



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 583

Cape Town,
Kaapstad, 27 January 2014

No. 37270

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

DIE PRESIDENSIE

No. 54 27 Januarie 2014

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No 44 van 2013: Wysigingswet op die Suid-Afrikaanse Posbank Beperk, 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 Section 4 of the principal Act is hereby repealed.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 Section 8 of the principal Act is hereby repealed.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

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder dui invoegings in bestaande
verordenings aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 23 Januarie 2014)

WET

Tot wysiging van die Wet op die Suid-Afrikaanse Posbank Beperk, 2010, ten einde
bepalings te wysig wat die operasionele selfbestuur en onafhanklikheid van die
Kantoor vir Banke negatief kan raak; enige teenstrydighede met die Bankwet te
verwyder; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika,
soos volg:—

Wysiging van artikel 1 van Wet 9 van 2010

1. Artikel 1 van die Wet op die Suid-Afrikaanse Posbank Beperk, 2010 (Wet No. 9 van
2010) (hierna die Hoofwet genoem), word hierby gewysig— 5
- (a) deur die omskrywing van “Minister” deur die volgende omskrywing te
vervang:
 “**Minister**” die Minister [**van Kommunikasie**] verantwoordelik vir
 kommunikasie;”; en
- (b) deur die omskrywing van “Registrateur van Banke” te skrap. 10

Wysiging van artikel 3 van Wet 9 van 2010

2. Artikel 3 van die Hoofwet word hierby gewysig deur subartikel (2) deur die
volgende subartikel te vervang:
- “(2) Ondanks artikel 32 van die Maatskappywet [**en artikel 37 van die**
 Bankwet], is die Poskantoor, by inlywing van die Maatskappy, die alleenlid van en 15
 alleenaandeelhouer in die Maatskappy.”.

Herroeping van artikel 4 van Wet 9 van 2010

3. Artikel 4 van die Hoofwet word hierby herroep.

Herroeping van artikel 8 van Wet 9 van 2010

4. Artikel 8 van die Hoofwet word hierby herroep. 20

Wysiging van artikel 9 van Wet 9 van 2010

5. Artikel 9 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang:
 “(1) Die Maatskappy het die bevoegdhede om hom in staat te stel om
 die oogmerk in artikel 2 bedoel, te bereik.”; en 25
- (b) deur subartikel (3) te skrap.

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]**”; 5
 - (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**”; 10
 - (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: 15
“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— 20
- (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 25
(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]**.”; 30
 - (b) by the insertion in subsection (4)(a) after subparagraph (v) of the following word “**and**”; 35
 - (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— 40
- (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: 45
“(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.”.

Wysiging van artikel 13 van Wet 9 van 2010

6. Artikel 13 van die Hoofwet word hierby gewysig—
- (a) deur in subartikel (1) paragraaf (f) deur die volgende paragraaf te vervang:
“(f) te eniger tyd weens wangedrag uit ’n vertrouensamp ontslaan is; **[of]**”; 5
 - (b) deur in subartikel (1) paragraaf (g) deur die volgende paragraaf te vervang:
“(g) enige direkte of indirekte belang het wat in stryd met die bedryf van die Maatskappy is; **of**”; 5
 - (c) deur die volgende paragraaf by te voeg:
“**(h) nie geskik en gepas is om die amp van ’n lid van die Raad van ’n bankinstelling, soos in die Bankwet beoog, te beklee nie.**”; en 10
 - (d) deur in subartikel (3)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
“’n Persoon wat vir aanstelling as ’n lid van die Raad benoem is moet, voor aanstelling **[en op versoek van die Minister]**, ’n skriftelike 15
verklaring aan die Minister voorlê wat—”.

Wysiging van artikel 14 van Wet 9 van 2010

7. Artikel 14 van die Hoofwet word hierby gewysig—
- (a) deur in subartikel (1) paragrawe (a) en (b) onderskeidelik deur die volgende paragrawe te vervang: 20
“(a) by kennisgewing in ten minste twee nasionale koerante en in die *Staatskoerant* belanghebbendes vra om, binne die tydperk en op die wyse in die kennisgewing bepaal, die name voor te lê van persone in artikel 12(1)(a) beoog **[wat geskikte en gepaste persone is om die amp van ’n lid van die Raad van ’n bankinstelling te beklee, soos in die Bankwet beoog]**; en 25
(b) die Poskantoor skriftelik vra om, **met die instemming van die Registrateur van Banke,** die name van persone in artikel 12(1)(b) beoog voor te lê **[wat geskikte en gepaste persone is om die amp van ’n lid van die Raad van ’n bankinstelling te beklee, soos in die Bankwet beoog]**.”; 30
 - (b) deur in subartikel (4)(a) na subparagraaf (v) die woord “**en**” in te voeg;
 - (c) deur die volgende subparagraaf in subartikel (4)(a) in te voeg:
“**(vi) bankervaring,**”; en
 - (d) deur in subartikel (4) paragraaf (d) te skrap. 35

