

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.

REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

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# GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1764.

24 Junie 1992

No. 1764.

24 June 1992

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

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

No. 101 van 1992: Wysigingswet op Pos- en Telekommunikasiewette, 1992.

No. 101 of 1992: Posts and Telecommunications Acts Amendment Act, 1992.

**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.

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## ACT

To amend the Radio Act, 1952, so as to provide for the licensing of radio frequencies; and to extend the powers of delegation of the Postmaster-General; to amend the Post Office Act, 1958, so as to amend certain definitions; to extend the powers of delegation of the Postmaster-General; to provide for the defrayal of operating losses of the postal company from the State Revenue Fund; to dispense with publication by the Minister of tariffs levied by successor companies; to make further provision concerning steps against an officer or employee in respect of misconduct; to provide for the deduction of certain amounts due, from pension benefits; to provide for the issuing of financial instruments by successor companies; and to further regulate the handling of balances in respect of inactive accounts in the Post Office Savings Bank; to amend the Post Office Service Act, 1974, so as to amend the definition of "Minister"; to further regulate the constitution of the Staff Management Board; and to make further provision in connection with the appointment of a Postmaster-General; to amend the Post Office Amendment Act, 1991, in order to correct an erroneous reference; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)*  
*(Assented to 18 June 1992.)*

**BE IT ENACTED** by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 7 of Act 3 of 1952, as substituted by section 32 of Act 73 of 1976 and amended by section 4 of Act 2 of 1978 and section 23 of Act 61 of 1982

5 1. Section 7 of the Radio Act, 1952, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

10       “(a) issue to any person approved by him a licence conferring upon such person the right to use, or cause any person in his employ or under his control to use, a station for any purpose prescribed by regulation or to use any specified radio frequency for a purpose and in the manner so prescribed;”.

Amendment of section 16 of Act 3 of 1952, as substituted by section 12 of Act 93 of 1969 and amended by section 10 of Act 2 of 1978 and section 2 of Act 99 of 1991

15 2. Section 16 of the Radio Act, 1952, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

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“Any person [in the service of the State] duly authorized thereto by the Postmaster-General may at all reasonable times—”.

Amendment of section 1 of Act 44 of 1958, as amended by section 1 of Act 56 of 1973, section 1 of Act 13 of 1974, section 1 of Act 113 of 1976, section 1 of Act 15 of 1978, section 1 of Act 37 of 1984 and section 1 of Act 85 of 1991

3. Section 1 of the Post Office Act, 1958 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in the definition of “Companies Act” for the expression “71” of the expression “61”;
- 10 (b) by the substitution for paragraph (b) of the definition of “excluded commitments” of the following paragraph and words:
- “(b) loan and other financing and related agreements entered into by the department, but excluding those made by the State to the department in terms of the Exchequer Act, 1975 (Act No. 15 66 of 1975) [in respect of which the Minister with the approval of the Minister of Finance decides that the State will continue to be liable after the transfer date concerned],  
in respect of which the Minister with the approval of the Minister of Finance decides that the State will continue to be liable after the  
 20 transfer date concerned;”; and
- (c) by the substitution for the definition of “Minister” of the following definition:
- “Minister” means the Minister [of Mineral and Energy Affairs and Public Enterprises] entrusted with the administration of the de-  
 25 partment;”.

Amendment of section 2D of Act 44 of 1958, as inserted by section 3 of Act 113 of 1976

4. Section 2D of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- 30 “(1) The Postmaster-General may, on such conditions as he may determine, delegate to an officer or to the holder of any post in the department any power conferred upon him by this Act or any other law, except the power of delegation granted under this subsection and a power which he  
 35 may exercise only with the approval of the Minister, and may in his discretion withdraw any such delegation.”.

Insertion of section 6 in Act 44 of 1958

5. The following section is hereby inserted after section 5 of the principal Act:

“Defrayal of operating loss from State Revenue Fund

- 40 6. (1) An operating loss suffered by the postal company during any financial year, shall, subject to the provisions of subsections (2), (3) and (4), be a direct charge on the State Revenue Fund, which charge shall be defrayed from dividends and tax paid into such Fund by the telecommunications company.
- 45 (2) If the amounts of dividends and tax paid into the State Revenue Fund by the telecommunications company in respect of any financial year is less than an operating loss suffered by the postal company during the financial year concerned and which is in terms of subsection (1) a charge on the State Revenue Fund, the telecommunications company shall furnish to the Treasury bridging finance to  
 50 cover the difference between the said dividends and tax paid by the telecommunications company, and the operating loss suffered by the postal company.

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(3) The terms and conditions of the bridging finance referred to in subsection (2) shall be determined by the Minister with the concurrence of the Minister of Finance.

(4) The financing of operating losses in terms of subsections (1) and (2) shall be for such period as the Minister with the concurrence of the Minister of State Expenditure may at his discretion determine, which period shall not exceed five years after the commencement of this section.

