

NO. 104 OF 1996: JUDICIAL MATTERS AMENDMENT ACT, 1996.

PRESIDENT'S OFFICE

No. 1902.
27 November 1996

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It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Currency and Exchanges Act, 1933, so as to effect a technical correction; to amend the Insolvency Act, 1936, so as to further define a certain expression; to amend the Magistrates' Courts Act, 1944, so as to further regulate the appointment of judicial officers; to abolish the Regional Divisions Appointments Advisory Board; and to delete an obsolete provision; to amend the Pension Funds Act, 1956, so as to effect a technical correction; to amend the Supreme Court Act, 1959, so as to regulate certain appeals anew; to amend the Justices of the Peace and Commissioners of Oaths Act, 1963, so as to extend the offices, the holders of which are ex officio justices of the peace; to amend the Maintenance Act, 1963, so as to further regulate the service of maintenance orders; to amend the Administration of Estates Act, 1965, so as to further regulate the acceptance of a will; to amend the Attorneys Act, 1979, so as to provide for the cession of a contract of service; and to make further provision for rules of court; to amend the Judges' Remuneration and Conditions of Employment Act, 1989, so as to further regulate the power of the Minister of Justice to make a certain regulation; to amend the Investigation of Serious Economic Offences Act, 1991, so as to make provision for preparatory examination procedures; and to regulate prosecution in criminal proceedings by the Director and officials of the Office for Serious Economic Offences; to amend the Attorney-General Act, 1992, so as to further regulate the delegation powers of an attorney-general; to amend the Criminal Law Second Amendment Act, 1992, so as to substitute certain references; to amend the Magistrates Act, 1993, so as to substitute an obsolete expression; to amend the Magistrates' Courts Amendment Act, 1993, so as to delete an obsolete provision; to amend the Promotion of National Unity and Reconciliation Act, 1995, so as to amend a definition; to further regulate the quorum for meetings of the Truth and Reconciliation Commission; to further regulate the granting of amnesty; and to further regulate the powers of the Commission with regard to investigations and hearings; to amend the Justice Laws Rationalisation Act, 1996, so as to provide for further transitional provisions; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 12 November 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 9 of Act 9 of 1933, as amended by section 6 of Act 27 of 1940, section 17 of Act 43 of 1941, section 26 of Act 36 of 1950, section I of Act 23 of 1987, section 1 of Act 48 of 1988, section 2 of Act 23 of 1996 and section 1 of Act 49 of 1996

1. Section 9 of the Currency and Exchanges Act, 1933, is hereby amended by the addition of the following subsection:

"(6) The Treasury may consider and grant or refuse any application to purchase foreign currency by utilising a computer system or other electronic device or apparatus capable of absorbing and processing data and, in accordance with instructions given by the Treasury, of making available information indicating the refusal or approval of that application, in the form of a document."

Amendment of section 35A of Act 24 of 1936, as inserted by section I of Act 32 of 1995

2. Section 35A of the Insolvency Act, 1936, is hereby amended by the substitution in subsection (1) for the definition of "market participant" of the following definition:

" 'market participant' means a stockbroker or a member as defined in section 1 of the Stock Exchanges Control Act, 1985, or a financial instrument principal or a financial instrument trader as defined in section I of the Financial Markets Control Act, 1989, or a client of such a stockbroker, member or financial instrument trader or any other party to a transaction;"

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986 and section 17 of Act 90 of 1993

3. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended-

(a) by the substitution for paragraph (aA) of subsection (1) of the following paragraph:

"(aA) The Minister may, in a particular case or generally and subject to such directions as he or she may deem fit, delegate the power conferred upon him or her by paragraph (a) to the Director-General or his or her department or another officer of that department with the rank of director or an equivalent or higher rank, in respect of a district, sub-district or regional division situated wholly or partly in an area for which a legislative assembly has been established under the National States Constitution Act, 1971 (Act No. 21 of 1971), to any officer of his department who holds the office of secretary or director of a department of the government of

the

area concerned or a magistrate at the head of a regional division or a magistrate with the rank of chief magistrate.";

(b) by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) Whenever by reason of absence or incapacity a magistrate, additional magistrate or assistant magistrate is unable to carry out

the

functions of his or her office or whenever such office becomes vacant, the Minister, or an officer in the Department of Justice or a magistrate at the head of a regional division or a magistrate with the

rank of chief magistrate authorized thereto in writing by the Minister, may appoint any other competent officer of the public service or any competent retired officer of the public service person to act in the place of the absent or incapacitated magistrate, additional magistrate or assistant magistrate, as the case may be, during such absence or incapacity or to act in the vacant office until the vacancy is filled: Provided that no person shall be appointed as an acting magistrate of a regional division unless he or she has satisfied all the requirements for the degree referred to in subsection (1) (b) or has passed an examination referred to in that subsection: Provided further that when any such vacancy has remained unfilled for a continuous

period

exceeding six months the fact shall be reported to the Public Service Commission Magistrates Commission established by section 2 of the Magistrates Act, 1993 (Act No. 90 of 1993).

