

POSTAL POLICY REVIEW

PHASE I Situational Analysis

Submitted by



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1. Introduction

Purpose and Structure of the Document

This document constitutes the second deliverable (Deliverable D2A Report) – the review of existing policies, laws and regulations in South Africa since 1994. Together with the Market Review Document (Deliverable D2B) the International Benchmark Report (Deliverable D2A), this Policy Review report will form a comprehensive Situational Analysis report.

2. Executive Summary

The postal policy review highlights the large number of sectors that intermingle with the postal sector to facilitate a functioning society in South Africa. In this document

This report provides an analysis of the relevant policies, legislation and regulations applicable in the postal market, and provides an overview of the following documents:

- 1998 White Paper on Postal Policy
- Postal Services Act No. 124 of 1998
- Postal Services Amendment Act of 2006
- South African Postbank Limited Act No 9 of 2010
- ICASA and ICASA Amendment Act 3 of 2006
- Broadband Infraco Act 33 of 2007
- South African Post Office SOC Ltd Act No 22 of 2011
- National Road Traffic Act, 93 of 1996
- National Credit Act
- Electronic Communications and Transactions Act 25 of 2002
- South African Social Security Agency Act, 9 of 2004

Towards the end of this report, a table was developed that illustrates the translation of the policy into legislation, regulations and licencing. It should be noted that in the next phase of this report, this table will be developed further to complete areas that require feedback from industry players to understand the status quo, to identify areas that have not yet been implemented as required in the policy, identify areas that have not contributed to the growth of the industry and to identify gaps in the policy and indicate areas that are to be addressed going forward.

3. Policy Analysis

3.1 1998 White Paper

The 1998 White Paper identified postal service as the most basic and most common means by which messages can be communicated and goods delivered. It stated that postal services is a basic link serving the entire population, it also serves as an important medium of communications for business and commerce. Based on this view the Government committed to facilitating the growth and development of the sector and to ensuring the provision of universal and affordable postal service to all South Africans irrespective of race, gender, class, age or geographical location. The overarching goal of the policy framework was to ensure a more accessible, equitable, efficient, and effective postal service.

The policy presented various implementation strategies which were designed to meet the basic needs of all citizens, given the limited resources available. The objective was to balance the provision of basic universal postal services to disadvantaged rural and urban communities with the delivery of service capable of meeting the needs of a growing South African economy.

The policy was divided into 12 respective chapters, each addressing a particular issue. As extracted from the executive summary of the policy, the chapters address the following:

Chapter One

Access to basic postal services is the right of all South African citizens. The South African RDP and constitution demand that certain criteria influence the formulation of service delivery to ensure basic human rights. Accordingly, universal postal service suggests that all citizens regardless of race or gender shall have equal access to basic postal services. The Universal Service Obligation is placed on the monopoly provider to ensure such access, as well as rebalancing the postal network for equity, improvement of scale, scope and quality of service, and the elimination of cost inefficiencies. Delivery policy will be revised to provide a more efficient and equitable service. Standards will be set and mechanisms established to monitor the minimum achievement of a satisfactory service in terms of speed, customer care and reliability.

Some of the critical provisions in Chapter 1 include:

- (1) Equal access to a basic letter service:
 - That is reasonably accessible to all people in the country regardless of physical location
 - At a uniform rate of postage
 - At an affordable price.
 - Offers a reliable service
- (2) In order to facilitate the effective delivery of a universal service, a set of reserved postal services conferring exclusive rights to the monopoly provider have been established.
- (3) The policy requires a licence to be issued to the monopoly provider, in this case the Post Office, in terms of which a Universal Service Obligation will be imposed. This stipulates various obligations through which universal service is achieved. This will

ensure the provision of specified postal services to the whole community, even though these services may not be commercially viable. Funding of the USO will be derived primarily from profits earned on monopoly and non-monopoly activities. In order to achieve sustainable profit levels the Minister may in consultation with the Universal service provider, set revenue and volume growth targets in the license conditions.

- (4) The Universal Service Obligation demands the rebalancing of postal networks for equitable access, the implementation of operational changes to improve the scope, scale and quality of service provision, and the reduction and ultimate elimination of cost and service inefficiencies.
- (5) The policy also required that, a commercial obligation will be placed on the monopoly service provider to operate as far as possible in a manner consistent with sound commercial practices. It states that should a loss be incurred by the monopoly provider in non-reserved areas, where there is no Universal Service Obligation, there will be no recourse to an automatic subsidy.
- (6) The policy additionally provides that the monopoly provider will execute its functions in a manner consistent with Government development and growth strategies, any directions given by the Minister subject to existing legal and statutory provisions and obligations imposed under any international conventions.
- (7) The policy also sets targets to provide postal addresses to those areas not previously covered. In terms of the license agreement to be issued by the Minister, four million new postal addresses will be provided by the Post Office. A roll out plan to achieve this target will be agreed on by the Post Office and the Minister.
- (8) The post office will also be required to meet certain customer service and service standards.

Chapter Two

This chapter identifies which services are to be kept exclusive and which are to be open to competition. It is critical to note that it recognises the benefits of competition, however the policy appears to provide that only once the universal service obligations have been achieved, will the exclusive services be opened to competition. The policy therefore provides that, in order to ensure universal service, a set of reserved services has been established, in which the universal service provider receives a degree of monopoly protection. The monopoly service includes all letter mail, the issuing of stamps and roadside letter box collection as well as street delivery box, address box, phantom box, private box and poste restante delivery. All other services, including parcel and express services, and any future services differing from those defined as reserved, are categorized as non-reserved and are subject to competition and market forces.

The Post Office is active in 3 markets:

- the communications and distribution market in terms of postal services offered and the movement of parcels
- the retail market through its post office networks
- The financial services market through third party payments and money orders, and the Postbank.

Chapter 2 recognises that the Post Office is faced with both direct and indirect competition in some areas (as discussed in Chapter 1). The direct competition is offered from various segments of the postal market, and the indirect competition through rapid technological and communication advances, in the form of fax, electronic mail (e-mail) the unaddressed mail market, retail marketing, internet marketing and other forms of electronic communications media.

The policy therefore considered international trends, and stated that the South African postal sector is inevitably moving towards a greater degree of deregulation and liberalization and that Government is committed to facilitating this process.

Chapter 2 therefore provides that, while the current exclusivity of the Post Office will be retained, it is the Government's intention to analyze the cost of the universal service obligation and to review the existing subsidy and monopoly in the light of these findings. The scope of the monopoly and that of the reserved area will be reviewed by the Regulator every three years, or at the Minister's discretion

Chapter 2 of the policy provides a good overview of the various markets in the postal sector. It should be noted that the communication and distribution markets are not easily separated. Speed, content, size and media variations are factors distinguishing the communications market from the distribution market.

Communication Market

- This refers to the market in which the communication of messages occurs, and incorporates the letter and direct mail market. The communications market is further segmented in terms of product, speed of delivery, and the security level of the item. This market has a unique position of being a generator or multiplier of mail volume. The majority of mail marketing campaigns are posted in three tranches- a pre-mailer, a main mailer, and a follow-up mailing. These letters generate positive and negative mailed responses, the delivery of goods, the distribution of invoices and statements, the payment of accounts, and the initiation of a non-sales communication relationships driven very often through the mail.
- A letter contains a message, but due to the physical format needs to be distributed. A letter may also contain non-messaged items such as a piece of clothing, which places it purely within the distribution market. As the size of the item to be distributed grows, so the letter becomes a parcel.
- In the communications sector, the speed at which the sender wishes the message to be received plays an important role in the choice of the medium of communication.

The Distribution Market

- The distribution market includes the transport and delivery of goods to a specified address. Postal delivery is a specialized sector of the distribution market, especially the distribution of individual parcels. During the 1970's an international trend developed in which courier companies were formed to handle express and parcel business on an overnight or same-day basis. Despite the demand, at the time post offices world-wide did not offer such a service.

It is interesting to note that at the time that the policy was written the telex and telegram had virtually disappeared, but the view was that due to the limited availability of electronic transmission services, the letter service will remain the primary means of communications. It was therefore believed that customers should be offered a choice between economical standard mail or more expensive fast-mail or courier services.

Chapter 2 of the policy further explains that the parcel distribution market caters for all material falling outside the definition of a letter. Services that are offered by companies on high-volume and localized routes demonstrate the practice of "cherry-picking". Private sector companies therefore at the time served only the high volume, short distance, low unit cost routes.

In line with the understanding of the market trend, and the limited ability and availability of technology, courier services started to fill the gap by delivering large documents too difficult to transmit electronically. Private sector courier companies filled this gap, however they only targeted high volume routes, charging premium rates in return for fast delivery and other services such as collection and delivery to and from clients' premises, customs clearance and track-and-trace facilities. These services were delivered as private companies sought to enhance and build their competitive advantage in the market.

The policy furthermore discusses the requirements of publishing as well as direct marketing as part of its market analysis in Chapter 2.

Chapter 2 also considers the agency services currently being provided by the post-office (Telkom services, Third-party services such as payment of municipal accounts, TV licences etc, Pension Services and Gaming product sales. However, it also provides the vision of using postal infrastructure optimally to provide additional profitable value added services on a competitive basis as multi-purpose community centres such as:

- Tax collection;
- Eskom services;
- Housing;
- Motor vehicle licences;
- Radio licences;
- Voters Roll Administration;
- Lottery and
- Rural financing.

One of the critical factors that informed the policy decision regarding monopoly services is mentioned in Chapter 2. The Hamburg Congress resolution C26/1984 appeals to the governments of Union member countries to:

- Maintain the postal monopoly in order to ensure that all of their citizens have equal access to a universal postal service;
- To define clearly the items which fall within the scope of the postal monopoly; and
- Where appropriate to instruct the customs and other national authorities to assist the postal authorities in enforcing the postal monopoly.

Chapter 2 also provides further guidance regarding the Universal Service Obligation of reserved services. It states that the postal monopoly includes all letter mail, that is letters, postcards, printed paper and small packets up to 2kgs. This standard is to be reduced at such time as the Regulator assumes full authority and power. A letter is defined as any form of written communication or other document, article or object that is directed to a specific person or specific address and is to be conveyed other than by electronic means; and includes a packet, package or wrapper containing any such communications or article -

- of a maximum mass of two kg, or conforming to the following dimensions:
- maximum length 458mm
- maximum width 324mm
- maximum thickness 100mm
- Cylinders having a maximum length of 458mm and 100mm thickness are regarded as letters.

The policy also explains that there are several key exemptions from the monopoly:

- Delivery by an employee of the sender
- Unaddressed mail
- Legal document exchanges
- Letters exceeding the stipulated dimensions or mass
- Occasional Letters delivered by an individual not in the business of delivering letters.
- Trade announcements, circulars, printed extracts from newspapers, or advertisements which are not addressed to any person
- Newspapers and periodical bulletins

It should however be noted that it was provided that the Post Office has special rights in respect of the issuing of stamps and the provisioning of roadside collection and address boxes.

Lastly, Chapter 2 explains that any service that falls outside of the ambit of the reserved areas is non-reserved, and should be provided in free competition. These include:

- Parcel services, referring to the movement of individual goods and items larger or heavier than the dimensions prescribed by reserved services
- Courier services including both express letters and parcels larger or heavier than the dimensions prescribed by the reserved service
- New services significantly different from existing reserved standard services. If a new service subsequently becomes a necessary element in the achievement of universal service, it can be integrated into the reserved area subject to the criteria.

While parcels are not included in the reserved services, there is, however, a universal obligation on the delivery of parcels the term of which will be stipulated in the licence agreement of the Post Office.

