

**REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA**

Vol. 535

**Pretoria, 8 January
Januarie 2010**

No. 32859

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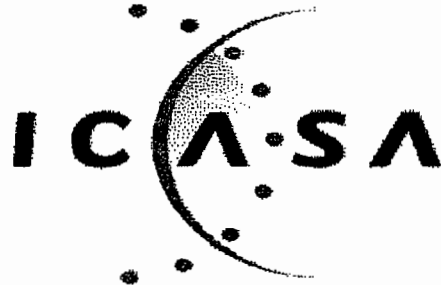
Independent Communications Authority of South Africa

General Notice

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GENERAL NOTICE

NOTICE 13 OF 2010



THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA UNRESERVED POSTAL SERVICES REGULATIONS

The Independent Communications Authority of South Africa ("ICASA") hereby gives notice that it has promulgated the "Regulations of Unreserved Postal Services". The regulations are attached hereto and also available at ICASA Library, Block D, Pinmill Farm, no. 164 Katherine Street, Sandton, Johannesburg during hours 09h30-16h00 or on the Authority's website: www.icasa.org.za

UNRESERVED POSTAL SERVICES REGULATIONS

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("the Authority") acting on behalf of the Council of the Authority hereby approve and publish draft regulations in the Schedule, made in terms of Section 61 (b) and (c) read with Section 21 of the Postal Services Act, 1998 (Act No. 124 of 1998)



**PARIS MASHILE
CHAIRPERSON
ICASA**

SCHEDULE

1. DEFINITIONS

In these regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned. .

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

“Authority” means the Independent Authority of South Africa

“applicant” means a person who has submitted an application for registration , renewal, amendment, surrender or transfer of a certificate;

“application fee” means a once-off fee paid to register, renew, amend or transfer a certificate.

“day” means working day unless otherwise specified.

“Operator” means a person issued with registration certificates in terms of Section 20 of the Act to provide unreserved postal services.

“transfer” means to assign, cede or transfer a registration certificate from one person to another;

2. PURPOSE OF THE REGULATIONS

The purpose of these regulations is to:

- (1) provide for the duration of the registration certificate;
- (2) provide for a procedure for the application, renewal and notification for change of information; and
- (3) provide for the registration fees payable.

3. SCOPE

The regulations apply to all operators who offer postal services listed in Schedule 2 of the Act.

4. APPLICATION FOR REGISTRATION CERTIFICATE

- (1) Applications for registration to the Authority must be in writing and completed in accordance with **FORM A**.
- (2) A once-off application for registration must be accompanied by a non-refundable fee of R1000.00.
- (3) Applications must be submitted to the Authority before 16H00 during working days.
- (4) The application fee must be paid by way of an electronic transfer or via a direct deposit into the following Authority's bank account:

Account name: Independent Communications Authority of SA

Bank Name: Nedbank

Account number: 1454090456

Branch name: Corporate client services JHB

Branch Code: 145405

- (5) Proof of payment must accompany the application for the registration certificate.

5. APPLICATION FOR RENEWAL OF A REGISTRATION CERTIFICATE

- (1) All applications for renewal must be in writing and completed in accordance with **FORM B**.
- (2) An application for renewal of registration must be accompanied by a non-refundable fee of R1000.00.
- (3) Renewal of application must be submitted to the Authority before 16H00 during working days.
- (4) An application for renewal must be paid by way of an electronic transfer or via a direct deposit into the following Authority's bank account:

Bank Name: Nedbank

Account number: 1454090456

Branch name: Corporate client services JHB

Branch Code: 145405

- (5) Proof of payment must accompany the renewal application for the registration certificate.

6. CHANGE OF INFORMATION

- (1) The operator must notify the Authority in the event that any information in the registration certificate changes subsequent to the granting thereof.
- (2) A notice of change of information must be submitted in the format as set out in **FORM C**.
- (3) A registrant must submit the notice within fifteen (15) days from the date of change of information.

