



GOVERNMENT GAZETTE

OF THE

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No. 464

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 106

1992

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 19 of 1992: Posts and Telecommunications Act, 1992.

**POSTS AND TELECOMMUNICATIONS
ACT, 1992****ACT**

To make provision for the regulation of and exercise of control over the conduct of postal services and telecommunications services; to provide for certain powers, duties and functions of Namibia Post Limited and Telecom Namibia Limited; and to provide for matters connected therewith.

(Signed by the President on 15 August 1992)

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SCHEDULE

**POSTS AND TELECOMMUNICATIONS
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BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

**CHAPTER I
PRELIMINARY**

Definitions.

1. In this Act, unless the context otherwise indicates -

“Commission” means the Namibian Communications Commission established by section 2 of the Namibian Communications Commission Act, 1992 (Act 4 of 1992);

“mail” means every article collected for conveyance by post, and includes loose and individual articles and a mail-bag;

“mail-bag” includes every bag, box, parcel, basket or hamper and any other envelope or covering in which postal articles in course of transmission by post are conveyed, whether or not it contains such articles;

“Minister” means the Minister of Works, Transport and Communication;

“money order” means a money order issued by the postal company or by any postal authority of any foreign country for payment under this Act;

“postage” means the amount chargeable for the transmission of articles by post;

“postage stamp” or “stamp” means any piece of paper or other substance or material having thereon the stamp, mark or impression of any die, plate or other instrument made or used by the postal company or by the postal authority of any foreign country for the purpose of denoting any postage or other postal fee;

“postal article” means any letter, post-card, reply post-card, letter-card, newspaper, book, packet, pat-

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tern or sample packet or any parcel or other article when in course of transmission by post, and includes a telegram when conveyed by post;

“postal company” means Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992;

“postal order” means a postal order issued by the postal company or by any postal authority of any foreign country for payment under this Act;

“postal service” means the business of receiving, collecting, dispatching, conveying and delivering postal articles and of transmitting and delivering telegrams and of performing all incidental services and such other services as may be prescribed by or under any law;

“post office” includes any house, building, room, carriage, place or structure where postal articles are received, sorted, delivered, made up or dispatched or which is used for any other purpose in connection with the rendering or operation of any postal, savings, money transfer or other service by the postal company and any pillar box or other receptacle provided by that company for the reception of postal articles for transmission;

“prescribed” means prescribed by or under this Act;

“railway” includes any tramway, whether the means of traction be animal or steam power, electricity or other motive force, but does not include the railway lines of Transnamib Limited referred to in section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987);

“regulation” means a regulation made under this Act;

“Savings Bank” means the Post Office Savings Bank controlled and managed by the postal company;

“sender”, in relation to any postal article or telegram, means the person from whom that postal article or telegram purports to have come, unless such person proves that he or she is not the sender thereof;

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“telecommunications” means any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electro-magnetic waves or an agency of a like nature, whether with or without the aid of tangible conductors, from one point to another;

“telecommunications company” means Telecom Namibia Limited established by section 2(1)(b) of the Posts and Telecommunications Establishment Act, 1992;

“telecommunications line” includes any apparatus, instrument, pole, mast, wire, pipe, pneumatic or other tube, thing or means which is or may be used for or in connection with the sending, conveying, transmitting or receiving of signs, signals, sounds, communications or other information;

“telecommunications service” means the business of undertaking or providing telecommunications;

“telegram” means any communication in written form or information in the form of an image transmitted by the postal company over a telecommunications line and delivered in any such form, or intended to be thus transmitted and delivered or delivered from any post office or intended to be thus delivered as a communication or as information transmitted either wholly or partially over a telecommunications line;

“this Act” includes any regulations made thereunder.

**CHAPTER II
LICENSING OF PERSONS TO CONDUCT
POSTAL SERVICES OR TELECOMMUNICATIONS SERVICES**

Prohibition on conduct of a postal service or a telecommunications service.

2. (1) No person other than the postal company shall conduct a postal service, except under the authority of a licence granted by the Commission.

(2) No person other than the telecommunications company shall conduct a telecommunications service, except under the authority of a licence granted by the Commission.

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(3) A licence referred to in subsection (1) or (2) shall -

(a) be issued in accordance with the provisions of the Namibian Communications Commission Act, 1992 (Act 4 of 1992);

(b) be subject to such restrictions and conditions as may be imposed by the Commission generally or in the particular case.

(4) The Commission may, either by notice in the *Gazette* generally, or when granting a licence in terms of subsection (1) or (2) in a particular case, as a condition of such licence, apply to all holders of licences issued under either of those subsections or to the particular holder of such licence, as the case may be, any of the provisions of Chapter II or Chapter III, and may, for the purposes of such application, make such modifications to any such provision as it may deem fit.

(5) Upon the application of any provision of Chapter II or III in accordance with subsection (4) to the holders of licences in general or a particular licence holder, any reference in any such provision to the postal company or to the telecommunications company shall be construed as including a reference to the holder of a licence in respect of a postal service or the holder of a licence in respect of a telecommunications service, respectively.

(6) Any person who contravenes the provisions of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

**CHAPTER III
PROVISIONS RELATING TO POSTAL SERVICES
AND SUPPLEMENTARY SERVICES**

Part 1 — Posts

Rates of postage.

3. (1) Subject to the provisions of this Act, there shall be paid on every article for transmission by post such postage and other sums as may be prescribed by the postal company.