Chapter Three

Government does not envisage any changes to the current ownership structure of the Post Office. However, new ownership strategies, namely Strategic Equity Partnerships and employee ownership schemes will be considered for state subsidiaries of the Post Office. Strategic Management Partnerships and Performance Contracts are proposed as restructuring options. A financial mandate has been placed on the Post Office to reduce the subsidy levels over the next three years, reach breakeven and then achieve profit.

The policy states that since its commercialization in 1991, the Post Office has been a wholly owned government company with a board of directors and management board, with certain freedoms associated with private sector companies in terms of the Post Office Act. However, the restructuring of the enterprise will occur within the framework of the National Framework Agreement on the restructuring of state-owned assets. The potential forms of management contracts provided for in the policy, that Government will consider for its restructuring processes are:

- Performance and Management Partnerships
- Performance Management Contracts
- Strategic Management Partnerships (SMP's)

In the case of subsidiaries of the Post Office, different forms of ownership including foreign ownership, holding companies, and employee share ownership schemes (ESOP), were to be considered.

The policy included the following governance requirements:

- The South African Post Office will be managed by a single board which will comprise executive and non-executive members. The daily operations will be supervised by an Executive Committee, operating within specific parameters of authority;
- The Board will consist of not more than fifteen members of which at least five will be executive members. Employee representation through union structures will

not exceed two, non-executive, members. The Chief Executive Officer of the company will be one of the executive members of the Board.

- While the Articles of Association are not prescriptive in any way, specific skills and representation of both geographic and sectoral diversity are deemed essential.
- The Chairperson of the Board will show evidence of executive experience in a large multi-faceted company, and have good standing in the business community.
- The position of Chairperson of the Board and that of Chief Executive Officer will be separated.
- The Chairperson of the Board will be appointed by the Minister for Posts, Telecommunications and Broadcasting.
- In addition to the executive committee, it is proposed that four board committees be constituted, representing the audit, human resources, remuneration and Postbank arenas.

In determining the governance requirements for the board the King report was considered in the policy. Based on this intention it is assumed that any future policies would consider the latest best practice guidelines of good governance.

Other noteworthy provisions in the policy include:

- To enable the Board to direct Post Office strategy effectively the Board must ensure that the Post Office executive management engage major stakeholders constructively. This should include formalized interaction with the National Postal Forum, as well as industry representative bodies.
- The Chief Executive Officer will supervise, under the direction of the Board, the management of the company in accordance with the objectives and requirements of the Act.
- Board meetings will be conducted at a minimum of quarterly intervals. Additional meetings may be convened when considered necessary.

The policy also clearly indicates the specific mandate of the Shareholder to be as follows:

- Change in strategy objectives or primary business direction.
- Change to the articles of association or memorandum.
- The issue or allotment of shares.
- Mergers and acquisitions.
- Change in share capital or capital structure.
- Declaration of dividend policy.
- Any capital expenditure over an amount stipulated in the Articles of Association.
- Disposal of assets over an amount stipulated in the Articles of Association.
- Appointment and dismissal of board members, including the Chief Executive Officer.
- The remuneration of the Chief Executive Officer will be market-related and determined by the remuneration committee.
- The Board will ensure a constructive relationship with the shareholder by at least:
 - Making available to the shareholder all minutes of Board meetings
 - Conducting regular meetings between the Chairperson, Chief Executive Officer, the Minister and the Department of Communications.

Based on the financial performance of the Post Office at the time, the financial mandate for the Post Office was formulated in the policy to reach breakeven within three years and to then operate on a profitable basis. Should the Post Office exceed its target during this period, the excess will be injected back into the company for re-capitalisation or infrastructure development.

The policy considers a number of ways in which the Post Office could facilitate financing such as franchising opportunities. However it is clearly restricted to only borrow money with the permission of the Minister.

It is lastly critical to note that the policy envisages certain areas of investment to improve and extend the services of the Post Office:

- Technology
- Mail centres
- Equipment for postal automation
- Additional addresses
- Additional post office rentals and ownership
- Counter automation
- Staff training
- Maintenance of facilities
- Infrastructure upgrading

These areas were expected be financed primarily through normal internal capital expenditure. Efficiency gains within the postal network were furthermore expected to cover the redistribution of post offices to previously disadvantaged areas, the increase of postal agencies and post points, and franchising.

Chapter Four

Chapter 4 of the policy addresses the regulatory framework in the postal sector. Regulation of the sector has followed international trends. In short, chapter 4 deals with the establishment of a regulator reporting to the Minister for Posts, Telecommunications and Broadcasting, to monitor and regulate tariff structures, the provision of universal services and other licence conditions, quality, research, standards and enforcement.

Some of the critical provisions contained in the policy are that the Department of Communications assumes responsibilities in the following areas:

- The promotion of universal service;
- The formulation and development of policy relating to the postal sector;
- The issuing of policy directives;
- The monitoring and evaluation of human resource policy;
- Shareholder management;
- International relations; and
- Approval of business plans

The Department is also required to report to the Minister on the implementation and achievement of its responsibilities on an ongoing basis.

The policy provides that a licence for twenty five years is to be issued to the South African Post Office Limited by the Minister. It requires compliance to licence terms and conditions and the payment of a licence fee.

Additionally, the Minister will issue a licence to delegate monopoly operations, which grant exclusive privileges to the Post Office for a determined period of time. At the end of the stipulated period, the licence agreement and conditions will be reviewed (the monopoly will be reviewed every three years). One of the most critical provisions in Chapter 4 of the policy is that the exclusivity period is supposed to provide a time-frame for the Post Office to restructure and improve efficiency in preparation for competition in all areas.

The policy provides that the purpose of regulation within the postal sector include in short:

- Provide access to quality postal services at a reasonable price;
- Regulation will simulate a competitive environment while leaving the essential share of the reserved sector intact;
- Accessibility by implementing Universal Service Obligations;
- Affordability (tariffs regulated within reserved areas – cost-based with no cross subsidisation);
- Quality control (service delivery standards with time frames);
- Monitoring and control; and
- Enforcement.

The policy at the time provided that the regulator of the postal industry would be situated within the Ministry and will be independent from the public operator. It furthermore provides that the funding of the regulator be in accordance with normal government budgetary procedure and that the regulator shall report to the Minister on the performance of its functions.

As part of the functions of the monopoly operator, the policy provides that:

- It assumes full responsibility for the provision of universal service and equal access;
- It will ensure that benefits accrued in the reserved portion of the market are not used for unfair advantage over competitors in the non-reserved services market.

The Post Office as monopoly provider may bring any violation of the monopoly over reserved areas to the attention of the regulator. The Post Office in particular is also required to build a close relationship with customers, resolve customer complaints and create and administer a national register of addresses. The Post Office shall lastly submit all business plans to the Department of communications 6 months prior to implementation.

The Post Office shall ensure that privacy rights of consumers are to be protected by obliging all direct mailers to subscribe to the Mail Preference Service of the Direct Marketing Association of South Africa.

One of the most critical areas covered in Chapter 4 is the functions of the regulator, which include:

- Implementation and monitoring of policy directives
- Adherence to international conventions that South Africa is signatory to;
- Set targets for the achievement of universal service;
- Monitor universal service obligations on an ongoing basis and ensure that the Post Office does not use its monopoly powers to obtain an unfair competitive advantage;

- Advise Government on the scope of universal service required;
- Take action and impose penalties in consultation with the Minister in case of non-performance;
- Protect the Post Office:
 - in the carrying of letters within and between South Africa and other countries;
 - In issuing of postage stamps;
 - Prohibit the operation of any entity violating the monopoly or reserved area
- Licensing of all postal service providers;
- Registering courier companies and licence courier companies to handle parcels (and delivery only for international courier companies);
- Obtain information records from licensees;
- Handle complaints;
- Regulate the prices of monopoly services;
- Regulate tariff increases in the reserve area through a price cap system (inflation related);
- Require public notification of tariff increases on the reserved areas;
- Appoint an independent monitor to assess the standards and performance of the Post Office by:
 - Assessing the performance of the Post Office against publicly-stated service objectives;
 - Conduct continuous measurement that is statistically valid (sample mail to enter the postal system every business day);
 - Provide the Post Office with performance results on a daily and monthly basis
- Audit the results of the independent monitor and publish the results quarterly in all major newspapers and magazines;
- Promote fair competition in the non-reserved area by issuing licences and licence conditions that level the playing field;
- Promote and conduct research into developments in the area of regulatory policy and technological development within the sector.

Chapter Five

The postal sector was identified as one of the sectors with a vital role to play in contributing to the economic empowerment of historically disadvantaged communities. Therefore the policy required a decisive programme of Black economic empowerment to be initiated. It was to ensure the productive use of the entire economically active population, while addressing the plight of victims of past discrimination. The policy recognised that black economic empowerment will promote meaningful participation in the mainstream economy through management, ownership and employee positions. Procurement policy and tendering were therefore required to be amended, and the roles of small, medium and micro-enterprises and entrepreneur involvement were encouraged.

The procurement policy envisaged in the policy is to include historically excluded individuals in the allocation of contracts and that procurement should be used in the creation of employment. Additionally the approach towards procurement is to create packages in order to maximise the utilization and promotion of SMME's.

Another area that is highlighted in Chapter 5 is the certain governance rules for the tendering process.

Chapter Six

The development of human resource capacity is considered an essential component of the postal policy. Continued skills training, education and capacity building will be implemented; human resources will be assessed, and a human resource strategy will be formulated. This will incorporate affirmative action plans, and redress past biases in terms of gender, race, and disability.

In particular the Department of Communications will:

- The setting of realistic target for all activities, and instituting the monitoring and measuring procedures to ensure all targets are met
- Overseeing the auditing of the employee profile, specifying racial, gender and disability components.
- Reviewing management practice and identifying barriers to entry for historically disadvantaged communities.

The policy provides that there should be effective human resource planning in the Post Office, and goes further to state that the implementation of human resource planning requires:

- An assessment of the human resources required to deliver the operational objectives in the organizations strategic plan.
- An assessment of the organizations existing human resource capacity
- A proposal on how best to bridge the gap between existing human resource capacity and the future human resource requirement, within financial resources available.

Linked to the requirement in the policy for effective human resource planning is also a requirement to focus on skills development. The policy requires that training programmes need to be integrated, available to all, and designed around both company (Post Office) and individual needs, with emphasis on redressing existing inequalities and injustices. These programmes should be effectively planned, implemented and monitored at the national and regional levels.

In as far as affirmative action is concerned, the policy states that the Post Office is required to prepare detailed plans for the internal monitoring and evaluation of their affirmative action programmes. In addition, it will be required to present an annual progress report for scrutiny by the Ministry for Posts, Telecommunications and Broadcasting so that special measures can be taken where it failed to make visible progress towards their affirmative action targets.

The Post Office's affirmative action plan should be integrated into the human resource guidelines and manuals, and all employees will be made aware of the policy. As part of the corrective action plan, the policy requires specific actions from the Post Office management that include:

- Appoint a manager and support staff to manage the acceleration process
- Identify and implement a specific skill and management training curriculum
- Provide seminars and courses for instructors, supervisors and mentors of the identified group
- Formulate a plan to rotate the group through key positions
- Allocate high achievers to appropriate assignments for short-term, rapid experience.

It requires the affirmative action plan to be implemented over a period of five years. To facilitate the achievement of these requirements, a Human Resource Fund for the postal sector is required to be established within the framework of the Skills Development Bill (now an Act). The fund is required to promote the provision of adequately skilled human resources at all levels to sufficiently meet the postal needs of the Republic of South Africa. This fund will also facilitate the creation of expertise and management skills within the postal sector.

