

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 53

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. 38 of 2011 : South African Post Office SOC Ltd Amendment Act, 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 Post Office SOC Ltd Act, 2011, so as to improve governance provisions between the Boards of the South African Post Office SOC Ltd and the South African Postbank Limited; to amend the Post and Telecommunication-related Matters Act, 1958, so as to provide for the payment of pension benefits to a former spouse of a member on divorce or the dissolution of a customary marriage; 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 22 of 2011

1. Section 1 of the South African Post Office SOC Ltd Act, 2011 (Act No. 22 of 2011) (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for the definition of “Post Office Act” of the following definition:

“**‘Post and Telecommunication-related Matters Act’** means Post and Telecommunication-related Matters Act, 1958 (Act No. 44 of 1958);”.

Amendment of section 3 of Act 22 of 2011 10

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The South African Post Office SOC Ltd, the postal company contemplated in section 3 of the **[Post Office Act]** Post and Telecommunication-related Matters Act, continues to exist as a public company, notwithstanding the repeal by this Act of provisions in the **[Post Office Act]** Post and Telecommunication-related Matters Act relating to the postal company.”. 15

Amendment of section 8 of Act 22 of 2011

3. Section 8 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 20

“(a) not more than **[11]** 10 non-executive members appointed in terms of section 11[, **one of whom must be the managing director of the Postbank by virtue of his or her office**]; and”;

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

“(5) The Board must upon invitation by the Minister nominate **[non-executive members of the Board]** persons for appointment to the Board of the Postbank, as contemplated in section 14(1)(b) of the Postbank Act.”; and

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(c) by the substitution for subsection (6) of the following subsection:

“(6) **[The]** If any non-executive members of the Board are appointed to the Board of the Postbank **[are]**, such members are accountable to the Board of the **[Post Office]** Postbank in respect of their functions performed as Board members of the Postbank.”.

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Amendment of section 11 of Act 22 of 2011

4. Section 11 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) the requirement that **[some]** members of the Board must be fit and proper persons **[to hold the office of a member of the Board of a banking institution,]** as contemplated in section 44(2)(d) of the Banks Act, 1990 (Act No. 94 of 1990)[, for purposes of section 8(5)]; and”.

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Amendment of laws

5. The law mentioned in Schedule 1 is hereby amended to the extent set out in the third column of that Schedule.

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Short Title

6. This Act is called the South African Post Office SOC Ltd Amendment Act, 2013.

SCHEDULE

LAWS AMENDED

Act No. and Year	Short Title	Extent of amendment or repeal
Act No. 44 of 1958	Post and Telecommunication-related Matters Act, 1958	<p>1. Amendment of section 10B by the substitution for subsection (1) of the following subsection:</p> <p>“10B. (1) No pension or lump sum from a pension fund referred to in section 10, or right to such a benefit, or right in respect of contributions made by, or on behalf of, a member, may be ceded, pledged or hypothecated, or be attached or subjected to any form of execution under a judgment or order of a court of law, except in terms of a court order made in accordance with the provisions of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), or a decree for the dissolution of a customary marriage, and in the event of the beneficiary attempting to cede, pledge or hypothecate a benefit or right thereto, payment of the benefit may be withheld, suspended or entirely discontinued by the pension fund concerned in its discretion: Provided that the pension fund concerned may, during such period as it may determine, make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a curator for such dependant or dependants.”.</p> <p>2. Insertion of the following section after section 10E:</p> <p>“Payment of pension interest upon divorce or dissolution of customary marriage.</p> <p>10F. (1) <u>The pension fund concerned must reduce a member’s pension interest by any amount assigned from the member’s pension interest to the member’s former spouse in terms of a decree of divorce granted under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), or a decree for the dissolution of a customary marriage.</u></p>

