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REPUBLIC OF SOUTH AFRICA
SUPERIOR COURTS BILL

(Working Draft)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 52- 2003]

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.

B I L L

To rationalise, consolidate and amend the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa; to incorporate certain specialist courts into the High Court of South Africa; to make provision for the administration of the judicial functions of all courts; to make provision for the administrative functions and budgetary aspects relating to the functioning of all courts; to make provision for the making of rules for all courts; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS section 1 of the Constitution of the Republic of South Africa, 1996, provides that the supremacy of the Constitution and the rule of law form part of the founding values of the Republic;

AND WHEREAS section 165 of the Constitution provides that—

1. the judicial authority of the Republic is vested in the courts;
2. the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice;
3. no person or organ of state may interfere with the functioning of the courts;
4. organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts;
5. an order or decision by a court binds all persons to whom and all organs of state to which it applies;
6. the Chief Justice is the head of the judicial authority and exercises responsibility over the development and implementation of norms and standards for the exercise of the judicial functions of all courts; and
7. the Cabinet member responsible for the administration of justice exercises final responsibility over the administration and budget of all courts;

AND WHEREAS section 166 of the Constitution provides that the courts are—

1. the Constitutional Court;
2. the Supreme Court of Appeal;
3. the High Court of South Africa;
4. the magistrates courts; and
5. any other court established or recognised in terms of an Act of Parliament;

AND WHEREAS section 171 of the Constitution provides that all courts function in terms of national legislation, and their rules and procedures must be provided for in terms of national legislation;

AND WHEREAS section 180 of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution;

AND WHEREAS item 16(6)(a) of Schedule 6 to the Constitution provides that as soon as practical after the Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the Constitution;

AND NOTING that, with the advent of the new constitutional dispensation in 1994, the Republic inherited a fragmented court structure and infrastructure, which were largely derived from our colonial history and were subsequently further structured to serve the segregation objectives of the apartheid dispensation;

AND NOTING that, before the advent of the new constitutional dispensation in 1994, the lower courts were not constitutionally recognised as part of the judicial authority and were largely dealt with as an extension of the public service;

AND NOTING that, since the Constitution provides that the judicial authority is vested in all the courts, it is desirable to provide for a uniform framework for judicial management of the judicial functions of all courts, subject to the final responsibility of the Chief Justice;

AND NOTING that, since the Constitution provides that the Cabinet member responsible for the administration of justice exercises final responsibility over the administrative functions, including the budget, of all courts, it is desirable that such administrative functions be administered through a uniform framework in respect of all courts;

AND RECOGNISING that the rationalisation envisaged by item 16(6)(a) of Schedule 6 to the Constitution is an on-going process that is likely to result in further legislative and other measures in order to establish a judicial system suited to the requirements of the Constitution,

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

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CHAPTER 1

Introductory Provisions

Definitions

1. In this Act, unless the context otherwise indicates—

"Board" means the Advisory Board for Rules of Court established by section 42(1);

"business day" means a day that—

(i) is not a public holiday, Saturday, or Sunday; and

(ii) does not fall during a recess period of a Superior Court, as determined in terms of section X;

"civil case" includes any labour matter and any matter falling within the jurisdiction of a Special Division, and "civil proceeding" has a corresponding meaning;

"Commissioner" means the Commissioner for the South African Revenue Service referred to in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Department" means the Department responsible for the administration of justice;

"Director-General" means the Director-General of the Department;

"Division" means any General or Special Division of the High Court of South Africa, and includes any seat of a Division;

"full court", in relation to any Division, means a Court consisting of three judges;

"General Division" means a General Division of the High Court referred to in section 6(1);

"head of the Court" in relation to—

(i) the Constitutional Court, means the Chief Justice;

(ii) the Supreme Court of Appeal, means the President of that Court; and

(iii) any Division of the High Court, means the Judge President of that Division;

"High Court" means the High Court of South Africa;

"Judicial Service Commission" means the Judicial Service Commission referred to in section 178 of the Constitution;

"judicial officer" means any person referred to in section 174(1) of the Constitution;

"labour matter" means any justiciable matter, excluding any criminal proceedings, arising out of the application of—

(a) the Labour Relations Act, 1995 (Act No. 66 of 1995);

(b) the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

(c) the Unemployment Insurance Act, 1966 (Act No. 30 of 1966);

(d) the Skills Development Act, 1998 (Act No. 97 of 1998);

(e) the Employment Equity Act, 1998 (Act No. 55 of 1998);

(f) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

(g) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); and

(h) any other Act the administration of which has been assigned to the Cabinet member responsible for labour;

"lower court" means any court which is lower in status than the High Court and which is required to keep a record of its proceedings;

"Minister" means the Cabinet member responsible for the administration of justice;

"NEDLAC" means the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No 35 of 1994);

"plaintiff" includes any applicant or other party who seeks relief in civil proceedings;

"prescribed" means determined by regulation in terms of this Act;

"President" means the President of the Republic of South Africa;

"registrar" means the registrar of the Constitutional Court, the Supreme Court of Appeal or any Division of the High Court, as the case may be, and includes an assistant registrar;

"rules" means rules made under section 41;

"Special Division" means a Special Division of the High Court referred to in section 6(2);

"special member" means a special member of a Special Division referred to in section 8(3);

"Superior Court" means the Constitutional Court, the Supreme Court of Appeal and any Division of the High Court.

Objects and interpretation of Act

2. (1) The objects of this Act are—

(a) to consolidate and rationalise the laws pertaining to Superior Courts as contemplated in item 16 (6) of Schedule 6 to the Constitution;

(b) to bring the structure of the Superior Courts into line with the provisions of Chapter 8 and the transformation imperatives of the Constitution;

(c) to make provision for the adjudication of matters relating to competition appeals, electoral disputes, income tax appeals, labour disputes and land claims by the Superior Courts; and

(d) to make provision for the administration of the judicial functions of all courts, including governance issues, over which the Chief Justice exercises final responsibility, and the administrative functions, including the budget of all courts, over which the Minister exercises final responsibility.

(2) This Act must be read in conjunction with Chapter 8 of the Constitution, which contains the founding provisions for the structure and jurisdiction of the Superior Courts, for the appointment of judges of the Superior Courts and matters related to the Superior Courts.

Introduction of legislation dealing with court structures

3. Draft legislation providing for the establishment of any court of law, or any tribunal contemplated in section 34 of the Constitution, may be introduced in Parliament by the Minister only.

CHAPTER 2

Structure of Superior Courts

Constitution and seat of Constitutional Court

4. (1) (a) The Constitutional Court consists of the Chief Justice of South Africa, the Deputy Chief Justice of South Africa and nine other judges of the Constitutional Court.

(b) The seat of the Constitutional Court is in Johannesburg, but whenever it appears to the Chief Justice in consultation with the Minister that it is expedient to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place.

(2) The Deputy Chief Justice must—

(a) exercise such powers or perform such functions of the Chief Justice in terms of this or any other law as the Chief Justice may assign to him or her; and

(b) in the absence of the Chief Justice, or if the office of Chief Justice is vacant, perform the functions of the Chief Justice, as Acting Chief Justice.

Constitution and seat of Supreme Court of Appeal

5. (1) (a) The Supreme Court of Appeal consists of—

(i) the President of the Supreme Court of Appeal;

(ii) two Deputy Presidents of the Supreme Court of Appeal;

and

(iii) so many other judges as may from time to time be determined in accordance with the prescribed criteria, and approved by the President.

(b) Subject to section 9(1), the seat of the Supreme Court of Appeal is in Bloemfontein, but whenever it appears to the President of the Supreme Court of Appeal, in consultation with the Minister, that it is expedient to hold its sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, it may hold such sitting at that place.

(2) A Deputy President of the Supreme Court of Appeal must—

(a) exercise such powers or perform such functions of the President of the Supreme Court of Appeal in terms of this or any other law as he or she may assign to him or her; and

(b) in the absence of the President of the Supreme Court of Appeal, or if the office of President of the Supreme Court of Appeal is vacant, a Deputy President of the Supreme Court of Appeal, designated by the President, perform the functions of the President of the Supreme Court of Appeal, as Acting President of the Supreme Court of Appeal.

(3) (a) The President, after consultation with the Chief Justice and the Minister, must designate one of the Deputy Presidents of the Supreme Court of Appeal as being mainly responsible for assisting the President of the Supreme Court of Appeal with managing appeals in regard to labour matters.