The inclusive approach towards human resources development in the postal sector proposed by the policy also includes that people with disabilities are provided with adequate, appropriate and accessible information about employment programmes.

Additionally, and consistent with the recommendations in the Integrated National Disability Strategy, the postal sector is required to make all buildings in its domain – particularly pension pay outs – easily accessible for disabled people.

Lastly, the policy also touches on gender discrimination, which was evident in the postal sector at the time. Accordingly the sector is required to facilitate the empowerment of women in South African society, and the empowerment of women within the postal sector itself.

Chapter Seven

In 1998 already, it was recognised that the rapid advances made in technology provide both a threat and opportunity to the postal sector. The policy states that new technology will be incorporated into the Post Office, facilitating the improvement and expansion of service and quality of service offered. The sector will conduct ongoing research and development programmes to ensure that the opportunities offered by technological change are maximised.

In particular, the Post Office was required, by using data networks and electronic point of sale systems to act as multi-purpose centres that can provide information to communities, offer effective money transfer and agency services, act as bridging point for electronic communication (e.g. by providing fax, e-mail and internet access) and provide effective banking services. The Post Office was furthermore required to provide hybrid services. Hybrid services involve both the delivery of a hard copy version of a message that originated from the sender in electronic form, and the translation of a hard copy communication into electronic form for transmission to a recipient by modem or other electronic networks. These services were expected to speed up the transmission and delivery of hard copy communications and represent a bridge between the present and future of business and consumer communications. (Some of the hybrid products and services that are in the forefront of development are Volume Electronic Mail (VEM) for the transmission and regional delivery of large volume mailing (point to multi point); the Hybrid Data Interchange service that provides both a bridge between trading partners at different stages of adopting electronic communications technology, a fax-on-demand document storage and retrieval service.)

Chapter Eight

The postal sector supports the national "African Renaissance" philosophy, and will consolidate existing relationships with neighbouring African countries. South Africa's involvement in the Southern African Transport and Communications Commission will be

encouraged, as will potential involvement in the Pan African Postal Union (The Ministry announced its intention of joining PAPU during the course of 1998). South Africa is a member of the Universal Postal Union (UPU). The jurisdiction over incoming and outgoing mail is ambiguous, and specific limits are proposed. Since the UPU is a regulatory body, legislative provision should be made to ensure that the regulations of the Convention and the UPU Agreement are lawfully applicable to and in South Africa.

The point at which South Africa assumes or relinquishes jurisdiction over mail is ambiguous. Precise boundaries of jurisdiction and authority over inward and outward-bound mail are therefore necessary. The policy provides clarity by stating that:

Outgoing postal items will remain under the jurisdiction of South African law in the case of items -

- by air: until the aircraft conveying the item touches down on the runway at the first airport in the country of destination or of transit of the item;
- conveyed by ship: until the ship conveying the items enters the territorial waters of the country of destination or of transit of the item;
- Conveyed by road: until the vehicle conveying the items passes through the first border post along the route to the country of destination of the item.

Similarly **incoming** postal items will come under the jurisdiction of South African law in the case of items -

- conveyed by air: from the moment the aircraft conveying the items touched down on the runway of the first airport of arrival in South Africa
- conveyed by ship: from the moment the ship conveying the items enters South African territorial waters
- Conveyed by road: from the moment the vehicle conveying the items enters South Africa through a border post.

Chapter Nine

Postbank provides a unique opportunity to provide savings and banking services to rural communities. The policy envisages that the Postbank will be used to encourage a culture of savings among its target clientele. A three-phased restructuring plan was required to be implemented resulting in the Postbank as an autonomous fully-fledged savings bank, owned by the Post Office. In the interim period, Postbank was to operate as a profit centre, and to continue to be exempt from registering as a bank under the Bank Act. Co-operation between the Postbank and another financial institution was expected to assist in the redesigning and expansion of Postbank products and services.

The policy provided that the restructuring of the Postbank should be implemented in a three-phased process:

Phase I The Postbank as a profit centre – providing greater autonomy within the existing divisional structure. The savings product range will be expanded.

Phase II Post Office savings bank – a subsidiary fully owned by the Post Office or Government, providing a complete range of payment and funds transfer services and expanding the deposit service range.

Phase III Savings bank – an autonomous company owned by the Post Office or Government and operated as a fully-fledged savings bank extending lending facilities. An independent Board of Directors will be established and be held accountable to the

Shareholders. The savings bank will be managed by professional managers. Although the Postbank as a savings bank will be owned by the Post Office or Government, a strategic equity partner may obtain a minority share of the Postbank company.

The policy also envisaged that a separate Postbank Committee will be established to facilitate the achievement of the autonomy required to operate the Postbank profitably and efficiently. This committee was required to be autonomous in matters relating to Postbank, and to report directly to the Post Office Board.

In the period leading up to corporatisation as a Savings Bank, the policy provides that the Postbank will operate as a profit centre and a division of the South African Post Office. The Postbank will be regulated by a special chapter in the proposed Postal Act, and will continue to be exempted from registering as a bank under the Bank Act. In order to provide a full range of financial services to the target market, Postbank needs exemption from the normal regulatory framework that governs the SA financial industry to fulfil its primary objective. However, it provided that in the interim period the Reserve Bank shall exercise supervisory control over the activities of the Postbank only in terms of the reporting requirements of the Banks Act. The Department was ultimately required to consider the future regulatory framework under which the Postbank were to operate.

Specific service areas, suggested by the Strauss Commission, have been identified for development, expansion and improvement:

- Mobilize Saving

The Postbank must improve availability of, and access to, appropriate savings products and opportunities, and where appropriate adopt a new range designed to mobilize rural services. These should be appropriate to the rural context in which they are situated. Responsive and flexible packages should be designed to provide greater incentives for increased savings.

- Pension Delivery

It is proposed that pension payouts be delivered through a debit order into a savings account. This should both assist in the mobilization of savings and promote the institutional development of civil society. This option also offers enhanced security for the beneficiary. This would, however, be contingent on continual access to the Postbank service.

- Transmission Services

Transmission services enhancing transfer opportunities between rural-rural and rural-urban extended family networks should be improved. The existing system offered by commercial banks is inappropriate to the rural context. Assistance should also be offered, through these services, in the paying of services such as rates, water supply, electricity and telephones.

- Credit facilities

Savings records held with Postbank are currently not available for credit leverage. Although the establishment of a credit function is both complex and costly, it would facilitate the rendition of a more comprehensive and accessible range of services in the case of micro-lending facilities becoming available to rural customers.

- Consumption Smoothing and Productive loans

Postbank should offer facilities for short-term loans for consumption smoothing, and finance for agricultural and non-agricultural activities.

- Other Services

The Postbank could also offer money transfer services, pension payments, unemployment benefits, housing subsidies administered by intermediaries, and other services which it may deem necessary.

Chapter Ten

In terms of Chapter 10 of the policy, it is recognized that crime can be committed both through and within the postal system. It recommends that action be taken to address both these aspects, and include legislation, greater national, regional and international co-operation, the establishment of national data systems and an effective communications strategy, and the re-evaluation of human resource strategies.

The crime categories listed in the policy include postal revenue offences, commercial offenses, mail violation and secretion and crimes against postal property and identity.

- Postal revenue offences, which can either be committed by employees or any person outside the postal service include:
 - Forgery of postage stamps and money orders;
 - Re-usage of postage stamps with intent to defraud;
 - Fraudulent removal of stamps from articles in the course of transmission;
 - Sale of stamps below face or retail value, except by the postal service or its authorized agents;
 - Unauthorized resale of stamps;
 - Evasion of due postage and postal charges;
 - Theft of postal stamps;
 - Misappropriation, theft or embezzlement of postal money;
- Commercial Offenses include:
 - Collusive tendering for contracts;
 - Demanding or accepting bribes or secret commissions;
 - Unauthorized expenditure of postal money; and
 - The award of contracts by an employee, director or an official of the Regulator or the Department of Communications with interest in the outcome.
- Mail violation and secretion include the following offences:
 - Damage, destruction, unauthorized opening or violation of mail and postal articles;
 - Theft, secretion, wrongful diversion and unauthorized disposal of mail bags and postal articles, including items which have been lost on their way to a Post Office or incorrectly delivered;
 - Obstructing the carriage or delivery of mail bags, postal articles or messages;
 - Forgery or falsification of postal messages and disclosure of existence or contents of mail;
 - Deliberately or carelessly delivering articles or messages incorrectly; and
 - Retaining of an article which has been wrongly delivered.
- Crimes against postal property and identity.
 - Robberies
 - Housebreaking (Burglaries);
 - Theft where Post Office employees assist syndicates to obtain cheques, credit cards, postal orders and other goods which are carried by the Post Office;

- Defacement, damage, theft and destruction of postal property; and
- Imitation of corporate identity.
- Crimes committed through the mail include the following:
 - Illicit drug trafficking;
 - Mail bombs;
 - Child pornography and paedophile networks;
 - Money laundering and unauthorized lotteries
 - Mail fraud

The postal violations and crimes are required in terms of the policy to be incorporated into postal legislation. To this end, the internal Security and Investigation Services will be given the powers to enforce that aspect of the law pertaining to the direct interest of the postal service and its customers. This will include postal revenue offences, mail violation and secretion and crimes against postal property and identity. They will cooperate with and assist the South African Police Service on matters related to criminal law. This will include special powers of entry, search, seizure, investigation and arrest. These powers will be backed up by specific legislation prohibiting bribing, impeding, injuring or assaulting such officials in the course of their duties.

Enforcement for crimes with a wider national interest, for instance illicit drugs, pornography and misuse of mail will be by external agencies such as the South African Police Service and Customs, assisted by the internal Security and Investigations Services.

The policy proposes the following is an approach to the different priority crimes:

- Violation/Secretion/Unlawful delay and Theft of Mail - To increase the efficiency and effectiveness of preventing and investigating these crimes, focus will be on the following:
 - Mail testing by both overt and covert legal means.
 - The installation of covert/overt CCTV Cameras at strategic points for the purpose of monitoring criminal activities.
 - The installation of effective access control mechanisms on Post Office premises
 - The searching of persons, bags, vehicles, containers and property on all premises occupied by the South African Post Office.
 - As methods and *modus operandi* of criminals change, other internationally acceptable techniques will be utilized.
- Fraud
 - to deal effectively with this type of crime, programmes to strengthen internal regulations and controls will be developed and the frequent auditing of systems, books and registers.
- Robberies
 - A partnership needs to be formed with the South African Police Service, Congress of South Africa Banks (COSAB), Business Against Crime (BAC) and the community structures to both reduce and prevent this crime. A programme to secure Post Office premises will be developed to deter and protect the employees and assets, In addition, another programme will be developed to create and maintain security and crime awareness amongst the employees.
- Housebreaking (burglaries)
 - A programme to secure all Post Office property, premises and assets will be developed to improve cooperation and coordination between the South

African Post Office, South African Police Service and the community to create and maintain security awareness amongst all employees.

- Misuse of mail
 - Effective detection programmes for illicit drug trafficking, mail bombs, child pornography and paedophile networks and mail fraud will be developed in collaboration with the South African Police Service and the Direct Marketing Association (DMA). The mail is not only used for dispatching drugs but also for drug-related money laundering and unauthorized lotteries. Fighting these crimes is further complicated by the current trend towards greater privacy of individuals and the ease of travelling to and importing from countries without proper protection measures.
- Postage Evasion
 - A coordinated process amongst all the relevant role-players will be established to ensure that postage evasion is identified. Internationally undercover techniques will be utilized to identify and monitor activities of such employees with regards to this offence. An ongoing awareness amongst all employees and agents with regard to the causes and effects of fraud will be created.

