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## GOVERNMENT NOTICE

No. 91      Promulgation of Posts and Telecommunications Companies Establishment Act, 1992  
(Act No. 17 of 1992), of the National Assembly .....

# Government Notice

OFFICE OF THE PRIME MINISTER

No. 91	1.	1992
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## 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. 17 of 1992: Posts and Telecommunications Companies Establishment Act, 1992.

"Minister' nicans the Minister of  
and Communicaflon;

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"officer" in relation to a person in the employment of the department, means an officer as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980);

"posw company" means Namibia Post Limited established by section 2(1)(a);

"postal enterprise" means all the assets, liabilities, rights and obligations, including any claim to copyright, trade marks and patentable inventions of the State which relate to or are connected with the conduct of the postal service and the supplementary services by the department, as determined by the Minister;

"postal service" means the business of receiving, collecting, dispatching, conveying and delivering postal articles as defined in section 1 of the Posts and Telecommunications Act, 1992 and of performing all incidental services as undertaken by the department prior to the transfer date;

"Postmaster-General" means the officer occupying the post with that designation on the fixed establishment of the department in terms of the Post Office Act, 1958 (Act 44 of 1958);

"Savings Bank" means the Post Office Savings Bank controlled and managed by the Postmaster-General immediately before the transfer date;

"successor company" means a company established by section 2(1);

"supplementary services" means -

(a) the control and management of the Savings Bank;

(b) the rendering of a money transfer service;

"telecommunications company" means Telecom Namibia Limited established by section 2(1)(b);

"telecommunications enterprise" means all the assets, liabilities, rights and obligations, including any claim to copyright, trademarks and patentable inventions

1 - - are connected with the

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conduct of the telecommunications service by the department, as determined by the Minister;

"telecommunications service" means the business of undertaking or providing any system or method of conveying signs, signals, sounds, communications or other information by means of electricity, magnetism, electromagnetic waves or an agency of a like nature, whether with or without the aid of tangible conductors, from one point to another, and as undertaken by the department prior to the transfer date;

"transfer date" means the date determined by the Minister under section 4(1).

CHAPTER 1  
SUCCESSOR COMPANIES

Establishment of successor companies.

**2. (1)** There are hereby established three corporate bodies namely -

- (a) a postal company to conduct a postal service and the supplementary services, and which shall be known as Namibia Post Limited;
- (b) a telecommunications company to conduct a telecommunications service, and which shall be known as Telecom Namibia Limited; and
- (c) a holding company which shall hold the shares in the postal company and the telecommunications company, and which shall be known as Namibia Post and Telecom Holdings Limited.

(2) On the issue by the Registrar of Companies of the certificates referred to in subsection (4), the corporate bodies established by subsection (1) shall be deemed to be public companies incorporated under the Companies Act.

(3) The Minister shall submit to the Registrar of Companies the memoranda and articles of association of the successor companies for registration and shall on behalf of the State sign all documents that are required to be signed by the promoters of the successor companies.

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(4) The Registrar of Companies shall register the memoranda and articles of association referred to in subsection (3) and issue certificates that the successor companies are incorporated as public companies under the Companies Act and certificates entitling the successor companies to commence business.

(5) The Registrar of Companies shall issue such directives and authorise such deviations from the regulations made under the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to the provisions of this section.

(6) No registration fee or any other fee payable in terms of the Companies Act shall be payable in respect of the registration of the successor companies.

(7) The Postmaster-General shall be appointed as the first director of each successor company and shall occupy the office of director until the date immediately preceding the transfer date.

(8) (a) The postal company and the telecommunications company shall upon incorporation each issue one share with a nominal value of one Rand to the holding company;

(b) The holding company shall upon incorporation issue one share with a nominal value of one Rand to the State.

(9) The memoranda of association of the postal company and the telecommunications company shall provide that the company and its subsidiaries -

(a) shall have as its main object and main business -

(i) in the case of the postal company, to conduct a postal service and the supplementary services; and

(ii) in the case of the telecommunications company, to conduct a telecommunications service;

(b)

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**contracts with the Minister for the performance  
of specified functions by the company.**

- (c) shall exercise its powers with a view to enhancing corporate profit and shareholder gain, taking into account the promotion of an economically prosperous and efficient postal system and telecommunications system, as the case may be, conducted on sound business principles;
- (d) shall not have the power to perform any of the following acts without the approval of the Minister, granted with the concurrence of the Minister of Finance, namely -
- (i) the alienation or encumbrance by the company otherwise than in the normal course of its business of assets of the company with a market value of more than 10 per cent of the market value of all the assets of the company;
  - (ii) the cessation or alteration of the main object or main business of the company;
  - (iii) the alienation of shares held by the company;
  - (iv) the merger of the company with another company.