(b) The President must, before designating the Deputy President referred to in paragraph (a), also consult with NEDLAC.

Constitution of High Court of South Africa

6. The High Court of South Africa consists of the General and Special Divisions referred to in sections 7 and 8.

Constitution and seats of General Divisions

7. (1) The General Divisions of the High Court are:

(a) Eastern Cape General Division.

(b) Free State General Division.

(c) KwaZulu Natal General Division.

(d) Limpopo General Division.

(e) Mpumalanga General Division.

(f) Northern Cape General Division.

(g) Northern Gauteng General Division.

(h) North West General Division.

(i) Southern Gauteng General Division.

(j) Western Cape General Division.

(2) Each General Division of the High Court—

(a) has one or more seats, as set out in Schedule 1; and

(b) consists of-

(i) a Judge President and one or more Deputy Judges President, as determined by the President, each with specified headquarters within the area under the jurisdiction of that Division; and

(ii) so many other judges as may from time to time be determined in accordance with the prescribed criteria, and approved by the President.

(3) Subject to subsection (4)—

(a) the area of jurisdiction of a General Division is as set out in Schedule 1; and

(b) the area under the jurisdiction of a General Division may comprise more than one or any part of more than one province.

(4) (a) If a General Division has a main seat only, the area of original and appeal jurisdiction of that Division comprises the whole area of jurisdiction as set out in Schedule 1.

(b) If a General Division has a main seat and one or more local seats—

(i) subject to paragraph (c), the area of original jurisdiction of each seat in that Division comprises the area of jurisdiction of that seat as set out in Schedule 1;

(ii) the main seat of that Division has concurrent appeal jurisdiction over the area of jurisdiction of any local seat of that Division;

(iii) the Judge President of that Division must compile a single court roll for that Division; and

(iv) the Judge President of that Division may deploy all the judges of that Division within the Division as he or she deems fit.

(c) Notwithstanding paragraph (b)(i), but subject to section 38, in the event of any uncertainty regarding which seat in a General Division has original jurisdiction in a particular matter, such a matter may be instituted in any seat in that Division which may have original jurisdiction.

(5) (a) Notwithstanding any provision of Schedule 1, the Northern Gauteng and Southern Gauteng General Divisions have concurrent jurisdiction in respect of the magisterial district of Randburg.

(b) Paragraph (a) shall lapse two years after this subsection comes into operation.

(6) If a judge of one General Division is to be temporarily deployed in another

General Division, such deployment must take place by way of an acting appointment in terms of section 175(2) of the Constitution.

(7) (a) Subject to paragraph (b), a Deputy Judge President of a Division must—

(i) exercise the powers or perform the functions of the Judge President in terms of this or any other law as the Judge President may assign to him or her; and

(ii) in the absence of the Judge President of that Division, or if the office of the Judge President is vacant, exercise the powers or perform the functions of the Judge President, as the Acting Judge President of that Division.

(b) If more than one Deputy Judge President is appointed in respect of a Division, the President must, after consultation with the Minister and the Chief Justice, designate one Deputy Judge President, as Acting Judge President of that Division, who must perform the functions of the Judge President in the circumstances contemplated in paragraph (a)(ii).

(8) Subject to section 9(1), the main and local seats of each General Division is as set out in Schedule 1, but whenever it appears to the Judge President of a General Division that it is expedient to hold a sitting for the hearing of any matter at a place elsewhere than at the seat of the Court, he or she may, in consultation with the Minister, hold such sitting at that place.

Constitution and seats of Special Divisions

8. (1) The Special Divisions of the High Court are the—

(a) Competition Appeals Special Division, seated in Cape Town;

(b) Electoral Matters Special Division, seated in Johannesburg;

(c) Income Tax Special Division, with seats in Bloemfontein, Cape Town, Durban, Grahamstown, Johannesburg, Kimberley, Port Elizabeth and Pretoria; and

(d) Land Claims Special Division, seated in Johannesburg.

(2) A Special Division—

(a) has jurisdiction throughout the territory of the Republic; and

(b) may, whenever it appears to the Judge President concerned, in consultation with the Minister, that it is expedient to hold sittings for the hearing of any matter at a place elsewhere than a seat of the Division, hold such sitting at that place.

(3) (a) The Competition Appeals Special Division consists of three or more judges of General Divisions, as the President may from time to time determine, designated by the President after consultation with the Chief Justice and the Minister, one of whom must be designated as the Judge President.

(b) The Electoral Matters Special Division consists of—

(i) a judge of the Supreme Court of Appeal, designated by the President after consultation with the Chief Justice and the Minister, as the Judge President;

(ii) two or more judges of General Divisions, as the President may from time to time determine, designated by the President after consultation with the Chief Justice and the Minister; and

(iii) two or more special members appointed by the President on the advice of the Judicial Service Commission and in accordance with the criteria and the procedure set out in Schedule 2.

(c) The Income Tax Special Division consists of—

(i) six or more judges of General Divisions, designated by the President after consultation with the Chief Justice and the Minister, one of whom must be designated as the Judge President; and

(ii) two or more special members, appointed by the President on the advice of the Judicial Service Commission in accordance with the criteria and the procedure set out in Schedule 2.

(d) The Land Claims Special Division consists of three or more judges of General Divisions, designated by the President after consultation with the Chief Justice and the Minister, one of whom must be designated as the Judge President.

Circuit Courts

9. (1) The President of the Supreme Court of Appeal must, in consultation with the Minister, by notice in the *Gazette* establish at least three circuit districts for the Court, called the Northern, Central and Southern districts, for the hearing of civil or criminal appeals emanating from the areas of jurisdiction of those districts, and may from time to time by like notice add to or alter such districts.

(2) The Supreme Court of Appeal must at least twice a year and at such times and places as may be determined by the President of the Supreme Court of Appeal, hear appeals in each district referred to in subsection (1).

(3) The Judge President of a General Division may by notice in the *Gazette* within the area under the jurisdiction of that Division establish circuit districts for the adjudication of civil or criminal matters, and may from time to time by like notice alter the boundaries of any such district.

(4) In each circuit district of a General Division there must be held at least twice a year and at such times and places as may be determined by the Judge President concerned, a court which must be presided over by a judge of that Division.

(5) A court referred to-

(a) in subsection (1), is called a circuit court of the Supreme Court of Appeal; and

(b) in subsection (4) is called a circuit court of the Division in question.

Appointment, remuneration and tenure of office of judges, acting judges and special members

10. (1) Judges and acting judges of the Superior Courts are appointed in accordance with the provisions of the Constitution, and receive such remuneration as determined under the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

(2) Any—

(a) Judge President of a Special Division; and

(b) judge of a Special Division,

may be appointed or designated by the President after consultation with the Chief Justice and the Minister for such fixed period as he or she determines at the time of the appointment or designation.

(3) Any person who has been appointed as an acting judge of a Superior Court, shall be deemed to have been so appointed also in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings—

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

(b) which has not yet been disposed of at the expiry of the period for which he or she was appointed.

(4) Any special member—

(a) must be appointed for such fixed term as determined by the President at the time of the appointment;

(b) must be paid such remuneration and allowances as the Minister may determine with the concurrence of the Cabinet member responsible for finance;

(c) may resign from office by tendering written notice of resignation to the President; and

(d) may on good cause shown be removed from office by the President after consultation with the Chief Justice and the Minister.

CHAPTER 3

Judicial administration of judicial functions of all courts, including governance issues and administration of administrative functions of courts, including finances of all courts

Part 1

Judicial administration of judicial functions of all courts, including governance issues

Judicial administration of judicial functions

11. (1) For the purpose of any consultation regarding any matter referred to in this section, the Chief Justice may convene any forum of judicial officers that he or she deems appropriate, but at least a third of the membership of any such forum must be women.

(2) The Chief Justice, as the head of the judicial authority as contemplated in section 165(6) of the Constitution, exercises responsibility over the development and implementation of norms and standards for the exercise of the judicial functions of all courts, other than the adjudication of any matter before a court of law.

(3) The Chief Justice must, subject to subsection (5), issue written protocols or directives, or give guidance or advice, to judicial officers—

(a) in respect of norms and standards for the performance of the judicial functions as contemplated in subsection (2); and

(b) regarding any matter affecting the—

(i) dignity;

(ii) accessibility; or

(iii) effectiveness, efficiency or functioning,

of the courts, and

each judicial officer must comply with each such directive or protocol.