The policy explicitly states that the Universal Service Provider is required to be empowered by legislation to take active steps against postal violators. These will include disciplinary action and dismissal of postal employees, and the laying of criminal charges against all violators, whether employees or general public.

Lastly, it requires effective and quick-acting legislative powers to deal with companies that use mail to defraud consumers, and particularly requires direct mail order companies to abide with the code of ethics detailed by the Direct Marketing Association of South Africa.

Chapter Eleven

The philatelic concerns of the Post Office are the responsibility primarily of the Philatelic Business Unit. The issuing of stamps is the sole domain of the Post Office. Philately as an activity should be encouraged as a means of generating income for the Post Office, and providing a unique window to the diverse histories, cultures and achievements of South African society

The policy requires the Minister to appoint the Stamp Advisory Committee (SAC) in consultation with the Chairperson of the Board of Directors. The SAC shall advise on events or themes that should be celebrated on stamps. This Committee will operate in conjunction with the Philatelic Business Unit of the Post Office. This Committee is required to formulate a broad stamp programme two years in advance which is finalized a year prior to implementation. The SAC may consider applications up to three months before the proposed date, but this should only be in cases of extreme national importance or concern.

Written proposals and suggestions for postage stamps themes are invited each year from all members of the public. All proposals and suggestions are submitted to the Stamp Programme Advisory Group (SPAG) who, in conjunction with the SAC, select the most suitable themes on an annual basis.

The stamp issuing policy will comprise the following components:

- Definitive issues
- Commemorative issues
- Prestige booklet issues (linked to commemorative issues)
- Internal standard rate booklet issues (usually linked to definitive issues)
- Airmail postcard rate booklet issues
- Corporate products
- Philatelic commemoration
- Postal stationery

Chapter Twelve

The policy states that the existing legislation has been formulated over the past century. The introduction of the 1998 White Paper initiated a process of legislative reform that may impact on a number of existing related legislation.

The tabling of the White Paper in Parliament further resulted in the introduction of a new Postal Services Act.

3.2 Broadband Policy 2010

The broadband policy was developed in line with the World Summit of Information Society and general global trends. Given that Broadband is a platform that facilitates the convergence of voice, data, and audio visual services onto a single network; broadband infrastructure is central in achieving the goal of digital inclusion, enabling sustainable and affordable access to ICTs by all. The Broadband Policy sites a lack of affordable universal access to Broadband services which contributes to slow economic growth and inhibits social benefits such as education and health services. The broadband policy focuses on increasing accessibility, availability, affordability and usage of broadband throughout South Africa.

The definition of broadband varies both nationally and internationally; the broadband policy adopts the International Telecommunications Union Development Sector which states that broadband can be interpreted as “an always available, multimedia capable connection with a download speed of at least 256kbps”¹.

The Vision of the Policy captures the essence of broadband accessibility, it reads as follows:

“The Vision of this policy is to ensure universal access to broadband by 2019 by ensuring that South Africans are able to access Broadband either individually, or as a household, subscribe to a broadband service, or are able to access a broadband service directly or indirectly at a private or public access point”.

The first of the three the key priority areas that are identified by the Policy is Access; which is specifically concerned with the provision of infrastructure towards achieving the goal of universal access. As part of this key priority it also provides target areas that contribute to achieving broadband access which are, amongst other, universal access and access for needy persons. These provisions are aligned with the strategic objectives of universal service and universal access.

The policy notes that it is evident in the South African market that the provision of Broadband services in certain areas and in some economic groups is prohibitively costly. Chapter 14 of the ECA provides for the governments intervention to offset these

¹ Broadband Policy 2010 – Definition of Broadband

costs by using contributions to the USAF to build an inclusive society. The Policy explicitly cites that the various options for construction, operation and maintenance of networks in under-serviced areas will be developed by USAASA and implemented in co-operation with other stakeholders in their locations.

3.3 Economic Policies

3.3.1 Presidential Infrastructure Coordinating Commission

In 2011 the cabinet adopted the New Growth Path as the framework to drive the job creation vision for the country, to rebuild and strengthen the country after the recession, and lay the platform for strong, sustained and inclusive economic growth.

However, the Presidency recognised that infrastructure development was lagging behind and as such would hinder some of the growth plans. The Cabinet set up the Presidential Infrastructure Coordinating Commission (PICC) to bring together representative of the three spheres of government.

The PICC mandate is to develop a twenty-year infrastructure pipeline, to ensure that the nation can plan ahead and move away from the stop-start syndrome around the building of infrastructure.

The PICC developed an Infrastructure Plan with 17 Strategic Integrated Projects (SIPs), covering more than 150 specific infrastructure interventions. These cover all key platforms: rails, road and port; dams, irrigation systems and sanitation; new energy generation plants, transmission lines and distribution of electricity to households; communication and broadband infrastructure; social infrastructure in the form of hospitals, education institutions; as well as regional infrastructure².

Of these 17 SIPs, SIP 15 speaks directly to communications and broadband. SIP 15 focuses on expanding access to communication technology by committing to providing broadband coverage to all households by 2020. This will be achieved by establishing core Points of Presence (POPs) in district municipalities, extending a new Infraco fibre network across provinces linking districts, establishing PoPs and fibre connectivity at local level, and further penetrate the network into deep rural areas.

The strategy is that the private sector will invest in ICT infrastructure where its economically viable for them such as urban and corporate networks; notwithstanding government will co-invest for townships, and rural access, as well as for e-government, schools and health connectivity. The school roll-out focus is initially on the 125 Dinaledi schools and 1525 district schools. Part of the digital access to all South Africans will include Digital migration from analogue to digital broadcasting.

3.3.2 National Development Plan

The National Development Plan is a product of the National Planning Commission which was commissioned by President Jacob Zuma. The Commission headed by Minister Trevor Manuel, consists of 26 commissioners majority of whom are from outside government; this commission was given a mandate to develop a critical, objective and attainable development plan that would speak to South Africans as a whole. The NDP has set its targets for 2030 and beyond, and has outlined 13 pillars of development. These Pillars are:

- a. Economy and Employment

² www.doed.gov.za - PICC

- b. Economic Infrastructure
- c. Environmental Sustainability and Resilience
- d. Inclusive Rural Economy
- e. Transforming Human Settlements
- f. South Africa in the Region and the World
- g. Improving Education, Training and Innovation
- h. Health Care for All
- i. Building Safer Communities
- j. Building a Capable and Developmental State
- k. Fighting Corruption
- l. Nation Building and Social Cohesion
- m. Social Protection

The objective on economic infrastructure cites an increase to broadband penetration, uptake and competitive pricing in that regard. The NDP recognises the economic contribution that Broadband has on a country GDP and as such has cited two key performance indicators:

- a. Establish a national, regional and municipal fibre optic network to provide the backbone infrastructure for broadband access; driven by private investment, complemented by public funds required to meet social objectives
- b. Facilitate a regulatory environment that will ensure internet broadband capacity improves, prices fall significantly and access improves.

3.4 E-Government Policy

The Department of Public Service and Administration (DPSA) drafted South Africa's *E-Government Policy* in 2001 after an extensive two year consultation process with various private sector representatives, community organisations and public service officials. The policy outlines a ten year implementation plan for implementing e-government in South Africa. The implementation plan draws on tested global practices and seeks to avoid the mistakes, of other governments implementing e-government initiatives, and improve on their success.³

Unfortunately this policy is not available for detailed analysis, and research indicated that it is under review.

3

<http://www.commerce.uct.ac.za/informationssystemsf/staff/personalpages/jybelle/pubs/jonathan%20trusler%20confpaper%20egov04%20sa%20egovernment%20and%20policies.pdf>

4. Legislative Analysis

4.1 Postal Services Act No. 124 of 1998 & Postal Services Amendment Act of 2006

The Postal Services Act was inter alia enacted to regulate postal services and provide for the operational functions of the postal company and the Postbank. The objective of the legislation reflects to a large extent the requirements of the policy, as will be compared in more detail in section 4 of this report.

Section 2 of the Act lists the following primary objectives:

- Promote the universal and affordable provision of postal services;
- Promote the provision of a wide range of postal service in the interest of the economic growth and development of the Republic;
- Make progress towards the universal provision of postal services;
- Encourage investment and innovation in the postal industry;
- Promote the development of postal services that are responsive to the needs of users and consumers;
- Ensure greater access to basic services through the achievement of universal postal service, by providing an acceptable level of effective and regular postal services to all areas including rural areas and small towns where post offices are not sustainable;
- Develop greater equity in respect of the distribution of services, particularly within the areas of the historically disadvantaged communities, including rural areas;
- Ensure that the needs of disabled persons are taken into account in the provision of postal services;
- Encourage the development of human resources and capacity building within the postal industry, especially amongst historically disadvantaged groups;
- Ensure fair competition within the postal industry;
- Promote stability in the postal industry;
- Protect the interests of postal users and consumers;
- Promote the effective maintenance of an efficient system of collecting, sorting and delivering mail nationwide, in a manner responsive to the needs of all categories of mail users;
- Contribute to the community and rural development and education through actively participating in the development of a citizen's post office, serving as an interface between Government and community and providing a centre for community activities;
- Promote interaction and co-operation with other agencies and local authorities;
- Ensure compliance with international commitments;
- Promote small, medium and macro-enterprises within the postal industry; and
- Promote a culture of saving by means of the Postbank

The regulations issued in terms of this legislation include:

- The Conveyance of Mail Regulations published in October 2009 – it regulates the general powers and duties of conveyors of mail, the legal possession and

ownership of mail and aims to eradicate exposure of mail to the risk of loss, theft, fraud, damage and tampering.

- Fees and Charges regulations published in January 2012 – it regulates fees and charges for reserved services.
- Unreserved Postal Services Regulation published in January 2010 – it provides for the duration of the registration certificate; the procedure for application, renewal and notification of change of information and registration fees.

4.2 South African Postbank Limited Act No 9 of 2010

This Act provides for the incorporation of the Postbank as a division of the South African Post Office, the transfer of the enterprise of the Postbank Division within the Post Office to the Postbank Company and for the governance functions of the Postbank Company.

The object of the Act as set out in section 2 includes:

- Conducting the business of a bank that will encourage and attract savings amongst the people of South Africa;
- Rendering transactional services and lending facilities through, amongst others existing infrastructure of the Post Office;
- Expanding the range of banking services and developing into a bank of first choice, in particular to the rural and lower income markets as well as communities that have little or no access to commercial banking services or facilities;
- Promoting universal and affordable access to banking services;
- Ensuring that the rates and charges of the company take into consideration the needs of the people in the lower income market; and
- Ensuring lending to rural and lower income markets.

4.3 Independent Communications Authority of South Africa Act (Act 14 of 2000)

The Independent Communications Authority of South Africa was established on the 1st of July 2000 according to the ICASA Act. ICASA was established, according to section 3 (3) and (4), as an independent body that is subject only to the Constitution of the Republic and the law. Therefore, in performing its functions ICASA must be impartial and perform its functions without fear, favour or prejudice. Subsection (4) continues to say that ICASA is to function autonomously of any form of political or commercial interference.

The Act establishes ICASA as an independent licencing authority that regulates broadcasting and telecommunications in the public interest and ensures fairness and diversity of views broadly representative of the South African society as required by section 192 of the Constitution. Furthermore, section 2(c) further provides the object of the Authority as to achieve the object of the underlying statutes; such as the Electronic Communications Act of 2005.

