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THE PRESIDENCY

No. 21

11 January 2006

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

No. 22 of 2005: Judicial Matters Amendment Act, 2005.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 23 December 2005.)

ACT

To amend—

- e the Magistrates' Courts Act, **1944**, so **as** to provide for the disposal of part heard cases by **permanently** appointed magistrates who vacate the office of magistrate;
- e the Administration of Estates Act, **1965**, so **as** to amend the definition of "Master"; and to provide that the Chief Master is subject to the control, direction and supervision of the Minister;
- the Companies Act, **1973**, so as to effect a technical correction;
- the Criminal Procedure Act, **1977**, so **as to** effect a technical correction;
- e the Attorneys Act, **1979**, so **as to** allow a council to exempt an attorney from the attendance of a legal practice management course in certain circumstances;
- e the Right of Appearance in Courts Act, **1995**, so **as** to provide that an attorney that has been granted the right to appear in a High Court may do so in any court in the Republic;
- e the Special Investigating Units and Special Tribunals Act, **1996**, so **as** to provide for the delegation by the head of a Special Investigating Unit of his or her powers and functions in certain circumstances;
- the Maintenance Act, **1998**, so **as** to further regulate the appointment or designation of **officers** in the Department **as** maintenance investigators;
- e the Debt Collectors Act, **1998**, so **as** to amend the definition of "debt collector"; to correct an erroneous reference; to provide anew for the keeping of registers by the Debt Collectors Council; to provide for the cancellation of the registration of a debt collector; and to further regulate the provisions relating to trust accounts of debt collectors;
- e the Promotion of Administrative Justice Act, **2000**, so as to make provision for the publishing of a code of good administrative conduct by notice in the **Gazette**; and to extend the period of time within which the code of good administrative conduct must be made;
- e the Promotion of Equality and Prevention of Unfair Discrimination Act, **2000**, so as to extend the application of the Act expressly to include intersexed persons within the definition of sex;

- the Implementation of the Rome Statute of the International Criminal Court Act, 2002, so as to clarify the provision regarding the surrender of a person to the International Criminal Court; and
 - the Judicial Matters Second Amendment Act, 2003, so as to repeal a redundant provision;
- and to provide for matters connected therewith.

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

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, section 17 of Act 90 of 1993, section 3 of Act 104 of 1996, section 3 of Act 66 of 1998, section 1 of Act 62 of 2000 and section 1 of Act 28 of 2003

1. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended by the addition of the following subsection after subsection (6):

“(7) (a) A magistrate appointed in terms of subsection (1) who presided in criminal proceedings in which a plea was recorded in accordance with section 106 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, notwithstanding his or her subsequent vacation of the office of magistrate at any stage, dispose of those proceedings and, for such purpose, shall continue to hold such office in respect of any period during which he or she is necessarily engaged in connection with the disposal of those proceedings—

(i) in which he or she participated, including an application for leave to appeal in respect of such proceedings; and

(ii) which were not disposed of when he or she vacated the office of magistrate.

(b) The proceedings contemplated in paragraph (a) shall be disposed of at the court where the proceedings were commenced, unless all parties to the proceedings agree unconditionally in writing to the proceedings being resumed in another court mentioned in the agreement.

(c) If the magistrate contemplated in paragraph (a) has subsequently been appointed as a Constitutional Court judge or judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001)—

(i) he or she shall only be entitled to the benefits to which such a Constitutional Court judge or judge is entitled as contemplated in the Judges' Remuneration and Conditions of Employment Act, 2001, in respect of any period taken to dispose of the proceedings as contemplated in paragraph (a) and

(ii) the period taken to dispose of the proceedings as contemplated in paragraph (a) is deemed to be active service for purposes of the Judges' Remuneration and Conditions of Employment Act, 2001.

(d) If the magistrate contemplated in paragraph (a) has subsequently not been appointed as a Constitutional Court judge or judge as contemplated in paragraph (c), he or she is entitled to such benefits as determined by the Minister from time to time by notice in the *Gazette* at an hourly rate.

(e) A magistrate contemplated in paragraph (a) who is, in the opinion of the Minister—

(i) unfit to continue holding the office of magistrate for purposes of disposing of the proceedings in question; or

(ii) incapacitated and is not able to dispose of the proceedings in question due to such incapacity,

may be exempted by the Minister from the provisions of this subsection, after consultation with the Chief Justice.”.