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(2) Except as is otherwise prescribed by the postal company, the postage and any fees payable in respect of a postal article posted within Namibia shall be prepaid by means of postage stamps, issued for Namibia by the postal company, and not previously used, obliterated or defaced, and in default thereof there shall be payable in money upon every such postal article, at the time of or after delivery thereof, an amount so prescribed.

(3) Any fees, rates or charges prescribed by the postal company, and any alteration thereof, shall be published by the postal company in the *Gazette*.

When postal articles deemed to be in course of transmission, or to be posted or delivered.

4. For the purposes of this Act -

- (a) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the person to whom it is addressed;
- (b) the placing of a postal article in a pillar box or other receptacle provided for the purpose by the postal company or the delivery of a postal article to an employee of the postal company or other person authorized to receive postal articles of the kind in question for the post, shall be deemed to be delivery to a post office;
- (c) the delivery of a postal article at the house or office of the person to whom the article is addressed or to such person's servant or agent or any other person ostensibly authorized to receive that person's postal articles or at the address specified on such article, shall be deemed to be delivery to the person addressed;
- (d) delivery into a private box or private bag shall be deemed to be delivery to the addressee personally.

Articles deemed to be posted in contravention of Act.

5. A postal article received in a post office shall be deemed to have been posted in contravention of this Act -

- (a) if any postage stamp thereon has been previously used, obliterated or defaced;
- (b) if any profane, blasphemous, indecent, obscene, offensive or libellous matter appears on the out-

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side thereof or any indecent or obscene matter is enclosed therein; or

- (c) if it is posted or contains anything in fraud of or contrary to the provisions of this Act or any other law.

Disposal of undelivered postal articles.

6. (1) Subject to the provisions of subsection (2), any postal article -

- (a) which is not addressed or bears an illegible address or is otherwise undeliverable;
- (b) which is refused by the person to whom it is addressed; or
- (c) which has been posted or is reasonably suspected to have been posted in contravention of this Act or any other law,

shall be sent to the division of the postal company known as the returned letter office and be dealt with as prescribed.

(2) Notwithstanding the provisions of subsection (1), any postal article referred to in paragraph (a) or (b) of that subsection -

- (a) which bears on the outside thereof the name and address of the sender, may be returned to such sender;
- (b) excluding a letter or parcel, which -
- (i) does not bear on the outside thereof the name and address of the sender;
- (ii) in the opinion of the postal company, is of little value or importance;
- (iii) does not contain money or any document or valuable article;
- (iv) has not been posted upon the public service,

may be destroyed or otherwise disposed of in accordance with the directions of the postal company.

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(3) Any postal article referred to in subsection (1)(c), which is not a letter or parcel, may be destroyed or otherwise disposed of, as may be determined by the postal company.

Treatment of unclaimed letters in returned letter office.

7. (1) Subject to the provisions of subsection (2), a postal article received in the returned letter office in terms of section 6, shall be opened by an employee of the postal company designated for that purpose, and shall, unless it contains any value or saleable enclosure or has in the opinion of the postal company been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, be returned to the sender if his or her name and address are known, and may, if the sender refuses to receive it or if his or her name and address are not known, be destroyed or otherwise disposed of in accordance with the directions of the postal company.

(2) Any postal article referred to in subsection (1), the name and address of the sender of which are known, but which -

- (a) in the opinion of the postal company, is of little value or importance;
- (b) does not contain any documents;
- (c) has not been transmitted by registered post;
- (d) has not been posted upon the public service,

may, after it has been retained for the prescribed period and with due regard to any prescribed requirements, be destroyed or otherwise disposed of as may be prescribed.

Articles subject to customs duty.

8. Any postal article containing or suspected or containing an enclosure upon which customs duty is payable shall be dealt with as prescribed, but subject to the provisions of the Customs and Excise Act, 1964 (Act 91 of 1964).

Opening and examination of postal articles.

9. Any postal article, other than a letter, may be opened in the post for examination in order to ascertain whether that article is entitled to transmission at the rate of postage pre-paid thereon or has been posted in contravention of this Act.

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Unclaimed articles of value and articles posted in contravention of Act.

10. (1) Every postal article opened under this Act which contains any valuable or saleable enclosure shall be safely kept and a record thereof and of its contents shall be made and preserved.

(2) The postal company shall, unless such postal article or the contents thereof have in its opinion been posted in contravention of this Act or with intent to evade payment of the postage properly chargeable thereon, cause notice of the possession of the postal article and of the contents thereof to be sent to the person to whom the postal article is addressed or, if such person cannot be found, to the sender thereof if he or she can be found.

(3) The postal company shall, upon application by the person to whom the notice referred to in subsection (2) has been sent, cause the postal article in question and its contents to be delivered to that person upon payment of all charges due thereon.

(4) If no such application is made within three months after the sending of the notice referred to in subsection (2), or if the postal article in question or the contents thereof have in the opinion of the postal company been posted in contravention of this Act or with intent to evade payment of any charge properly payable thereon, such article and its contents shall, without affecting the liability to any penalty or punishment to which the sender may be subject, be destroyed, sold or otherwise disposed of as the postal company may direct.

(5) The proceeds of the sale of any postal article or its contents in terms of subsection (4) and any such contents of such a postal article consisting of money or any order or security for money, shall be paid into and form part of the revenue of the postal company.

(6) Any order or security for money referred to in subsection (5) shall for the purpose of procuring payment be deemed to be the property of the postal company.

Sender of undelivered article liable for all charges due thereon.

11. (1) The sender of any undelivered postal article shall on demand pay all charges due thereon and in the event of his or her refusal to pay such charges, be guilty of an offence and liable on conviction to a fine not exceeding R100.