(5) For the purposes of this section—  
 'financial year' means a financial year as defined in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975);  
 'operating loss' means the amount of a loss as determined by the Minister with the concurrence of the Minister of State Expenditure;  
 'tax' means any levy or tax leviable in terms of the Income Tax Act, 1962 (Act No. 58 of 1962)."

**Amendment of section 7 of Act 44 of 1958, as substituted by section 6 of Act 85 of 1991**

6. Section 7 of the principal Act is hereby amended by the deletion of subsection (5).

**Amendment of section 8 of Act 44 of 1958, as inserted by section 7 of Act 85 of 1991**

7. Section 8 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (5) of the following paragraph:

"(b) (i) any [disciplinary steps] enquiry or other action instituted or contemplated [against such officer or employee] in respect of alleged misconduct [or improper conduct] committed by such officer or employee prior to his employment by [the] that successor company, shall be disposed of or instituted by such company and such company shall take steps against the officer or employee concerned if he is found guilty of misconduct, in terms of the laws applicable to him before such employment;

(ii) for the purposes of subparagraph (i) any reference in the laws contemplated in that subparagraph, to—

(aa) the Minister, shall be construed as a reference to the chairman of the board of directors of the company concerned;

(bb) the Staff Management Board, shall be construed as a reference to the management board of such company;

(cc) the Postmaster-General, shall be construed as a reference to the managing director of such company;

(dd) the department, shall be construed as a reference to the company concerned;"

**Amendment of section 10B of Act 44 of 1958, as inserted by section 7 of Act 85 of 1981**

8. (1) Section 10B of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) Notwithstanding the provisions of subsection (1), the pension fund concerned may on the date of a member's retirement or the date on which he ceases to be a member of the fund, deduct—

(a) any amount due to that fund in respect of a loan granted by that fund in terms of its statutes to a member or beneficiary, from any benefit to which the member or beneficiary is entitled in terms of such statutes;

(b) any amount due by a member to his employer in respect of—

(i) any loan granted by the employer to such member at his request;

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- (ii) any amount for which the employer is liable in terms of a guarantee furnished in respect of a loan granted by some other person to the member for the purchase of land or a dwelling or the erection, alteration, improvement, maintenance or repair of a dwelling for occupation by the member or a dependant of the member;
- (iii) compensation (including the legal costs recoverable from the member in a matter contemplated in subparagraph (ii)) in respect of any damage caused to the employer, by reason of any theft, dishonesty, fraud, misconduct or negligence by the member;
- (iv) any other written agreement between the member and the employer in respect of a study bursary, training of the member or the military service obligations of the member, from any benefit payable to the member or a beneficiary in terms of the statutes of that fund, and pay such amount to the employer concerned;
- (c) any amount which such fund or the employer has paid or will pay by an arrangement with, or on behalf of, a member or beneficiary in respect of—
- (i) such member's or beneficiary's subscription to a medical scheme registered otherwise than provisionally in terms of the Medical Schemes Act, 1967 (Act No. 72 of 1967);
- (ii) any insurance premium payable by such member or beneficiary to an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943), from any benefit to which the member or beneficiary is entitled in terms of the statutes of that fund and pay such amount, if due, to such employer, medical scheme or insurer, as the case may be.
- (2) Subsection (1) shall be deemed to have come into operation on 1 October 1991.

**Amendment of section 12U of Act 44 of 1958, as inserted by section 9 of Act 85 of 1991**

9. Section 12U of the principal Act is hereby amended by the deletion of subsection (5).

**Insertion of section 12W in Act 44 of 1958**

10. The following section is hereby inserted in the principal Act after section 12V:

**“Financial instruments**

- 12W. (1) Subject to the provision of subsections (2) and (3), a successor company of which all the issued equity shares are held by the State, may, for as long as the said shares are being so held, and notwithstanding anything to the contrary contained in the Companies Act, issue stock, securities, bills, promissory notes, debentures, debenture stock, obligations or other financial instruments as proof of a loan of money, and may negotiate or have them listed in the same manner and on the same financial markets or on the same stock exchange as is customary in the case of similar financial instruments issued by the State.
- (2) Financial instruments referred to in subsection (1) shall only be issued with the approval of the Minister with the concurrence of the Minister of Finance, and after a guarantee in terms of section 35 of the Exchequer Act, 1975 (Act No. 66 of 1975), has been obtained in respect thereof.
- (3) Any financial instruments issued by a successor company before the commencement of this section and which purported to be public stock or bonds issued by the Postmaster-General in terms of

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section 12I(1)(b), shall be deemed to be financial instruments issued by the company concerned in terms of subsection (1).

(4) Public stock or bonds which immediately prior to the deletion of section 12U(5) by the Posts and Telecommunications Acts Amendment Act, 1992, were in terms of the said provision deemed to be debentures issued by the successor company concerned, shall be deemed to be financial instruments issued by the company concerned in terms of subsection (1).

(5) The provisions of the Companies Act in respect of debentures shall, subject to subsection (8), not apply to financial instruments referred to in subsections (1), (3) and (4).

