

## INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 381

27 MARCH 2020



## INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

## UNRESERVED POSTAL SERVICES REGULATIONS, 2020

The Independent Communications Authority of South Africa ("the Authority") hereby publishes the Unreserved Postal Services Regulations in the Schedule, made in terms of section 21, read with section 61 (b) and (c) of the Postal Services Act, 1998 (Act No. 124 of 1998).

The Regulations are also available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at No. 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion between 09h00 and 16h00, Monday to Friday.

A handwritten signature in black ink, appearing to read 'Dr. Keabetswe Modimoeng', written over a horizontal line.

**DR KEABETSWE MODIMOENG**  
**ACTING CHAIRPERSON**  
**ICASA**

## THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

The Independent Communications Authority of South Africa has in terms of section 21, read with section 61 (b) and (c) of the Postal Services Act, 1998 (Act No. 124 of 1998), made the Regulations in the schedule.

### SCHEDULE

#### 1. DEFINITIONS

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

**“Agent”** means a person that has concluded a commercial agreement or similar instrument with the registered operator for the provision of unreserved postal services on behalf of the registered operator;

**“applicant”** means a person who has submitted an application for a registration of a registration certificate;

**“application fee”** means a once off non-refundable fee paid to the Authority to apply for registration to provide unreserved postal services;

**“Authority”** means the Independent Communications Authority of South Africa;

**“day”** means working day unless otherwise specified;

**“Franchisee”** is a business that has purchased the right to use a registrant trademarks, associated brands, and other proprietary knowledge to market and sell the same brand and uphold the same standards as the registrant;

**“Registered operator”** means a person issued with registration certificate to provide unreserved postal services as contemplated by section 20 of the Act;

**“Renewal fee”** means a non-refundable fee paid for the renewal of a registration certificate to provide unreserved postal services; and

**“the Act”** means the Postal Services Act, 1998 (Act No 124 of 1998).

## 2. PURPOSE OF THE REGULATIONS

- (1) The purpose of these Regulations is to set out:
  - (a) the procedure for the application and renewal of the registration certificate for the provision of unreserved postal services;
  - (b) the procedure for notification for change of information and the surrender of a registration certificate;
  - (c) fees payable with respect to the procedure referred to in paragraph (a);
  - (d) the validity period of the registration certificate;
  - (e) the obligation(s) on third party contracting; and
  - (f) penalties applicable for the contraventions of the Regulations.

## 3. SCOPE

These Regulations apply to a registered operator who provides unreserved postal services listed in Schedule 2 of the Act.

## 4. APPLICATION FOR A REGISTRATION CERTIFICATE

- (1) No person may operate unreserved postal services without a valid registration certificate issued by the Authority.
- (2) An application for a registration certificate must be made in writing and completed in accordance with **FORM A** of the Regulations.
- (3) An applicant must submit two (2) hard copies (including an original) of the application as well as an electronic copy of the application on a USB or a disc or via email to **upsapplications@icasa.org.za**.
- (4) An application must be accompanied by the following documents:

- (a) certified copies of the applicant's company registration documents;
  - (b) business profile;
  - (c) certified copies of the applicant's tax clearance certificate; and
  - (d) proof of payment of the application fee.
- (5) An application that is not accompanied by any of the documents listed in sub regulation (3) above is incomplete and will not be processed or dealt with by the Authority.
- (6) An application must be hand delivered or posted to the Authority's Head office or Regional offices by or before 16H00 during working days.
- (7) The Authority will inform an applicant of the outcome of its application in writing within thirty (30) days of the Authority receiving a complete application for a registration certificate.

## **5. MINIMUM OPERATING STANDARDS**

An application relating to unreserved postal services must include documents describing the following minimum operating standards with undertakings to:

- (a) have a track and trace system capable of locating the whereabouts of any item received or collected for delivery by the unreserved postal service;
- (b) provide standard delivery times for deliveries across borders and within the Republic;
- (c) have rates to be charged for delivery; and
- (d) clear items through customs where applicable.

## 6. CUSTOMER COMPLAINTS PROCEDURES

An applicant must provide a customer complaints procedure, which at a minimum, must include:

- (a) a designated contact point for all customers;
- (b) acknowledgement of receipt of a complaint within three (3) days upon receipt of a complaint in writing;
- (c) a timeframe of a maximum of fifteen (15) days within which to resolve a complaint;
- (d) information to the complainant of the right to escalate an unresolved complaint to the Authority within fifteen (15) days of receiving the said response; and
- (e) a record keeping mechanism of all complaints that the operator received for five (5) years.