(4) The Minister or an officer in the Department of Justice or a magistrate at the head of a regional division or a magistrate with the rank of chief magistrate authorized thereto in writing by the Minister, may appoint temporarily any competent person to act either generally or in a particular matter as magistrate of a regional

division

in addition to any magistrate or acting magistrate of that division or as additional or assistant magistrate for any district or sub-district in addition to the magistrate or any other additional or assistant magistrate."; and

(c) by the addition of the following subsection:

"(5) The Minister may, with the concurrence of the Minister of Finance, determine the remuneration and allowances and the method of calculation of such remuneration and allowances payable to a person appointed under subsection (3) or (4), if such person is not an officer of the public service."

Repeat of section 9bis of Act 32 of 1944

4. (a) Section 9bis of the Magistrates' Courts Act, 1944, is hereby repealed.

(b) Any matter before the Regional Divisions Appointments Advisory Board established in terms of section 9bis of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), which immediately before the commencement of this section was not yet disposed of by the Board, shall be continued and concluded in every respect as if this section had not been put into operation.

Amendment of section 114 of Act 32 of 1944, as amended by section 9 of Act 16 of 1959 and section 12 of Act 91 of 1977

5. Section 114 of the Magistrates' Courts Act, 1944, is hereby amended by the deletion of subsection (4).

Amendment of section 7E of Act 24 of 1956, as inserted by section 2 of Act 22 of 1996

6. Section 7E of the Pension Funds Act, 1956, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Sections 7A, 7B, 7C and 7D shall apply to all funds registered on, or after, a date 12 months after the date of commencement of the Pension Funds Amendment Act, 1995 (Act No. 22 of 1996)."

Substitution of section 21A of Act 59 of 1959, as inserted by section 22 of Act

7. The following section is hereby substituted for section 2]A of the Supreme Court Act, 1959:

"Powers of court of appeal in certain civil proceedings

21A. (1) When at the hearing of any civil appeal to the Appellate Division or any Provincial or Local Division of the Supreme Court the issues are of such a nature that the judgment or order sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

(2) (a) If at any time prior to the hearing of an appeal the Chief Justice or the Judge President, as the case may be, is prima facie of the view that it would be appropriate to dismiss the appeal on the grounds set out in subsection (1), he or she shall call for written representations from the respective parties as to why the appeal should not be so dismissed.

(b) Upon receipt of the written representations or, failing which, at the expiry of the time determined for their lodging, the matter shall be referred by the Chief Justice or by the Judge President, as the case may be, to three judges of the Division concerned for their consideration.

(c) The judges considering the matter may order that the question whether the appeal should be dismissed on the grounds set out in subsection (1) be argued before them at a place and time appointed, and may, whether or not they have so ordered-

(i) order that the appeal be dismissed, with or without an order as to the costs incurred in any of the courts below or in respect of the costs of appeal, including the costs in respect of the preparation and lodging of the written representations; or

(ii) order that the appeal proceed in the ordinary course.

(3) Save under exceptional circumstances, the question whether the judgment or order would have no practical effect or result, is to be determined without reference to consideration of costs.

(4) The provisions of subsections (2) and (3) shall apply with the necessary changes if a petition referred to in section 21(3) is considered."

Amendment of the First Schedule to Act 16 of 1963, as substituted by section 5 of Act 21 of 1967 and amended by section 3 of Act 55 of 1970, section 12 of Act 33 of 1974, section 1 of Act 110 of 1984, section 2 of Act 36 of 1986 and section 4 of Act 18 of 1996

8. The First Schedule to the Justices of the Peace and Commissioners of Oaths Act, 1963, is hereby amended by the substitution for the fourth item of the following item:

"Chief of the South African National Defence Force and Commissioned Officer a commissioned officer of the Permanent Force permanent force component of the South African National Defence Force and, while he or she renders any service, undergoes any training or performs any duty in pursuance of the Defence Act, 1957 (Act No. 44 of 1957), a commissioned officer of the part-time reserve component of the South African National

Defence Force."

Amendment of section 5 of Act 23 of 1963, as amended by section 2 of Act 39 of 1970 and section 2 of Act 2 of 1991

9. Section 5 of the Maintenance Act, 1963, is hereby amended by the substitution for subsection (9) of the following subsection:

"(9) A copy of an order made against any person in his or her absence in terms of subsection (7), shall be sent to him or her by registered post in the prescribed manner or be delivered or tendered to him or her by any maintenance officer or any, police officer or sheriff and the return of such officer or sheriff showing that such copy was sent, delivered or tendered to such person shall be deemed sufficient prima facie proof that such person was aware of the terms of such order: Provided that the court or the clerk of the court, as the case may be, shall, if there is reason to doubt whether the order sent, delivered or tendered has come to the actual knowledge of the person concerned, and in the absence of satisfactory evidence, treat such sending, delivery or tendering as invalid."