(6) A successor company may engage in commercial transactions of whatever nature, including repurchase agreements, in respect of its own financial instruments and similar financial instruments issued by the State or other institutions.

(7) A successor company shall, as far as possible, keep a register of all financial instruments referred to in subsections (1), (3) and (4).

(8) Stock referred to in subsections (1), (3) and (4) may be transferred by means of a securities transfer form in the manner referred to in section 135 of the Companies Act, and the stock certificate issued by the successor company concerned in respect of such transfer shall be *prima facie* evidence of the right to such stock of the person named therein as the holder of such stock.

(9) No levy, tax, stamp duty, fees or other costs of whatever nature shall be payable in respect of the issue or transfer of any financial instrument referred to in subsections (1), (3) and (4).

(10) No provision of this section shall be construed as derogating from the powers of a successor company in terms of its memorandum of association or its articles and under the provisions of the Companies Act, to issue, negotiate or list any financial instrument as proof of the loan of money."

**Amendment of section 76A of Act 44 of 1958, as inserted by section 27 of Act 113 of 1976**

11. The following section is hereby substituted for section 76A of the principal Act:

**"Inactive accounts"**

76A. If a balance in an ordinary account has remained unchanged for more than **[seven years]** a period determined by the Minister by regulation (but which may not be less than two years), except for the accrual of interest, the postal company may in **[his]** its discretion transfer the balance to the revenue of the postal company and utilize it for the purposes of the company: Provided that if the depositor concerned or any person legally competent to claim the balance on his behalf applies for the repayment thereof, or if an amount for deposit in the ordinary account concerned is paid after such transfer, an amount equal to the balance and the interest which would have accrued thereon if it had not been so transferred shall be **[retransferred]** transferred from the revenue of the postal company to the credit of the depositor concerned."

50 **Amendment of section 1 of Act 66 of 1974, as amended by section 1 of Act 27 of 1985 and section 78 of Act 85 of 1991**

12. Section 1 of the Post Office Service Act, 1974, is hereby amended by the substitution for the definition of "Minister" of the following definition:

55 " 'Minister' means the Minister **[of Mineral and Energy Affairs and Public Enterprises]** entrusted with the administration of the department;".

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**Amendment of section 4 of Act 66 of 1974, as amended by section 78 of Act 85 of 1991**

13. Section 4 of the Post Office Service Act, 1974, is hereby amended—

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

“(b) The Board shall consist of the Postmaster-General, who shall be chairman thereof, and the officers and other persons (if any) who are members of the Board in terms of the provisions of subsection (2).”; and

10 (b) by the substitution for subsection (2) of the following subsection:

15 “(2) The officers permanently appointed to posts of the prescribed grade or grades and any person or persons (if any) who is or are employed by a successor company as defined in section 1 of the Post Office Act, 1958 (Act No. 44 of 1958), and who has or have been seconded to the department to serve in such post or posts, shall be members of the Board.”.

**Amendment of section 10A of Act 66 of 1974, as inserted by section 8 of Act 27 of 1985**

14. Section 10A of the Post Office Service Act, 1974, is hereby amended by  
20 the addition of the following subsection:

25 “(3) (a) The Minister may appoint to the office of Postmaster-General a person who is in the employment of an institution established by law or a company of which the majority of the equity shares is held by the State, with the consent of such person and of that institution or company, for a period which, subject to subsection (1), is determined with such consent and while the person so appointed remains in the employment of that institution or company.

30 (b) If a person is appointed in terms of paragraph (a), the conditions of employment applying to him as an employee of such institution or company immediately prior to such appointment, shall continue to apply during the term of his appointment in terms of paragraph (a), but such person shall perform the functions, exercise the powers and fulfil the duties of Postmaster-General in terms of this Act, the Post Office Act, 1958 (Act No. 44 of 1958), or any other law, subject to the control of the Minister.

35 (c) Notwithstanding the provisions of paragraph (b), a person appointed in terms of paragraph (a), shall during the term of his appointment be exempted from the performance of any obligation he may have as an employee of the institution or company concerned towards such institution or company, in so far as it may be necessary for him to perform his functions, exercise his powers and fulfil his duties as Postmaster-General.

40 (d) An amount equal to the amount paid by the institution or company concerned to a person appointed in terms of paragraph (a) in respect of salary, emoluments and the value of other service benefits during the term of the appointment, shall be paid from the Post Office Fund referred to in section 12D of the Post Office Act, 1958, to the institution or company,  
45 unless the Minister and that institution or company agree otherwise.”.

**Amendment of section 79 of Act 85 of 1991**

15. Section 79 of the Post Office Amendment Act, 1991, is hereby amended  
50 by the substitution in subsection (2) of the Afrikaans text for the expression “1(j)” of the expression “1(k)”.

**Short title and commencement**

16. (1) This Act shall be called the Posts and Telecommunications Acts Amendment Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

55 (2) Different dates may be so fixed in respect of different provisions of this Act.