## 7. APPLICATION FOR THE RENEWAL OF A REGISTRATION CERTIFICATE

- (1) An application for renewal of a registration certificate must be lodged with the Authority ninety (90) days before the expiry thereof.
- (2) An application for renewal of a registration certificate must be made in writing and completed in accordance with **FORM B** of these Regulations.
- (3) An applicant must submit two (2) hard copies (including an original) of the application for renewal as well as an electronic copy of the application on a USB or a disc or email to **upsapplications@icasa.org.za**.
- (4) An application for the renewal of a registration certificate must be accompanied by the following documents:
  - (a) certified copies of the company registration documents;
  - (b) business profile;
  - (c) certified copies of the tax clearance certificate; and
  - (d) Proof of payment of the renewal fee.

- (5) A renewal application that is not accompanied by any of the documents listed in sub-regulation (4) above is incomplete and will not be processed by the Authority.
- (6) Subject to sub-regulation (1), the Authority will, in writing, notify the applicant of its incomplete application, to which the applicant will have an opportunity to furnish the Authority with a complete application.
- (7) An application for the renewal of a registration certificate may be hand delivered or posted to the Authority's Head office or Regional offices on or before 16H00 during working days.
- (8) An application for renewal of a registration certificate will not be processed by the Authority where it is found that:
  - (a) an applicant has failed to pay its annual fee; and/or
  - (b) an applicant has been found guilty of non-compliance by the Complaints and Compliance Committee (CCC) and the applicant has not rectified the non-compliance with the Act or the Regulations, and/or has not paid the relevant fine imposed by the Authority.
- (9) If a registered operator fails to lodge an application to renew in terms of sub-regulation (1), such a certificate will expire at the end of its validity period.

## **8. CHANGE OF INFORMATION**

- (1) A notice of change of information must be submitted in the format as set out in **FORM C**.
- (2) A registrant must notify the Authority within fifteen (15) days from the date of a change of information with respect to the following:
  - (a) name of the Registrant;
  - (b) contact details, including the contact person;

(c) shareholding; and

(d) company physical and postal address.

## 9. FEES PAYABLE

- (1) The application and renewal fee must be paid upfront, that is prior to submitting an application to the Authority, by way of an electronic transfer or via a direct deposit into the Authority's bank account:

**Account name:** Independent Communications Authority of South Africa

**Bank name:** Nedbank

**Account number:** 1454090456

**Branch name:** Corporate client services JHB

**Branch Code:** 145405

**Reference:** Applicant's name

- (2) A non-refundable application fee of R3000.00 (Three thousand Rands) is payable on application for registration.
- (3) A registrant must pay an annual fee of R4000.00 (Four thousand Rands) each year for the duration of the registration certificate.
- (4) The annual fee is payable within sixty (60) days after the publication of inflation adjusted fees on the Authority's website or Government Gazette.
- (5) A non-refundable fee of R3000.00 (Three thousand Rands) is payable upon application for the renewal of a registration certificate.
- (6) No fee is payable in respect of notifications.

- (7) Interest on fees that are overdue will be charged in accordance with the section 80 of the Public Finance Management Act, Act 1 of 1999, as amended, at the applicable interest rate as published by the Minister of Finance.

## **10. FEES INCREASE**

- (1) The Authority will, on an annual basis, implement an automatic increase in the registration, renewal and annual fee by the Consumer Price Index ("CPI").
- (2) The applicable CPI, in terms of sub regulation (1), shall be the average of the previous calendar year as published by Statistics South Africa.
- (3) The Authority will on annual basis publish the inflation adjusted fees on the Authority's website and/or Government Gazette.

## **11. DURATION OF A REGISTRATION CERTIFICATE**

A Registration certificate is valid for a period of five (5) years from the date of issue.

## **12. THIRD PARTY CONTRACTING**

- (1) An unreserved postal service may be provided by an agent and/or franchisee of the registered operator, without such agent and/or franchisee being required to hold a registration certificate in terms of the Act.
- (2) The registered operator must on a quarterly basis notify the Authority of such agent and/or franchisee in writing by providing full business details of the agent and/or franchisee.
- (3) Any non-compliance with these Regulations, by an agent and/or franchisee, will be attributed to the registered operator.



### 13. SURRENDER OF A REGISTRATION CERTIFICATE

- (1) A registrant may not cease providing unreserved postal services prior to notification for the surrender of its registration certificate to the Authority.
- (2) A registrant may surrender its registration certificate by submitting a Notice of Surrender as set out in **Form D** of these Regulations.
- (3) The registrant that intends to surrender its registration certificate must take appropriate steps to inform its customers of the cessation of its unreserved postal services two (2) months prior to ceasing with the provision of the services.
- (4) All amounts payable in terms of these Regulations must be paid to the Authority within twenty-two (22) days of the date on which the service provided in terms of the registration certificate are discontinued, except where the Authority, upon the request by the registrant and on good course shown, extends the time in this regard.