Amendment of section 1 of Act 66 of 1965, as amended by section 1 of Act 54 of 1970, section 1 of Act 79 of 1971, section 1 of Act 49 of 1996, section 26 of Act 57 of 1988 and section 1 of Act 20 of 2001

2. Section 1 of the Administration of Estates Act, 1965, is hereby amended by the substitution for the definition of “Master” of the following definition:

“ ‘Master’, in relation to any matter, property or estate, means the Master, Deputy Master or Assistant Master of a High Court appointed under section 2, who has jurisdiction in respect of that matter, property or estate and who is subject to the control, direction and supervision of the Chief Master;”.

Amendment of section 2 of Act 66 of 1965, as amended by section 2 of Act 79 of 1971, section 35 of Act 47 of 1997, section 2 of Act 20 of 2001 and section 14 of Act 16 of 2003 5

3. Section 2 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) Subject to subsection (2) and the laws governing the public service, the Minister — 10

[(a)](i) shall appoint a Chief Master of the High Courts[, **who shall, as such, be the executive officer of the Master’s offices and exercise such supervision over all the Masters as may be necessary in order to bring about uniformity in their practice and procedure;** 15

[(b)](ii) shall, in respect of the area of jurisdiction of each High Court, appoint a Master of the High Court; and

[(c)](iii) may, in respect of each such area, appoint one or more Deputy Masters of the High Court and one or more Assistant Masters of the High Court, who may, subject to the control, direction and supervision of the Master, do anything which may lawfully be done by the Master. 20

(b) The Chief Master —

(i) is subject to the control, direction and supervision of the Minister;

(ii) is the executive officer of the Masters’ offices; and

(iii) shall exercise control, direction and supervision over all the Masters.” 25

Amendment of section 370 of Act 61 of 1973

4. Section 370 of the Companies Act, 1973, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) if the person so nominated was nominated as sole liquidator or if all the persons so nominated have not been appointed by him or her, appoint, in accordance with the policy determined by the Minister, as liquidator or liquidators of the company concerned any other person or persons not disqualified from being liquidator of that company.” 30

Amendment of section 276 of Act 51 of 1977, as amended by section 3 of Act 107 of 1990, section 41 of Act 122 of 1991, section 18 of Act 139 of 1992, section 20 of Act 116 of 1993, section 2 of Act 33 of 1997, section 34 of Act 105 of 1997 and section 5 of Act 55 of 2003 35

5. Section 276 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (3) for the proviso to paragraph (b) of the following proviso:

“: Provided that any punishment contemplated in this paragraph may not be imposed in any case where the court **[intends imposing]** is obliged to impose a sentence contemplated in section 51(1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997.” 40

Substitution of section 13B of Act 53 of 1979, as inserted by section 8 of Act 55 of 2003 45

6. The following section is hereby substituted for section 13B of the Attorneys Act, 1979:

“Certain attorneys to complete training in legal practice management

13B. (1) After the commencement of section 6 of the Judicial Matters [Second] Amendment Act, [2003] 2005, and subject to subsection (2), every attorney who, for the first time, **[practises as a partner in a firm of** 50

attorneys or who practises for his or her own account] is required to apply for a fidelity fund certificate in terms of section 42 must—

- (a) within the period contemplated in section 74(1)(dA); and
- (b) after payment of the fee prescribed in terms of section 80[(1)](i), complete a legal practice management course approved by and to the satisfaction of the council of the province in which he or she [practises] intends to practise. 5

(2) The relevant council may exempt an attorney, fully or partially and on such conditions as may be appropriate, from completing a legal practice management course to the extent that the attorney— 10

- (a) has a qualification that is similar to or of a higher standard than that attainable on completion of the course in question; or
- (b) has a level of experience that would render the completion of the course in question or any part of such a course unnecessary.”.

Amendment of section 4 of Act 62 of 1995 15

7. Section 4 of the Right of Appearance in Courts Act, 1995, is hereby amended by the addition of the following subsection:

“(4) An attorney who has been granted the right of appearance in terms of this section shall be entitled to appear in any court throughout the Republic.”.

Insertion of section SA in Act 74 of 1996 20

8. The following section is hereby inserted in the Special Investigating Units and Special Tribunals Act, 1996, after section 5:

“Delegation of powers and functions by Head of Special Investigating Unit

5A. (1) The Head of a Special Investigating Unit may, in writing— 25

- (a) delegate any power vested in and any function entrusted to him or her in terms of this Act to any member of that Special Investigating Unit; and

- (b) at any time revoke the delegation contemplated in paragraph (a).

(2) A delegation to a member in terms of subsection (1)(a)— 30

- (a) is subject to any limitations and conditions prescribed in terms of this Act;

- (b) is subject to any limitations and conditions that the Head of the Special Investigating Unit may impose;

- (c) may be either in respect of a specific person or in respect of the holder of a specific post in the Special Investigating Unit; and 35

- (d) does not divest the Head of the Special Investigating Unit of any responsibility concerning the exercise of the delegated power or the performance of the delegated function.