4.4 ICASA Amendment Act 3 of 2006

One of the critical provisions of the ICASA Amendment Act, is the addition of regulating postal services to the mandate of the Authority. The approach in terms of postal

regulation is to subject the sector in general to the same requirements as are applicable to electronic communications and broadcasting.

4.5 Broadband Infraco Act (Act 33 of 2007)

Broadband Infraco was established with the purpose of expanding the availability and affordability of access to electronic communication, including but not limited to underdeveloped and under serviced areas, in accordance with the ECA and commensurate with international best practice and pricing⁴. Broadband Infraco is to provide an electronic communication network services, and electronic communications services. Furthermore, Broadband Infraco Act provides for the transfer of Infraco shares and Infraco interests from Eskom to the state as Infraco is established in accordance with section 33(1) of the Companies Act.

4.6 Electronic Communications and Transactions Act

The ECT Act provides for the facilitation and regulation of electronic communication and transactions. The objectives of this Act are to, amongst other things, develop a safe, secure and effective environment for the consumer, business and the Government to conduct and use electronic transactions. It also provides for the development of a national e-strategy and to promote universal access to electronic communications and transactions and the use of electronic transactions by SMME's.

One of the critical provisions for this project is section 28 that provides:

- 28.** (1) In any case where a public body performs any of the functions referred to in section 27, such body may specify by notice in the *Gazette*-
- (a) the manner and format in which the data messages must be filed, created, retained or issued;
 - (b) in cases where the data message has to be signed, the type of electronic signature required;
 - (c) the manner and format in which such electronic signature must be attached to incorporated in or otherwise associated with the data message;
 - (d) the identity of or criteria that must be met by any authentication service provider used by the person filing the data message or that such authentication service provider must be a preferred authentication service provider;
 - (e) the appropriate control processes and procedures to ensure adequate integrity, security and confidentiality of data messages or payments; and
 - (f) any other requirements for data messages or payments.
- (2) For the purposes of subsection (1)(d) the South African Post Office Limited is a preferred authentication service provider and the Minister may designate any other authentication service provider as a preferred authentication service provider based on such authentication service provider's obligations in respect of the provision of universal access.

⁴ Section 4 Broadband Infraco Act 33 of 2007

The South African Post Office (SAPO) has developed the Trust Centre, a secure environment that holds the public key infrastructure (PKI) and Certificate Authorities (CAs) which provide user authentication digital certificates that ensure trust and legal status in electronic transactions.

The Trust Centre technology has been accredited by the South African Accreditation Authority (SAAA), in terms of the Electronic Communications and Transactions Act 25 of 2002.

A digital certificate is an electronic file securely linking an individual to encryption keys and identification data. This certificate belongs to a server or person and resides on a mobile token or within the certificate store of an application like an internet browser – encrypting and signing communications and transactions, protecting them from being intercepted by any unauthorised third party.

The Trust Centre provides all three existing types of personal digital certificates in meeting the information security needs of prospective clients. Medium and high assurance certificates are provided for standard commercial use with varying degrees of security, and then there are advanced electronic signature certificates which provide the strongest authentication available for users and organisations looking to transact and communicate with clear legal status.

The Trust Centre will also offer secure socket layer (SSL) certificates which provides strong authentication of servers and Web sites. It incorporates an environment housed within a secure perimeter with eight levels of encryption security and encryption keys are stored at level eight. The control of each lies with a number of reputable and independent people and organisations, including Government, audit houses and private companies.

Through its PKI, the Trust Centre will authenticate and ensure the user is who they say they are; validate the transaction to ensure non-repudiation; protect messages from tampering; encrypt messages to protect the message from unauthorised access; and will digitally sign transactions and communications to authenticate code, data messages and documents⁵.

4.7 South African Post Office SOC Ltd Act No 22 of 2011

This Act was introduced to provide for the continued corporate existence of the SAPO and its subsidiaries and to provide for its governance and staff. It addresses critical provisions contained in the 1998 Policy White Paper as highlighted in paragraph 5 of this report.

It is important to note that an amendment Bill has been tabled to update and transfer pension-related provisions of the SAPO from the Post and Telecommunication-related Matters Act, 1958, to the SAPO SOC Ltd Act, 2011. It also provides for the payment of pension benefits to a former spouse of a member on divorce or the dissolution of a

⁵ <http://www.it-online.co.za/2013/06/28/sapo-trust-centre-to-issue-digital-certificates/>

customary marriage. Additionally, it intends to improve governance provisions between the Boards of the SAPO SOC Ltd and SAPO Ltd.

4.8 South African Social Security Agency Act, 9 of 2004

The Act provides for the establishment of the South African Social Security Agency, as an agency for the administration and payment of social assistance. It provides for the prospective administration and payment of social security by the Agency and the provision of services related thereto.

Of critical importance to this project is that the functions of the Agency includes to collect, collate, maintain and administer such information as is necessary for the payment of social security, as well as for the central reconciliation and management of payment of transfer funds, in a national data base of all applicants for and beneficiaries of social assistance. Additionally, it must establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained.

The legislation allows for the Agency to conclude an agreement with any person to ensure effective payments to beneficiaries (section 4(2)). The legislation (s 4(3)) further provides that the agreement must include provisions to ensure:

- The effective, efficient and economical use of funds designated for payment to beneficiaries of social security;
- The promotion and protection of the human dignity of applicants for and beneficiaries of social security;
- The protection of confidential information held by the Agency;
- Honest, impartial, fair and equitable service delivery;
- Mechanisms to regulate community participation and consultation; and
- Financial penalties for non-compliance with the provisions of the agreement.

In 2009, SASSA signed an agreement with the South African Post Office to assist beneficiaries open banking accounts so that their grants could be deposited into them. In terms of this agreement the Post Office agreed to provide beneficiaries with additional services including a free mini-statement, a Mzansi bank card and two free ATM withdrawals each month.⁶

4.9 National Credit Act

The Act brings into existence the National Credit Regulator (NCR) which is responsible for the regulation of the consumer credit industry. A National Consumer Tribunal exists to deal with matters relating to the Act. The Act aims to protect the consumer, to eliminate various undesirable credit practices and to regulate consumer credit agreements, credit providers and credit bureaus, as well as to provide mechanisms for debt rehabilitation⁷.

The Act requires the registration of credit providers, credit bureaus and debt counselors. Additionally, credit providers must register if they have at least 100 credit agreements (excluding incidental credit agreements); or total principal debt of more than R500,000.

⁶ <http://www.citypress.co.za/news/post-office-to-pay-out-grants-20110312/>

⁷ <http://www.bdo.co.za/documents/The%20National%20Credit%20Act.pdf>

The Act applies to all credit agreements (as defined), whether or not the credit provider is registered. However the failure to register is unlawful and it means that such credit agreements entered into in these circumstances may be voidable.

The Act applies to all credit agreements. These are defined in Sections 8 and 9 to include:

1. Credit facility

Supply of goods or services or payment of an amount to a consumer and where repayment is deferred and a charge, fee or interest is payable to the credit provider

2. Credit transaction

Pawn or discount transaction; incidental credit agreement; instalment agreement; mortgage agreement or secured loan; lease, other

3. Credit guarantee

A person undertakes or promises to satisfy upon demand any obligation of another consumer in terms of a credit facility or credit transaction.

This means that the NCA is not applicable to the Post Bank, as none of its current products fall within the description of credit agreements.

The NCA is relevant to SAPO due to the fact that in terms of section 129(1)(b), read together with section 130, of the National Credit Act 34 of 2005 ('NCA'), a credit provider is required to deliver a notice to defaulting consumers under credit agreements before it can institute legal proceedings. There has been much conjecture as to what constitutes 'delivery' of this requisite notice.

In general, the 2010 Supreme Court of Appeal decision in *Rossouw and Another v FirstRand Bank Ltd* has been adhered to by credit providers. This judgment stated that mere proof of dispatch of the notice to the consumer's selected address was sufficient to satisfy the NCA. Accordingly, it was acceptable that a defaulting consumer would not have to actually receive notice of the pending action as proof by the credit provider of dispatch.

However, the recently decided Constitutional Court case of *Sebola v Standard Bank of South Africa Limited* held that it was insufficient for a credit provider to simply provide proof of dispatch before being allowed to institute legal proceedings. Although the court did not go so far as to require the notice to actually come to the attention of the consumer, it states that the credit provider must show, on a balance of probabilities, that the notice reached the consumer. In order to satisfy the court's requirement, the credit provider must provide proof of dispatch together with proof that the notice reached the appropriate post office.

The implication of this decision is that credit providers will have to send notices by registered post and show that the notice was delivered to the correct post office through a 'track-and-trace' printout from the South African Post Office. If this is satisfied,

the burden will shift to the consumer to prove that he or she did not receive proper notice from the credit provider.⁸

It is interesting to note that this judgement did not deal with cases where the track and trace is 'returned to sender'. This has resulted in the South African High Courts having subsequently delivered conflicting decisions. The Western Cape High Court in *Nedbank Limited v Anelene Binneman* held that proof of the notice reaching the correct post office was sufficient and any risk of non-receipt thereafter rested with the consumer. The court adopted this view upon reasoning that the Sebola judgment did not overrule the Rossouw requirements for delivery but merely altered that judgment to state that delivery is effected when it reaches the consumer's post office instead of when it is dispatched. Any risk thereafter rested with the consumer.

However, the KwaZulu-Natal High Court case of *ABSA Bank Limited v Mkhize* took a different view and held that, where the notice was returned undelivered, delivery as intended in section 129 of the NCA had not been fulfilled. The High Court reasoned that Sebola allows a court to adjourn proceedings if the consumer can show the notice went astray, wasn't collected or was not attended to once collected from the post office. This adjournment enquiry takes place before the delivery analysis. The KwaZulu-Natal High Court subsequently reasoned that Sebola had overruled Rossouw because, if delivery is satisfied by the notice reaching the consumer's post office, no adjournment thereafter would be possible. Rather, as this adjournment is allowed, delivery as contemplated in section 129 is not fulfilled if the notice is returned to sender.⁹

4.10 National Road Traffic Act, 93 of 1996

This Act provides for road traffic matters and applies uniformly throughout South Africa. For the purposes of this project, section 3 of the Act provides that the Shareholders Committee shall, in consultation with the relevant MEC and by notice in the Gazette, appoint a registering authority for the area and on the conditions it determines from time to time.

The powers and duties conferred or imposed upon a registering authority by or in terms of this Act shall be exercised or performed on behalf of that registering authority by the persons authorised thereto by the registering authority.