### 14. CONTRAVENTIONS AND PENALTIES

- (1) Any person that contravenes regulation 4 (1) of the Regulations is guilty of an offence and subject, on conviction, to imprisonment not exceeding 5 (five) years and/or a fine not exceeding R250 000.00 (two hundred and fifty thousand Rands).
- (2) Any registered operator that contravenes regulations 8 (2) and 12 (2) of these Regulations is subject to a fine not exceeding R 250 000.00 (two hundred and fifty thousand Rands).
- (3) Any registered operator that contravenes regulation 9 (3) of these Regulations will have their registration certificate revoked by the Authority. Prior to confiscating the certificate, the Authority will adhere to the following process:
  - (a) give the operator an opportunity to provide reasons, within twenty (20) days of receipt of written correspondence from the Authority, why its certificate must not be revoked; and

(b) upon receipt of reasons, as per paragraph (a) above, the Authority will advise the registered operator of its decision.

- (4) Any person that contravenes regulation 13 (1) of the Regulations is guilty of an offence and subject, on conviction, to imprisonment for a period not exceeding six (6) months and/or a fine not exceeding R100 000.00 (One hundred thousand Rand).

## **15. SHORT TITLE AND COMMENCEMENT**

These Regulations are called the "Unreserved Postal Services Regulations, 2020" and shall come into operation ninety (90) days upon publication in the Government Gazette.

## **16. REPEAL OF REGULATIONS**

The Unreserved Postal Services Regulations, 2009 published in Government Gazette No. 32859 of 8 January 2010 are hereby repealed in their entirety.

**FORM A****APPLICATION FOR REGISTRATION TO OPERATE UNRESERVED POSTAL SERVICE IN TERMS OF SECTION 21 OF THE POSTAL SERVICES ACT 124 OF 1998**

- (a) Applicants must refer to the Act and any Regulations published under the Act regarding the requirements to be fulfilled by applicants.
- (b) Information required in terms of this Form which does not fit into the space provided may be contained in an appendix attached to the Form. Each appendix must be numbered with reference to the relevant part of the Form.
- (c) Where any information in this Form does not apply to the applicant, the applicant must indicate that the relevant information in the Form is not applicable.

**1. PARTICULARS OF THE APPLICANT**

- 1.1. Company Name: .....
- 1.2. Company registration number: .....
- 1.3. Company name as it is to appear on the certificate: .....
- 1.4. Provide details of each member of the applicant board of Directors as per below (additional pages may be affixed if required):
  - 1.4.1. Name: .....
  - 1.4.2. Nationality: .....
  - 1.4.3. Identification or passport number: .....
  - 1.4.4. Position: .....

**2. COMPANY DETAILS**

2.1. Company physical address (Head Office):

.....  
.....

2.2. Company postal address:

.....  
.....

2.3. Contact person details:

2.3.1. Name: .....

2.3.2. Telephone number: .....

2.3.3. Fax number: .....

2.3.4. Mobile number: .....

2.3.5. e-mail address: .....

**3. DESCRIPTION OF THE SERVICE:** (additional pages may be affixed if required).

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<b>Standard Operating Procedure:</b>	<b>Documents in relation to regulation 5 attached</b>  <b>Yes /No</b>	<b>Initials</b>
Track and trace system		
Standard delivery times		
Delivery Rates		
Customer complaints procedure		

3.1 Does the applicant intend to have a franchise or agents in the postal services sector (Y/N)?

3.1.1. If yes to the above, provide information as set out below:

3.1.1.1. Number of Franchisees and/or Agents per province.

<b>Province</b>	<b>Number of franchises</b>	<b>Number of agents</b>

<b>TOTAL</b>		

3.1.1.2. Provide business name and address of all Franchisees and Agents (list of franchise and agents must be attached).