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(2) Subsection (1) shall not be construed as releasing the person to whom a postal article is originally addressed from liability to pay the charges due thereon if such postal article is delivered to him or her.

Delay or return of postal articles or delivery to person other than addressee prohibited.

12. Except as expressly provided by this Act or with the consent in writing of the addressee or on the special authority of the postal company, no postal article shall be delayed in transmission or returned to the sender or be delivered to any person other than the addressee.

Articles addressed to persons conducting a lottery or sports pool or dealing in indecent or obscene matter.

13. When the postal company is satisfied on enquiry or by any advertisement, letter, circular or other documentary evidence that a person is conducting or assisting as agent or otherwise in conducting a lottery or sports pool, or is dealing in indecent or obscene matter, and is using the services of the postal company for the purpose, the postal company may detain or delay any postal article containing or suspected of containing any matter in connection with any such activity and which is addressed to such person (whether under such person's own name or under a fictitious or assumed name) or to the agent or representative of such person, or to any address of any such person, agent or representative without the name of any person appearing thereon, and any such postal article may be opened and returned to the sender thereof or otherwise disposed of as the postal company may deem fit.

Telegrams which may be refused transmission.

14. Any telegram which in the opinion of the postal company contains anything blasphemous or indecent or obscene or which constitutes a contravention of any law, may be refused transmission.

Part 2 — Money transfer services

Remittance of money.

15. Money may be remitted through the postal company either within or outside Namibia at rates prescribed by the postal company.

Power of postal company to refuse to issue or pay money orders, postal orders or other instruments.

16. (1) The postal company may refuse to issue or pay any money order, postal order or other instrument authorized to be used for the purpose of remitting money through the postal company which is required to be issued or paid in favour of any person to whom the provisions of section 13 apply.

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(2) Where payment of a money order, postal order or other instrument is refused in terms of subsection (1), such money order, postal order or other instrument may, if it was issued in Namibia, be returned to the person to whom it was originally issued or be disposed of otherwise as the postal company may deem fit, or, if it was issued outside Namibia, the amount thereof shall be returned to the postal authority of the country in which it was issued.

Money orders, postal orders and other instruments deemed to be bank notes.

17. (1) A money order, postal order or other instrument issued by the postal company under section 15 shall be deemed to be a bank note or an order for the payment of money and valuable security within the meaning of any law relating to forgery or theft.

(2) Any unissued postal order shall be deemed to be money of the postal company.

Part 3 — Post Office Savings Bank

Interest on deposits in Savings Bank.

18. Interest on deposits in the Savings Bank shall be paid at a rate determined from time to time by the postal company, with the concurrence of the Minister of Finance in the case of each kind of deposit.

Deposits in Savings Bank in name of minors or married women.

19. Notwithstanding anything to the contrary contained in any other law, deposits in the Savings Bank -

(a) made by or for the benefit of any person under 21 years of age, may be repaid to that person after such person has attained the age of seven years, or such other age above seven years as may be prescribed by the postal company in respect of any particular kind of deposit or account in the Savings Bank, in every respect as if such person were of full age; and

(b) standing in the name of a married woman shall be repayable to her, notwithstanding the fact that she may be married in community of property.

Transfer of deposits from or to another country.

20. The postal company may in accordance with arrangements made with the postal authority of any foreign country or place for the transfer from or to Namibia of sums of money standing to the credit of depositors in the Savings Bank or depositors in a savings

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bank controlled by that postal authority, and subject to the provisions of any regulation made under section 9 of the Currency and Exchanges Act, 1933 (Act 9 of 1933), place any sum so transferred to the postal company to the credit of a depositor's ordinary account.

Inactive accounts.

21. If a balance in an ordinary account has remained unchanged for more than three years, except for the accrual of interest, the postal company may in its discretion transfer the balance to its revenue, but if the depositor concerned or any person legally competent to claim the balance on such depositor's behalf applies for the repayment thereof, or if an amount for deposit in the ordinary account concerned is paid after such transfer, an amount equal to the balance and the interest which would have accrued thereon if it had not been so transferred shall be transferred from the revenue of the postal company to the credit of the depositor concerned.

**CHAPTER IV
PROVISIONS RELATING TO
TELECOMMUNICATIONS SERVICES**

Fees, rates and charges of telecommunications company.

22. (1) The fees, rates and charges, including rental, payable in respect of the services of the telecommunications company shall be as prescribed by the telecommunications company.

(2) Different fees, rates and charges may be prescribed under subsection (1) in respect of different categories of telecommunications lines or different systems of telecommunications lines.

Prohibition on use of telecommunications lines of telecommunications company.

23. (1) No person shall use any telecommunications line of the telecommunications company for the purpose of transmitting telephonic communications for the public, except under the authority of the telecommunications company and on such terms and conditions as it may prescribe.

(2) The telecommunications company shall have the right of inspecting all offices which are authorized to accept or transmit telephonic communications under the authority of the telecommunications company granted in terms of subsection (1).

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(3) This section shall not apply in respect of a telecommunications line -

- (a) which conforms to the requirements prescribed by the telecommunications company and which is used exclusively for the conveyance of transmissions, in any broadcasting service, which are received by means of radio, to a receiving apparatus which reproduces such transmissions; or
- (b) where both the sending or transmission and the receiving of the same sounds, images, signs, signals, communications or other information take place on a single piece of land or on pieces of land which are contiguous to each other and owned by the same person.

Right of entry and to construct lines across any land.