(4) (a) Any function or any power in terms of this section, vesting in the Chief Justice or any other head of court, may be delegated as many times as is deemed necessary, to any other judicial officer.

(b) Subject to subsections (2) and (3), the management of the judicial functions of each court is the responsibility of the head of the court, including the head of each lower court as contemplated in section 1 of the Magistrates Act, 1993 (Act No. 90 of 1993).

(c) Subject to subsections (2) and (3), the Judge President of a General Division is also responsible for the co-ordination of the judicial functions of all lower courts falling within the jurisdiction of that Division.

(5) Any written protocol or directive in terms of subsection (3)—

(a) may only be issued by the Chief Justice, if it enjoys the majority support of a forum convened in terms of subsection (1), which forum must include all the heads of Superior Courts; and

(b) must be published in the *Gazette*.

Establishment and composition of Office of Chief Justice

12. (1) There is an Office of the Chief Justice comprising an Executive Secretary to the Chief Justice and the number of other personnel as determined from time to time by the Minister after consultation with the Chief Justice.

(2) The Executive Secretary and other personnel are officers in the Department.

(3) (a) The Executive Secretary is appointed by the Minister in consultation with the Chief Justice and at a post level of at least a Chief Director in the Department.

(b) The other personnel are appointed by the Director-General in consultation with the Chief Justice or any person designated by the Chief Justice for that purpose.

Functions of Office of the Chief Justice

13. (1) The Executive Secretary, under the control and direction of the Chief Justice or any judge designated by the Chief Justice, must subject to section 15—

(a) develop and maintain, in the Office of the Chief Justice, the capacity to—

(i) administer the responsibility over the judicial functions falling under the Chief Justice, as contemplated in section 165 of the Constitution and this Act, including the establishing of such capacity in the Superior Courts to undertake research as the Chief Justice deems fit and the compilation of periodical statistics relating to the functioning of the courts and the performance of judicial duties by the judicial officers;

(ii) participate in the compilation of the budgets of the courts by the Department; and

(iii) properly record the recess periods of the Superior Courts, and leave periods and any other absences from courts by all judicial officers;

(b) exercise responsibility over the Secretariat of the Judicial Service Commission; and

(c) generally, perform such administrative tasks related to the judicial functions of the Chief Justice under this Act or any other law as assigned by the Chief Justice from time to time.

(2) The other personnel of the Office of the Chief Justice must, under the control and direction of the Executive Secretary, assist the Executive Secretary in the performance of the functions referred to in subsection (1).

Access to courts, recess periods of Superior Courts and attendance at courts

14. (1) All courts—

(a) must be open to the public every business day; and

(b) may conduct business on any Saturday, Sunday or any public holiday as may be required from time to time.

(2) Each Superior Court will recess during specified periods in—

(a) June and July;

(b) December and January; and

(c) any other period,

as may be determined by the Minister after consulting the Chief Justice and the forum referred to in section 11(1) and having regard to the workload of the courts, the public need for convenient access to the courts, and the interests of justice.

(3) The purpose of recess periods is to enable a judge of a Superior Court to do research and to attend to outstanding or prospective judicial functions as may be assigned to him or her by the head of court.

(4) During each recess period, the head of each Court must ensure that an adequate number of judges are available in that court to deal with any judicial functions that may be required, in the interests of justice, to be dealt with during that recess period.

(5) Subject to subsections (1) to (4), the head of each Superior Court is responsible to—

(a) ensure that sufficient judges of that court are available to conduct the business of the court at all times that the court is open for business;

(b) issue directions to the judges of that court with respect to their attendance at the court and absences from the court during recess periods; and

(c) approve any extraordinary absence of a judge from the court, in accordance with the regulations; and

keep a register, in the prescribed manner and form, of vacation periods allocated to, or extraordinary absence approved for, a judge of that court.

(6) The head of each lower court is responsible to—

(a) ensure that sufficient judicial officers of that court are available to conduct the business of the court at all times that the court is open for business;

(b) issue directions to the judicial officers of that court with respect to their attendance at the court and absences from the court during business days; and

(c) in consultation with the Judge President of the General Division concerned, approve any extraordinary absence of a judicial officer from the court, in accordance with the regulations; and

keep a register, in the prescribed manner and form, of every vacation period allocated to, or extraordinary absence approved for, a judicial officer of that court.

(7) Vacation leave for judges of the Superior Courts must be provided for in terms of an Act of Parliament, but such provision must at least give a judge a choice between four weeks standard annual vacation leave, or a period of three and a half months for every period of four years' actual service completed by that judge.

Part 2

Administration of administrative functions of all courts, including the budgets, finances and financial accountability of all courts

Finances and accountability

15. (1) The Minister exercises authority over the administration and budget of all courts in accordance with

section 165 (7) of the Constitution.

(2) Expenditure in connection with the administration and functioning of all courts envisaged in section 166 of the Constitution, and the Board, must be defrayed from moneys appropriated by Parliament for this purpose to the Departmental vote in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) Monies appropriated by Parliament for this purpose—

(a) constitute earmarked funds on the Departmental vote; and

(b) may not be used by the Department for any other purpose without the approval of the Chief Justice and Treasury.

(4) Whenever an amount of monies referred to in subsection (3)(a) has been budgeted for the training of judicial officers, at least thirty per cent of such amount must be allocated for the training of women.

(5) The Minister must consult with the Chief Justice on the funds required for the administration and functioning of the Courts in the manner prescribed.

(6) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General of the Department—

(a) is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Courts and the Board; and

(b) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

Appointment of officers and staff of Superior Courts and Board

16. (1) (a) The Minister must, after consultation with the head of the Court concerned, appoint for the Constitutional Court, the Supreme Court of Appeal and each Division—

(i) a court manager; and

(ii) a registrar.

(b) The Minister may, after consultation with the head of the Court concerned, appoint in respect any Court or Division referred to in paragraph (a)-

(i) one or more assistant court managers;

(ii) one or more assistant registrars, including assistant registrars dealing specifically with labour matters; and

(iii) such other officers and staff as may be required for the administration of justice or the execution of the powers and authority of the court concerned.

(c) The Minister must, after consultation with the Chairperson of the Board, appoint a Secretary of the Board and may appoint such other officers and employees as may be required for the performance by the Board of its functions.

(d) Any person appointed in terms of paragraph (a), (b) or (c) is in the employ of the Department and is subject to the laws governing the public service.

(e) A court manager is the senior executive officer of the court where he or she has been appointed, and under the control and direction of the Director General of the Department, is responsible for the performance of the administrative functions relating to that court and exercises administrative control over the persons referred to in paragraphs (a)(ii) and (b), and performs such other functions as agreed to from time to time by the Minister and the Chief Justice.

(2) Whenever by reason of absence or incapacity any court manager, registrar or assistant registrar is unable to carry out the functions of his or her office, or if his or her office becomes vacant, the Minister may after consultation with the head of the court concerned, authorise any other competent officer of the public service to act in the place of the absent or incapacitated officer during such absence or incapacity or to act in the vacant office until the vacancy is filled.

(3) Any person appointed under subsection (1) may simultaneously hold more than one of the offices mentioned in that subsection.

(4) The Minister may delegate to an officer in the Department any of the powers vested in him or her by this section.

(5) Any of the powers or functions vested in the Minister or his or her delegate in terms of this section, must be exercised in accordance with a protocol prescribed by a regulation made under section 66.

CHAPTER 4

Manner of arriving at decisions in Superior Courts

Manner of arriving at decisions by Constitutional Court

17. (1) In accordance with section 167(2) of the Constitution, any matter before the Constitutional Court must be heard by at least eight judges.

(2) If, at any stage after a hearing has commenced, any judge of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, and—

(a) the remaining members of the court are not less than eight in number—

(i) such hearing must continue before the remaining judges of the court; and

(ii) the decision of the majority of the remaining judges of the court shall, if that majority is also a majority of the judges of the court before whom the hearing commenced, be the decision of the court; or

(b) the remaining members of the court are fewer than eight in number, the proceedings must be stopped and commenced *de novo*.

(3) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

Manner of arriving at decisions by Supreme Court of Appeal

18. (1) Proceedings of the Supreme Court of Appeal must ordinarily be presided over by five judges, but the President of the Supreme Court of Appeal may—

(a) direct that an appeal in a criminal or civil matter be heard before a court consisting of three judges; or

(b) whenever it appears to him or her that any matter should in view of its importance

be heard before a court consisting of a larger number of judges, direct that the matter be heard before a court consisting of so many judges as he or she may determine.

