Act, (Act No. 94 of 1990) as amended;

"**Board**" means the Board of directors of the Bank as constituted under section 7;

"**Business of the Bank**" means the business of the Bank as set out in section 8;

"**Close Relative**" in relation to any person, means –

- a. a spouse;
- b. a child, stepchild, parent or stepparent
- c. the spouse of any of the persons mentioned in paragraph (b)

"**Companies Act**" means the Companies Act, (Act No. 61 of 1973) as amended;

"**Company**" means a company as defined in the Companies Act;

"**Co-Operative Society**" means a co-operative as defined in section 1 of the

Co-Operatives Act, (Act No. 91 of 1981);

"Department" means the Department of Communications

"Deposit" means deposit as defined in section 1(1) of the Banks Act No. 94 of 1990

"Financial statements" means annual financial statements referred to in sections 286 and 288 of the Companies Act;

"Financial Services Board Act" means the Financial Services Board (Act, Act no 97 of 1990);

"Former Postbank" means the Postbank established under section 52 of the Postal Services Act (Act, 124 of 1998);

"Futures contract" means a futures contract as defined in section 1 of the Financial Markets Control Act, (Act No. 55 of 1989);

"General public" means any person, but does not include another bank;

"Government" the National Government of the Republic of South Africa for the time being;

"Holding Company" means Holding Company as defined in the Banks Act

"Independent external auditor" the independent, external auditor of the Bank appointed in terms of section 36;

"Liquid assets" means liquid asserts as defined in the Banks Act

"Member" means an executive and non-executive member of the board referred to in section 7 of this Act

"Minister" means the Minister/s charged with the administration of this Act;

"National Revenue Fund" means the National Revenue Fund as controlled and supervised by the Treasury;

"Option contract" means an option contract as defined in section 1 of the Financial Markets Control Act, (Act No. 55 of 1989);

"Other banks" means banks that are registered in terms of the Banks Act;

"Person" means any natural person or juristic person and included a trust, society and partnership;

"Post Office" means the South African Post Office Limited established in terms of the Post Office Act;

"Post Office Act" means the Post Office Act, (Act, No. 44 of 1958);

"Postal Company" means the South African Post Office Limited established in terms of the Post Office Act No. 44 of 1958;

"Public Finance Management Act" means the Public Finance Management Act, (Act No. 1 of 1999);

"Prescribed" means prescribed by Regulations

"Primary share capital" means primary capital share as defined in the Banks Act;

"Primary unimpaired reserve funds" means primary capital share as defined in the Banks Act;

"Registrar" means the Registrar of Banks as defined in the Banks Act;

"Registrar of Companies" means the Registrar of Companies appointed under section 7 of the Companies Act;

"Regulation" means a regulation made under section 41 of this Act;

"Republic" means the Republic of South Africa as constituted from time to time;

"Reserve Bank" means the South African Reserve Bank;

"Secondary capital" means secondary capital share as defined in the Bank's Act;

"Secondary unimpaired reserve funds" means secondary unimpaired reserve funds as defined in the Banks Act;

"Business Products and services of the Bank" means business, products and services of the bank as provided for in the Banks Act;

"SMME" means small, micro and medium enterprises;

"Tertiary capital" means tertiary capital as defined in the Banks Act;

"This Act" means the South African Postbank Act, including regulations promulgated hereunder;

"Transfer date" means the date determined by the Minister by notice in the Gazette for the transfer of the business of the former Postbank to the Bank;

"Treasury" means the National Treasury department of the government of the Republic.

Objects of Act

2. The object of the Act is to provide for the corporatisation of the Postbank and to provide for the regulation and supervision of the business of the Postbank in the public interest and for that purpose to-:
 - (a) To create a bank of first choice for the underserved communities providing them with appropriate banking products and high quality essential financial services in order to advance household savings;
 - (b) To establish a financial institution for the mass mobilisation of savings and investment funds by making payment and savings services available and to utilise such funds through investment at the lowest possible risk and at an acceptable profit margin;
 - (c) to extend lending facilities subject to approval of South African Reserve Bank in consultation with the shareholder”,

CHAPTER II: INCORPORATION AND TRANSFER OF BUSINESS OF THE BANK

Incorporation of the Bank

3. (1) The Postbank division of the Post Office shall be incorporated as a wholly owned subsidiary company of the Post Office in terms of the Companies Act as the South African Postbank Limited or such other name as the Registrar of Companies approves, and all references in this Act to the Bank shall be a reference to the company so established.