7. REGISTRATION FEE

In addition to an application fee of R1000.00 an annual amount of R5000.00 for registration is payable by all operators.

8. DURATION OF CERTIFICATE

A Registration certificate is valid for a period of three (3) years from the date of issue.

9. CONTRAVENTIONS AND PENALTIES

A person who contravenes or fails to comply with these regulations is subject to a penalty by Council not exceeding R 250 000.00.

10. SHORT TITLE AND COMMENCEMENT

These regulations are called "Unreserved Postal Services Regulations, 2009" and shall come into operation six (6) months after publication in the Government Gazette.

11. REPEAL AND AMENDMENT OF REGULATIONS

The regulations published in Government Gazette No. 27309 on 21 February 2005 are hereby repealed.



Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

FORM A

APPLICATION FOR REGISTRATION TO OPERATE UNRESERVED POSTAL SERVICE IN TERMS OF SECTION 21 OF THE POSTAL SERVICES ACT 124 OF 1998

1. Particulars of the Applicant

1.1 Natural Persons:

1.1.1 Name of the applicant.....

1.1.2 Nature of business.....

.....
.....
.....

1.1.3 Identification number of applicant

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

1.1.4 Permanent residential address of applicant

.....
.....
.....
.....

1.2.5 Principal place of business:

.....
.....
.....
.....

1.2.5.1 Postal address

.....
.....
.....
.....

1.2.5.2 Telephone number

1.2.5.3 Fax number

1.2.5.4 Mobile number

1.2.5.5 E-mail address.....

1.2.6 Does the business have shares in other entities in the Postal Services sector? (Y / N)

1.2.7 Is the applicant a subsidiary of another company in the postal services sector? (Y / N)

If yes to any of the above, proof must be attached to the form.

Certified copies of all founding documents must accompany this application form.

2 Description of the Service and the routes (additional pages may be affixed if required)

.....
.....
.....
.....
.....

3 Any other information the applicant deems relevant

.....
.....
.....
.....

I certify that this declaration was signed and sworn to before me at
on theday of 20..., by the deponent who
acknowledges that he/she:

1. Knows and understands the contents hereof;
2. Has no objection to taking the prescribed oath or affirmation; and
3. Considers this oath or affirmation to be truthful and binding on his/her conscience

COMMISSIONER OF OATHS
Name:
Address:
Capacity:

1.1.4 Permanent residential address of applicant

.....
.....
.....
.....

1.1.5 Principal place of business

.....
.....
.....
.....

1.1.6 Telephone number:

1.1.7 Fax number:.....

1.1.8 Mobile number

1.1.9 E-mail address:.....

1.2 Juristic Persons

1.2.1. Name of Business

.....

1.2.2. Name of Business as it is to appear on the certificate

.....

1.2.3. Nature of Business:

.....
.....
.....
.....

1.2.4 Registration Number

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1.2.5 Principal place of business:

.....
.....
.....
.....

1.2.5.1 Postal address

.....
.....
.....
.....

1.2.5.2. Telephone number:

1.2.5.3. Fax number:

1.2.5.4. Mobile number:

1.2.5.5. e-mail address.....

1.2.6. Does the business have shares in other entities in the Postal Services sector? (Y / N)

1.2.7. Is the applicant a subsidiary of another company in the postal services sector? (Y / N)

If yes to any of the above, proof must be attached to the form.

Certified copies of all founding documents must accompany this application form.

2. Description of the Service and the routes (additional pages may be affixed if required)

.....
.....
.....
.....
.....

3. Any other information the applicant deems relevant

.....
.....
.....
.....