(2) (a) The majority of judges hearing any labour matter in the Supreme Court of Appeal must, for the purpose of that hearing, be judges whose names appear on the list of judges referred to in section 24.

(b) The court roll of the Supreme Court of Appeal must contain a separate portion dealing with all labour matters to be heard.

(c) If, during the course of the hearing of any matter which was not dealt with as referred to in paragraph (a), it becomes apparent that the matter concerned is or may be a labour matter and the names of the majority of judges hearing that matter do not appear on the list of judges referred to in section 24, the validity of the hearing or any ensuing judgment is not affected.

(3) The judgment of the majority of the judges presiding at proceedings before the Supreme Court of Appeal shall be the judgment of the court and where there is no judgment to which a majority of such judges agree, the hearing must be adjourned and commenced *de novo* before a new court constituted in such manner as the President of the Supreme Court of Appeal may determine.

(4) If at any stage after the hearing of an appeal has commenced a judge of the Supreme Court of Appeal is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises—

(a) the hearing must, where the remaining judges constitute a majority of the judges before whom the hearing was commenced, proceed before the remaining judges, and the decision of a majority of the remaining judges who are in agreement shall, if that majority is also a majority of the judges before whom the hearing was commenced, be the decision of the court; or

(b) in any other case, the appeal must be heard *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

(5) Two or more judges of the Supreme Court of Appeal, designated by the President of the Supreme Court of Appeal, have jurisdiction to hear and determine applications for interlocutory relief, including applications for condonation and for leave to proceed *in forma pauperis*, in chambers.

(6) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

Manner of arriving at decisions by General Divisions

19. (1) (a) Save as provided for in this Act or any other law, a General Division must be constituted before a single judge when sitting as a court of first instance for the hearing of any civil matter, but the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may at any time direct that any matter be heard by a full court consisting of not more than three judges, as he or she may determine.

(b) For the purpose of hearing any labour matter in a General Division—

(i) the judge hearing that labour matter; or

(ii) the majority of the judges hearing that labour matter,

as the case may be, must for the purpose of that hearing be a judge or judges whose names appear on the list of judges referred to in section 24.

(c) If, during the course of the hearing of any matter by a General Division, which was not dealt with as referred to

in paragraph (b), it becomes apparent that the matter concerned is or may be a labour matter and—

(i) the name of the judge hearing that matter does not appear; or

(ii) the names of the majority of judges hearing that matter do not appear, on the list referred to in section 24, the validity of the hearing or any ensuing judgment is not affected.

(d) The court roll of a General Division must contain a separate portion dealing with all labour matters to be heard.

(e) A single judge of a General Division may, in consultation with the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, at any time discontinue the hearing of any civil matter which is being heard before him or her and refer it for hearing to the full court of that Division as contemplated in paragraph (a).

(2) For the hearing of any criminal case as a court of first instance, a court of a General Division must be constituted in the manner prescribed in the applicable law relating to procedure in criminal matters.

(3) Except where it is in terms of any law required or permitted to be otherwise constituted, a court of a General Division must be constituted before two judges for the hearing of any civil or criminal appeal: Provided that the Judge President or, in the absence of both the Judge President and the Deputy Judge President, the senior available judge, may in the event of the judges hearing such appeal not being in agreement, at any time before a judgment is handed down in such appeal, direct that a third judge of that Division be added to hear that appeal.

(4) Save as otherwise provided for in this Act or any other law, the decision of the majority of the judges of a full court of a General Division is the decision of the court, and where the majority of the judges of any such court are not in agreement, the hearing must be adjourned and commenced *de novo* before a court consisting of three other judges.

(5) If at any stage during the hearing of any matter by a full court, any judge of such court is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, that hearing must—

(a) if the remaining judges constitute a majority of the judges before whom it was commenced, proceed before such remaining judges; or

(b) if the remaining judges do not constitute such a majority, or if only one judge remains, be commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

(6) The provisions of subsection (4) apply, with the changes required by the context, whenever in the circumstances set out in subsection (6) a hearing proceeds before two or more judges.

(7) During any recess period, one judge designated by the Judge President shall, notwithstanding anything contained in this Act or any other law, but subject to subsection (3), exercise all the powers, jurisdiction and authority of a General Division.

(8) No judge may sit at the hearing of an appeal against a judgment or order given in a case which was heard before him or her.

Manner of arriving at decisions in Competition Appeals Special Division

20. (1) The Judge President of the Competition Appeals Special Division must preside at proceedings of the Division or designate another judge of the Division to preside at particular proceedings of the Division.

(2) Subject to subsection (3), the Judge President must assign each matter before the Division to a court composed of three judges of the Division.

(3) The Judge President, or any other judge of the Division designated by the Judge President, may sit alone to consider an—

(a) appeal against a decision of an interlocutory nature, as prescribed by the rules;

(b) application concerning the determination or use of confidential information;

(c) application for leave to appeal, as prescribed by the rules;

(d) application to suspend the operation and execution of an order that is the subject of a review or appeal; or

(e) application for procedural directions.

(4) The decision of a judge sitting alone in terms of subsection (3), or of the majority of the judges hearing a particular matter, is the decision of the court.

(5) If a judge or any of the judges hearing a matter assigned in terms of subsection (2) is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, the Judge President must—

(a) direct that the hearing of that matter proceed before the remaining judge or judges to whom that matter was assigned; or

(b) terminate the proceedings before that court and constitute another court, which may include a judge to whom the matter was originally assigned, to hear the matter *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining judges or of the one remaining judge as the decision of the Court.

Manner of arriving at decisions in Electoral Matters Special Division

21. (1) Subject to subsection (2), any matter before the Electoral Matters Special Division must be heard by a court composed of three judges and two special members of the Division.

(2) The Judge President, or any other judge of the Division designated by the Judge President, may sit alone to consider an appeal against a decision of an interlocutory nature, as prescribed by the rules.

(3) If, at any stage after a hearing before a court of the Division has commenced, any member of that court is absent or unable to perform his or her functions, or if a vacancy among the members of the court arises, and—

(a) the remaining members of the court are not less than three in number—

(i) such hearing must continue before the remaining members of the court; and

(ii) the decision of the majority of the remaining members of the court shall, if that majority is also a majority of the members before whom the hearing commenced, be the decision of the court; or

(b) the remaining members of the court are fewer than three in number, the proceedings must be stopped and commenced *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the majority of the remaining members or of the one remaining member as the decision of the Court.

Manner of arriving at decisions in Income Tax Special Division

22. (1) Subject to subsections (2) and (4), the Judge President of the Income Tax Special Division must assign each matter before the Division to a court composed of a judge as presiding officer, a special member who is an accountant and a special member who is a representative of the commercial community: Provided that—

(a) in all cases relating to the business of mining such third member shall, if the Judge President of the court, the Commissioner or the appellant so desires, be a qualified mining engineer;

(b) where any such appeal relates to the valuation of immovable property, or of both movable and immovable property, such third member must, if the Judge President, the Commissioner or the appellant so desires, be a sworn appraiser who has skills or knowledge relating to the purpose for which the property is utilised; and

(c) when an appeal before the court involves a matter of law only or constitutes an application for condonation, the court consists of the Judge President or a judge of the Division assigned by the Judge President, sitting alone.

(2) Any question as to whether a matter for decision involves a matter of fact or a matter of law, as contemplated in subsection (1)(c), shall be decided by the Judge President or judge of the court sitting alone.

(3) The decision of—

(a) a judge sitting alone in terms of subsection (1)(c); or

(b) the majority of the members hearing a particular matter,

is the decision of the Court: Provided that a decision referred to in paragraph (b) must in all cases be supported by the judge in question.

(4) The Judge President of the Division may, where—

(a) the amount which is the subject of a dispute exceeds R50 million; or

(b) the Commissioner and the appellant agree thereto and have jointly applied to that Judge President,

direct that the court hearing that appeal consist of three judges of the Division and the special members contemplated in subsection (1).

(5) (a) If a special member of a court hearing a matter in terms of subsections (1) or (4) is unable to complete the proceedings in that matter, the matter must proceed before the judge or judges and the remaining special member.