24. The telecommunications company may for the purposes of this Act and the conducting of its telecommunications service enter upon any land, including any street, road, footpath or land reserved for public purposes, and any railway, and construct and maintain a telecommunications line or any work (including any pay phone cabinet) upon, under, over, along or across any land, street, road, footpath or waterway or any railway, and alter or remove the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.

Facilities for installation of telecommunications equipment in buildings.

25. If in any building erected in a prescribed area, no conduit-pipes or other facilities complying with the requirements of the telecommunications company in respect of the installation of telecommunications equipment in that building, or a building of such a nature, have been installed, the postal company may -

- (a) refuse to provide telecommunications services in that building or in any part thereof until such conduit-pipes or other facilities have been so installed; or
- (b) provide telecommunications services in that building or in any part thereof, and in respect of the installation of the telecommunications equipment in question charge, in addition to the fees prescribed for the provision of those telecommunications services, an amount equal to the amount by which the costs of the installation of

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the said equipment, in the opinion of the telecommunications company, exceed the costs which would have been incurred if the required conduit-pipes or other facilities had been installed in the building in question.

Local authorities may provide facilities for underground lines.

26. (1) Where the telecommunications company and a local authority has come to an agreement that in a particular area electricity supply and telecommunications services shall be provided by means of underground cable, such local authority may, when installing a cable for the underground electricity supply line on any premises in such area, provide, in accordance with the requirements of the telecommunications company, a conduit-pipe or other facilities for the installation of an underground telecommunications service line from a point of connection on the street boundary of such premises.

(2) The costs of the provision of such conduit-pipe or other facilities shall be payable to the local authority in question and shall for the purposes of any law be deemed to be fees payable by the owner of the premises in question to the local authority in respect of the installation of the electricity supply line.

Construction of lines under streets.

27. (1) The telecommunications company may after reasonable notice in writing to any local authority or a person owning or having the control and care of any street, road or footpath, construct and maintain in the manner specified in the notice any telecommunications lines, pipes, tunnels or tubes required for telecommunications purposes under any such street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain or main) for the supply of water, gas or electricity, and the local authority or person to whom any such pipe belongs, or by whom it is used, shall be entitled at all times while any work in connection with the alteration in the position of such pipe is in progress, to supervise that work.

(2) The telecommunications company shall pay all reasonable expenses to which a local authority or person may be put in connection with any construction or maintenance work or alteration referred to in subsection (1) or in connection with the supervision of work relating to any such alteration.

Liability for damage or injury.

28. (1) The telecommunications company shall in the carrying out of any work, take all reasonable precautions for the safety of the public, but shall not be liable for

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any compensation, except in so far as actual damage may be caused to any work or property or standing crops or any bodily injury may be caused to any person in consequence of any failure to comply with the provisions of this section.

(2) Any work in connection with the construction, maintenance or repair of any telecommunications line shall be carried out in such a way as to avoid as far as possible loss or inconvenience to owners of property or to the public, and any street, road or footpath shall, while it is opened, broken up or otherwise obstructed, be at all times fenced or guarded, and on completion of any such work any street, road, footpath, land or railway which may have been disturbed shall be restored to as good a condition as that in which it was before the work was commenced with.

Removal of lines at request of local authority or other person.

29. (1) If, at any time after the construction of any telecommunications line, pipe, tunnel, tube or pay phone cabinet upon, in, over, along, across or under any land, building, railway, street, road, footpath or waterway, the telecommunications company considers it necessary to alter or remove the same on account of any alteration, alignment or levelling or any other work carried out by a local authority or any person, the cost of such alteration or removal shall be borne by that local authority or person.

(2) Where any telecommunications line passing over any private property will be affected by any building about to be erected on that property, the telecommunications company shall, upon being satisfied that a building is to be erected, cause the line to be deviated or altered in such manner as will remove all obstacles to building operations.

(3) Any person requiring any deviation or alteration referred to in subsection (2) shall give written notice thereof to the telecommunications company not less than 28 days before the alteration or deviation is required to be effected.

(4) If any deviation or alteration of a telecommunications line passing over any private property is desired for any reason other than that mentioned in subsection (2), written notice thereof of not less than 28 days shall be served on the telecommunications company.

(5) If the telecommunications company agrees that a deviation or alteration required in terms of subsection (4) is possible and necessary or expedient, it may agree to

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make the deviation or alteration and, unless the telecommunications company agrees otherwise, the cost of carrying out the work shall be borne by the person at whose request the deviation or alteration is effected.

Gates in fences.

30. (1) If any fence erected on land over which a telecommunications line is constructed or is to be constructed renders or would render it impossible or inconvenient for the telecommunications company to obtain access to that land for any purpose in connection with its functions, it may at its own expense erect and maintain gates in any such fence and shall provide therefor duplicate keys, one of which shall be handed over to the owner or occupier of the land.

(2) If any person erects a fence on land over which a telecommunications line is constructed or is to be constructed and such fence would render it impossible or inconvenient for the telecommunications company to obtain access to that land for any purpose in connection with its functions, the owner of such land shall, at the request of the telecommunications company and at such owner's own expense, erect and maintain gates in such fence and shall provide therefor duplicate keys, one of which shall be handed over to the telecommunications company.

(3) Any person intending to erect a fence on land over which a telecommunications line is constructed or is to be constructed, shall give not less than six weeks' notice in writing to the telecommunications company of such intention.

(4) Where the telecommunications company erects a gate in a fence which has been constructed by a person in contravention of or without complying with the provisions of subsection (2) or (3), such person shall, notwithstanding the provisions of subsection (1), be liable to pay to the telecommunications company the reasonable expenses incurred by it for the installation of such gate.