**4. ANY OTHER INFORMATION THE APPLICANT DEEMS RELEVANT TO THE APPLICATION (attach additional pages if necessary)**

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**5. DOCUMENTS CHECKLIST**

<b>Documents attached</b>	<b>Yes /No</b>	<b>Initials</b>
Proof of payment of the application fee (see regulation 9 of the Regulations)		
Certified copies of the applicant’s tax clearance certificate		
Certified copies of the applicant’s company registration documents;		
Business profile including but not limited to the following: <ul style="list-style-type: none"> <li>• Overview of the company;</li> <li>• General historical background;</li> <li>• Postal sector background;</li> <li>• Primary business activity;</li> </ul>		

<ul style="list-style-type: none"> <li>• Number and breakdown of employees and management;</li> <li>• Ownership structure: Indicate if the applicant is part of a larger holding company or a group of companies and the identity thereof; and</li> <li>• An approximate annual turnover.</li> </ul>		
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I acknowledge that the Authority reserves the right to have any registration certificate issued pursuant to this application set aside should any material statement made herein, at any time, be found to be false.

Signed: .....

Applicant: .....

I certify that this declaration was signed and sworn to before me at..... on the ..... day of ..... 20...., by the deponent who acknowledges that he/she:

1. Knows and understands the contents hereof;
2. Has no objection to taking the prescribed oath or affirmation; and
3. Consider this oath or affirmation to be truthful and binding on his/her conscience.

.....  
 COMMISSIONER OF OATHS

Name: .....

Address: .....

Capacity: .....

**FORM B****APPLICATION FOR RENEWAL**

- (a) Applicants must refer to the Act and any Regulations published under the Act regarding the requirements to be fulfilled by applicants.
- (b) Information required in terms of this Form which does not fit into the space provided may be contained in an appendix attached to the Form. Each appendix must be numbered with reference to the relevant part of the Form.
- (c) Where any information in this Form does not apply to the applicant, the applicant must indicate that the relevant information in the Form is not applicable.

**1. PARTICULARS OF THE APPLICANT**

1.1 Company Name	
1.2 Registration Certificate Number	
1.3 Nature of services authorised to be provided in terms of the registration certificate	
1.4 Expiry date of the certificate	
1.5 Attach a copy of the registration certificate that is the subject of this application marked clearly as <b>appendix 1 of form B</b>	

**2. CONTACT PERSON DETAILS:**

2.1. Name: .....

2.2. Telephone number: .....

2.3. Fax number: .....

2.4. Mobile number: .....

2.5. e-mail address: .....



**3. BUSINESS PRESENCE**

3.1. Number of business outlets / branches: .....

3.2. Number of business outlets / branches per province.

Province	Number of outlets/ branches
<b>TOTAL</b>	

3.3. Number of Franchises/Agents .....

3.4. Number of franchises / agents per province.

Province	Number of franchises	Number of agents
<b>TOTAL</b>		

**4. Has the applicant been found guilty of contravening the Act or any related Legislation Y/N?**

If yes, provide details below

.....  
 .....  
 .....

**5. Any other information the applicant deems relevant to the application**

.....  
 .....  
 .....

**6. DOCUMENTS CHECKLIST**

Documents attached	Yes /No	Initials
• Certified copies of the applicant’s company registration documents;		
• Business profile;		
• Certified copies of the applicant’s tax clearance certificate; and		
• Proof of payment of the renewal fee (see regulation 9 of the Regulations).		

I acknowledge that the Authority reserves the right to have any registration certificate issued pursuant to this application set aside should any material statement made herein, at any time, be found to be false.

Signed: .....

Applicant: .....

I certify that this declaration was signed and sworn to before me at..... on the .....day of ..... 20..., by the deponent who acknowledges that he/she:

1. Knows and understands the contents hereof;
2. Has no objection to taking the prescribed oath or affirmation; and
3. Consider this oath or affirmation to be truthful and binding on his/her conscience.

.....  
COMMISSIONER OF OATHS

Name: .....

Address: .....

Capacity: .....

**FORM C****NOTICE OF CHANGE OF INFORMATION**

- (a) Registrants must refer to the Act and any Regulations published under the Act regarding the requirements to be fulfilled by Registrants.
- (b) Information required in terms of this Form which does not fit into the space provided may be contained in an appendix attached to the Form. Each appendix must be numbered with reference to the relevant part of the Form.
- (c) Where any information in this Form does not apply to the registrant, the registrant must indicate that the relevant information in the Form is not applicable.