(b) If the judge or both special members of a court hearing a matter in terms of subsection (1) is unable to complete the proceedings in that matter, the Judge President must terminate the proceedings before that court and constitute another court, which may include a judge or special member to whom the matter was originally assigned, to hear the matter *de novo*.

(c) If at any stage during the hearing of a matter in terms of subsection (4), one of the judges becomes unavailable to complete the proceedings in that matter, the hearing must proceed before the remaining judges and special members.

Manner of arriving at decisions in Land Claims Special Division

23. (1) (a) Save as otherwise provided for in this Act or the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), a court of the Land Claims Special Division must be presided over by a single judge of the Division for the

hearing of any matter, but the Judge President or, in the absence of the Judge President, the most senior available judge, may at any time direct that any matter be heard by a full court consisting of three judges.

(b) A single judge of the Division may, in consultation with the Judge President or, in the absence of the Judge President, the most senior available judge, at any time discontinue the hearing of any civil matter which is being heard before him or her and refer it for hearing to the full court of the Division as contemplated in paragraph (a).

(2) Judges of the Land Claims Special Division must be assisted at a hearing before any court of the Division by assessors in the circumstances prescribed by, and in accordance with, the provisions of section 28 of the Restitution of Land Rights Act, 1994.

(3) In the event of an equality of votes—

(a) at a hearing where one or more members of a court of the Division are assessors, the vote of the judge, or, if there is more than one judge, the vote of the majority of the judges, shall prevail; and

(b) at any other hearing, the hearing must be adjourned and commenced before a new court constituted in such manner as the Judge President may determine.

(4) If at any stage during the hearing of any matter where three judges are presiding, any judge of the court is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, the hearing must proceed before the remaining members of the court: Provided that such members must include at least one judge.

(5) If at any stage during the hearing of any matter an assessor who is a

member of a court is unavailable to complete the hearing, the presiding judge may direct—

(a) that the hearing proceed before the remaining member or members of the court; or

(b) that the hearing shall commence *de novo*, unless all the parties to the proceedings agree unconditionally in writing to accept the decision of the remaining member or members as the decision of the court.

List of judges in labour matters

24. (1) The Chief Justice must from time to time enter the names of judges of the Supreme Court of Appeal and the High Court on a list of judges for the hearing of labour matters, as contemplated in subsection (2).

(2) Any judge of the Supreme Court of Appeal or a Division of the Supreme Court may submit a written request to the Chief Justice to be placed on the list referred to in subsection (1).

(3) The name of a judge may be entered on the list referred to in subsection (1) if, after consultation with the Deputy President of the Supreme Court of Appeal referred to in section 5(3)(a), the Head of Court of the judge concerned (if applicable) and NEDLAC, the Chief Justice is satisfied that:—

(a) the judge has successfully completed a prescribed training course in labour matters at a prescribed institution; or

(b) the judge, on account of—

(i) previous experience as a judge or acting judge of any court dedicated to the adjudication of labour matters; or

(ii) proven expertise in the field of labour law matters,

has suitable knowledge of, and expertise in, labour matters, to preside over the adjudication of labour matters.

(4) The Chief Justice must enter the names of the judges referred to in section

68(1) and 68(3)(c) on the list referred to in subsection (1).

(5) (a) The Minister must cause the list referred to in subsection (1), as well as any changes thereto, to be published in the *Gazette*.

(b) The list must first be published within six months after the date of the commencement of this section, and at least once a year thereafter.

CHAPTER 5

Orders of constitutional invalidity, appeals and settlement of conflicting decisions

Referral of order of constitutional invalidity to Constitutional Court

25. (1) (a) Whenever the Supreme Court of Appeal, a Division of the High Court or any competent court declares an Act of Parliament, a provincial Act or conduct of the President invalid as contemplated in section 172(2)(a) of the Constitution, that court must, in accordance with the applicable rules of court, refer the order of constitutional invalidity to the Constitutional Court for confirmation.

(b) Whenever any person or organ of state with a sufficient interest appeals or applies directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court, as contemplated in section 172(2)(d) of the Constitution, the court must deal with the matter in accordance with the rules.

(2) If requested by the Chief Justice to do so, the Minister must appoint counsel to present argument to the Constitutional Court in respect of any matter referred to in subsection (1).

Appeals generally

26. (1) Subject to section 25(1), the Constitution and any other law—

(a) an appeal against any decision of a court of any Division or a court of a status similar to the High Court lies, upon leave having been granted to the Supreme Court of Appeal; and

(b) an appeal against any decision of a court of a General Division on appeal to it lies to the Supreme Court of Appeal upon special leave being granted by the Supreme Court of Appeal, and the provisions of section 27 apply with the necessary changes.

(2) (a) (i) When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone.

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

(b) If at any time prior to the hearing of an appeal the President of the Supreme Court of Appeal 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 ground set out in paragraph (a), he or she must call for written representations from the respective parties as to why the appeal should not be so dismissed.

(c) Upon receipt of the representations or, failing which, at the expiry of the time determined for their lodging, the President of the Supreme Court of Appeal or the Judge President, as the case may be, must refer the matter to three judges for their consideration.

(d) The judges considering the matter may order that the question whether the appeal should be dismissed on the ground set out in paragraph (a) 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) Notwithstanding any other law, no appeal lies from any judgment or order in proceedings in connection with an application—

(a) by one spouse against the other for maintenance *pendente lite*;

(b) for contribution towards the costs of a pending matrimonial action;

(c) for the interim custody of a child when a matrimonial action between his or her parents is pending or is about to be instituted; or

(d) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or about to be instituted.

Leave to appeal

27. (1) Leave to appeal may only be given where the judge or judges concerned are of the opinion that—

(a) (i) the appeal would have a reasonable prospect of success; or

(ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;

(b) the decision sought on appeal does not fall within the ambit of section 26(2)(a); and

(c) where the decision sought to be appealed does not dispose of all the issues in the case, the appeal would lead to a just and prompt resolution of the real issues between the parties.

(2) (a) Leave to appeal as contemplated in section 26(1)(a) may be granted by the judge or judges against whose decision an appeal is to be made or, if not readily available, by any other judge or judges of the same court or Division.

(b) If leave to appeal in terms of paragraph (a) is refused, it may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after such refusal, or such longer period as may on good cause be allowed, and the Supreme Court of Appeal may vary any order as to costs made by the judge or judges concerned in refusing leave.

(c) An application referred to in paragraph (b) must be considered by two judges of the Supreme Court of Appeal designated by the President of the Supreme Court of Appeal and, in the case of a difference of opinion, also by the President of the Supreme Court of Appeal or any other judge of the Supreme Court of Appeal likewise designated.

(d) (i) The judges considering the application may order that it be argued before them at a time and place appointed, and may, whether or not they have so ordered, grant or refuse the application or refer it to the court for consideration.

(ii) Where an application has been so referred to the court, the court may thereupon grant or refuse it.

(e) The decision of the majority of the judges considering the application, or the decision of the court, as the case may be, to grant or refuse the application shall be final: Provided that the President of the Supreme Court of Appeal may in exceptional circumstances, whether of his or her own accord or on application filed within one month of the decision, refer the decision to the court for reconsideration and, if necessary, variation.

(3) An application for special leave to appeal under section 26(1)(b) may be granted by the Supreme Court of Appeal on application filed with the registrar of that court within one month after the decision sought to be appealed against, or such longer period as may on good cause be allowed, and the provisions of subsection (2)(c) to (e) shall apply with the necessary changes.

(4) The power to grant leave to appeal—

(a) is not limited by reason only of the fact that the matter in dispute is incapable of being valued in money; and

(b) is subject to the provisions of any other law which specifically limits it or specifically grants or limits any right of appeal.

(5) Any leave to appeal may be granted subject to such conditions as the court concerned may determine, including a condition—

(a) limiting the issues on appeal;

(b) that the appellant pay the costs of the appeal; or

(c) that the appellant furnish security for the costs of the appeal in such an amount as the registrar may determine, and the court may fix the time within which the security is to be furnished.

(3) Subsection (2)(c), (d) and (e) apply with the necessary changes to any application to the Supreme Court of Appeal relating to an issue connected with an appeal.

Suspension of decision pending appeal

28. (1) Subject to subsections (2) and (3), and unless the court under the most exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.

(2) Subject to subsection (3), unless the court under the most exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.

(3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he, she or it will suffer irreparable harm if the court does not so order and that the other party will not suffer irreparable harm if the court so orders.