Certain electrical works to conform to requirements of telecommunications company.

31. (1) Any person who constructs, equips or carries on any railway or any works for the supply of light, heat or power by means of electricity, shall conform to the requirements of the telecommunications company for the prevention of any telecommunications line being injuriously affected thereby, and shall, not later than 30 days before commencing the construction of any such railway or works -

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- (a) give notice in writing thereof to the telecommunications company;
- (b) provide the telecommunications company with a plan of the proposed railway or works, and particulars of the manner and position in which the same are intended to be constructed, executed and carried on; and
- (c) furnish the telecommunications company with such further information relative to the proposed railway or works as the telecommunications company may require.

(2) If it appears to the telecommunications company that the construction, equipment or carrying on of any such railway or works is likely to affect injuriously any telecommunications line, or if any telecommunications line is injuriously affected by the construction, equipment or carrying on of any such railway or works, the telecommunications company shall give reasonable notice of its requirements to the person concerned, and any person who, after receiving any such notice, proceeds with or causes to be proceeded with any such construction, equipment or carrying on in contravention of the said requirements, shall be liable to the telecommunications company in damages (recoverable by action in a competent court) of R50 for every day on which the same is proceeded with or the injurious effect continues, and shall in addition make good any damage or expense which may be caused to the telecommunications company by reason of the failure to comply with the telecommunications company's requirements.

**CHAPTER V
OFFENCES AND PENALTIES**

Forgery, fraudulent alteration of stamps, dies and certain other documents and instruments.

32. Any person who, without due authority or lawful excuse -

- (a) makes, alters, imitates or imports or assists in making, altering, imitating or importing any postage stamp, date stamp, card, envelope, wrapper, cover or any money order, postal order or Savings Bank warrant or any other warrant or order for the payment of money through the

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postal company or acknowledgement of deposit or any form or paper similar to that used or made for the purposes of the functions of the postal company or used or made by any postal authority of any foreign country, or uses, issues, offers, exposes for sale, sells, deals in, sends by post or disposes of or has in his or her custody or possession any such stamp, date stamp, card, envelope, wrapper, cover, money order, postal order, Savings Bank warrant or any other warrant or order, acknowledgement of deposit, form or paper, knowing it to have been made or altered or to be an imitation in contravention of this paragraph;

- (b) engraves or in any manner makes upon any plate or material any stamp or mark or figure or device in imitation of or resembling any stamp or mark or figure or device used or made for the purposes of the functions of the postal company or by any postal authority of any foreign country, or sells, disposes of, purchases, receives, or has in his or her custody or possession any plate or material so engraved or made;
- (c) makes or assists in making or has in his or her custody or possession any mould, frame or other instrument having thereon any words, letters, figures, marks, lines or devices peculiar to paper provided, used or made for any postage stamp or for any other purposes of the functions of the postal company or by any postal authority of any foreign country;
- (d) makes or assists in making or has in his or her custody or possession any paper in the substance of which appear any words, letters, figures, marks, lines or devices peculiar to paper provided, used or made for any postage stamp or for any other purposes of the functions of the postal company or by any postal authority of any foreign country, or makes, purchases, sells, disposes of or receives or has in his or her custody or possession any paper provided or made for the purpose of being used for any postage stamps or for any other purposes of the functions of the postal company or by any postal authority of any foreign country before the same has been issued for public use;

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- (e) makes use of any stamp, die, plate or paper engraved or made for the purposes of the functions of the postal company or by any postal authority, of any foreign country or sells, disposes of, purchases, receives or has in his or her custody or possession any such paper or other material bearing an impression or mark of any such stamp, die or plate; or
- (f) makes on any envelope, wrapper, card, form or paper any mark in imitation of or similar to or purporting to be any official stamp or mark used for the purposes of the functions of the postal company or by any postal authority of any foreign country or any words, letters, device or marks which signify or imply or may reasonably be regarded as signifying or implying that any article bearing such words, letters, device or marks has been in or is entitled to be sent through the post,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years, and any stamp, die, plate, instrument or material found in the possession of any person in contravention of this section shall be seized and forfeited.

Fraudulent removal of stamps or marks from stamps or other articles.

33. Any person who, with intent to defraud -

- (a) removes from any article sent by post or from any telegram or document used for the purposes of the functions of the postal company, any stamp which has been affixed thereon, or wilfully removes, or attempts to remove from any stamp which has been previously used, any mark or impression which has been made thereon at any post office, or knowingly utters, puts off or uses any stamp or any part of any stamp which has been so removed or from which any such mark or impression has been removed;
- (b) erases, cuts, scrapes, defaces, obliterates or otherwise discharges or removes from, or attempts to remove or in any manner adds to or alters any mark or impression upon any postal article, money order, postal order, Savings Bank warrant or other warrant or order or acknowledgement of deposit, paper or other material

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provided, used or made for the purposes of the functions of the postal company or by any postal authority of any foreign country; or

- (c) attempts unlawfully to evade payment of any of the rates, fees or charges prescribed by the postal company,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

Fraudulent, injurious and offensive practises in connection with postal articles and premises.