**1. PARTICULARS OF THE REGISTRANT**

1.1. Company name	
1.2. Registration certificate number	
1.3 Attach a copy of registration certificate that is subject to this application, marked clearly as Appendix 1 of <b>FORM C</b>	

**2. CHANGE OF INFORMATION**

2.1 Indicate with an X whether the updated information relates to	
2.1.1. Name of the registrant	
2.1.2. Contact details	
2.1.2. Shareholding	
2.1.3. Company physical Address	
2.1.4. Company postal address	
2.1.5. Other (provide details)	

**3. NEW INFORMATION**

3.1. Registrant must provide information in this section <b>only</b> where they have indicated with an "X" above (section 2)	
3.1.1. Name of the registrant	
3.1.2. Contact details	
3.1.2.1. Name of contact person	
3.1.2.2. Telephone number	
3.1.2.3. Mobile number	
3.1.2.4. Fax number	
3.1.2.5. E-Mail address	
3.1.3. Shareholding	
3.1.4. Company physical Address	
3.1.5. Company postal address	
3.1.6. Other (provide details)	

I acknowledge that the Authority reserves the right to have any registration certificate issued pursuant to this application set aside should any material statement made herein, at any time, be found to be false.

Signed: .....

Applicant: .....

I certify that this declaration was signed and sworn to before me at..... on the .....day of ..... 20..., by the deponent who acknowledges that he/she:

1. Knows and understands the contents hereof;
2. Has no objection to taking the prescribed oath or affirmation; and
3. Considers this oath or affirmation to be truthful and binding on his/her conscience.

.....

COMMISSIONER OF OATHS

Name: .....

Address: .....

Capacity: .....

**FORM D****SURRENDER OF UNRESERVED POSTAL SERVICE  
CERTIFICATE**

- a) Registrants must refer to the Act and any Regulations published under the Act regarding the requirements to be fulfilled by applicants.
- b) Information required in terms of this Form which does not fit into the space provided may be contained in an appendix attached to the Form. Each appendix must be numbered with reference to the relevant part of the Form.
- c) Where any information in this Form does not apply to the registrant, the registrant must indicate that the relevant information in the Form is not applicable.

**1. PARTICULARS OF REGISTRANT**

1.1 Company name	
1.2. Company registration number	
1.3. Expiration date of the certificate	
1.4. Date on which surrender of the certificate is to take effect:	
1.5. Attach a copy of the certificate that is the subject of this notice marked clearly as <b>Appendix 1 of Form D.</b>	

**2. PARTICULARS OF THE DESIGNATED CONTACT PERSON**

2.1. Full name	
2.2. Position	
2.3. Telephone numbers	
2.4. E- mail address	

**3. REASONS FOR SURRENDER**

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**4. STEPS TO INFORM CUSTOMERS**

Provide details of the steps the registrant proposes to take to inform customers of the cessation of the unreserved postal services in respect of which the certificate was granted.

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**5. FEES PAYABLE**

Indicate the fees which will be due and payable by the date on which the surrender of the certificate is to take effect and, where possible, the amount of such fees.

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**6. GENERAL**

6.1. Provide details of any matter and undertakings which, in the registrant's view, the Authority should take note of.

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6.2. Attach a resolution authorising the person signing this notice marked clearly as Appendix 2 of Form D.

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.....

Signed .....(CERTIFICATE)

I certify that this declaration was signed and sworn to before me at .....  
on the ..... day of ..... 20 ..., by the deponent who acknowledged that  
he/she:

- 1. knows and understands the contents hereof;
- 2. has no objection to taking the prescribed oath or affirmation; and
- 3. consider this oath or affirmation to be truthful and binding on his/her conscience.

.....  
COMMISSIONER OF OATHS  
Name: .....  
Address: .....  
Capacity: .....



**Independent Communications Authority of South Africa**

350 Witch-Hazel Avenue, Eco Point Office Park

Eco Park, Centurion.

Private Bag X10, Highveld Park 0169

Telephone number: (012) 568 3000/1

# **REASONS DOCUMENT ON UNRESERVED POSTAL SERVICES REGULATIONS**

## **March 2020**

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## 1. Background and Process

- 1.1. On 28 September 2018 the Authority published a notice of its intention to conduct an inquiry into the effectiveness of the Regulations on Unreserved Postal Services, 2010 ("Regulations") in Government Gazette No. 32859, in terms of section 4B of the Independent Communications Authority of South Africa Act no. 13 of 2000 ("ICASA Act"). This was pursuant to a Discussion Document on Unreserved Postal Services ("Discussion Document") published in Government Gazette No. 41928.
- 1.2. Following the Discussion Document, on 13 March 2019 the Authority Published a Position Paper on Unreserved Postal Services ("Position Paper")<sup>1</sup>. The Position Paper also contained the findings of the inquiry into the effectiveness of the Regulations. The findings are that the Regulations are inefficient to address challenges of the unreserved postal services due to the following reasons:
  - 1.2.1. The registration process is inadequate for regulation of the unreserved postal sector;
  - 1.2.2. Fees payable are not applicable to the current environment; and
  - 1.2.3. The duration of the registration certificate is inadequate.
- 1.3. In light of the findings the Authority took a decision to review the Regulations and published the Unreserved Postal Services Draft Regulations ("Draft Regulations") on 27 September 2019 in Government Gazette No. 42725.
- 1.4. The Authority received submissions from Fastway Couriers ("Fastway"), South African Express and Parcel Association ("SAEPA") and Consumer Advisory Panel ("CAP") which all requested an opportunity to present in a public hearing.
- 1.5. On the 17th of January 2020, the Authority held public hearings. Post hearings, stakeholders were afforded an opportunity to submit additional information as identified in the hearings.