(4) If a court orders otherwise as contemplated in subsection (1)—

(i) the court must immediately record its reasons for doing so on the record;

(ii) the aggrieved party will have an automatic right of appeal to the next highest court;

(iii) the court hearing such an appeal must deal with it as a matter of extreme urgency; and

(iv) such order will be automatically suspended, pending the outcome of such appeal.

(5) For the purposes of subsections (1) and (2), a decision becomes the subject of an application for leave to appeal or of an appeal, as soon as an application for leave to appeal or a notice of appeal is lodged, in terms the applicable rules of court, with the registrar.

Powers of court on hearing of appeals

29. The Supreme Court of Appeal or a Division exercising appeal jurisdiction may, in addition to any power as may specifically be provided for in any other law—

(a) dispose of an appeal without the hearing of oral argument;

(b) receive further evidence;

(c) remit the case to the court of first instance, or the court whose decision is the subject of the appeal, for further hearing, with such instructions as regards the taking of further evidence or otherwise as the Supreme Court of Appeal or the Division deems necessary; or

(d) confirm, amend or set aside the decision which is the subject of the appeal and render any decision which the circumstances may require.

Settlement of conflicting decisions in civil cases

30. Whenever a decision on a question of law is given by a court of a Division which is in conflict with a decision on the same question of law given by a court of any other Division, the Minister may submit such conflicting decisions to the Chief Justice, who must cause the matter to be argued before the Constitutional Court or the Supreme Court of Appeal, as the case may be, in order to determine the said question of law for guidance.

CHAPTER 6

Provisions applicable to High Court only

Persons over whom and matters in relation to which General Divisions have jurisdiction

31. (1) A General Division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognizance, and has the power, subject to the direction of the Judge President concerned—

(a) to hear and determine appeals from all lower courts within its area of jurisdiction;

(b) to review the proceedings of all such courts;

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

(2) A General Division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other General Division.

(3) Subject to section 26 and the powers granted under section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), any General Division may—

(a) issue an order for attachment of property or arrest of a person to confirm jurisdiction or order the arrest *suspectus de fuga* also where the property or person concerned is outside its area of jurisdiction but within the Republic: Provided that the cause of action arose within its area of

jurisdiction; and

(b) where the plaintiff is resident or domiciled within its area of jurisdiction but the cause of action arose outside its area of jurisdiction, issue an order for the attachment of property or arrest of a person to found jurisdiction regardless of where in the Republic the property or person is situated.

(4) Notwithstanding any provision in this or any other law, any contractual obligation, term or provision which is in conflict with this section is null and void and is not enforceable.

Jurisdiction of Special Divisions

32. Subject to this Act and the Constitution—

(a) the Competition Appeals Special Division—

(i) has jurisdiction over the matters referred to in section 37 of the Competition Act, 1998 (Act No. 89 of 1998); and

(ii) is subject to such provisions as may specifically be applicable to the Division under that Act;

(b) the Electoral Matters Special Division—

(i) has jurisdiction over the matters referred to in section 20 of the Electoral Commission Act, 1996 (Act No. 51 of 1996); and

(ii) is subject to such provisions as may specifically be applicable to the Division under that Act;

(c) the Income Tax Special Division—

(i) has jurisdiction over the matters referred to in section 83 of the Income Tax Act, 1962 (Act No. 58 of 1962) ; and

(ii) is subject to such provisions as may specifically be applicable to the Division under that Act; and

(d) the Land Claims Special Division—

(i) has jurisdiction over the matters referred to in section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); and

(ii) is subject to such provisions as may specifically be applicable to the Division under that Act.

Grounds for review by General Division of proceedings of lower court

33. (1) The grounds upon which the proceedings of any lower court may be brought under review before a court of a General Division are—

(a) absence of jurisdiction on the part of the court;

(b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;

(c) gross irregularity in the proceedings; and

(d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

(2) This section does not affect the provisions of any other law relating to the review of proceedings in lower courts.

Judgment by default

34. A judgment by default may be granted and entered by the registrar of a Division in the manner and in the circumstances prescribed in the rules made in terms of section 41, and a judgment so entered is deemed to be a judgment of a court of the Division.

Time allowed for appearance

35. The time allowed for entering an appearance to a civil summons served outside the area of jurisdiction of the General Division in which it was issued shall be not less than—

(a) one month if the summons is to be served at a place more than 150 kilometres from the court out of which it was issued; and

(b) two weeks in any other case.

Circumstances in which security for costs shall not be required

36. If a plaintiff in civil proceedings in a General Division resides within the Republic, but outside the area of jurisdiction of that Division, he or she shall not by reason only of that fact be required to give security for costs in those proceedings.

Disposal of records and execution of judgments of Circuit Courts

37. (1) Within one month after the termination of the sittings of any Circuit Court, the registrar thereof must, subject to any directions of the presiding judge or judges, transmit all records in connection with the proceedings in that court to the registrar of the Supreme Court of Appeal or the General Division concerned, as the case may be, to be filed as records of that Court or Division.

(2) Any judgment, order or sentence of a Circuit Court may, subject to any applicable rules for the time being in force, be carried into execution by means of process of the Supreme Court of Appeal or the General Division concerned, as the case may be.

Removal of proceedings from one Division to another or from one seat to another in the same Division

38. (1) If any proceedings have been instituted in a Division or at a seat of a Division, and it appears to the court, in consultation with the Judge President concerned, that such proceedings—

(a) should have been instituted in another Division or at another seat of that Division; or

(b) would be more conveniently or more appropriately heard or determined—

(i) at another seat of that Division; or

(ii) in another Division,

that court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other Division or seat, as the case may be.

(2) An order for removal under subsection (1) must be transmitted to the registrar of the court to which the removal is ordered, and upon the receipt of such order that court may hear and determine the proceedings in question.

Prohibition on attachment to found jurisdiction or arrest where defendant resides within the Republic

39. (1) No attachment of person or property to found jurisdiction shall be ordered by a Division against a person who is resident in the Republic.

(2) No writ shall be issued out of any General Division in or in connection with civil proceedings instituted or to be instituted for the arrest of a person residing within the Republic to secure his or her appearance as a defendant in those proceedings by reason only of the fact that such person has departed or is about to depart to a place outside the jurisdiction of that Division but within the Republic.

CHAPTER 7

Rules of court

Definitions

40. In this Chapter, unless the context indicates otherwise—

"clerk of the court" means a person appointed as such in terms of section 13(1) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

"commissioner" means a commissioner referred to in section 57;

"committee" means a committee of the Board; and

"rule" means a rule of court as contemplated in section 171 of the Constitution.

Minister may make rules

41. (1) The Minister must, with a view to the efficient, expeditious and uniform administration of justice in the Superior Courts and the lower courts—

(i) on a regular basis review existing rules of court; and

(ii) after consideration of the advice of the Board as contemplated in section 42(6), make, amend or repeal rules for those courts regulating—

(a) the practice and procedure in connection with litigation, including the time within which and the manner in which appeals must be noted;

(b) the form, contents and use of process;

(c) the practice and procedure in connection with the service of process or other documents, including the issue of interrogatories;

(d) the practice and procedure in connection with the execution of process, including writs and warrants;

(e) the practice and procedure in connection with the reference of any matter to a referee, and the remuneration payable to any such referee;

(f) the compulsory examination by one or more registered medical practitioners of any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed and whose state of health is relevant for the determination of such damages or compensation, as well as the manner, time, place and responsibility for the cost of the examination, and the making available to the opposing party of any documentary report on the examination;

(g) the procedure at or in connection with any enquiry as to the mental state of any person, and the findings or orders which may be made or issued at any such enquiry;

(h) the appointment and admission of commissioners to take evidence and examine witnesses;

(i) the manner in which documents executed outside the Republic may be authenticated to permit of their being produced or used in any court or produced or lodged in any public office in the Republic;

(j) the appointment and admission of sworn translators;

(k) the duties of sheriffs and other officers of court;

(l) fees and costs, including the fees payable in respect of the service or execution of process (except subpoenas or warrants issued at the request of the State in criminal matters) or in respect of the summoning of persons to answer interrogatories;

(m) the manner of determining the amount of security in any case where it is required that security must be given, and the form and manner in which such security may be given;

(n) the hours during which the offices of registrars and clerks of the court must be open for official purposes;

(o) the manner of recording or noting evidence and proceedings;

(p) the custody and disposal of records or minutes of evidence and proceedings;

(q) the appointment of assessors in proceedings in lower courts;

(r) the tariff of fees chargeable by advocates, attorneys and notaries;

(s) the taxation of bills of costs and the recovery of costs; and

(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Superior Courts and the lower courts in civil as well as in criminal proceedings.