34. (1) Any person who -

- (a) with intent to defraud, puts into any post office anything purporting to be a postal article within any exemption prescribed by or under this Act, or any postal article purporting to belong to a class in respect of which a lower rate of postage or no postage is chargeable, or any postal article containing any other postal article unstamped or insufficiently stamped which if sent alone would be liable to postage;
- (b) with intent to defraud, puts into any post office any article in or upon or with which there is any communication, intelligence, character, figure, number, mark, matter or thing not allowed by this Act or any other law, or wilfully subscribes on the outside of any postal article or otherwise a false statement of the contents thereof;
- (c) puts into any post office any article in which or with which or upon which there is any indecent or obscene matter or anything of a profane, libelous or grossly offensive character;
- (d) without due authority places or paints anything upon, or wilfully damages, disfigures or tampers with any post office or any card, notice or other property of or used by or on behalf of the postal company or telecommunications company or any person licensed under section 2 to conduct any postal service or telecommunications service or commits any nuisance in or on or against any post office or against or upon any such card, notice or property;

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- (e) detains, secretes or keeps any mail or postal article which ought to have been delivered to another person or which has been found by him or her or by any other person;
- (f) by false pretence or misstatement induces any employee of the postal company to deliver to him or her or to any other person any postal article not addressed to or intended for either of them,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) The conviction of a person for an offence under paragraph (d) of subsection (1) shall not prejudice any right the postal company or telecommunications company may have of proceeding civilly against such person for compensation for any damage that may have been caused by him or her.

Placing of dangerous, filthy, noxious or deleterious matter in any post office, and theft or robbery of mail.

35. (1) Any person who -

- (a) sends in or with any postal article or puts into or against any post office any fire, match or light or any explosive, dangerous, filthy, noxious or deleterious matter or thing or any matter or thing which is likely to cause damage or injury to any post office, person or mail;
- (b) steals any mail or steals from any mail or post office or from the possession or custody of any person in charge of mail or for any purpose embezzles or fraudulently secretes or destroys any postal article or any of the contents thereof;
- (c) receives any such mail or postal article or any of the contents thereof knowing the same to have been stolen, embezzled or fraudulently secreted or to have been sent or intended to be sent by post; or
- (d) stops any person or conveyance conveying mail with intent to rob or search such mail,

shall be guilty of an offence and liable on conviction to a fine not exceeding R28 000 or imprisonment for a period

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not exceeding seven years or to both such fine and such imprisonment: Provided that the postal company may, subject to special precautions determined by it, exempt from the provisions of this section noxious or deleterious matter sent in the interest of public health.

(2) Notwithstanding anything to the contrary contained in any law, the postal company or any person licensed under section 2 to conduct any postal service may cause any article referred to in subsection (1)(a) or any postal article suspected of containing such an article, to be handed to or removed by a police official or a person designated by a police official for examination.

(3) Any police official may destroy or render harmless or cause to be destroyed or rendered harmless any article or postal article referred to in subsection (2) which he or she considers to be dangerous, or may otherwise dispose thereof.

Tampering with mail or postal articles by employees.

36. Any employee of the postal company or any person licensed under section 2 to conduct any postal service who otherwise than in pursuance of his or her duties opens or tampers with or wilfully destroys, makes away with or secretes or allows to be opened or tampered with, destroyed, made away with or secreted any mail or postal article, and any person who opens or tampers with or wilfully destroys, makes away with or secretes any mail, shall be guilty of an offence and liable on conviction to a fine not exceeding R28 000 or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment.

Obstructing or delaying conveyance of mail.

37. Any person who wilfully interferes with the conveyance of any mail or through whose act or neglect the conveyance of any mail is interfered with, shall be guilty of an offence and liable on conviction to a fine not exceeding R400 or, in default of payment, to imprisonment for a period not exceeding one month, for each hour or part of an hour during which the delivery of the mail is delayed in consequence of any such interference.

Opening of postal articles or telegrams or delaying delivery thereof.

38. (1) Any person who, other than in accordance with the provisions of this Act, wilfully opens any postal article or telegram which he or she knows ought to have been delivered to another person or does any act or thing whereby the due delivery of that article or telegram to such other person is prevented, obstructed or delayed, shall be

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guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Nothing in this section contained shall apply to any person who does any act to which this section applies where that person is the parent or in the position of parent or guardian of the addressee and the addressee is a minor under sixteen years of age or a ward.

Unauthorised use of
certain words.

39. Any person who without the authority of the postal company or the telecommunications company or without being authorized thereto by a condition of any licence issued under section 2, as the case may be -

- (a) displays or allows to be displayed in, on or near any house, premises, wall, door, window, box, post, pillar or other place belonging to him or her or under his or her control the words "post office" or any other word or a mark which may imply or may give reasonable cause for believing that house, premises, wall, door, window, box, post, pillar or other place to be a post office;
- (b) displays or allows to be displayed on any vehicle or vessel the word "mail" or any other word or mark which may imply or may give reasonable cause for believing that such vehicle or vessel is used for the conveyance of mail; or
- (c) in connection with any publication or proposed publication, or in any invitation, prospectus, order form, notice, invoice or advertisement relating to any publication, uses the words "telephone directory", "yellow page directory", "yellow pages", "telex directory", "fax directory" or any other word or a mark, in circumstances or in a manner which may imply or may give reasonable cause for believing that such a publication or proposed publication is a telephone directory, yellow page directory, telex directory, fax directory or other publication published on the authority of the telecommunications company,

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

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Fraudulent issue of documents or presentation or sending of communications.

40. Any person who with fraudulent intent -

- (a) issues, re-issues, utters or presents to any other person or at any post office any money order, postal order, Savings Bank warrant or other warrant, order or other instrument for the transfer, payment or deposit of money through or with the postal company;
- (b) transmits through the post or otherwise any letter, telegram or other communication or message concerning any money order, postal order, Savings Bank warrant or other warrant, order or other instrument for the transfer, payment or deposit of money through or with the postal company;
- (c) forges or, knowing it to be forged, utters any delivery slip or other instrument issued by the postal company as proof of the receipt of a postal article,

shall be guilty of an offence and liable on conviction to a fine not exceeding R28 000 or to imprisonment for a period not exceeding seven years or to both such fine and such imprisonment.