(2) Date of incorporation shall be determined by the Minister by notice in the Gazette.

(3) Notwithstanding the provisions of the Companies Act, the Minister or such other person delegated by the Minister shall sign the memorandum and the articles of association of the Bank.

Transfer of business to the Bank

4. (1) The Minister shall by notice in the Gazette, determine the date of transfer of the former Postbank to the corporatized Bank.

(2) On the transfer date, subject to the provisions of this section the Minister shall by regulations—

(a) transfer to the Bank responsibility for the management, control and operation of all the customers of the former Postbank; and

(b) transfer to the Bank such assets owned and employees employed by, and liabilities, rights or obligations of the Post Office and/or the Government as may be necessary for the effective establishment, maintenance, management, control and operation of the Bank; and

(2) The regulations mentioned in subsection (1) shall include provisions concerning—

(a) the commercial relationship between the Bank and the Post Office;

(b) the extent of the assets, employees, liabilities, rights and obligations to be transferred in terms of subsection (a); and

(c) any other matter which the Minister deems expedient for the functioning of the Bank.

(3) The Bank shall, as consideration for the transfer of assets, liabilities, rights or obligations in terms of subsection (1) (a), issue to the Post Office fully paid-up shares in the Bank and such value shall be deemed to be reasonable consideration for such transfer.

(4) Notwithstanding any provision to the contrary in any other law, the Bank shall on the transfer date become the owner of the assets, movable and immovable, transferred to it in terms of subsection (1) (a).

(5) The accounts of the former Postbank shall be audited by the independent external auditor within three (3) months of the transfer date and the independent external auditor shall determine the value of all the assets and liabilities of the former Postbank. The value so determined shall become the opening balance on the balance sheet of the Bank.

(6) Notwithstanding the provisions of section 5 of the State Land Disposal Act, (Act No. 48 of 1961), and section 18 of the Deeds Registries Act, (Act No. 47 of 1937), the registrar as defined in section 102 of the Deeds Registries Act shall, on submission to him or her of a certificate by the Minister that State land has been transferred in terms of subsection (1) (a), free of charge make such entries and endorsements as he or she may deem necessary in or on any appropriate register, title deed or other document in his or her office or

laid before him or her, in order to register the transfer of such land in the name of the Bank.

(7) The registrar referred to in subsection (5) shall, on submission to him or her of a certificate by the Minister that a servitude, other real right or lease has been transferred in terms of subsection (1) (a) or that a servitude exists over State land which has been transferred in terms of that subsection, free of charge make such entries and endorsements as he or she may deem necessary in or on any appropriate register, title deed or other document in his or her office or laid before him or her, in order to—

(a) register the transfer of such servitude, other real right or lease in the name of the Bank; or

(b) confirm the existence of the servitude over the State land so transferred in favour of any other person.

(8) Notwithstanding legal provisions to the contrary, no servitude or other right of any kind in respect of State land transferred to the Bank in terms of subsection (1) (a) shall be acquired by prescription.

(9) Notwithstanding any provision to the contrary in any other law, the Bank shall be exempt from any stamp duties, transfer duties or registering fees payable in terms of any law in relation to the transfer to the Bank of assets or rights in terms of subsection (1) (a).

(10) Unless otherwise provided for in this Act or approved by the Board, the Bank shall not alienate or encumber, otherwise than in the normal course of its business, assets transferred to the Bank in terms of subsection (1) (a) and used to perform any relevant activity.

(11) For the purposes of the Income Tax Act, (Act No. 58 of 1962), the assets mentioned in subsection (1) (a) shall be deemed to have been acquired in terms of that subsection by the Bank at a price equivalent to the value determined in terms of subsection (3).