(2) (a) Different rules may be made in respect of—

(i) the various Superior Courts, including the various General and Special Divisions of the High Court, and the various lower courts in different magisterial districts; and

(ii) in respect of different kinds of proceedings.

(b) The Minister may determine that any rule shall be of force for a specified period or periods only.

(3) Rules relating to any Special Division must be made after consultation with the Minister responsible for the administering of any law specifically connected with the jurisdiction of that Special Division.

(4) The power to make, amend or repeal rules under subsection (1), includes the power to make, amend or repeal rules in order to give effect to the provisions of sections 2 and 3 of the Foreign Courts Evidence Act, 1962 (Act No. 80 of 1962).

(5) The power to make, amend or repeal rules under subsection (1), includes the power to make, amend or repeal rules in relation to the application of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), prescribing—

(a) the appointment of any person or body for the assessment of fees and costs, and the manner in which such fees and costs are to be assessed;

(b) measures aimed at avoiding circuitousness or multiplicity of actions;

(c) the practice and procedure for referring to arbitration any matter arising out of proceedings relating to a maritime claim, and the appointment, remuneration and powers of an arbitrator.

(6) (a) The Minister must cause every new rule and every amendment or repeal of a rule to be tabled in Parliament.

(b) No new rule or amendment or repeal of a rule commences unless—

(i) the Rules Board has been given a reasonable opportunity to comment thereon;

(ii) the Minister has considered the advice of the Rules Board;

(iii) it was tabled in Parliament; and

(iv) published in the *Gazette* at least one month before the day upon which such rule, amendment or repeal is determined to commence.

Establishment, composition and functions of Advisory Board for Rules of Court

42. (1) There is an Advisory Board for Rules of Courts, consisting of the following members appointed by the Minister, namely—

(a) a judge of the Constitutional Court;

(b) a judge of the Supreme Court of Appeal;

(c) a judge of the High Court;

(d) a Chief Magistrate;

(e) a Regional Court magistrate;

(f) a senior practising advocate;

(g) a senior practising attorney;

(h) a senior lecturer in law at a university in the Republic;

(i) three persons who are not ordinarily involved in the administration of justice; and

(j) an officer of the Department.

(2) The Minister must appoint the members referred to—

(a) in subsection (1)(a) to (e), in consultation with the Chief Justice; and

(b) in subsection (1)(f) to (h), after consultation with the Chief Justice and, in respect of—

(i) subsection (1)(f) and (g), after consultation with the advocates' and attorneys' professions, respectively; and

(ii) subsection (1)(h), after consultation with the deans of law.

(3) The Minister must, after consultation with the Chief Justice, designate a chairperson and a vice-chairperson of the Board from the members referred to in subsection (1)(a) to (e).

(4) The Minister may in respect of a member referred to in subsection (1)(f) to (i), appoint a person as an alternate member to act during the absence from any meeting of the Board of the member in respect of whom he or she is so appointed, in the place of that member.

(5) A member of the Board is appointed for a period of not more than three years, and any such appointment may be terminated at any time by the Minister, after consultation with the Chief Justice, if there are sound reasons for doing so.

(6) Any person whose period of office as a member of the Board has expired, may be reappointed.

(7) The functions of the Board are to advise the Minister on-

(a) the making and reviewing of rules of court, including the monetary jurisdiction limits of lower courts and the limitation of the costs of litigation; and

(b) any other matter referred to the Board by the Minister.

Meetings of Board

43. (1) Meetings of the Board must be held at the times and places determined by the chairperson or, if he or she is not available, by the vice-chairperson of the Board.

(2) The majority of the members of the Board constitute a quorum for a meeting.

(3) If the chairperson is absent from a meeting, the vice-chairperson must act as chairperson, and if both the chairperson and the vice-chairperson are absent, the members present must elect one of their number to preside at that meeting.

(4) The Board may regulate the proceedings at its meetings as it may think fit and must cause minutes to be kept of the proceedings.

(5) The decision of the majority of the members of the Board is the decision of the Board.

Committees of Board

44. (1) The Board may establish committees consisting of—

(a) such members of the Board as may be designated by the Board; and

(b) such other persons, if any, as the Board, in consultation with the Minister, may appoint, for the period

determined at the time of the appointment.

(2) The Minister may at any time extend the period of any appointment made under subsection (1)(b) or, if are sound reasons for doing so, terminate such appointment.

(3) The Board must designate a chairperson for every committee and, if the Board deems it necessary, a vice-chairperson.

(4) A committee must, subject to the directions and supervision of the Board, perform such functions of the Board as the Board may assign to it.

(5) On completion of all functions assigned to it in terms of subsection (4), a committee must submit a full report thereon to the Board, whereupon the committee automatically dissolves.

(6) The Board may at any time dissolve any committee.

(7) The provisions of section 43 apply mutatis mutandis to meetings of a committee.

Executive committee

45. (1) The Board may appoint an executive committee of the Board consisting of the chairperson, the vice-chairperson and such other members of the Board as may be determined by the Board.

(2) The chairperson of the Board is the chairperson of the executive committee.

(3) The executive committee is responsible for the day to day management of the functions of the Board and, in urgent and exceptional cases, it may with regard to any matter referred to in section 41(1)(a) to (t) inclusive, or any other matter entrusted to the Board, formulate and adopt a draft resolution, which becomes a decision of the Board when a document setting out that draft resolution has been submitted to all members of the Board and has been approved by the majority of such members.

(4) The Minister may in his or her discretion determine any matter which may not be dealt with under this section.

Subcommittee on Rules for Labour Matters

46. (1) The Board has a Subcommittee on Rules for Labour Matters, whose purpose is to make recommendations to the Board on rules of court for the Supreme Court of Appeal and the General Divisions of the High Court when they deal with labour matters.

(2) The Subcommittee referred to in subsection (1) consists of—

(a) the Deputy President of the Supreme Court of Appeal: Labour Matters, who is the chairperson of the Subcommittee;

(b) a Judge, whose name appears on the list referred to in section 24(1), as the deputy chairperson of the Subcommittee, appointed by the Minister after consultation with the Chief Justice, for the period determined at the time of the appointment;

(c) the following persons appointed by the Minister for a period of three years, acting after consultation with NEDLAC:

(i) a senior practising advocate with knowledge, experience and expertise in labour law;

(ii) a senior practising attorney with knowledge, experience and expertise

in labour law;

(iii) a person who represents the interests of employees;

(iv) a person who represents the interests of employers; and

(v) a person who represents the interests of the State.

(3) Any person referred to in subsection (2)(b) or (c) may be re-appointed to the Subcommittee.

(4) The Subcommittee must, when necessary, submit recommendations to the Board in the form of draft rules, that is either new rules, rules amending existing rules or measures repealing existing rules, in order to regulate the conduct of proceedings in the Supreme Court of Appeal and the High Court when they deal with labour matters, including—

(a) the process by which proceedings are brought before those courts, and the form and content of that process;

(b) the period and process for noting appeals;

(c) the taxation of bills of costs;

(d) after consulting with the Cabinet member responsible for finance, the fees payable and the costs and expenses allowable in respect of the service or execution of any process of those courts, and the tariff of costs and expenses that may be allowed in respect of that service or execution; and

(e) all other matters incidental to performing the functions of the courts in question, including any matters not expressly mentioned in this subsection that are similar to matters in respect of which the Minister may make rules in terms of section 41.

(5) Section 43 applies, with the changes required by the context, to meetings and decisions of the Subcommittee.

Reports of Board

47. The Board must submit a full report to the Minister—

(a) regarding each function of the Board or a committee, on completion thereof;

(b) annually, on the date determined by the Minister from time to time, regarding all the functions of the Board and its committees during the period determined by the Minister.

Remuneration and expenses of members of Board

48. (1) A member of the Board or a committee who is a judge of a Superior Court or a magistrate is entitled to such allowance for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as such a member, as the Minister with the concurrence of the Cabinet member responsible for finance may determine.