(3) The Head of a Special Investigating Unit may vary or revoke any decision taken by a member as a result of a delegation in terms of subsection (1)(a), subject to any rights that may have become vested as a consequence of such decision.”. 40

Amendment of section 5 of Act 99 of 1998

9. Section 5 of the Maintenance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) The Minister, or any officer of the Department of Justice and Constitutional Development authorised thereto in writing by the Minister, may—

- (a) subject to the laws governing the public service, appoint or designate one or more officers in the Department; or 50

- (b) appoint in the prescribed manner and on the prescribed conditions one or more persons,

as maintenance investigators of a maintenance court to exercise or perform any power, duty or function conferred upon or assigned to maintenance investigators by or under this Act.”.

Amendment of section 1 of Act 114 of 1998

10. Section 1 of the Debt Collectors Act, 1998, is hereby amended by the substitution in the definition of “debt collector” for paragraph (c) of the following paragraph: 5

“(c) a person who, as an agent or employee of a person referred to in paragraph (a) or (b) or as an agent of an attorney, collects the debts on behalf of such person or attorney, excluding an employee whose duties are purely administrative, clerical or otherwise subservient to the actual occupation of debt collector;” 10

Amendment of section 10 of Act 114 of 1998

11. Section 10 of the Debt Collectors Act, 1998, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) he or she has been found guilty in terms of section [18] 15 of improper conduct;” 15

Substitution of section 12 of Act 114 of 1998

12. The following section is hereby substituted for section 12 of the Debt Collectors Act, 1998:

“[Register] Registers

12. (1) The Council shall keep— 20

contemplated in section 11; and

(b) a register of the names and prescribed particulars of every debt collector whose registration has been cancelled at the debt collector’s 25

month by the Council.

(4) The registers contemplated in subsection (1)(a) and (b) shall be available for inspection by the public at the prescribed places and times. 40

13. The following section is hereby inserted in the Debt Collectors Act, 1998, after section 16:

- (a) in the prescribed manner cancel the registration of a debt collector upon the written request of the debt collector; and

Amendment of section 20 of Act 114 of 1998

14. Section 20 of the Debt Collectors Act, 1998, is hereby amended —

- (a) by the substitution for subsections (2) and (3) of the following subsections, respectively: 10

“(2) The money deposited in terms of subsection (1) shall, **together with the interest as determined under subsection (3),** be paid within a reasonable or agreed time to the person on whose behalf the money is received or held: Provided that a settlement account, containing a complete exposition of all credits and debits reflected in the said account shall be delivered to that person at least once a month. 15

(3) All interest, if any, on money deposited in terms of subsection (1) shall be paid, **[as] at the prescribed time and in the prescribed manner,** to the **[person on whose behalf the money was deposited] Council.**”; 20

- (b) by the insertion after subsection (3) of the following subsection: 20

“(3A) The Council may, in accordance with a tariff and procedure determined by the Council, reimburse the debt collector concerned for any bank charges or any portion thereof incurred by the debt collector in connection with the keeping of his or her trust account.”; and 25

- (c) by the addition of the following subsections: 25

“(6) A debt collector must, in the prescribed manner and period —

(a) cause his or her accounting records to be audited annually by a public accountant or auditor contemplated in the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991); and 30

(b) report to the Council thereon.

(7) No amount standing to the credit of a trust account contemplated in subsection (1) shall form part of the assets of a debt collector or may be attached on behalf of any creditor of such debt collector.

(8) If any debt collector —

(a) dies; 35

(b) becomes insolvent;

(c) in the case of a company or close corporation, is liquidated or placed under judicial management, whether provisionally or finally;

(d) has his or her registration withdrawn;

(e) is declared by a competent court to be incapable of managing his or her own affairs; or 40

(f) abandons his or her practice or ceases to practise, the Council must, where necessary, control and administer his or her trust account until the Master of the High Court having jurisdiction has, on application made by the Council or by a person having an interest in the trust account of that debt collector, appointed a *curator bonis* with such rights, duties and powers as the Master may deem fit to control and administer such account.”. 45