CHAPTER III: OWNERSHIP AND FUNCTIONS OF THE BANK

Ownership of Bank

5. The Bank shall be the subsidiary wholly owned by the Post Office, on behalf of the Government.

Functions of Bank

6. The Bank shall have the powers to enable it to realize its objects as set out in section 2 , except such specific powers as are expressly excluded or qualified in its memorandum or articles of association or this Act, including the power to

- (1) purchase or acquire in any way land, buildings, agencies, equipment, stock and every other kind or description of movable and immovable property;
- (2) to manage, insure, sell, lease, mortgage, dispose of, give in exchange, work, develop, build on, improve, turn to account or in any way otherwise deal with its undertaking or all or any part of its property and assets;
- (3) to apply for, purchase or by any other means acquire, protect, prolong and renew any patents, patent rights, licences, trademarks, concessions or other rights and to deal with and alienate them;
- (4) to operate its business, products or services as set out in section 9;
- (5) to raise funds in the manner prescribed;
- (6) to invest money in any manner prescribed;
- (7) to do any such other act as it may be authorised to do under this Act.

CHAPTER IV: CONTROL AND MANAGEMENT OF THE BANK

Control of Bank by Board

7. (1). The Bank shall be controlled by the Board of directors. The Board shall—

(a) direct and conduct the operations and business of the Bank;

and

(b) determine and implement policies to administer this Act.

(2) The first Board of the Bank shall be appointed by the Minister and thereafter as determined by the Articles of Association.

Composition of the Board

8. (1) The board shall consist of-

(a) not more than twelve non-executive members

(b) the Managing Director, the Chief Operations Officer and the Chief Financial Officer or their equivalent who are by virtue of their positions are members of the Board or ex-officio members of the Board.

(2) In order to determine whether a particular person is fit and proper to hold the office of a director of the Bank, the Minister shall have regard to the following qualities, insofar as they are reasonably determinable. Persons appointed to the Board must be persons who-

(a) are committed to fairness, openness and accountability on the part of those entrusted with the governance of a public service; 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 or finance and economics, or any other relevant expertise or qualifications.

(3) The members of the Board shall be appointed for such period, not exceeding five years or as the Minister may in the case of each member determine.

(4) At the expiry of the period of any board member or any retiring, board member may be re-appointed as a member of the Board unless removed from his or her office or disqualified for any of the reason provided under section 9.

(5) The Minister must designate one of the members of the board referred to in subsection (1) as the chairperson and another as deputy chairperson of the board and both to whom must be no-executive members of the board.

Disqualification

9. (1) A person may not be appointed as a Board member if he or she-

- (a) is not a citizen of the Republic;
- (b) is not permanently resident in the Republic;
- (c) is a member of Parliament, any provincial legislature or any municipal council;
- (d) is an unrehabilitated insolvent;

- (e) has been declared by a court to be mentally ill or disordered;
- (f) has at any time been convicted, whether in the Republic
or
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 or the underlying statutes;
- (g). 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
- (h). has at any time been removed from an office of trust on an account of misconduct.

Executive Committee

10. (1) The affairs of the Postbank shall be administered by the executive committee consisting of the Managing Director, Chief Operations Officer, Chief Financial Officer and other members.

(2) The executive committee is accountable to the Board and must perform such functions as may be determined by the Board

CHAPTER V: BUSINESS AND FUNDS OF THE BANK

Business, products and services of the Bank

11. The business, products and services of the Bank will be as defined in section 1(1) of the Banks Act.

Joint ventures concluded by the Bank with third parties

12. Subject to the Public Finance Management Act and the approval by the Minister, the Bank shall be entitled to conclude joint ventures and other commercial agreements with third parties in order to promote and advance its business as set out in section 9, subject to the provision of the Banks Act.

Funds of the Bank

13. (1) The funds of the bank shall consist of—

- (a) the capital invested in the Bank at the commencement of this Act as determined by the external auditor.
- (b) funds raised by the Bank under the provisions of section 19 and 22 ;

and

- (c) such moneys as Parliament may from time to time by appropriation authorize the Minister to pay to the Bank as part of its funds.