(10) The articles of association of -

- (a) the company and the telecommunications company - inter alia provide that

- (i) the company shall have not less than five or more than seven directors.
- (ii) one of the directors shall be appointed as managing director;
- (iii) the directors, with the exception of the managing director, shall fulfil a non-executive function;

- (iv) no person, except the holding company, shall be a director in the company;

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(b) the holding company shall inter alia provide that-

(i) the company shall have not less than three .  
nor more than **five** directors;

(ii) the directors shall fulfil a non-executive function;

(iii) no person, except the State, shall, whether directly or indirect**14**, hold any shares in the **company.**,

(1) The Minister shall lay copies of the memorandum and articles of association of each successor company, and of amendments thereto, upon the Table in the National Assembly within fourteen days after their registration if the National Assembly is then in ordinary session or, if the National Assembly is not then in session, within fourteen days after the commencement of its first ensuing ordinary session.

(12) Notwithstanding the provisions of the Companies Act, a successor company shall not have more than one member.

(13) The powers and duties of the State as a member and shareholder of the holding company shall be exercised and performed by the Minister or a person nominated by the Minister in **winding** from time to time.

(14) A successor company shall not conduct any business and shall not acquire any assets, liabilities, rights or obligations prior to the transfer date.

Application of provisions  
of Companies Act.

**3. (1)** The provisions of the Companies Act shall apply to the successor companies, except -

(a) those provisions of the said Act that are inconsistent with the provisions of this Act or that are excluded under subsection (2);

(b) sections 73, 103(1), 193, 195, 208(2) and 221 until the first annual general meeting of each successor company.

(2) Save for **any** provisions of the Companies Act or any other law relating to companies the exclusion of which

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may be inconsistent with this Act, the Minister may, by notice in the *Gazette*, exclude the application to the successor companies, or any of them, of any provision of the said Act or such other law, or render such provision or law applicable subject to such modification as the Minister may deem fit, and the Minister may withdraw or amend such notice.

Transfer of postal enterprise and telecommunications enterprise to successor companies.

**4. (1) On a date determined by the Minister by notice in the *Gazette* -**

- (a) the postal enterprise shall, subject to subsection (4), be transferred to the postal company, from which date the postal company shall be entitled to conduct a postal service and the supplementary services, subject to the Posts and Telecommunications Act, 1992;
- (b) the telecommunications enterprise shall, subject to subsection (4), be transferred to the telecommunications company, from which date the telecommunications company shall be entitled to conduct a telecommunications service, subject to the Posts and Telecommunications Act, 1992.

(2) For the purposes of subsection (1), any State land of which the postal enterprise and the telecommunications enterprise have the use immediately before the transfer date, shall on that date, but subject to subsection (4), pass to the postal company or the telecommunications company, as the case may be.

(3) Subject to subsection (4), any servitude, other real right or lease existing immediately before the transfer date in favour of the State, the department or the Postmaster-General and which is exercised in favour of the postal enterprise or the telecommunications enterprise shall on the transfer date pass to the postal company or the telecommunications company, as the Minister shall determine.

(4) Notwithstanding the provisions of subsections (2) and (3) the Minister may determine that any land referred to in subsection (2) or any servitude, other real right or lease referred to in subsection (3), shall pass to the holding company which shall, by lease or otherwise and on terms to be determined by it, make such land or the enjoyment of



any right pertaining to any such servitude, other real right or lease available to the postal company or telecommunications company.

vesting in the holding company by virtue of subsection (4) may at any time be transferred by the holding company to the Postal company or the telecommunications company on such conditions as the holding company may determine.

**(6) The Registrar of Deeds shall on submission to him or her of a certificate by the Minister -**

(a) that Stalc land or any servitude, other real right or lease has passed in terms of subsection (2), (3),

endorsements as he or she may deem necessary in or on any relevant register, title deed or other document in his or her office or laid before him or her in order to effect the transfer in the name of the company in question;

(b) that a servitude exists over land which has passed in terms of subsection (1), (4) or (5), make such entries and endorsements as he or she may deem necessary in or on any relevant register, title deed necessary in his or her office or laid or other document in order to confirm the existence of the servitude before him or her in person Over tence of the servitude in favour of an land which has so passed.