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<sup>1</sup> Government Gazette No. 42323 of 22 March, 2019.

1.6 The deadline for submission of additional information was 27 January 2020. Additional submissions were received from CAP, SAEPA, Fastway and Zuzile Consulting. The submission from Zuzile Consulting was received three (3) days beyond the closing date and was therefore not considered in the final Regulations. Following the consideration of the three submissions, the Authority has concluded the final Regulations.

1.7 This document sets out the Authority's reasons with respect to the Regulations

## 2. Submissions received on the draft Regulations and the Authority's response

### 2.1. Definitions

#### 2.1.1. Franchisee and Agent

##### 2.1.1.1. Submission received:

- 2.1.1.1.1. CAP proposes that the Authority insert the definitions of franchisee and agent as they are used in the Regulation.
- 2.1.1.1.2. CAP suggests that the Authority should consider the Consumer Protection Act as it defines the Franchise as a consumer and prescribes conditions under which the Franchisor-Franchisee relationship will succeed.
- 2.1.1.1.3. CAP further suggests that the definition of an Agent be extracted from the Notice in Respect of the Accounting Separation Regulations for Reserved Postal Services.
- 2.1.1.1.4. FASTWAY proposed a definition of an agent as "*a third party with whom a registered operator has contracted for the purpose of the Agent performing services contemplated in the Unreserved Postal Services on behalf of the Registered Operator*".

#### 2.1.1.2. **Authority's Decision**

After having considered the submissions, the Authority inserted the definition for a "franchisee" and "agent" in the Regulations to provide clarity to what these terms mean in these Regulations.

#### 2.1.2. **Franchise agreement**

##### 2.1.2.1. **Submission received**

2.1.2.1.1. CAP suggests that the definition of Franchise Agreement be inserted in order to harmonise the Regulations with the Consumer Protection Act and also to give guidance to what encompasses the full business details that the registered operator should provide as per Regulation 12(2) on Third Party Contracting in the Draft Regulations.

##### 2.1.2.2. **Authority's Decision**

The Authority decided to not include the definition of Franchise Agreement as it is not used in the Regulations. Further, the Authority does not have jurisdiction to regulate franchise agreements in the unreserved postal services sector.

#### 2.2. **Regulation 4: Application for registration Certificate**

##### 2.2.1. **Requirement to submit hard and electronic copy.**

##### 2.2.1.1. **Submission received:**

2.2.1.1.1. SAEPA proposes a process through which certificate applications are submitted electronically *via* an on-line portal, doing away with hard copy submissions. This would obviate the preparation and submission costs (printing and transport costs) associated with hard copy submissions.

### 2.2.1.2. **Authority's decision**

- 2.2.1.2.1. The Authority decided to retain the requirement to submit hard copies, however, extended the mechanism for electronic submissions to include an email as an accessible alternative.

### 2.2.2. **Documents to accompany the application**

#### 2.2.2.1. **Submission received:**

- 2.2.2.1.1. SAEPA submits that a full list of the information that the Authority requires in the business profile would provide more certainty to applicants in preparing their applications and reduce the administrative burden on the Authority that may arise as a result of incomplete or non-conforming applications.

- 2.2.2.1.2. Therefore SAEPA proposes instead that applicants should include in their registration applications, and as part of the business profile the following information set out in paragraph 8 of SAEPA's Additional Submissions and Representations dated 27 January 2020:

*"8.1 the applicant's full legal particulars, including full legal name, trading name, identification number, entity type, principal business address, and primary contact details including their e-mail address;*

*8.2 a brief description of the applicant's industry or sector;*

*8.3 a brief description of the applicant's core business, including a description of the geographic areas in which these services are provided. This should be limited to whether the applicant provides international, regional or local services or a combination of any of these;*

*8.4 the names of the applicant's directors and executive officers;*

*8.5 confirmation of the applicant's track and trace abilities insofar as it confirms locational tracking ability and final delivery status and signatory;*

*8.6 confirmation of the applicant's delivery packages with a brief description of each package;*