(2) The interest set out in subsection (2) shall be payable upon such dates as the Minister may from time to time direct, and shall be payable at such rates as may be agreed between the Board and the Minister.

Power to raise further funds

14. (1) The Board shall have power to raise funds upon such conditions as shall be determined by the Minister in consultation with the Minister of Finance.

Acceptance of deposits

15. (1) The Bank may accept deposits from —

- (a) any class of persons, association, society, club or fund approved by the Managing Director;
- (b) minors, if duly assisted by their parents or guardians;
- (c) a trustee, who may make deposits in a trust provided that —
 - (i) repayments of such deposits and any interest due thereon shall not, subject to the provisions of this Act, be made without the written consent of both the trustee and the beneficiary;
 - (ii) in the event of the death of the beneficiary person on whose behalf such deposits were made, repayment of such deposits and any interest due thereon shall only be made with a consent of the trustee;

- (d) any other person not otherwise excluded from depositing funds in another bank.

Inactive and dormant accounts

16. Inactive and Dormant accounts with the bank shall be dealt with in accordance with the terms and conditions signed with the client.

Applications for advances

17. (1) No advance shall be made to any person, except—

- (a) upon a written application which shall be in the form prescribed by the Board; and
- (b) unless adequate security has been furnished or alternatively the person applying for the loan has been exempted from furnishing security in accordance with the rules and procedures as the Board shall determine; and
- (c) until the bond or other security which is proposed to be given in respect of the advance has been registered as required by law or otherwise completed, or until such conditions as the Board may determine have been complied with.
- (d) If an advance has been approved, it must be taken up within three months, otherwise it will lapse.

Interest on advances

18. (1) The rate of interest payable to the Bank in respect of advances shall be prescribed by the Board from time to time, and the rate so prescribed shall be sufficient to ensure that the Bank does not contravene the prudency requirements as set out in chapter 6.

(2) If any amount owing to the Bank is repaid on a date prior to the due date for payment of any instalment or interest, the Bank may claim interest in respect of such amount up to the date of such payment only.

CHAPTER VI: MONEY ORDER TRANSFERE

Remittance of money through bank

19. (1) Money may be remitted through the Postbank either within or outside the Republic at rates determined by the Postbank and the Postbank may authorise any employee to issue and pay money orders, postal orders and other documents authorised to be used for the purpose of so remitting money.

(2) The Managing Director may, at the request of a depositor, make arrangements with any banking authority outside of the Republic, for the transfer to the Republic into the account of any depositor with the Bank, of monies standing to the credit of the any person in a bank account under the control of such authority, or from the Republic to any such account of monies standing to the credit of any person with the Bank.

(3) No transfer shall be made under subsection (1) unless it is made in accordance with any exchange control regulations in force in the Republic, and with such conditions as may, from time to time, be laid down for the purposes of this section by the Board.

Refusal to issue or pay money orders, postal orders, or other documents

20. (1) The Postbank may refuse to issue or pay any money order, postal order or other document authorised to be used for the purpose of remitting

money through the Postbank, in favour of any person in respect of whom a competent court has authorised such refusal

(2) Where payment of any such money order, postal order, or other document is so refused, such money order, postal order or other document may, if it was issued in the Republic, be returned to the person to whom it was originally issued or otherwise disposed of as the court may determine, or, if it was issued outside the Republic, the amount thereof must be returned to the postal authority of the country in which it was issued.

Money orders and postal orders regarded as bank notes

21. (1) Any money order, postal order or other document issued under section--- must be regarded as bank note or an order for the payment of money and a valuable security within the meaning of any law relating to forgery or theft

(2) Any unissued postal order must be regarded as money of the Postbank.

National Savings Certificates

22. National Savings Certificates issued in terms of section 77(A) of the Post Office Act, No. 44 of 1958 shall, on maturity, be paid by the Postbank.