Amendment of section 8 of Act 66 of 1965, as amended by section 12 of Act 43 of 1992

10. Section 8 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subsection (4B) of the following subsection:

"(4B) The Master may for the purposes of this Act also accept a duplicate of the original will."

Substitution of section 10 of Act 53 of 1979, as amended by section 8 of Act 87 of 1989

11. The following section is hereby substituted for section 10 of the Attorneys Act, 1979:

"Cession of articles or contract of service

10. (1) Articles or a contract of service may with the consent of a principal and the candidate attorney concerned be ceded to any other principal willing to accept such cession.

(2) The society concerned may in the event of the death, mental illness, insolvency, conviction for crime, imprisonment for debt suspension, striking off the roll or discontinuance of practice of the principal under whom a candidate attorney is serving or the debarring

of

such principal from engaging or continuing to engage a candidate attorney, or any other cause, direct that the articles or the contract of service concerned be ceded to any other principal willing to accept such cession, and all service completed under the ceded articles or the contract of service shall be effectual for the purposes of this Act.

(3) Articles or a contract of service may be ceded under subsection (2) notwithstanding the fact that the principal who accepts the cession will, as a result of that acceptance, have more than three candidate attorneys in his or her employment.

(4) An agreement whereby articles or a contract of service are ceded shall within two months of the date on which the services of the candidate attorney concerned have been terminated with

the cedent, or within such further period as the court may for good cause allow, be lodged with the society of the province wherein service under the said articles or the said contract of service so ceded is to be performed, by the cessionary together with affidavits-

(a) by the cedent stating whether the provisions of this Act relating to service under articles of clerkship or a contract of service have been complied with during the whole term of service during which the candidate attorney concerned was in his or her service and the date on which the candidate attorney terminated his or her services with him or her; and

(b) by the cessionary stating the date on which the said candidate attorney assumed duty with him or her.

(5) The secretary of the law society referred to in subsection (4) shall on payment of such fee as is prescribed under section 80-

(a) examine the agreement and affidavits referred to in that subsection; and

(b) if he or she is satisfied that the cession is in order and that the council of the society has no objection, register the cession,

and shall advise the attorney and the candidate attorney concerned of such registration in writing by certified registered post.

(6) If articles or a contract of service are so ceded in terms of subsection (2), the agreement whereby the articles or the contract of service are so ceded shall be signed by the legal representative of the attorney concerned or the president or secretary of the society concerned as cedent, and a certificate of such legal representative, president or secretary containing the particulars referred to in subsection (4) (a), shall serve as a substitute for the affidavit referred to in subsection (4) (a)."

Amendment of section 80 of Act 53 of 1979, as amended by section 10 of Act 108 of 1984 and section 19 of Act 115 of 1993

12. Section 80 of the Attorneys Act, 1979, is hereby amended by the substitution for paragraph (d) of the following paragraph:

"(d) registration of a cession of articles of clerkship or a contract of service in terms of section 10(5);".

Amendment of section 82 of Act 53 of 1979

13. Section 82 of the Attorneys Act, 1979, is hereby amended by the substitution for paragraph (d) of the following paragraph:

"(d) the procedure to be followed and the information to be supplied to the court by any applicant for admission or readmission under this Act;".

Amendment of section 12 of Act 88 of 1989, as amended by section 9 of Act 10 of 1994

14. (a) Section 12 of the Judges' Remuneration and Conditions of Employment Act, 1989, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) the amounts which may be paid to acting judges in connection with the maintenance by them of their practices as advocates or attorneys; and".

(b) Paragraph (a) shall be deemed to have come into operation on 27 April 1994.

Amendment of section 5 of Act 117 of 1991

15. Section 5 of the Investigation of Serious Economic Offences Act, 1991, is hereby amended by the addition of the following subsections:

"(13) If the Director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection (1) (a), the Director may hold a preparatory investigation.

(14) The provisions of sections 5(2) to (10), inclusive, and 6 and 8 shall, with the necessary changes, apply to a preparatory examination referred to in subsection (13)."

Insertion of section 6A in Act 117 of 1991

16. The following section is hereby inserted in the Investigation of Serious Economic Offences Act, 1991, after section 6:

"Prosecution powers of Director

6A. (1) Subject to subsection (2), the Director or any person authorized thereto by him or her in writing may, for the purposes of criminal prosecution-

- (a) institute an action in any court in the Republic of South Africa; and
- (b) prosecute an appeal in any court in the Republic of South Africa emanating from criminal proceedings instituted by the Director or the person authorized thereto by him or her.