Impersonating employees of postal company or telecommunications company.

41. Any person who with fraudulent intent impersonates or represents himself or herself to be an employee of the postal company or the telecommunications company or any person licensed under section 2 to conduct any postal service or telecommunications service, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

False declarations.

42. Any person who in any declaration prescribed by or under this Act makes a false statement knowing the same to be false, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000.

Theft, destruction, forging or alteration of telegrams.

43. Any person who -

- (a) with fraudulent intent takes from the possession of any employee of the postal company or other person having the custody thereof for the postal company or from any post office, or steals,

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secretes or destroys any telegram or any part thereof or fraudulently receives any such telegram or any part thereof;

- (b) forges a telegram or utters a telegram knowing the same to be forged or false or transmits by telegraph as a telegram any message or communication purporting to be a telegram which he or she knows to be forged or false; or
- (c) knowingly sends, delivers or causes to be sent or delivered to any employee of the postal company for the purpose of being transmitted as a telegram any message or communication which has been wilfully and without due authority altered or which purports to be signed or sent by any other person without that person's consent, or who wrongfully signs any telegram with the name of another person without that person's consent or with the name of some fictitious person, or who wilfully and without the consent of the sender alters any telegram or writes, issues or delivers any message or communication which purports to be a telegram received through a telegraph office but which was not so received,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

Divulging contents of telegrams or telephonic communications.

44. Any employee of the postal company or telecommunications company who, not being a witness in a court of law, without the consent of the sender or addressee or receiver, or otherwise than in pursuance of his or her duties -

- (a) opens or tampers with or divulges the contents or substance of any telegram, or discloses its existence otherwise than by delivering it or giving a copy thereof to the person to whom he or she is authorized to deliver it or to give such copy, or who maliciously or wilfully misdelivers, mistakes, secretes, intercepts, destroys, makes away with, alters or omits to transmit or deliver or prevents or delays the delivery or transmission of any telegram or makes use for his or her own purposes of any knowledge he or she may acquire of the contents thereof;

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- (b) divulges the existence, contents or substance of any telephonic communication or maliciously or wilfully intercepts a telephonic communication or prevents or delays the transmission thereof or makes use for his or her own purposes of any knowledge he or she may acquire of the contents thereof,

shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

Damaging of telecommu-
nications lines.

45. (1) Any person who wilfully or maliciously destroys, damages or removes any telecommunications line owned or controlled by the telecommunications company or any person licensed under section 2 to conduct any telecommunications service or any material, instrument or apparatus used in connection therewith or any pay phone cabinet, or disturbs, obstructs or impedes in any way the free use or working of any such line, material, instrument, apparatus or cabinet, or affixes or attaches any wire, conductor or any other thing to any telecommunications line or pay phone cabinet, or any part thereof, without the authority of the telecommunications company or the person so licensed, as the case may be, or who interferes with or hinders the construction or alteration of any such line or cabinet or the maintenance or examination thereof or causes delay in the restoration of any such line or cabinet, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

(2) The conviction of a person for an offence under subsection (1) shall not prejudice any right the telecommunications company or the person so licensed, as the case may be, may have of proceeding civilly against such person for compensation for any damage as may have been caused by him or her.

(3) Any person who, either directly or by means of an animal, vehicle or other thing owned by him or her or in his or her custody or under his or her control, destroys or damages any telecommunications line or pay phone cabinet of the telecommunications company or any person licensed under section 2 to conduct any telecommunications service, shall be liable to pay to the telecommuni-

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cations company or the person so licensed, as the case may be, such expenses as may be incurred in making good the destruction or damage.

Attempt to commit or procuring commission of offences.

46. Any person who attempts to commit any offence under this Act or solicits or authorises or endeavours to employ, cause, procure, aid, abet, incite or counsel any other person to do anything the doing whereof is an offence under this Act shall be guilty of an offence and liable to the same punishment as if he or she had actually committed the offence.

Certain allegations in charge sufficient.

47. In any charge against a person prosecuted for any offence committed in respect of the postal company or the telecommunications company or any person licensed under section 2 to conduct any postal service or telecommunications service, or of any mail, telegram or telecommunications line or any property, moneys, money order, postal order or other instrument authorized to be used for the purpose of remitting, paying or depositing money through or with the postal company or with respect to any act, deed, matter or thing which has been done or committed with any malicious, injurious or fraudulent intent relating to or concerning the postal company or the telecommunications company, as the case may be, or any such mail, telegram, telecommunications line, property, moneys, money order, postal order or other instrument, it shall be sufficient -

- (a) to allege that any such mail, telegram, property, moneys, money order, postal order or other instrument belongs to or is in the lawful possession of the postal company or the telecommunications company or the person so licensed, as the case may be, and to produce the same in evidence, and it shall not be necessary to allege or prove the same to be of any value;
- (b) to allege that any such act, deed, matter or thing was done or committed with intent to injure or defraud the postal company or the telecommunications company, as the case may be, without setting forth its name or any other name, addition or description whatsoever; and
- (c) if the offender is an employee of the postal company or telecommunications company, to allege that the offender was such an employee at

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the time of the commission of the offence without stating the nature or particulars of his or her employment.

Evidence.