CHAPTER VII: PRUDENTIAL REQUIREMENTS OF THE BANK

The prudential requirements

23. (1) The bank shall comply with the prudential requirements as set out in the Banks Act and all of the regulations enacted in relation to such sections.

(2) The supervision of the prudential requirements as set out in sub-section (1) shall be the responsibility of the Registrar *mutatis mutandis* on the

same basis as set out in Chapter 2 of the Banks Act, provided that any failure by the Bank to comply with the prudential requirements as set out in subsection (1) shall be reported by the Registrar and the Minister of Finance.

(3) The Registrar and the Minister of Finance shall thereafter agree upon the way in which such non-compliance with the Bank shall be corrected.

CHAPTER VIII: ACCOUNTS OF THE BANK

Publication and keeping of accounts of the Bank

24. The provisions of the Public Finance Management Act and the Banks Act shall be applicable to the Bank and its business.

Inspection of accounts and documents by Minister

25. The Minister or any officer in the public service authorised by him or her in writing, shall have full access to all the accounts, documents and papers of the Bank, and the Board shall at all times furnish to him or her all such information as he or she may reasonably require.

Reserve fund of the Bank

26. (1) The reserve fund of the Bank shall be credited with any net to profit earned by the Bank from time to time and shall be applied by the Board in making good any loss or deficiency which may occur in any transaction of the Bank.

(2) Any balance remaining in the reserve fund after providing for any loss or deficiency aforesaid, may be invested in Government or municipal stock or securities or in any other stock or securities approved by the Board, or be devoted to any of the purposes to which any other funds of the Bank may in terms of this Act be devoted.

Appointment of independent external auditor

27. At the incorporation of the Bank as set out in section 3, the Post Office as the shareholder shall appoint an independent external auditor as the auditor of the Bank on mutatis mutandis the same basis as set out in the Companies Act.

CHAPTER IX: GENERAL AND MISCELLANEOUS**Power of Minister to make regulations on recommendation of the Board**

28. (1) The Minister may make regulations on any matter consistent with the provisions of this Act and upon the recommendation of the Board.

Limitation of Liabilities

29. Limitation of Liability in terms of this Act shall be dealt with in accordance with the provision as provided for in the Banks Act.

Offences and penalties

30. Offences and penalties in terms of this Act shall be dealt with in accordance with the provision as provided for in the Banks Act.

Repeal of laws

31. The laws mentioned in the First Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

Short title and date of commencement

32. This Act is called the South African Postbank Act and come into operation on a date to be fixed by the President by proclamation in the Gazette.

Schedule**LAWS REPEALED AND AMENDED**

No. and Year of Law	Title and Subject of Law	Extent of Repeal or Amendment
Act No. 124 of 1998	Postal Services Act, 1998	Sections 51 to 58
Act NO. 44 of 1958	Post Office Act, of 1958	Section 3 (4) (b) (ii) (cc) and section 3 (4) (d) to allow the Postal Company to issue shares.



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Department:
Communications
REPUBLIC OF SOUTH AFRICA

**CONSULTATION DOCUMENT
PROPOSED SOUTH AFRICAN POSTBANK ACT,
2009**

JULY 2009

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PREFACE

This consultation document is aimed at eliciting comments on the proposed South African Postbank Act. The comments received will enable the Department to refine and enhance its proposals before embarking on the process of introducing the draft legislation to parliamentary process. The proposals and the views in this document should therefore not be regarded as the Department's final view.

The consultation document is published with the Draft South African Postbank Bill that indicates how the Department's proposal will appear in a legislative format. This is to give persons and bodies wishing to comment and to make suggestion sufficient information to enable them to make informed comments and suggestions.

Written submissions, suggestions and comments are requested to be submitted to the Department by 07 August 2009 to:

The Director General:

Department of Communications

Private Bag X 860

Pretoria

0001

Or

Fax: 012 427 8105

Or

Email: dimakatsom@doc.gov.za or thembani@doc.gov.za

An electronic version of this consultation document and the draft bill can be accessed on the internet at: www.doc.gov.za. For further information, the Department can be contacted at: 012 427 8106/8529/7017

1. INTRODUCTION

Postbank is a financial services division of the Post Offices around the world. Their main aim is to give mostly isolated communities access to vital financial and related services and thereby contribute greatly to the economic and social development.