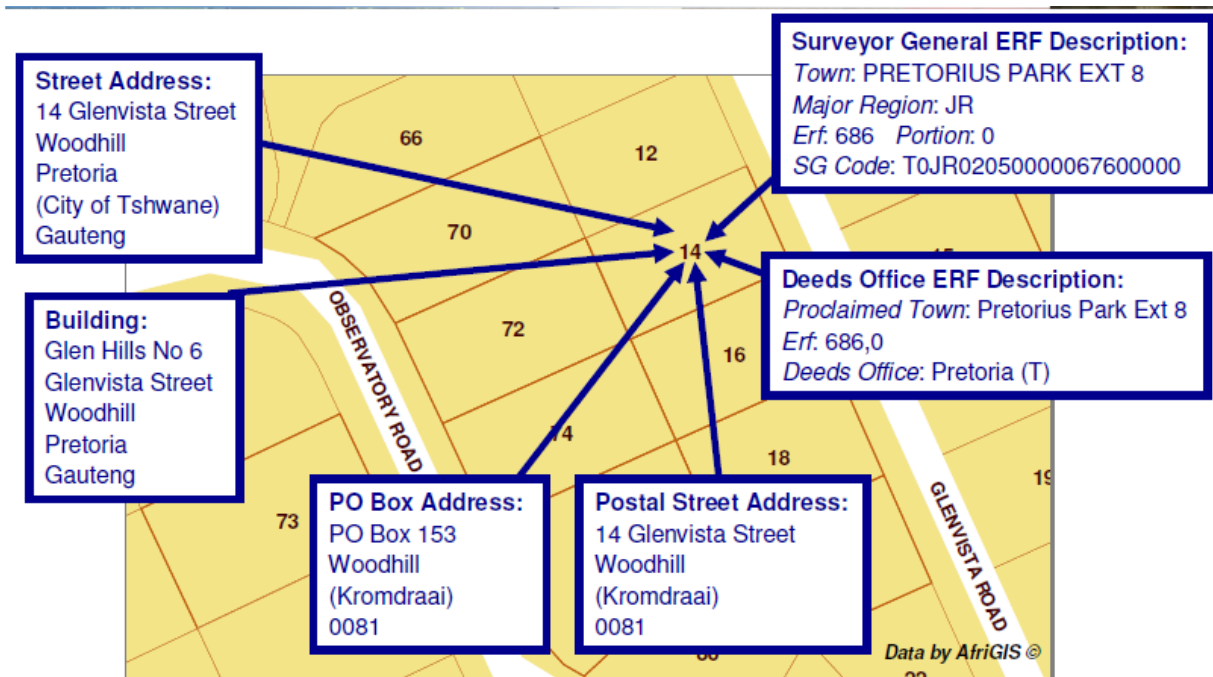
The Post Office acts as a registering authority at most post offices across the country¹⁰.

⁸ <http://www.mahons.co.za/media-display.php?cmsid=74>

⁹ <http://www.mahons.co.za/media-display.php?cmsid=74>

¹⁰ <http://www.postoffice.co.za/questions/mvlbranches.html>

4.11 Address Allocation



There is a considerable array of legislation that controls planning within the geographic boundaries of the Republic of South Africa. Some of the most important are as follows: -

- Constitution of RSA No 108 of 1996 – the primary role being the assigning of municipal planning responsibility to municipalities.
- Municipal Systems Act No 32 of 2000 – setting out in Chapter 2 the requirement, amongst other, for newly elected municipal councils to prepare and adopt an integrated development plan (IDP) for their respective areas and to provide for annual revision thereof. The IDP is required in terms of the act to include a spatial development framework (SDF) which must include the provision of basic guidelines for a land use system for the municipality.
- Development Facilitation Act No 67 of 1995 (DFA) – originally envisaged as interim legislation post the 1994 national elections to facilitate accelerated housing delivery by waving other legislation and giving decision making to provincial Development Tribunals (where established), but utilized to a large extent by the private sector for the development of amongst others, shopping centres, golf course estates, etc. Section of this legislation have since been declared unconstitutional by the Constitutional Court as it usurped the decision making powers of municipalities and is required to be repealed or amended by June 2012.

Note: Despite sections of the Act being declared unconstitutional by the court, its General Principles for Land Development, as contained in Chapter 1, Section 3 of the act, are still deemed valid.

- Less Formal Township Establishment Act No 113 of 1991 – this act provides for shortened procedures for the establishment of townships, for less formal forms of

residential settlement and to regulate the use of land by tribal communities for communal forms of residential settlement. This act is administered by the provinces and it provides for the exclusion of certain laws and the suspension of servitudes and restrictive title deed conditions. Although not challenged as yet in the Constitutional Court, this law is also no doubt, like the DFA, unconstitutional as it shifts decision making from the municipalities to the provinces.

- Planning Acts and Ordinances in the provinces. - The majority of legislation directly controlling planning in the nine provinces is still pre-1994 legislation enacted by the original four provinces of South Africa and they are all also generally unconstitutional in some or other aspect. Only in KwaZulu-Natal and in the Northern Cape has new planning legislation been enacted and put into effect since 1994 and even here certain aspects (relating to appeals) are challengeable. Some of the other provinces are in the process of drafting new planning legislation. As a result of the Constitutional Court ruling with respect to the DFA and the tardiness of the preparation of the new legislation in some provinces, the Department of Rural Development and Land Affairs recently published the Spatial Planning and Land Use Management Bill for comment and. The respective provincial legislation is listed below: -
 - Free State – Townships Ordinance No 9 of 1969
 - Eastern Cape - Cape Land Use Planning Ordinance No 15 of 1985
 - North West – Cape Land Use Planning Ordinance No 15 of 1985
 - Western Cape – Cape Land Use Planning Ordinance No 15 of 1985
 - Gauteng – Transvaal Town Planning and Townships Ordinance No 15 of 1986
 - Limpopo – Transvaal Town Planning and Townships Ordinance No 15 of 1986
 - Mpumalanga – Transvaal Town Planning and Townships Ordinance No 15 of 1986
 - Northern Cape – Northern Cape Planning and Development Act No 7 of 1998.
 - KwaZulu-Natal - KwaZulu-Natal Planning and Development Act No 6 of 2008 (and vestiges of Natal Town Planning Ordinance No 27 of 1949 for special consents)

An understanding of the town planning framework is required, as both the municipalities and the SAPO have authority to allocate addresses. In terms of the SAPO Licence street addresses mean:

“premises in the republic which have been assigned a number and a name by the relevant municipal authorities, or have been allocated an address by the Licensee.”

The South African Bureau of Standards (SABS) has developed the South African address standard (SANS 1883), to enable interoperability in address data, which is believed to ultimately facilitate a national address database. The standard defines twelve address types that describe all forms of addresses currently in use in South Africa¹¹. Addresses come in many forms and have a variety of uses. An address is not only a set of

¹¹ http://www.isotc211.org/address/FOSS4G2008/55_Coetzee.pdf

directions for delivering post, but also a wide range of other services such as utility services such as water, sewerage, telecommunications and electricity supply, refuse collection, billing, postal and courier delivery, emergency response, goods delivery, serving summonses, household surveys and social visiting.

Address databases for South Africa exist in both the public and private sector, but none of the providers of these address databases have been given a mandate to provide an official register of addresses. The Geographic Names Council (GNC) is responsible for standardising place names in South Africa.

It is interesting to note that, In the last financial year the SA Post Office was responsible for allocating 1,2 million addresses, mainly to those in rural areas.¹²

4.12 Licence

ICASA issued the Amended Reserved Postal Services Licence in Notice 149 of 2012, it is however deemed effective from 20 October 2008. The licence is issued on a national basis and requires the payment of 0.55% of the licensee's audited regulated annual turnover in terms of licence fees within 90 days of the end of each financial year (clause 7.1)

This section is only intended to provide a brief overview of the major provisions in the licence, and not all provision will be discussed.

The licence provides for the exclusive provision of reserved postal services by SAPO (clause 7.3). Clause 7.4 of the licence lists the universal nature of the postal services required to be provided.

- (a) extend the services such as the basic letter services to all underserved areas;
- (b) provide retail outlets at which customers can mail basic letters and other postal items taking into account the population size and mail volumes of particular areas;
- (c) provide mail collection points which are accessible;
- (d) provide and roll out virtual addresses where there are no available post box facilities; provided that the Licensee must within a maximum period of twelve (12) months convert such virtual addresses to post boxes or street addresses;
- (e) ensure that there are sufficient retail outlets in the under serviced areas;
- (f) improve service performance standards;
- (g) provide basic letter services at charges approved by the Authority;
- (h) provide adequate facilities for the receipt from the dispatchers of basic letters;
- (i) sell postage stamps;

¹² <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=36607&tid=107525>

- (i) accept and deliver Cash on Delivery (COD) items, insured parcels, ordinary parcels, registered letters (with an insurance option) and signature on delivery (SOD) items;
- (k) issue and pay money orders; and
- (l) must render the reserved postal services by way of vending machines or other devices.

In terms of reserved postal services, SAPO must consult with ICASA regarding the fee to be levied to other service providers in the utilisation of its Infrastructure for the provision of reserved postal services.

Another noteworthy provision contained in the licence is that it requires SAPO to draw up a sustainable programme for a period which will be reviewed annually by the Authority from the beginning of April to the end of March for the delivery point roll-outs and retail outlet roll-outs in the Republic, as well as the development of the reserved postal services commencing from the 1st April 2008. (clause 7.5) Additionally, ICASA regulates the SAPO tariffs through the imposition of price caps and the licence contains detailed requirements regarding tariff submissions and costing information required (clause 7.6).

The comprehensive licence proceeds to address postal stamps, postal security and confidentiality as well as compliance with international commitments.

Some of the other requirements include the submission of compliance reports and the filing of all contracts with ICASA. These include past agreements, agreements with other licensees and other operators and strategic agreements (with other postal authorities).

5. Policy Implementation

Policy Provisions	Legislative implementation
Chapter 1	
In order to facilitate the effective delivery of a universal service, a set of reserved postal services conferring exclusive rights to the monopoly provider have been established.	Clause 7.3 in the licence
The policy requires a licence to be issued to the monopoly provider	Implemented – new licence issued 2012 (effective from 2008)
The licence should stipulate various obligations through which universal service is to be achieved.	Schedules 1 (under serviced areas) and 2 (address roll-out) to the licence
Funding of the USO will be derived primarily from profits earned on monopoly and non-monopoly activities.	To be clarified in interview phase
In order to achieve sustainable profit levels the Minister may in consultation with the Universal service provider, set revenue and volume growth targets in the license conditions.	To be clarified in interview phase
The licence should place a commercial obligation on the monopoly service provider to operate as far as possible in a manner consistent with sound commercial practices. It states that should a loss be incurred by the monopoly provider in non-reserved areas, where there is no Universal Service Obligation, there will be no recourse to an automatic subsidy.	Indirectly covered in clause 7.6 which deals with tariffs.
The monopoly provider will execute its functions in a manner consistent with Government development and growth strategies, any directions given by the Minister subject to existing legal and statutory provisions and obligations imposed under any international conventions.	
The policy also sets targets to provide postal addresses to those areas not previously covered. In terms of the license agreement to be issued by the Minister, four million new postal addresses will be provided by the Post Office. A roll out plan to achieve this target will be agreed on by the Post	Schedule 2 of the licence

Office and the Minister.	
Default on the determined target will subject the Post Office to penalties imposed by the Minister.	Clause 7.15 of the licence
The delivery time will be assessed against established Postal Service standards for delivery of such mail	To be clarified in interview phase
Customer complaints and enquiries received from individuals or representative organization will be addressed within a specified time of receiving the complaint or query. The successful resolution of complaints will also be monitored.	Code of Conduct for licensees (ECA)
The Postal sector is committed to environmental development and sustainability, and will thus ensure that all responsibilities and duties within the sector will be implemented with the least possible impact on the environment.	To be clarified in interview phase
Chapter 2	
The scope of the monopoly and that of the reserved area will be reviewed by the Regulator every three years, or at the Minister's discretion	Section 16(8) of the Postal Services Act provides - In the licence to be issued to the postal company in terms of subsection (3), there must be specified in respect of reserved postal services rendered by the postal company a fixed period or from time to time any extended period, during which no person other than the postal company may be licensed to provide a similar service: Provided that nothing contained in this subsection may be regarded as limiting the powers vested in the Minister by subsection (2) and that any such period must be reviewed by the Minister every five years or such shorter period as the Minister may determine. The ICASA Amendment Act replaces the word "Minister" with "Regulator" in this section
The role of the post office as a multi-purpose community centre to include: <ul style="list-style-type: none"> • Tax collection; • Eskom services; • Housing; • Motor vehicle licences; 	To be clarified in interview phase Section 3 of the National Road Traffic Act - The Post Office