(2) The Director or any person authorized thereto by him or her shall exercise the powers referred to in subsection (1) after such powers have been delegated to the Director or authorized person concerned by the Attorney-General concerned in terms of section 6 of the Attorney-General Act, 1992 (Act No. 92 of 1992)."

Amendment of section 6 of Act 92 of 1992

17. Section 6 of the Attorney-General Act, 1992, is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) delegate to any person who has been admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964) the right to appear in any court in terms of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), subject to the control and directions of the attorney-general, authority to conduct on behalf of the State any prosecution in criminal proceedings in any court within the area of jurisdiction of such attorney-general, or to prosecute in any court on behalf of the State any appeal arising from criminal proceedings within the area of jurisdiction of such attorney-general;"

Amendment of section 13 of Act 126 of 1992

18. Section 13 of the Criminal Law Second Amendment Act, 1992, is hereby amended by the substitution for subparagraphs (i) and (ii) of the following subparagraphs, respectively:

"(i) of the South African Police Service as contemplated in section 5 of the Police Act, 1958 (Act No. 7 of 1958) the Constitution;

(ii) for which the South African National Defence Force may be employed as contemplated in section 3(2) of the Defence Act, 1957 (Act No. 44 of 1957) the Constitution,".

Substitution of expression in Act 90 of 1993

19. The Magistrates Act, 1993, is hereby amended by the substitution for the expression "Minister of State Expenditure", wherever it appears, of the expression "Minister of Finance".

Repeal of section 7 of Act 120 of 1993

20. Section 7 of the Magistrates' Courts Amendment Act, 1993, is hereby repealed.

Amendment of section 1 of Act 34 of 1995, as amended by section 1 of Act 87 of 1995

21. Section 1 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended-

(a) by the substitution in subsection (1) for the words following upon paragraph (b) of the definition of "gross violation of human rights" of the following words:

the
"which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date within or outside the Republic, and the commission of which was carried out, advised, planned, directed, commanded or ordered, by any person acting with a political motive;" and

(b) by the substitution for subsection (2) of the following subsection:

"(2) For the purposes of sections 10(1), (2) and (3) and 11 and Chapters 6 and 7 "Commission" shall be construed as including a reference to "committee" or "subcommittee", as the case may be, and "Chairperson", "Vice-Chairperson" or "commissioner" shall be construed as including a reference to the chairperson, vice-chairperson or a member of a committee or subcommittee, as the case may be."

Amendment of section 10 of Act 34 of 1995

22. Section 10 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) (a) The quorum for the first meeting of the Commission shall be two less than the total number of the Commission.

(b) The Commission shall determine the quorum for any of its further meetings."

Amendment of section 20 of Act 34 of 1995, as amended by section 9 of Act 87 of 1995

23. Section 20 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) The Committee of Commissioners shall forthwith by proclamation in the Gazette make known the full names of any person to whom amnesty has been granted, together with sufficient information to identify the act, omission or offence in respect of which amnesty has been granted."

Amendment of section 29 of Act 34 of 1995

24. Section 29 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended-

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) by notice in writing call upon any person to appear before the Commission and to give evidence or to answer questions relevant to the subject matter of the investigation or the hearing;" and

(b) by the substitution for subsection (5) of the following subsection:

"(5) No person other than a commissioner, a member of the staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information submitted at such investigation shall not be made public until the Commission determines otherwise or, in the absence of such a determination, until the article is produced at a hearing in terms of this Act, or at any proceedings in any court of law."

Amendment of section 15 of Act 18 of 1996

25. Section 15 of the Justice Laws Rationalisation Act, 1996, is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

"(2) When the operation of a law specified in Schedule 1 is made applicable to an affected territory by section 2 and a provision of such a law confers a power, jurisdiction or right, or imposes a duty or entrusts a function to the holder of an office, a body, an institution or any other authority appointed or established in terms of or under a law which has not been made applicable to such affected territory, such power, jurisdiction or right shall be exercised and such duty or function shall be performed by the holder of a corresponding office, or a corresponding body, institution or authority appointed or established for the purpose of exercising a corresponding power, jurisdiction or right, or performing a corresponding duty or function in terms of or under a law applicable to such affected territory.

(3) Any reference in a law specified in Schedule 1 to a duty, function, power, procedure, process, provision or any other act in terms of or under another law which, when the operation of the first-mentioned law is made applicable to an affected territory, has not been made applicable to such

affected territory, shall be construed as a reference to a duty, function, power, procedure, process, provision or act in terms of or under a corresponding law applicable to such affected territory.".

Short title and commencement

26. (1) This Act shall be called the Judicial Matters Amendment Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be fixed in respect of different provisions of this Act.