I certify that this declaration was signed and sworn to before me at..... on theday of 20..., by the deponent who acknowledges that he/she:

- 1. Knows and understands the contents hereof;
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- 3. Considers this oath or affirmation to be truthful and binding on his/her conscience

 COMMISSIONER OF OATHS
 Name:
 Address:
 Capacity:



Independent Communications Authority of South Africa
 Pinmill Farm, 164 Katherine Street, Sandton
 Private Bag X10002, Sandton, 2146

FORM C

NOTICE OF CHANGE OF INFORMATION

1. PARTICULARS OF REGISTRATION CERTIFICATE	
Registration certificate number	
Attach a copy of registration certificate that is subject to this application, marked clearly as Appendix 1 of FORM C	

2. CHANGE OF INFORMATION	
2.1 Indicate whether the updated information relates to:	
2.1.1. Name and contact details of the operator; and /or	
2.1.2. Type of service provided by the operator	
2.1.3. Other (provide details)	

3. PARTICULARS OF REGISTRANT		
Operator must provide the information requested in this section even where no change has occurred in relation to the registrant's particulars		
		Indicate with an x where the information in question has changed
3.1. Full name of applicant		
3.2. Nature of business		
3.3. Identity number of applicant		
3.4. Principal place of business (if different from street address)		
3.5. Telephone numbers		
3.7. Mobile number		
3.8. Fax number		
3.9. Email address		

1. New information of the operator

1.1 Natural Persons:

1.1.1. Name of the applicant.....

1.1.2. Nature of business.....
.....
.....

1.1.3. Identification number of applicant

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

1.1.4. Permanent residential address of applicant

.....
.....
.....
.....

1.1.5. Principal place of business

.....
.....
.....
.....

1.1.6. Telephone number:

1.1.7. Fax number:.....

1.1.8. Mobile number:

1.1.9. E-mail address.....:

1.2 Juristic Persons

1.2.1. Name of Business

.....

1.2.2. Name of Business as it is to appear on the certificate

.....

1.2.3. Nature of Business:

.....
.....
.....
.....

1.2.4 Registration Number

--	--	--	--	--	--	--	--	--	--	--	--	--	--

1.2.5 Principal place of business:

.....
.....
.....
.....

1.2.5.1 Postal address

.....
.....
.....
.....

1.2.5.2. Telephone number:

1.2.5.3. Mobile number:.....

1.2.5.4. Fax number:

1.2.5.5. E-mail address.....

1.2.5.6. Does the business have shares in other entities in the Postal Services sector? (Y / N)

1.2.5.7. Is the applicant a subsidiary of another company in the postal services sector? (Y / N)

If yes to any of the above, proof must be attached to the form.

Certified copies of all founding documents must accompany this application form.

4. Description of the Service and the routes (additional pages may be affixed if required)

.....
.....
.....
.....

5. Any other information the applicant deems relevant

.....
.....
.....
.....

I certify that this declaration was signed and sworn to before me
at..... on theday of 20..., by the
deponent who acknowledges that he/she:

1. Knows and understands the contents hereof;
2. Has no objection to taking the prescribed oath or affirmation; and
3. Considers this oath or affirmation to be truthful and binding on his/her conscience

COMMISSIONER OF OATHS
Name:
Address:
Capacity:

Unreserved Postal Services

Findings Document

1. Background

In November 2008, the ICASA Council approved the establishment of a Council committee to develop the "Review of Unreserved Postal Services" Regulations. The committee was established in terms of section 4(4)(a) of the ICASA Act. The committee was chaired by Councillor Ntombela and co-chaired by Councillor Sibanda assisted by staff members.

On 30 January 2009 the Authority published a discussion paper on Unreserved Postal Services for public comment. In order to enrich the public consultation process, the committee conducted workshops during February 2009 in Gauteng, Western Cape, KwaZulu Natal and North West provinces. The input received was used in the development of draft regulations.

2. Introduction

The draft regulations were published on 10 July 2009 inviting comments from the public and the closing date for submissions was scheduled for 21 August 2009. The Authority received two submissions, one from the South African Express Parcel Association (SAEPA) and the other from the South African Post Office (SAPO), the latter, which also indicated an interest to make an oral submission. The Authority scheduled public hearings on 14 October 2009.