**(7) The value of the assets and liabilities of the enterprises transferred in terms of subsection (1), including any assets or liabilities referred to in subsection (4), shall be determined by the Minister with the concurrence of the Minister of Finance, and the net asset value of those enterprises shall likewise be determined.**

**(8) For the purposes of the Income Tax Act, 1981 (Act 24 of 1981), or any other law in terms of which a tax or levy may be imposed, it shall be deemed that expenses were actually incurred by a successor company in acquiring the assets transferred to it in terms of subsection (1) or (4) and that, notwithstanding the provisions of any other law, the expenses concerned, including the cost of the assets, are equal to the value determined in terms of subsection (7).**

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(9) In all pending litigation, including arbitrations, to which the President of the Republic of Namibia or the Government of the Republic of Namibia or the Minister is a party and which pertain to the postal enterprise or the telecommunications enterprise, the President or the Government or the Minister, as the case may be, shall, with effect from the transfer date, be substituted as the party to the suit -

- (a) by the postal company in the case of litigation pertaining to the postal enterprise;
- (b) by the telecommunications company in the case of litigation pertaining to the telecommunications enterprise.

(10) The postal company or telecommunications company, as the case may be, may apply for the registration of any registerable right relating to intellectual property or inventions (including the registration of patentable inventions as patents) transferred to It by the State in terms of this section.

(1 1) The Registrar of Trade Marks shall make such entries, notes and endorsements as he or she may deem necessary in or on any relevant register, certificate or other document in his or her office or submitted to him or her so as to effect the transfer of trade marks to the postal company or the telecommunications company in terms of this section, and may request the successor company concerned to submit or produce to him or her any information or document that he or she may deem necessary for such purpose.

(12) If any doubt arises as to whether anything for the purposes of this Act pertains to or is connected with the postal enterprise, the telecommunications enterprise, the department or anyone else, the decision of the Minister shall be final.

(13) (a) The postal company and the telecommunications company may each establish subsidiary companies of which the successor company shall be the sole member and shareholder and shall allow the assignments, substitutions and transfers contemplated in this section to be made to such subsidiary.

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- (b) The provisions of this Act applicable to such successor company, shall apply *mutatis mutandis* to any subsidiary of it.

(14) No stamp duty, transfer duty or any other tax or levy shall be payable in respect of the transfer of the postal enterprise or the telecommunications enterprise in terms of this section, nor in respect of any transfer effected in pursuance of subsection (4) or (5).

(15) Any employee of a successor company shall be deemed to be an officer in the service of the State for the purposes of section 17 of the Crown Land Disposal Ordinance, 1903 (Ordinance 57 of 1903 of the Transvaal), as applied to Namibia by the Crown Land Disposal Proclamation, 1920 (Proclamation 13 of 1920), and section 19 of the Expropriation Ordinance, 1978 (Ordinance 13 of 1978).

Shareholding in successor companies.

5. (1) As a consideration for the transfer contemplated in section 4(1) or (4), as the case may be -

- (a) the postal company and telecommunications company **shall**, in addition to the share referred to in section 2(8)(a), issue such number of shares in those companies to the holding company;
- (b) the holding company shall, in addition to the share referred to in section 2(8)(b), issue such number of shares in that company to the State,

as may, subject to the provisions of subsection (2), be determined by the Minister with the concurrence of the Minister of Finance.

(2) Should the nominal value plus any premium payable in respect of the number of shares determined in terms of subsection (1) by the Minister -

- (a) to be issued in the postal company or in the telecommunications company, be less than the net asset value of the enterprise concerned, an amount equal to that difference shall be credited to a loan account in favour of the holding company in the books of account of the postal company or the telecommunications company, as the case may be;

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(b) to be issued in the holding company, be less than the aggregate of the net asset value of the postal enterprise and the telecommunications enterprise plus the net value of any assets transferred to the holding company by virtue of the provisions of section 4(4), an amount equal to that difference shall be credited to a loan account in favour of the State in the books of the holding company.

(3) Any loan account created in terms of subsection (2)(a) or (b) shall bear interest at such rate and be repayable at such time or times and by such instalments as may be determined -

(a) in the case of a loan account due to the holding company, by the directors of the holding company;

(b) in the case of a loan account due to the State, by the Minister.

(4) The shares issued in terms of subsection (1) shall be allotted and issued at the time and on the conditions which the Minister, with the concurrence of the Minister of Finance, may determine.

(5) The shares issued in terms of subsection (1) shall have such nominal value and shall be issued at such premium, if any, as the Minister, with the concurrence of the Minister of Finance, may determine and shall be issued as fully paid by the transfer to the successor company concerned of assets and liabilities with a net asset value equal to the nominal value of the shares plus any such premium and, if applicable, the amount credited to a loan account established in terms of subsection (2)(a) or (b).