Substitution of section 10 of Act 3 of 2000

15. The following section is hereby substituted for section 10 of the Promotion of Administrative Justice Act, 2000: 50

“Regulations and code of good administrative conduct

- 10.** (1) The Minister must make regulations relating to—
- (a) the procedures to be followed by designated administrators or in relation to classes of administrative action in order to promote the right to procedural fairness; 5
 - (b) the procedures to be followed in connection with public inquiries;
 - (c) the procedures to be followed in connection with notice and comment procedures; and
 - (d) the procedures to be followed in connection with requests for reasons[; **and** 10
 - (e) **a code of good administrative conduct in order to provide administrators with practical guidelines and information aimed at the promotion of an efficient administration and the achievement of the objects of this Act].**
- (2) The Minister may make regulations relating to— 15
- (a) the establishment, duties and powers of an advisory council to monitor the application of this Act and to advise the Minister on—
 - (i) the appropriateness of publishing uniform rules and standards which must be complied with in the taking of administrative actions, including the compilation and maintenance of registers containing the text of rules and standards used by organs of state; 20
 - (ii) any improvements that might be made in respect of internal complaints procedures, internal administrative appeals and the judicial review by courts or tribunals of administrative action; 25
 - (iii) the appropriateness of establishing independent and impartial tribunals, in addition to the courts, to review administrative action and of specialised administrative tribunals, including a tribunal with general jurisdiction over all organs of state or a number of organs of state, to hear and determine appeals against administrative action; 30
 - (iv) the appropriateness of requiring administrators, from time to time, to consider the continuance of standards administered by them and of prescribing measures for the automatic lapsing of rules and standards; 35
 - (v) programmes for educating the public and the members and employees of administrators regarding the contents of this Act and the provisions of the Constitution relating to administrative action;
 - (vi) any other improvements aimed at ensuring that administrative action conforms with the right to administrative justice; 40
 - (vii) any steps which may lead to the achievement of the objects of this Act; and
 - (viii) any other matter in respect of which the Minister requests advice; 45
 - (b) the compilation and publication of protocols for the drafting of rules and standards;
 - (c) the initiation, conducting and co-ordination of programmes for educating the public and the members and employees of administrators regarding the contents of this Act and the provisions of the Constitution relating to administrative action; 50

- (d) matters required or permitted by this Act to be prescribed; and
- (e) matters necessary or convenient to be prescribed in order to—
- (i) achieve the objects of this Act; or
 - (ii) subject to subsection (3), give effect to any advice or recommendations by the advisory council referred to in paragraph (a).
- (3) This section may not be construed as empowering the Minister to make regulations, without prior consultation with the Public Service Commission, regarding any matter which may be regulated by the Public Service Commission under the Constitution or any other law.
- (4) Any regulation—
- (a) made under subsections (1)(a), (b), (c) and (d) and (2)(c), (d) and (e) must, before publication in the *Gazette*, be submitted to Parliament; and
 - (b) made under subsection [(1)(e) and] (2)(a) and (b) must, before publication in the *Gazette*, be approved by Parliament.
- (5) Any regulation made under subsections (1) and (2) or any provision of the code of good administrative conduct made under subsection (5A) which may result in financial expenditure for the State must be made in consultation with the Minister of Finance.
- (5A) The Minister must, by notice in the *Gazette*, publish a code of good administrative conduct in order to provide administrators with practical guidelines and information aimed at the promotion of an efficient administration and the achievement of the objects of this Act.
- (6) The [regulations] code of good administrative conduct contemplated in subsection [(1)(e)] 5A must, before publication in the *Gazette*, be approved by Cabinet and Parliament and must be made within [two years] 42 months after the commencement of this [Act] section.”.

Amendment of section 1 of Act 4 of 2000

16. Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “HIV/AIDS status” of the following definition:

“ **‘intersex’** means a congenital sexual differentiation which is atypical, to whatever degree;”; and
- (b) by the insertion in subsection (1) after the definition of “sector” of the following definition:

“ **‘sex’** includes intersex;”.

Amendment of section 10 of Act 27 of 2002

17. Section 10 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002, is hereby amended by the substitution in subsection (5) for the words following paragraph (c) of the following words:

- “the magistrate must **[issue an] order [committing]** that such person [to prison pending his or her surrender] be surrendered to the Court and that he or she be committed to prison pending such surrender.”.

Repeal of section 22 of Act 55 of 2003

18. Section 22 of the Judicial Matters Second Amendment Act, 2003, is hereby repealed.

Short title and commencement

- 19.** (1) This Act is called the Judicial Matters Amendment Act, 2005. 5
(2) Sections 1 and 10 to 14 come into operation on a date fixed by the President by proclamation in the Gazette.
(3) Section 6 comes into operation on the ~~date of~~ commencement of section 8 of the Judicial Matters Second Amendment Act, 2003 (Act No. 55 of 2003).
(4) Section 9 comes into operation on the date of commencement of section 5 of the 10 Maintenance Act, 1998 (Act No. 99 of 1998).