The draft regulations focused on the follow four main areas:

- the definition of unreserved postal services,
- registration categories,
- duration of the certificate and
- registration fees.

3. Discussion

3.1. Definition of unreserved postal services

SAEPA argued that the current definition of unreserved postal services is unclear.

SAPO reiterated this issue by stating that the definition needs to be more inclusive by recognising the different activities in the sector. It is important to note that the Postal Services Act of 1998 states that Unreserved Postal Services means “the services contemplated in Schedule 2”.

During its oral presentation SAPO raised issues that pointed to shortcomings in the Act. The committee believes that such matters can only be addressed by the Department of Communications who is the custodian of the Postal Services Act.

Recommendation

The Authority is of the view that Schedule 2 **sufficiently** provides a clear definition and description of “Unreserved Postal Services”. As a result, the committee does not agree with SAPO’s argument.

3.2. Registration categories

In the regulation the Authority identified three categories for the unreserved postal services namely international, national and intra-city. The rationale for developing the three categories was based on the need to demarcate the areas of operation for these services. The committee is of the view that the listed categories might assist it in its monitoring functions. The Authority conducted a benchmark study which established that in other developing countries such as Kenya and Tanzania, similar postal operators operating in the unreserved postal service are categorized in terms of their routes or areas of operation.

SAEPA raised an issue around the international unreserved postal services stating that the definition is “too broad” and that the Authority might not be able to monitor the different routes.

SAPO on the other hand raised a concern that the Authority needed to provide the definitions of the different categories.

Recommendation

After careful consideration and all facts considered, the committee decided that the issue of introducing categories would pose a challenge in conducting monitoring compliance. The committee concluded that the Authority should not categorise services but rather let the market dictate in an environment which is highly competitive. The committee also noted that international unreserved postal services does not fall within the Authority's jurisdiction.

3.3. Duration of the certificate

The current certificate is valid for a year. This period has proven to be an administrative burden for the Authority and committee members are that a one-year period does not provide for stability in the sector.

SAPO agreed to the three-year period but also proposed that it could be "indefinite". SAEPA on the other hand argued that the duration of the certificate should be limited to five (5) years as the three-year period does not enhance certainty in the sector. According to SAEPA this amendment or provision would satisfy section 2(d) of the Postal Services Act. They further argued that the registration should be automatic unless the operators contravene the conditions of the certificate.

Recommendation

The Authority used its discretion as provided for by Section 22 of the Act. Generally, small operators experience difficulties in remaining in the business and are compelled to surrender their registration certificates prematurely. For the sake of monitoring compliance, it is therefore imperative for the Authority to be able to monitor the operators who are still in the market. The Authority agrees with SAPO and therefore recommends that the duration for the certificate should be limited to three years.

3.4 Registration Fees

The draft regulations proposed the following fees:

- R1000 (one-thousand rand only) for application fee. This would be a once-off payment.

In addition to this, the following annual registration fees will apply:

- International operator R10 000.00
- National operator R5 000.00
- Intra-city operator R1 000.00

SAPO argued that the Authority should provide a motivation for "charging the annual registration fee". SAEPA argued that they view the registration fees as a licence fee and that this fee should be used for administrative purposes only.

During the hearings, the committee requested SAPO to explain their understanding of registration fee vis-a-vis application fee. SAPO responded by stating that they view an application fee as a once off payment made at the application stage whilst the annual registration fee is what operators would pay to the Authority on an annual basis.

Recommendation

The rationale for charging the different fees for licensing and registration is that an application fee would be non-refundable and a once-off payment, which will be used for administrative purposes.

The registration fee will be paid annually and will be used for the purposes of monitoring compliance (cost of regulation). The Authority currently has registered about 300 operators and envisages registering more. The Authority is bound by law to ensure compliance and monitor operators.