Wysiging van artikel 15 van Wet 9 van 2010

8. Artikel 15 van die Hoofwet word hierby gewysig—
- (a) deur in subartikel (2) na paragraaf (d) die volgende woord by te voeg:
“**of**”; en
 - (b) deur paragraaf (e) in subartikel (2) te skrap. 40

Wysiging van artikel 18 van Wet 9 van 2010

9. Artikel 18 van die Hoofwet word hierby gewysig deur in subartikel (3) paragraaf (a) deur die volgende paragraaf te vervang: 45
“(a) moet kwalifikasies of ervaring hê wat van toepassing is op die werksaamhede van die Maatskappy **en moet geskik en gepas wees om die amp van ’n hoofuitvoerende beampte van ’n bankinstelling soos in die Bankwet beoog, te beklee;**”.

Wysiging van artikel 25 van Wet 9 van 2010

10. Artikel 25 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang: 50
“(1) Die Minister kan, **[met die instemming van die Minister van Finansies]** totdat die Maatskappy ingevolge die Bankwet as ’n bankinstelling geregistreer word, die Maatskappy gelas om enige aksie deur die Minister bepaal, uit te voer indien die Maatskappy—

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:

“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:

“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.

(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.”.

Short title

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

- (a) wanbestuur word;
 - (b) versuim om sy werksaamhede doeltreffend of effektief te verrig;
 - (c) onbillik of op 'n diskriminerende of onregverdige wyse opgetree het teenoor 'n persoon teenoor wie die Maatskappy kragtens hierdie Wet 'n verpligting het; of
 - (d) versuim het om te voldoen aan enige wet of enige beleid in hierdie Wet beoog.”; en
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) Indien die Maatskappy versuim om die situasie binne die gestelde tydperk reg te stel, kan die Minister[, **met die instemming van die Minister van Finansies**]—
- (a) nadat die Maatskappy 'n redelike geleentheid gegun is om sy saak te stel; en
 - (b) nadat die Maatskappy 'n verhoor toegestaan is oor enige voorleggings wat ontvang is,
- die lede van die Raad vervang op dieselfde wyse as wat daardie vertrekkende lede van die Raad aangestel is of, waar omstandighede dit vereis, 'n persoon aanstel as administrateur om die betrokke werksaamheid van die Maatskappy oor te neem.”.

Wysiging van artikel 26 van Wet 9 van 2010

11. Artikel 26 van die Hoofwet word hierby gewysig deur subartikels (2) en (3) te skrap.

Invoeging van artikel 26A van Wet 9 van 2010

12. Die volgende artikel word hierby na artikel 26 van die Hoofwet ingevoeg:

“Toepassing van Bankwet

26A. In die geval van enige onbestaanbaarheid tussen die bepalinge van die Bankwet en hierdie Wet, geld die bepalinge van die Bankwet.”.

Vervanging van artikel 30 van Wet 9 van 2010

13. Artikel 30 van die Hoofwet word hierby deur die volgende artikel vervang:

“Oorgangsbepalings

30. (1) Ondanks die herroeping van artikels 51(1), (3) en (4), 52, 53, 55 en 58 van die Posdienswet deur artikel 31, gaan die voormalige Posbank voort om sonder enige onderbreking te funksioneer asof daardie artikels nie herroep is nie, totdat die [Maatskappy as 'n bank geregistreer is soos in artikel 4(2) beoog] voormalige Posbank soos in artikel 7 beoog oorgedra word.

(2) Enige vrystelling kragtens die Bankwet onmiddellik voor die oordragdatum op die voormalige Posbank van toepassing is steeds op die Maatskappy van toepassing totdat die Maatskappy ingevolge die Bankwet as 'n bankinstelling geregistreer word.”.

Kort titel

14. Hierdie Wet heet die Wysigingswet op die Suid-Afrikaanse Posbank Beperk, 2013.