(6) Any dividends received by the State in respect of shares in the holding company shall be paid into the State Revenue Fund.

(7) No stamp duty shall be paid by a successor company in **respect** of the issue of shares in terms of this **Act**.

(8) No money shall be paid by a successor company in terms of section 75 of the Companies Act in respect of any increase in the capital of such company.

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(9) The State shall not alienate any shares or rights to shares in the holding company, and **the** holding company shall not issue any **shares** in such **company** to any person other than the State-

(10) The holding company shall not alienate any shares or rights to shares in the postal company or the telecommunications company, and neither of those two companies shall issue any of its shares to any person other than the holding company.

CHAPTER 11  
STAFF MATTERS

Transfer to successor  
company.

6. (1) Any officer or employee of the department performing functions pertaining to the postal service or the telecommunications service, and who elects to become an employee of a successor company, shall, if he or she notifies the department in writing of his or her election prior to the transfer date, notwithstanding the provisions of the Public Service Act, 1980 (Act 2 of 1980), and without interrupting his or her service, from the transfer date become an employee in a similar post in the postal company, the telecommunications company or the holding company, as the case may be, subject to conditions of employment which shall not be less favourable than those applicable to him or her on the date immediately preceding the transfer date.

(2) If, for the purposes of subsection (1), the question arises whether a person performs functions pertaining to the postal service or to the telecommunications service, such question shall be decided by the Postmaster-General whose decision shall be final.

(3) For the purposes of the provisions of the Income Tax Act, 1981 (Act 24 of 1981), it shall be deemed that no change of employment took place when employment is taken up at a successor company by officers and employees of the department in terms of subsection (1).

(4) When an **officer** or employee of the department becomes an employee of a successor company in terms of subsection (1) -

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- (a) he or she shall retain all vacation and sick leave which on the date immediately preceding his or her employment by the successor company stands . to his or her credit with the department, including all monetary benefits attached thereto;
- (b) any disciplinary steps instituted or contemplated against such officer or employee in respect of alleged misconduct or improper conduct committed prior to his or her employment by the successor company, shall be disposed of or instituted in terms of the laws applicable to him or her before such employment;
- (c) he or she shall continue to be a member of the Government Institutions Pension Fund referred to in section 2(b) of the Pension Matters of Government Institutions Proclamation, 1989 (Proclamation AG. 56 of 1989) by virtue of his or her employment by the successor company.

(5) Each successor company shall for the purposes of the Rules of the Government Institutions Pension Fund referred to in subsection (4)(c), with effect from the transfer date, be deemed to be a statutory institution which has been admitted to membership of that Fund by the Board of Trustees of the said Fund.

CHAPTER 111  
MISCELLANEOUS

security for payment of  
deposits in Savings Bank.

7. The revenue and assets of the postal company and thereafter the State, shall serve as security for the repayment of deposits in the Savings Bank and for the payment of interest due thereon.

Financial statements of  
successor companies.

8. The Minister shall lay copies of the annual financial statements of each successor company upon the Table in the National Assembly within fourteen days after their approval by the board of directors of such company if the National Assembly is then in ordinary session or, if the National Assembly is not then in session, within fourteen days after the commencement of its first ensuing ordinary session.

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Repeal of laws and savings.

9. (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed or amended to the extent set out in the third column of that Schedule.

(2) Notwithstanding the repeal of the Post Office Act, 1958, sections 7, 78 and 106 thereof shall, subject to the provisions of subsection (3), continue to be of force until the date on which section 2 of the Posts and Telecommunications Act, 1992 comes into operation.

(3) In the application of the sections mentioned in subsection (2) the reference to Postmaster-General -

(a) in section 7, shall be construed as a reference to the Postal company;

(b) in subsections (1) and (I A) (except in relation to paragraph (b) thereof) of section 78, shall be construed as a reference to the telecommunications company;

(c) in subsection (IA) (in so far as it relates to paragraph (b) ) and subsections (I B) and (2) of section 78 and in section 106, shall be construed as a reference to the Namibian Communications Commission established by section 2 of the Namibian Communications Commission Act, 1992 (Act 4 of 1992).

Short title and commencement.

10. (1) This Act shall be called the Posts and Telecommunications Companies Establishment Act, 1992 and, except for the provisions of Chapter 1, shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be **fixed** under subsection (1) in respect of different sections.