In calculating the current fee, the Authority considered the number and job levels of people in the licensing and compliance units who deal with postal matters. It calculated

the total wage bill to be R1 850 000 per annum. The total wage bill was further divided by the approximate number of operators in the unreserved market (300). Our calculations indicated that it amounts to R6 166. However, taking into account that operators would pay a registration fee of R1000 and that the draft regulations espoused a sum of R5000 for national operators, the Authority decided that it cannot use an amount that is higher than R5000.

The Authority therefore recommends that the annual registration fee of R5000 be retained. In total operators will pay R6000 each. This gives an estimated revenue of $R6000 \times 300 = R1\,800\,000$, which is effectively R50 000 less than the cost of monitoring and administration (R1 850 000).

4. Other issues

4.1 Pricing

The Discussion Paper raised a question on whether the Authority should regulate the prices for the sector. During the consultations, stakeholders objected to this possibility. SAEPA further argued that prices should not be based on an entity's turnover. The Authority consequently decided not to include pricing in the draft regulations.

4.2. Unfair application of the law

In their submission, SAEPA constantly raised an issue on "unfair application of the law". They argued that "due to lack of clear definition of what constitute an Unreserved postal services as well as who should register, the Authority by singling out the unreserved and courier operators would constitute an unfair application of the law".

Their argument was that there are other operators beside courier services who operate in the unreserved sector.

Schedule 2(1) defines Unreserved Postal Services as;

1. Unreserved postal services include-

- (a) All letters, postcards, printed matter, small parcels and other postal articles that fall outside the ambit of the reserved services set out in Schedule 1 up to and including thirty kilograms;
- (b) Courier services in respect of items mentioned in paragraph(a); and
- (c) Any other postal service that falls outside the ambit of the reserved services as set out in Schedule 1.

The Authority disagrees with their argument as the Act states it clearly on section 22(a) that:

“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, must be regarded as being registered to provide an unreserved postal service.....”

The Authority is of the view that Section 22 recognises that there are other players in the sector hence the use of the words “any person” and “including courier services”. This section does not single out couriers as stated by SAEPA; rather it should be seen as inclusive.

Recommendation

Based on the above, the Authority would not be applying the law “unlawfully” as implied by SAEPA. The Authority has met its mandate in terms of the objects of the Act and has applied the law fairly based on section 22(a) as well as Schedule 2(1) of the Act.

4.3. Use of “convey” and “offer”

In their submission, SAEPA raised an issue around the use of the word “offer” a service in the definition and suggested that the Authority should use of the word “convey” as this is used in the Act.

Although the Act does not define the word “convey”, the word “conveyance” has been used in section 61(c). The Universal Postal Union (UPU) also does not use the word

“offer” but “convey”. The Authority agrees with SAEPA that the postal sector does not use the word “offer” but “convey”. However, the Authority would like to point out that nowhere in the regulation has the word “offer” been used.

4.4. Contravention

SAPO raised concerns on the contravention of the conditions and that the draft regulations do not state transgressions of the terms and conditions of the operators. The regulations only state that:

“A person who contravenes or fails to comply with these regulations is subject to a penalty not exceeding R 250 000.00”.

When this issue was probed, SAPO responded that although Section 22 of the Act outlines the conditions for “unreserved postal services”, they felt that the Authority did not elaborate in outlining the possible transgression.

The Authority is of the view that Sections (20) and (22) read with section (80) of the Act are sufficient in outlining the transgression and therefore, it is unnecessary to outline further transgressions.

4.5. Authority’s capacity to monitor the sector

In their submission and during the hearing, SAPO raised a concern regarding monitoring of unreserved postal operators by stating that the Authority might experience difficulties in monitoring the different categories. They further argued that the Authority needed to provide clear definitions of the different categories.

The Authority agrees with SAPO hence the regulations no longer deal with categories of different services.

5. Conclusion

Although SAEPA and SAPO view the definition of “unreserved postal services” as being unclear, the Authority believes that the definition is sufficiently clear. The regulation of unreserved postal services is fairly new (started in 2005). The Authority is mandated by the Act to regulate the unreserved sector, hence these regulations.
