

Return to Sender

MUNICIPALITIES AND THE POSTAL SERVICES ACT

The Postal Services Act (PSA) No. 24 of 1998 stipulates that delivery of “all letters, postcards, printed matter, small parcels...” is a reserved service which may only be performed by a licensed provider. Currently, the South African Post Office (SAPO) is the only licensed provider. The delivery of bills, statements of account, notices and such documents sent by municipalities to consumers of municipal services fall within the definition of reserved services. The implication is that municipalities are bound to use SAPO to deliver such items. Using any other unlicensed means would be in contravention of the PSA.

Background

In November 2007, the Postal Regulator issued a notice in national newspapers advising municipalities of their non-compliance with the provisions of the PSA. According to the notice, the Regulator, in cooperation with Salga, wished to sensitise municipalities to the requirements of the PSA. Apparently, several municipalities were not using SAPO to deliver statements of account and notices. Municipalities were resorting to alternative means for delivering mail to the public.

The Constitution empowers municipalities to impose rates on property and surcharges on fees for services provided by or on behalf of the municipality. In giving effect to this constitutional mandate, the Municipal Systems Act provides guidelines on how this power is to be administered. The Systems Act places a significant emphasis on customer care and transparency. Municipalities are required to adopt a credit control and debt collection policy detailing how the municipality will go about imposing such charges and collecting monies owed. The Systems Act requires, among other things, that municipalities *provide* persons liable for payment of such charges with “regular and accurate accounts”. The courts have also underlined the importance of members of the public being provided with an accurate picture of the debts owed for services and how they were incurred.

In addition, municipalities are permitted to terminate service delivery for non-payment of accounts. However, in order for a municipality to validly terminate such service it must have complied with its obligation to provide accounts and notices to the customer in accordance with the Systems Act and its own credit control and debt collection policy.

The problem

Although the Systems Act does not provide specific direction on how such accounts and notices are to be provided to customers, it is clear that municipalities have an obligation to make every reasonable attempt to ensure that the accounts and notices are received by the persons liable for payment. Therefore, they must use the most efficient and cost-effective

means to deliver these statements. However, the options open to them are constrained by other applicable law, specifically the PSA. Whether or not SAPO provides an adequate service in delivering municipal accounts is largely beyond the control of municipalities. However, the actual delivery of a municipal account to the correct account holder is a critical factor in a municipality’s ability to fulfil its obligation to ensure correct billing. The question therefore arises as to what municipalities should do if they are dissatisfied with the service provided by SAPO.

The solution?

At present, it would appear that the only option is for municipalities to make their concerns known to the postal regulator and SAPO and to engage with them to ensure that the service level is improved, if necessary. In fact, municipalities’ legislative obligation to make reasonable efforts to have statements of accounts and notices delivered to customers would necessitate such dialogue. Municipalities may not simply rely on the failure of SAPO to absolve themselves of their legislative obligation. They must be proactive in ensuring that the mandated means of delivering such statements meets the desired standards.

In this case, municipalities and Salga are in fact working with the Postal Regulator to resolve the issues and ensure that municipalities can comply with the PSA without falling short of their obligations under the Systems Act and the Constitution.

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Effective 1 January 2007 the Postal Regulator was moved from the Department of Communications to the Independent Communications Authority of South Africa – ICASA

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