48. In any proceedings for the recovery of any sum payable under this Act in respect of a postal article -

- (a) the official stamp or mark thereupon denoting the sum due shall be sufficient proof that the amount so denoted is the amount payable in respect thereof;
- (b) the production of any such postal article having thereon a post office stamp or mark denoting that the article has been refused or that the person to whom the same is addressed is dead or could not be found, shall be *prima facie* evidence of the fact so denoted.

**CHAPTER VI
MISCELLANEOUS**

Non-liability of postal company and telecommunications company.

49. (1) Except as is otherwise provided in this Act, no legal proceedings shall be instituted against the postal company or the telecommunications company, or any employee of any such company or against any person conveying postal articles or transmitting communications in pursuance of any contract entered into or arrangements made in terms of this Act or conveying mail which he or she is obliged to convey in terms of this Act (in this section and in section 50 referred to as a mail carrier) or against any employee of a mail carrier by reason of any error, default, delay, omission, damage, destruction, non-delivery, non-transmission or loss (but excluding any wilful act or omission) in respect of any postal article, communication or telegram or by reason of anything lawfully done under this Act or any other law.

(2) Any *bona fide* payment of any sum of money under the provisions of this Act or any other law shall, to whomsoever made, discharge the postal company or the telecommunications company, as the case may be, and the employee by whom any such payment was made, from liability in respect of any such payment, notwithstanding any forgery, fraud, mistake, neglect, loss or delay which

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may have been committed or have occurred in connection therewith: Provided that nothing in this subsection shall be construed as exempting the postal company or the telecommunications company from liability for damage or loss caused to any person by reason of any forgery or fraud on the part of any employee of such company in relation to his or her duties or as exempting any mail carrier from liability for damage or loss caused to any person by reason of fraud on the part of such carrier or any employee of such carrier in relation to his or her duties.

Compensation may be paid in certain cases.

50. (1) The postal company may -

- (a) if any unauthorised person by fraudulent means obtains payment of any deposit, in its discretion make good the loss sustained by the depositor or any portion thereof;
- (b) in its discretion and subject to any requirements and limitations that are prescribed, pay compensation for the loss of or damage to any postal article or the contents thereof whether conveyed by the postal company or by any mail carrier.

(2) Where the postal company has by virtue of the provisions of subsection (1) paid any amount in respect of loss caused by the commission of an offence, it shall, for purposes of section 300 of the Criminal Procedure Act, 1977 (Act 51 of 1977), be deemed to have suffered, as the result of the commission of such offence, loss of property belonging to it to the extent of the amount so paid.

(3) Any mail carrier shall on demand pay to the postal company an amount equal to any amount paid by the postal company by virtue of the provisions of subsection (1)(b) in respect of any postal article or of the contents thereof lost while in the possession of such carrier or such lesser amount as the postal company may in its discretion determine.

Detention of postal articles and telegrams suspected of relating to an offence.

51. Notwithstanding anything to the contrary in any law contained, any postal article or telegram which is reasonably suspected of containing anything that may afford evidence of the commission of an offence or of being sent in order to further the commission of an offence or to prevent the detection of an offence, shall be detained by the person in charge of the post office in which it is or through which it passes, and the postal company may bring the

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detention of any such postal article or telegram to the notice of the prosecutor-general or, at the request of the prosecutor-general, cause any such postal article or telegram to be handed over to any public prosecutor.

Regulations.

52. (1) The postal company and telecommunications company may each make regulations in relation to -

- (a) any matter required or permitted to be prescribed by it under this Act;
- (b) in general any matter which it deems necessary or expedient for the purposes of its functions.

(2) Any regulations made under subsection (1) shall be published in the *Gazette*.

Employees to take oath or make affirmation.

53. Every employee of the postal company and every employee of the telecommunications company, if required by such company to do so, shall take an oath or make an affirmation before a justice of the peace in the form set forth in the Schedule before exercising the duties of his or her office.

Transitional provisions.

54. Notwithstanding the repeal of the Post Office Act, 1958 by section 10 of the Posts and Telecommunications Establishment Act, 1992, any regulation made or anything done under any provision of the Post Office Act, 1958 or any contract concluded in connection with the postal enterprise or the telecommunications enterprise, as defined in section 1 of the Posts and Telecommunications Establishment Act, 1992, shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been made by the postal company or the telecommunications company, as the case may be, under the corresponding provision of this Act.

Short title and commencement.

55. This Act shall be called the Posts and Telecommunications Act, 1992 and shall be deemed to have come into operation on 1 August 1992 except Section 2 which shall come into operation on a date determined by the Minister by notice in the *Gazette*.

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SCHEDULE

(Section 61)

**OATH TO BE TAKEN OR AFFIRMATION
TO BE MADE BY OFFICERS**

I, (name in full)
do solemnly swear/affirm* faithfully in my position as an employee of the postal/telecommunications company* to be honest, trustworthy and fair, to discharge my duties according to the law and to the best of my knowledge, that I will not contrary to the law or to my duty communicate or divulge the contents of any letter, telegram or official paper of any description or any information regarding any telephone conversation or regarding the transactions of a depositor in the Post Office Savings Bank nor open or detain or cause or allow to be opened or detained any letter or other postal article or any telegram nor on any account whatsoever destroy or make away with any letter, telegram or official paper entrusted to my care, that I will give account of any responsibility entrusted to me whenever and wherever such may be required of me.

SO HELP ME GOD.*

Signature:

Sworn/ Affirmed* before me at on the

..... day of 19.....

JUSTICE OF THE PEACE

*delete which is not applicable.