Act No. and Year	Short Title	Extent of amendment or repeal
		<p><u>(2) (a) Subject to paragraph (j) , for purposes of section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), the portion of a member’s pension interest assigned to the member’s former spouse in terms of a decree of divorce or a decree for the dissolution of a customary marriage is deemed to accrue to the member on the date on which the decree of divorce or the decree for the dissolution of a customary marriage is granted.</u></p> <p><u>(b) The amount of the member’s pension interest in the pension fund concerned must be determined and the amount of the member’s pension interest that is assigned to the former spouse must be calculated by the pension fund concerned in accordance with the statutes as at the date of the decree of divorce or the decree for the dissolution of a customary marriage.</u></p> <p><u>(c) Prior to determining the amount of the member’s pension interest that is assigned to the former spouse, the amount of the member’s pension interest referred to in paragraph (b) must first be reduced in accordance with the statutes by any amount of the member’s pension interest which, in a previous divorce or a previous dissolution of a customary marriage, was paid over or awarded to another party.</u></p> <p><u>(d) The amount of any pension benefit that is subsequently payable to the member in terms of the statutes must be reduced by the equivalent of the amount of the share of the pension interest of the member which—</u></p> <p><u>(i) was deemed to accrue to the member as a benefit in advance of the benefit ordinarily payable in terms of the statutes; and</u></p> <p><u>(ii) was assigned to the member’s former spouse, less the amount of any additional voluntary contributions, if any, paid by the member to the pension fund concerned from time to time, and accumulated over the period from the date on which payment to the former spouse or transfer to the approved retirement fund as referred to in paragraph (e) took place to the date on which the member first became entitled to a part or the whole of the balance of the benefit, with interest as the pension fund concerned from time to time deems appropriate.</u></p>

Act No. and Year	Short Title	Extent of amendment or repeal
		<p><u>(e) The pension fund concerned must, within 45 days of the submission of the court order by the former spouse of a member, request the former spouse to elect whether the amount to be deducted must be—</u></p> <p><u>(i) paid directly to the former spouse; or</u> <u>(ii) transferred to an approved retirement fund on behalf of the former spouse.</u></p> <p><u>(f) The former spouse must, within 120 days of being requested to make a choice—</u></p> <p><u>(i) inform the pension fund concerned of the manner in which the amount referred to in paragraph (e) must be dealt with; and</u> <u>(ii) if the former spouse chooses that the amount must be paid to the former spouse directly, provide the pension fund concerned with the details that are necessary to effect the payment; or</u> <u>(iii) if the former spouse chooses that the amount must be transferred to an approved pension fund on his or her behalf, provide the pension fund concerned with the details of that approved retirement fund.</u></p> <p><u>(g) The pension fund concerned must pay or transfer the amount—</u></p> <p><u>(i) in the circumstances contemplated in paragraph (f)(ii) within 30 days; or</u> <u>(ii) in the circumstances contemplated in paragraph (f)(iii) within 60 days, in accordance with the former spouse's choice, failing which interest becomes payable on such amount at a rate determined in the statutes.</u></p> <p><u>(h) In the event that the former spouse fails to make a choice or identify the approved retirement fund to which the amount must be transferred within the period referred to in paragraph (f), the pension fund concerned must pay the amount directly to the former spouse within 30 days of the expiry of that period, failing which interest becomes payable on such amount at a rate determined in the statutes.</u></p> <p><u>(i) Despite paragraph (h), in the event that the pension fund concerned cannot reasonably ascertain the manner in which the payment to the former spouse must be effected, the pension fund concerned must retain the amount plus interest as determined in the statutes in the pension fund concerned, until such time as details of the manner in which that payment must be</u></p>

Act No. and Year	Short Title	Extent of amendment or repeal
		<p>effected is made available to the pension fund concerned by the member, the former spouse or any other person whom the pension fund concerned is satisfied has the necessary authority and capacity to instruct the pension fund concerned in that respect.</p> <p><i>(j)</i> Any portion of a member's pension interest assigned to a former spouse in terms of a decree of divorce or a decree for the dissolution of a customary marriage granted prior to the enactment of this subsection must, for purposes of any law other than the Income Tax Act, 1962 (Act No. 58 of 1962), including, but not limited to, section 7(9)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), be deemed to have accrued to the member on the date of enactment of this subsection, and must be paid or transferred in accordance with paragraphs (a) to (i).”</p>