<ul style="list-style-type: none"> • Radio licences; • Voters Roll Administration; • Lottery and • Rural financing. 	acts as a registering authority at most post offices across the country
While parcels are not included in the reserved services, there is, however, a universal obligation on the delivery of parcels the term of which will be stipulated in the licence agreement of the Post Office.	Clause 7.4.1 (a) of the licence
Chapter 3	
<p>The policy included the following governance requirements:</p> <ul style="list-style-type: none"> • The South African Post Office will be managed by a single board which will comprise executive and non-executive members. The daily operations will be supervised by an Executive Committee, operating within specific parameters of authority; • The Board will consist of not more than fifteen members of which at least five will be executive members. Employee representation through union structures will not exceed two, non-executive, members. The Chief Executive Officer of the company will be one of the executive members of the Board. • While the Articles of Association are not prescriptive in any way, specific skills and representation of both geographic and sectoral diversity are deemed essential. • The Chairperson of the Board will show evidence of executive experience in a large multi-faceted company, and have good standing in the business community. • The position of Chairperson of the Board and that of Chief Executive Officer will be separated. • The Chairperson of the Board will be appointed by the Minister for 	<p>Section 8 of the SAPO SOC Ltd Act</p> <p>Section 8 of the SAPO SOC Ltd Act provides 8. (1) The Board of the Post Office is responsible for managing the affairs of the Post Office. (2) The Board consists of- (a) not more than 11 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) three executive members appointed in terms of section 16.</p> <p>Section 11(4) SAPO SOC Ltd Act</p> <p>Section 11(4) SAPO SOC Ltd Act</p> <p>King III</p> <p>(Subsection 3) The Chairperson and Deputy Chairperson must</p>

<p>Posts, Telecommunications and Broadcasting.</p> <ul style="list-style-type: none"> In addition to the executive committee, it is proposed that four board committees be constituted, representing the audit, human resources, remuneration and Postbank arenas. 	<p>be appointed by the Minister from the non-executive members of the Board. Section 14(2)(a)</p>
<ul style="list-style-type: none"> To enable the Board to direct Post Office strategy effectively the Board must ensure that the Post Office executive management engage major stakeholders constructively. This should include formalized interaction with the National Postal Forum, as well as industry representative bodies. The Chief Executive Officer will supervise, under the direction of the Board, the management of the company in accordance with the objectives and requirements of the Act. Board meetings will be conducted at a minimum of quarterly intervals. Additional meetings may be convened when considered necessary. 	<p>Section 21 of the SAPO SOC Ltd Act</p>
<p>The financial mandate of the Post Office is to reach breakeven within three years and to then operate on a profitable basis. Should the Post Office exceed its target during this period, the excess will be injected back into the company for re-capitalisation or infrastructure development.</p>	<p>Section 29 provides (1) The Minister may, in consultation with the Minister of Finance, out of money appropriated by Parliament for the purpose, grant an annual subsidy to the postal company in respect of normal expenditure. (2) A request for a subsidy must be submitted by the postal company to the Minister by a date determined by the Minister in order for it to be subjected to the evaluation process for inclusion in the annual compilation and exposition of the Government's expenditure proposals for appropriation purposes. (3) The payment of subsidies must be for such purposes and period and subject to such conditions as the Minister may determine in consultation with the Minister of Finance.</p>
<p>Chapter 4</p>	
<p>A 25 year licence is to be issued.</p>	<p>Section 16(3) states that - At the date of commencement of</p>

	<p>this section the postal company must be regarded as having applied for a licence in terms of this Act and the Minister must grant the application and issue such licence to the postal company with a period of validity of 25 years from the date of commencement of this section.</p> <p>ICASA Amendment Act replaced “Minister” with “Regulator” in this section</p>
A licence fee will be levied on the Post Office.	<p>Section 19 (2) provides for the payment of licence fees</p> <p>ICASA Amendment Act provides for payment to the Regulator instead of the Department as per the original wording</p>
The Licence will provide for monopoly operations which will be reviewed every three years	<p>Section 16(8) provides - In the licence to be issued to the postal company in terms of subsection (3), there must be specified in respect of reserved postal services rendered by the postal company a fixed period or from time to time any extended period, during which no person other than the postal company may be licensed to provide a similar service: Provided that nothing contained in this subsection may be regarded as limiting the powers vested in the Minister by subsection (2) and that any such period must be reviewed by the Minister every five years or such shorter period as the Minister may determine.</p> <p>ICASA Amendment Act replaced “Minister” with “Regulator” in this section</p>
The Licence will provide service standards.	<ul style="list-style-type: none"> • Conveyance of Mail Regulations
The Post office shall oblige direct mailers to subscribe to the Mail Preference Service of the Direct Marketing Association of South Africa	To be clarified in the Interview phase
REGULATOR REQUIRED TO:	<p>Regulator functions set out in section 8</p> <p>The Regulator must -</p> <p>(a) exercise regulatory functions in respect of the reserved and unreserved postal services;</p> <p>(b) ensure that the provisions of this Act and the terms and</p>

	<p>conditions contained in any licence are complied with;</p> <p>(c) promote the interests of users of postal and other services provided through postal and related ICT infrastructure, in respect of the cost of reserved services, the continuity of those services and the quality thereof; [Para. (c) substituted by s. 4 of Act 22/2006]</p> <p>(d) ensure that all reasonable requests for postal services are satisfied;</p> <p>(e) promote and encourage the expansion of postal services and infrastructure, including ICT; [Para. (e) substituted by s. 4 of Act 22/2006]</p> <p>(f) promote universal access to postal and other services contemplated in paragraph (c) so as to facilitate equal access for all citizens to a service that, in addition to a basic letter service, is -</p> <p>(i) reasonably accessible to all people in the country regardless of physical location, with special attention to the needs of persons with disabilities;</p> <p>(ii) at a uniform rate of postage;</p> <p>(iii) at an affordable price; and</p> <p>(iv) reliable; [Para. (f) substituted by s. 4 of Act 22/2006]</p> <p>(g) regulate the issue of postage stamps including definitive, commemorative and special issues of such stamps and any other philatelic items.</p>
Implementation and monitoring of policy directives	Code of Practice for the South African Postal Industry published in the Government Gazette No 29740 of 30 March 2007
Adherence to international conventions that South Africa is signatory to;	Clause 7.10 of the licence

Set targets for the achievement of universal service;	<p>Section 16 (7) provides: The postal company and any other holder of a licence must comply with the conditions specified in the licence in question relating to the provision of postal services in areas and to communities which are not served or adequately served by postal services, with a view to achieving universal postal service.</p> <p>ICASA Amendment Act replaced “Minister” with “Regulator” in this section</p>
Monitor universal service obligations on an ongoing basis and ensure that the Post Office does not use its monopoly powers to obtain an unfair competitive advantage;	Section 16(6) provides - If it appears to the Regulator that the postal company or any other holder of a licence is taking or intends taking any action which has given or is likely to give an undue advantage to themselves or any other person or category of persons, the Regulator may, after having given the licensee an opportunity to be heard, direct the licensee in writing to cease or refrain from taking such action, as the case may be.
Advise Government on the scope of universal service required;	To be clarified in the interview phase
Take action and impose penalties in consultation with the Minister in case of non –performance;	<p>Section 24 provides - Notwithstanding anything to the contrary contained in this Act, the Regulator may after written notice to the holder of a licence or registration certificate and after due enquiry, suspend or cancel any licence or registration certificate issued under this Act, if the holder has contravened the terms and conditions of the licence or certificate or the provisions of this Act.</p> <p>(2) The holder of a licence or registration certificate is not upon the suspension or cancellation of his or her licence or registration certificate entitled to a refund of any fees paid in respect of such licence or registration certificate.</p> <p>(3) A person whose licence or registration certificate has been suspended in terms of subsection (1) must, during the period of suspension, be regarded, for the purposes of this Act, as not being the holder of such licence or registration</p>

	<p>certificate.</p> <p>(4) Any person who is aggrieved by the suspension or cancellation of his or her licence or registration certificate in terms of subsection (1) may apply to a court to review a decision of the Regulator in terms of this section.</p>
Protect the Post Office:	Through the licensing regime – however to be explored during the interview phase
in the carrying of letters within and between South Africa and other countries;	Reserved services – Licence
In issuing of postage stamps;	<p>Section 31 provides - Subject to section 30, there must be paid on every article for transmission by post, such postage and other sums as may be prescribed, or determined by the postal company.</p> <p>(2) Save as is otherwise prescribed or determined by the postal company, the postage and any fees which may be payable in respect of any postal article posted within the Republic must be prepaid by means of postage stamps issued for the Republic by the postal company and not previously used, obliterated or defaced, and in default thereof there is payable in money upon every such postal article, at the time of or after delivery thereof, an amount prescribed or so determined.</p>
Prohibit the operation of any entity violating the monopoly or reserved area	Section 66 provides that it is an offence to forge stamps, dies or other articles
Licensing of all postal service providers;	<p>Section 15 of the Act prohibits operating reserved postal service without licence, and states:</p> <p>(1) Subject to the provisions of this Act, no person may operate a reserved postal service except under and in accordance with a licence issued to that person in terms of this Chapter.</p> <p>(2) A licence confers on the holder the privileges and subjects</p>

	<p>him or her to the obligations referred to in this Act or specified in the licence.</p> <p>(3) The Minister may by notice in the <i>Gazette</i> make such amendments as may be necessary from time to time to the Schedules but may not, in so doing, cause any activity falling under unreserved postal services to fall under reserved postal services.</p> <p>Section 16 deals with applications for licensing and specifically states that licences for reserved services may only be issued upon publication of a Ministerial policy direction.</p>
Registering courier companies and licence courier companies to handle parcels (and delivery only for international courier companies);	Section 20 provides - No person may operate an unreserved postal service contemplated in Schedule 2, unless such person is registered with the Regulator in terms of this Act and is in possession of a registration certificate issued by the Regulator. (Section 22 provides for operators regarded as being registered)
Obtain information records from licensees;	Clause 7.11 of the Licence
Handle complaints;	Code of Practice for the South African Postal Industry published in the Government Gazette No 29740 of 30 March 2007
Regulate the prices of monopoly services;	<p>Fees and Charges Regulations (January 2012) – reserved services</p> <p>Clause 7.6 of licence</p>
Regulate tariff increases in the reserve area through a price cap system (inflation related);	<p>Fees and Charges Regulations (January 2012) – reserved services</p> <p>Clause 7.6 of licence</p>
Require public notification of tariff increases on the reserved areas;	Clause 7.6 of licence
Appoint an independent monitor to assess the standards and performance of the Post Office by:	To be clarified in the interview Phase