The South African Post Office (SAPO) has been offering financial services ever since its incorporation when firstly money order service and postal orders were introduced. Postbank was established by Post Office Act, 1958 (Act No. 44 of 1958) as division of the Post Office and under the control and management of the Post Office. The Postbank was used as a deposit taking and saving institution since its incorporation. As a financial services division, the Postbank has become extremely important in the realization of integrated services delivery to the people of South Africa. Many financial transactions are done through the post office systems to ensure that ordinary people participate within the economic activities, irrespective of their physical location or financial background. Many organizations including Government utilize the services of the Post Office and in particular the Postbank to ensure access to their services.

2. POLICY GUIDELINE IMPLEMENTATION

Corporitisation of the Postbank has been envisaged in terms of the White Paper on Postal Policy (1996) as a subsidiary of the South African Post Office in the short term and a stand-alone company in the long term extending to lending facilities. In 2005, Memorandum of Understanding (MOU) was entered into between Ministers of Communications and Finance on the governing principles and the process to be followed in the restructuring and corporatisation of Postbank. The MOU included the

milestones to be undertaken until the process is finalized in line with the 1996 Postal Policy.

3. CURRENT REGULATORY FRAMEWORK

The Postbank is currently regulated in terms of the Postal Services Act, 1998 (Act No. 124 of 1998) as amended and is exempted from the application of the Banks Act. The Postal Services Act does, however, not provide for any obligation on the Postbank, except for that section which allows for the provision of such financial services. The Postbank is also managed and controlled by the Post Office board and management.

As a financial services provider, the Postbank, like any other financial institution is exposed to the possibility of financial crimes such as money laundering and related activities. There are certain requirements in terms of the financial services laws that need to be complied with when providing financial services. The Postbank because of its nature and its current regulatory framework is exempted to comply with those requirements, which can expose it to the possibility of financial crimes being committed.

Corporatisation of the Postbank is also maimed at ensuring compliance with regulations and laws to ensure proper management of the bank as a financial service institution and continue to be the key player in ensuring access to the financial services, particularly to the underserved population.

The process of corporatising the Postbank can only be finalised once a regulatory framework has been put in place. Task team consisting of SAPO, Department of Communications and National Treasury was established to work on the corporatization process.

The Department of Communications is tasked with developing and or identifying enabling legislation to govern the corporatization of the Postbank. The Draft South African Postbank Bill has been developed to facilitate the process. The National Treasury as one of the key stakeholders is already working on other prudential requirements for the corporatisation process.

The objective of the Bill is to implement the Postal policy and the MOU of making the Postbank a subsidiary of SAPO and its vision as the corporatised Postbank.

4. SUMMARY OF THE DRAFT POSTBANK BILL

The South African Postbank Bill can be summarized as follows:

4.1 OBJECTIVES

The objectives of the Bill is to implement the vision of the White Paper on Postal Policy, 1996 and the MOU entered into by the Ministers of Communications and Finance in respect of the corporatisation the Postbank into a subsidiary legal entity owned by SAPO on behalf of Government. It is also aimed at providing for the regulation and supervision of the business of the Postbank in the public interest and for that purpose to:

- create a Bank of first choice for the underserved communities providing them with appropriate banking products and high quality essential financial services through the Post Office network in order to advance household savings and encourage the culture of saving;
- establish a financial institution for the mass mobilisation of savings and investment funds by making payment and savings services available through the Post Office network and other outlets, and to

utilise such funds through investment at the lowest possible risk and at an acceptable profit margin;

- extend lending facilities subject to approval of the South African Reserve Bank, in consultation with the shareholder.