*8.7 a brief description of the applicant's customs support capabilities, if any. The description should merely reference whether the applicant provides customs brokerage or clearance services for their customers shipments."*

- 2.2.2.1.3. Fastway states that it would be in everyone's interest for there to be a clear outline in the new Regulations of ICASA's requirements of the content of a 'Business Profile'. This will provide certainty to Applicants as well as to the staff inside ICASA who are tasked with monitoring compliance with the application requirements.
- 2.2.2.1.4. Fastway submits that the contents of paragraphs 1,2,3 and 4 of Form A of the Draft Regulations should be used. In addition, the Fastway suggests that the Authority include:
- Number of years in business;
  - An approximate annual turnover: e.g <R1mp.a;>R1m p.a;
  - The Applicant's customer complaints procedure;
  - A question on if an Applicant is part of a larger holding company or group and the identity thereof; and
  - A question on whether the Applicant has insurance cover available for the liability for the loss or damage of parcels.
- 2.2.2.1.5. Fastway is of the view that Applicants with a turnover below R1m p.a should be exempted from payment of the registration and annual fees in order to ensure the continued viability of small operators.



2.2.2.1.6. However, Fastway does not believe inclusion of financial statements is necessary as it does not assist ICASA with enforcement of the regulations and would be a disclosure of highly confidential information.

### 2.2.3. **Authority's decision:**

2.2.3.1. The Authority has decided to give an indication of what a business profile should contain for application and renewal. The information that should be contained in the business profile includes proposals submitted by stakeholders.

2.2.3.2. The Authority does not seek to prescribe a rigid business profile. Applicants must include information that they deem relevant and that which may assist the Authority to understand its business. The information in the business profile is an addition to the information required in Form A.

2.2.3.3. The Business Profile should, amongst others, contain the following:

- Overview of the company;
- General historical background;
- Postal sector background;
- Primary business activity;
- Number and breakdown of employees and management;
- Ownership structure: Indicate if the applicant is part of a larger holding company or a group of companies and the identity thereof; and
- An approximate annual turnover.

## 2.3. **Regulation 5: Minimum Operating standards**

### 2.3.1. **Submission received**

2.3.1.1. SAEPA proposes the deletion of Draft Regulation 5 altogether and further proposes instead that that applicants should include in their registration applications, and as part of the business profile, a statement of their capabilities, which must disclose the details set

out at paragraphs 8.5 to 8.7 of SAEPA's Additional Submissions and Representations dated 27 January 2020.

### 2.3.2. **Authority's decision**

2.3.2.1 The Authority has decided to keep Regulation 5 to ensure registrants commit to minimum service standards that are transparent and predictable. This is to further ensure consumer protection against exploitative practices by registrants.

## 2.4. **Regulation 6: Customer Complaints procedure**

### 2.4.1. **Submission received**

2.4.1.1. Fastway submits that the requirement to provide a single point of entry for all customer complaints is not an optimal structure for the resolution of complaints, as there are some important practical aspects surrounding complaint resolution that should be considered when deciding on a complaint resolution process. Fastway is of the view that a customer's complaint or enquiry is best addressed by the regional depot with whom they do business.

2.4.1.2. SAEPA states that regulation 6 in the Draft Regulation, if passed, will oblige registrants to undertake to provide a customer complaints procedure, which must meet the minimum requirements set out in Draft Regulation 6(a) – (e).

2.4.1.3. SAEPA points out that the Authority has not previously held stakeholder consultations in respect of the proposed mandatory customer complaints procedure, to the best of SAEPA's knowledge. Therefore, SAEPA considers the Authority's rationale for this proposal to be unclear.

2.4.1.4. SAEPA is of the view that the terms and conditions of service in the unreserved postal are a matter that ought to be left for agreement between service providers and their customers and/or as provided for in any contract between the parties.

#### 2.4.2. **The Authority's decision**

- 2.4.2.1. The Authority has decided to keep regulation 6 as a mechanism for consumer protection and to provide certainty and clarity on consumer complaints. Regulation 6 will further enhance quality of service.
- 2.4.2.2. The Authority has decided to rephrase regulation 6 (1) (a) to clarify confusion of single point of entry by replacing it with single designated contact. A single designated contact can be an email or call centre number at any branch or depot as chosen by the Operator. The intention of regulation 6 is to ensure that customer complaints procedures are in place and easy to access.
- 2.4.2.3. The Authority has consulted on consumer protection issues through the Discussion Document and the Position Paper

#### 2.5. **Regulation 7: Application for the renewal of a registration certificate.**

##### 2.5.1. **Submission received:**

- 2.5.1.1. SAEPA submits that it is not clear whether registrants that hold valid registration certificates under the existing regulations will be required to apply for new certificates upon the promulgation of the Draft Regulations, or if they will simply have to submit renewal applications.