<ul style="list-style-type: none"> ○ Assessing the performance of the Post Office against publicly-stated service objectives; ○ Conduct continuous measurement that is statistically valid (sample mail to enter the postal system every business day); ○ Provide the Post Office with performance results on a daily and monthly basis 	
Audit the results of the independent monitor and publish the results quarterly in all major newspapers and magazines;	
Promote fair competition in the non-reserved area by issuing licences and licence conditions that level the playing field;	To be clarified in interview phase
Promote and conduct research into developments in the area of regulatory policy and technological development within the sector.	To be clarified in interview phase
Chapter 5	
A decisive programme of Black economic empowerment to be initiated	To be clarified in interview phase
Governance rules for the tendering process to be implemented	To be clarified in interview phase
Chapter 6	
Requirement on the Department of Communications to: <ul style="list-style-type: none"> • The setting of realistic target for all activities of affirmative action, and instituting the monitoring and measuring procedures to ensure all targets are met • Overseeing the auditing of the employee profile, specifying racial, gender and disability components. • Reviewing management practice and identifying barriers to entry for historically disadvantaged communities. 	To be clarified in interview phase
The Post Office is required to: <ul style="list-style-type: none"> • Assess the human resources required to deliver the operational objectives in the organizations strategic plan. • Assess the organizations existing human resource capacity • Propose how best to bridge the gap between existing human resource capacity and the future human resource requirement, within financial resources available. 	To be clarified in interview phase Reflected in section 4 of the SAPO SOC Ltd Act
Post Office must prepare detailed plans for the internal monitoring and	To be clarified in interview phase

evaluation of affirmative action programmes -- present annual progress reports to Ministry	
Post Office Management to: <ul style="list-style-type: none"> • Appoint a manager and support staff to manage the acceleration process • Identify and implement a specific skill and management training curriculum • Provide seminars and courses for instructors, supervisors and mentors of the identified group • Formulate a plan to rotate the group through key positions • Allocate high achievers to appropriate assignments for short-term, rapid experience. 	To be clarified in interview phase
Affirmative action plan to be implemented over a period of five years.	To be clarified in interview phase
A Human Resource Fund for the postal sector is required to be established within the framework of the Skills Development Bill (now an Act).	To be clarified in interview phase – desktop research does not indicate that such fund was created
The postal sector is required to make all buildings in its domain – particularly pension pay outs – easily accessible for disabled people.	Regulations setting out the minimum customer care standards and complaints handling procedures Notice 140 of 2008
Chapter 7	
By using data networks and electronic point of sale systems the Post Office must act as multi-purpose centres that can provide information to communities, offer effective money transfer and agency services, act as bridging point for electronic communication (e.g. by providing fax, e-mail and internet access) and provide effective banking services.	<p>Section 47 provides –</p> <p>Money may be remitted through the postal company either within or outside the Republic at rates determined by the postal company and the postal company 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.</p> <p>Section 59 provides - Subject to the Electronic Communications Act, 2005 (Act No. 36 of 2005), the Postal Company may carry electronic mail, including the Internet, and provide electronic addresses.</p>
Chapter 8	

Since the UPU is a regulatory body, legislative provision should be made to ensure that the regulations of the Convention and the UPU Agreement are lawfully applicable to and in South Africa.	Clause 7.10 of the licence
Outgoing postal items will remain under the jurisdiction of South African law in the case of items - <ul style="list-style-type: none"> by air: until the aircraft conveying the item touches down on the runway at the first airport in the country of destination or of transit of the item; conveyed by ship: until the ship conveying the items enters the territorial waters of the country of destination or of transit of the item; Conveyed by road: until the vehicle conveying the items passes through the first border post along the route to the country of destination of the item. 	Section 46 (1) provides – South African law applies in the case of outgoing postal articles - (a) conveyed by air, until the aircraft conveying the postal articles touches down on the runway at the first airport in the country of destination or of transit of the postal articles; (b) conveyed by ship, until the ship conveying the postal articles enters the territorial waters of the country of destination or of transit of the postal articles; (c) conveyed by road, until the vehicle conveying the postal articles passes through the first border post along the route to the country of destination of the postal articles.
Incoming postal items will come under the jurisdiction of South African law in the case of items - <ul style="list-style-type: none"> conveyed by air: from the moment the aircraft conveying the items touched down on the runway of the first airport of arrival in South Africa conveyed by ship: from the moment the ship conveying the items enters South African territorial waters Conveyed by road: from the moment the vehicle conveying the items enters South Africa through a border post. 	Section 46 (2) provides – 2) South African law applies to incoming postal articles - (a) conveyed by air, from the moment the aircraft conveying the postal articles touches down on the runway of the first airport of arrival in South Africa; (b) conveyed by ship, from the moment the ship conveying the postal articles enters South African territorial waters; (c) conveyed by road, from the moment the vehicle conveying the postal articles enters South Africa through a border post. (Commencement date of s. 46: 1 January 1999)
Chapter 9	
The restructuring of the Postbank was required to be implemented in a three-phased process: Phase I The Postbank as a profit centre – providing greater autonomy within the existing divisional structure. The savings product range will be expanded.	

<p>Phase II Post Office savings bank – a subsidiary fully owned by the Post Office or Government, providing a complete range of payment and funds transfer services and expanding the deposit service range.</p> <p>Phase III Savings bank – an autonomous company owned by the Post Office or Government and operated as a fully-fledged savings bank extending lending facilities. An independent Board of Directors will be established and be held accountable to the Shareholders. The savings bank will be managed by professional managers. Although the Postbank as a savings bank will be owned by the Post Office or Government, a strategic equity partner may obtain a minority share of the Postbank company.</p>	<p>Section 10(1) and (2) of the Postbank Limited Act states –</p> <p>(1) The Company is controlled by a board of directors.</p> <p>(2) The members of the Board are appointed or reappointed by the Minister, with the concurrence of the Minister of Finance and the Post Office.</p>
<p>A separate Postbank Committee was required to be established to facilitate the achievement of the autonomy required to operate the Postbank profitably and efficiently. This committee was required to be autonomous in matters relating to Postbank, and to report directly to the Post Office Board.</p>	
<p>Postbank to operate as a profit centre and a division of the South African Post Office.</p>	<p>Section 51 (see below)</p> <p>Section 3(2) of the Postbank Limited Act states – 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.</p> <p>Section 9(2)(a) and (b) of the Postbank Limited Act states – The Company and the Post Office must, with the concurrence of the Minister and the Minister of Finance, conclude an agreement which governs cooperation between the Company and the Post Office.</p> <p>(b) Such agreement must include, amongst others, terms and conditions relating to the utilisation by the Company of infrastructure of the Post Office, envisaged in section 2.</p>

<p>The Postbank will be regulated by a special chapter in the proposed Postal Act, and will continue to be exempted from registering as a bank under the Bank Act</p>	<p>Section 51 provides - The Postbank is operated under the control and management of the postal company.</p> <p>(2) The postal company must undertake such activities as are customary for a financial institution carrying on the business of accepting deposits.</p> <p>(3) The Postbank must be operated, managed and controlled in accordance with this Act.</p> <p>(4) Interest on deposits in the Postbank must be paid at a rate determined from time to time by the postal company and the Minister in consultation with the Minister of Finance in the case of each kind of deposit.</p> <p>Section 4(2) of the Postbank Limited Act states – The Company must be registered as a bank after it has satisfied the requirements of the Banks Act.</p>
<p>In order to provide a full range of financial services to the target market, Postbank needs exemption from the normal regulatory framework that governs the SA financial industry to fulfil its primary objective.</p>	<p>Section 4(4) of the Postbank Limited Act states - The Company shall not expand the scope of its banking and investment activities which exist when this Act takes effect until it is registered as a bank in terms of the Banks Act, and any such additional business activity is approved by the Registrar of Banks.</p>
<p>However, it provided that in the interim period the Reserve Bank shall exercise supervisory control over the activities of the Postbank only in terms of the <u>reporting requirements</u> of the Banks Act.</p>	
<p>Strauss Commission suggestions:</p> <ul style="list-style-type: none"> • Mobilize Saving • Pension Delivery • Transmission Services • Credit facilities • Consumption Smoothing and Productive loans • Other Services <p>The Postbank could also offer money transfer services, pension payments, unemployment benefits, housing subsidies administered by intermediaries,</p>	

and other services which it may deem necessary.	
Chapter 10	
The postal violations and crimes are required in terms of the policy to be incorporated into postal legislation	<p>Section 34 provides - A postal article received in a post office must be regarded as having been posted in contravention of this Act -</p> <p>(a) if the postage stamps thereon have been previously used, obliterated or defaced; or</p> <p>(b) if it is posted or contains anything in fraud of or contrary to the provisions of this Act or any other law.</p> <p>Section 67 to 81 addresses illegal practices, offences and penalties.</p> <p>Conveyance of Mail Regulations Regulation 9</p>
The Universal Service Provider is required to be empowered by legislation to take active steps against postal violators. These will include disciplinary action and dismissal of postal employees, and the laying of criminal charges against all violators, whether employees or general public.	As above
Effective and quick-acting legislative powers will be introduced to deal with companies that use the mail to defraud consumers. Direct mail order companies must abide with the code of ethics detailed by the Direct Marketing Association of South Africa.	To be confirmed in the interview phase
<p>Violation/Secrecy/Unlawful delay and Theft of Mail - To increase the efficiency and effectiveness of preventing and investigating these crimes, focus will be on the following:</p> <ul style="list-style-type: none"> ○ Mail testing by both overt and covert legal means. ○ The installation of covert/overt CCTV Cameras at strategic points for the purpose of monitoring criminal activities. ○ The installation of effective access control mechanisms on Post Office premises 	Section 67 to 81 addresses illegal practices, offences and penalties.

<ul style="list-style-type: none"> ○ The searching of persons, bags, vehicles, containers and property on all premises occupied by the South African Post Office. ○ As methods and <i>modus operandi</i> of criminals change, other internationally acceptable techniques will be utilized. 	
<p>Fraud</p> <ul style="list-style-type: none"> ○ to deal effectively with this type of crime, programmes to strengthen internal regulations and controls will be developed and the frequent auditing of systems, books and registers. 	
<p>Robberies</p> <ul style="list-style-type: none"> ○ A partnership needs to be formed with the South African Police Service, Congress of South Africa Banks (COSAB), Business Against Crime (BAC) and the community structures to both reduce and prevent this crime. A programme to secure Post Office premises will be developed to deter and protect the employees and assets, In addition, another programme will be developed to create and maintain security and crime awareness amongst the employees. 	
<p>Housebreaking (burglaries)</p> <ul style="list-style-type: none"> ○ A programme to secure all Post Office property, premises and assets will be developed to improve cooperation and coordination between the South African Post Office, South African Police Service and the community to create and maintain security awareness amongst all employees. 	
<p>Misuse of mail</p> <ul style="list-style-type: none"> ○ Effective detection programmes for illicit drug trafficking, mail bombs, child pornography and paedophile networks and mail fraud will be developed in collaboration with the South African Police Service and the Direct Marketing Association (DMA). The mail is not only used for dispatching drugs but also for drug-related money laundering and unauthorized lotteries. Fighting these crimes is further complicated by the current trend towards 	

greater privacy of individuals and the ease of travelling to and importing from countries without proper protection measures.	
<p>Postage Evasion</p> <ul style="list-style-type: none"> o A coordinated process amongst all the relevant role-players will be established to ensure that postage evasion is identified. Internationally undercover techniques will be utilized to identify and monitor activities of such employees with regards to this offence. <p>An ongoing awareness amongst all employees and agents with regard to the causes and effects of fraud will be created.</p>	
Chapter 11	
The Minister is required to appoint the Stamp Advisory Committee (SAC) in consultation with the Chairperson of the Board of Directors.	
The SAC is required to formulate a broad stamp programme two years in advance which is finalized a year prior to implementation.	
<p>The stamp issuing policy will comprise the following components:</p> <ul style="list-style-type: none"> • Definitive issues • Commemorative issues • Prestige booklet issues (linked to commemorative issues) • Internal standard rate booklet issues (usually linked to definitive issues) • Airmail postcard rate booklet issues • Corporate products • Philatelic commemoration • Postal stationery 	

6. Conclusion

The policy implementation table will be expanded in Phase 2 of the project, to include an assessment of whether the implementation of the policy achieved the policy objectives and which areas do not have to be addressed going forward. Additionally, a gap analysis will be conducted to identify areas not addressed in the policy.