4.2 CONTENTS

The draft PostBank Bill amongst other covers the following Chapters:

- Preamble
- Interpretation and application of the Act
- Establishment and transfer of Business to the corporatised Postbank
- Ownership and functions of the bank
- Control and management of the bank
- Business, products and services and funds of the bank
- Prudential requirements of the bank
- Accounts of the bank
- General and miscellaneous which include the powers of the Minister to make regulations on recommendations of the board

4.2.1 Preamble

The purpose of the proposed South African Postbank Act is to provide for the corporatisation of the Postbank, for the re-naming of the Postbank to South African Postbank and to provide for the regulation and supervision of the business of the Postbank in line with the Bank's Act.

4.2.2 Interpretation and Objects of the Bill

This chapter provides for the interpretations of words as they will be used in the legislation and also the objects of the proposed legislation. The main aim of the Bill is the creation of a Bank of first choice for the underserved communities and the establishment of a financial institution to mobilise masses savings and investment and encourage economic

participation by all citizens, particularly in the rural area and for government's financial services programme to the communities.

4.2.3 Incorporation and transfer of the business of the Postbank

This chapter provides for the incorporation of the South African Postbank as public entity wholly owned by the SAPO on behalf of Government in terms of the Companies Act. It also makes provisions as to how the business, employees, rights, obligations, and customers of the former Postbank shall be transferred to the corporatised Postbank from the Post Office. It also outlines the relationship that will exist between the corporatized Postbank and the Post Office.

4.2.4 Ownership and functions of the Bank

The Bill provides for the Postbank to be wholly owned and a subsidiary of SAPO on behalf of Government. The powers and functions of the Postbank is to realise its objectives of being a bank of first choice for the underserved communities.

4.2.5 Control and Management of the Bank

This chapter provides for the establishment of a Board that will control and manage the Bank. The board shall be composed of not more than twelve (12) non-executive members and a Managing Director (MD), Chief Operational Officer (COO) and Chief Financial Officer (CFO) as executive members. It also provides for how the Board members shall be appointed and their responsibilities, as well as the disqualification of Board member for any contravention to the provision of this legislation.

4.2.6 Business, Products, Services and Funds of the bank

The chapter provides for the business and products services that the bank may provide. It also provides for the funds of the Bank and empowers the

bank as a legal entity to conclude agreements with the third parties and to raise funds.

4.2.7 Money Order Transfer

This chapter is adopted from the provision of chapters V and VI of the Postal Services Act 124 of 1998. It provides for the regulation of money remittance, both inside and outside the country through the Postbank and the payment for National Savings Certificate by the Bank.

4.2.8 Prudential requirements

The chapter provides for the Postbank to comply with the prudential requirements as set out in the Bank's Act and for the supervision of the Bank by the Registrar. This compels the Postbank to comply with the financial services sector regulations and to ensure that it does not fall victim of financial criminal activities. This chapter was done in agreement with the National Treasury and the Reserve Bank.

4.2.9 Accounts of the Bank

The proposed legislation also places obligations on the Bank to publish and keep accounts and documents of the Bank for inspection of the Minister or any officer authorized. It also provides for the appointment of an independent external auditor by the SAPO as the auditor of the Bank.

4.2.10. General and Miscellaneous

The Bill provides for the power of Minister to make regulations consistent with the provision of the Act on recommendation of the Board. It also provides for the limitation of liability on Government, SAPO, the Board or employee for any loss, unless act of negligence can be proved. The proposed legislation also creates what constitutes an offence and the penalties that can be imposed for any contravention of or any failure to comply with the provisions of the proposed legislation.

5. CONCLUSION

The Department believes that a comprehensive administrative and regulatory framework to ensure the corporatization of the Postbank as an independent public entity will establish an effective and co-operative process to remedy the failures and to comply with the financial regulatory systems in the country. The aim is also to ensure access to the much needed financial services by communities, especially for the rural communities and low income earners.

The Department would therefore appreciate receiving all suggestions for improvements to the current proposal in order to develop a sound solution to the corporatization of the Postbank.

- Commentators are therefore, requested to indicate whether they support the principle of establishing a South African Postbank as a separate legal entity owned by SAPO on behalf of Government.
- Also provide inputs on all the provision for the transfer of the business of the Bank to the corporatized bank.
- Inputs and comments are also requested on the structure of the bank and business to be undertaken by the Bank.