##### 2.5.2. **Authority's decision**

- 2.5.2.1. The regulations do not invalidate the current valid registration certificate. Any Operator holding a valid registration certificate is considered valid until the expiry date. Further, the Authority has removed reference to a transitional period.

## 2.6. Regulation 8: Change of information

### 2.6.1. Submission received:

2.6.1.1. SAEPA proposes an amendment to regulation 8(c) of the Draft Regulations to only require a registrant to notify the Authority of a change in its control, instead of shareholding. SAEPA suggests that control can then be defined to refer to control as it is understood or defined by the Companies Act, 2008 or the Competition Act.

### 2.6.2. The Authority's decision

2.6.2.1. The Authority decided to retain the requirement to submit notice of change of information of shareholding instead of control. It is important for the Authority to be notified of changes of shareholding as this will be a change to one of the required documents for application and renewal. Control is not defined by the Act.

## 2.7. Regulation 9: Fees Payable

### 2.7.1. Submission received

2.7.1.1. CAP is of the view that when stipulating the rate at which interest will be charged for late payments, there should be transparency in order to bring certainty and also to avoid charging exorbitant rates. CAP sites as an example, section 40 of the National Credit Act, which prescribes the method that is used to calculate the interest together with section 42 which sets the Maximum Prescribed Interest.

### 2.7.2. The Authority's decision

2.7.2.1. The Authority has included a clause that will provide clarity on the charged interest rate as per section 80 of the Public Finance Management Act, Act 1 of 1999, as amended.

## 2.8. Regulation 12: Third party contracting

### 2.8.1. Submissions received:

- 2.8.1.1. SAEPA submits that it is not clear in these circumstances whether the Authority will require notification of each agreement between the registrant and each person that conveys the items at some level of the supply chain or not. SAEPA accordingly submits that the Authority must have further stakeholder consultations on this clause.
- 2.8.1.2. SAEPA further submits that the Authority must in respect of this proposed regulation 12, provide its rationale as this will enable stakeholders to better understand the danger that this proposed regulation seeks to address, which is not immediately apparent to SAEPA.
- 2.8.1.3. Fastway submits that the current wording of regulation 12 of the Draft Regulations includes temporary contractors who are sometimes 'one-man shows' or individuals and places an unnecessary administrative burden on the operator to submit information.
- 2.8.1.4. Fastway submits it would be more efficient to require operators to provide business details to ICASA of its third parties only if they are providing services to the operator on a regular basis, for example, for more than 5 (five) business days in any calendar month.
- 2.8.1.5. Fastway is further of the view that the details of individuals providing services to registered operators on an adhoc basis should be exempted from this reporting.
- 2.8.1.6. Fastway also states that the details of third-party contractors that are already registered with ICASA should be exempted from this reporting. Fastway submits that alternatively, it would be more efficient to require registered operators to have a record-keeping mechanism for the safe-keeping of the details of all third parties to be retained for a period of a year. According to Fastway, this information should be available for inspection by ICASA if so required.

## 2.8.2. **The Authority's decision**

- 2.8.1.1. The Authority has decided to retain Regulation 12 to ensure that every operator involved in the provision of unreserved postal services is known to the Authority for sector intelligence and analysis. The Authority will further use the Third-Party list to follow up on unregistered operators that fulfil the criteria of being unreserved operators as per section 22 of Act.
- 2.8.1.2. The Third-Party list is also essential for the Authority to further enhance quality of service and compliance with requirements of the Act and other related legislation by ensuring non-compliance by an agent and/or franchisee, will be attributed to the registered operator.

## 2.9. **Regulation 14: Contraventions and Penalties**

### 2.9.1. **Submissions received:**

2.9.1.1. SAEPA submits that these provisions are draconian and disproportionate, particularly in an environment where ambiguity subsists in respect of the exact scope of what constitutes unreserved postal services.

2.9.1.2. SAEPA proposes that the Authority must engage with the Ministry to review the PSA's offence provisions insofar as they relate to imprisonment. In addition, it is unclear whether corporate entities will also be liable to imprisonment or if this will only be applicable to individual employees, and if so, the specific requirements or conduct that the individuals must engage in to be held criminally liable for the conduct of a corporate entity.

### 2.9.2. **Authority's decision**

2.9.2.1. The Authority reviewed the clauses on contraventions and penalties. The Authority believes that R250 000.00 (Two hundred thousand Rands) is a suitable amount to deter non-compliance.