(2) A member of the Board or of a committee, other than a judge or a magistrate, who is not subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), is entitled to such remuneration, including reimbursement for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as such a member, as the Minister with the concurrence of the Cabinet member responsible for

finance may determine.

CHAPTER 8

General provisions

Part 1

Nature of courts

Nature of courts and seals

49. (1) Every Superior Court is a court of record.

(2) Every Superior Court must have for use as occasion may require, a seal of such design as may be prescribed by the President by proclamation in the Gazette.

(3) The seal of a Superior Court must be kept in the custody of the Registrar.

Proceedings to be carried on in open court

50. Save as is otherwise provided for in this Act or any other law, all proceedings in any Superior Court must, except in so far as any such court may in special cases otherwise direct, be carried on in open court.

More than one court may sit at the same time

51. The Supreme Court of Appeal and any Division may at any time sit in so many courts constituted in the manner provided for in this Act or any other applicable law as the available judges may allow.

Part 2

Adducing of evidence and procedural matters

Certified copies of court records admissible as evidence

52. Whenever a judgment, order or other record of any Superior Court is required to be proved or inspected or referred to in any manner, a copy of such judgment, order or other record duly certified as such by the registrar of that court under its seal shall be *prima facie* evidence thereof without proof of the authenticity of such registrar's signature.

Manner of securing attendance of witnesses or production of any document or thing in proceedings and penalties for failure

53. (1) A party to proceedings before any Superior Court in which the attendance of witnesses or the production of any document or thing is required may procure the attendance of any witness or the production of any document or thing in the manner provided for in the rules of that court.

(2) Whenever any person subpoenaed to attend any proceedings as a witness or to produce any document or thing—

(a) fails without reasonable excuse to obey the subpoena and it appears from the return of the person who served such subpoena, or from evidence given under oath, that—

(i) the subpoena was served upon the person to whom it is directed and that his or her reasonable expenses calculated in accordance with the tariff framed under section 34(1) have been paid or offered to him or her; or

(ii) he or she is evading service; or

(b) without leave of the court fails to remain in attendance,

the court concerned may issue a warrant directing that he or she be arrested and brought before the court at a time and place stated in the warrant or as soon thereafter as possible.

(3) A person arrested under any such warrant may be detained thereunder in any prison or other place of detention or in the custody of the person who is in charge of him or her, with a view to securing his or her presence as a witness or production of any document or thing at the proceedings concerned: Provided that any judge of the court concerned may release him or her on a recognisance with or without sureties to attend as a witness or to produce any document or thing as required.

(4) Any person subpoenaed to attend any proceedings as a witness or to produce any document or thing who fails without reasonable excuse to obey such subpoena, is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

(5) If a person who has entered into any recognisance in terms of subsection (3) to attend such proceedings as a witness or to produce any document or thing fails without reasonable excuse so to attend or to produce such document or thing, he or she forfeits his or her recognisance and is guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months.

Manner in which witness may be dealt with on refusal to give evidence or produce documents

54. (1) Whenever any person who appears either in obedience to a subpoena or by virtue of a warrant issued under section 32 or who is present and is verbally required by the Superior Court concerned to give evidence in any proceedings—

(a) refuses to take an oath or to make an affirmation;

(b) having taken an oath or having made an affirmation, refuses to answer such questions as are put to him or her; or

(c) refuses or fails to produce any document or thing which he or she is required to produce,

without any just excuse for such refusal or failure, the Court may adjourn the proceedings for any period not exceeding eight days and may, in the meantime, by warrant commit the person so refusing or failing to prison unless he or she sooner consents to do what is required of him or her.

(2) If any person referred to in subsection (1) again refuses at the resumed hearing of the proceedings to do what is so required of him or her, the Court may again adjourn the proceedings and commit him or her for a like period and so again from time to time until such person consents to do what is required of him or her.

(3) Nothing contained in this section prevents the Court from giving judgment in any matter or otherwise disposing of the proceedings according to any other sufficient evidence taken.

(4) No person is bound to produce any document or thing not specified or otherwise sufficiently described in the subpoena unless he or she actually has it in Court.

(5) When a subpoena is issued to procure the attendance of any person as a witness or to produce any book, paper or document in any proceedings, and it appears that—

- (a) he or she is unable to give any evidence or to produce any book, paper or document which would be relevant to any issue in such proceedings; or
- (b) such book, paper or document could properly be produced by some other person; or
- (c) to compel him or her to attend would be an abuse of the process of the court,

any judge of the court concerned may, notwithstanding anything contained in this section, after reasonable notice by the Registrar to the party who sued out the subpoena and after hearing that party in chambers if he or she appears, make an order cancelling such subpoena.

Witness fees

55. (1) The Minister may, in consultation with the Minister of Finance, from time to time by notice in the *Gazette* prescribe a tariff of allowances which must be paid to a witness in civil proceedings or to any person who is to accompany any such witness on account of the youth or infirmity due to old age or any other infirmity of such witness.

(2) Such notice may differentiate between persons according to—

- (a) the distances which they have to travel to attend the court to which they are summoned or subpoenaed; or
- (b) their professions, callings or occupations,

and may empower such officers in the service of the State as may be specified therein to order payment of allowances in accordance with a higher tariff than the tariff so prescribed in cases where payment of allowances in accordance with the prescribed tariff may cause undue hardship.

(3) Notwithstanding any other law, a Superior Court may order that no allowances or only a portion of the allowances prescribed shall be paid to any witness.

Reference of particular matters for investigation by referee

56. (1) The Constitutional Court and, in any civil proceedings, any Division may, with the consent of the parties, refer—

- (a) any matter which requires extensive examination of documents or a scientific, technical or local investigation which in the opinion of the court cannot be conveniently conducted by it; or
- (b) any matter which relates wholly or in part to accounts; or
- (c) any other matter arising in such proceedings,

for enquiry and report to a referee appointed by the parties, and the court may adopt the report of any such referee, either wholly or in part, and either with or without modifications, or may remit such report for further enquiry or report or consideration by such referee, or make such other order in regard thereto as may be necessary or desirable.

(2) Any such report or any part thereof which is adopted by the court, whether with or without modifications, shall have effect as if it were a finding by the court in the proceedings in question.

(3) Any such referee shall for the purpose of such enquiry have such powers and must conduct the enquiry in such manner as may be prescribed by a special order of the court or by the rules of the court.

(4) For the purpose of procuring the attendance of any witness (including any witness detained in custody under

any law) and the production of any document or thing before a referee, an enquiry under this section shall be deemed to be civil proceedings.

(5) (a) Any person summoned to attend as a witness or to produce any document or thing before a referee and who, without sufficient cause—

(i) fails to attend at the time and place specified;

(ii) fails to remain in attendance until the conclusion of the enquiry or until he or she is excused by the referee from further attendance;

(iii) refuses to take an oath or to make an affirmation as a witness; or

(iv) having taken an oath or made an affirmation, fails to—

(aa) answer fully and satisfactorily any question put to him or her; or

(bb) produce any document or thing in his or her possession or custody, or under his or her control, which he or she was summoned to produce,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(b) Any person who, after having taken an oath or having made an affirmation, gives false evidence before a referee at an enquiry, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

(6) Any referee shall be entitled to such remuneration as may be prescribed by the rules of court or, if no such remuneration has been so prescribed, as the court may determine and to any reasonable expenditure incurred by him or her for the purposes of the enquiry, and any such remuneration and expenditure must be taxed by the taxing master of the court and shall be costs in the cause.

Examination by interrogatories

57. (1) The Constitutional Court and, in connection with any civil proceedings pending before it, any Division may order that the evidence of a person be taken by means of interrogatories if—

(a) in the case of the Constitutional Court, the court deems it in the interests of the administration of justice; or

(b) in the case of a Division, that person resides or is for the time being outside the area of jurisdiction of the court.

(2) Whenever an order is made under subsection (1), the registrar of the court must certify that fact and transmit a copy of his or her certificate to a commissioner of the court, together with any interrogatories duly and lawfully framed which it is desired to put to the said person and the fees and the amount of the expenses payable to the said person for his or her appearance as hereinafter provided.

(3) Upon receipt of the certificate, the interrogatories and the amounts contemplated in subsection (2), the commissioner must, in respect of the person concerned—

(a) summon that person to appear before him or her;

(b) upon his or her appearance, take that person's evidence as if he or she was a witness in a civil case in the said court;

(c) put to him or her the said interrogatories, with any other questions calculated to obtain full and true answers to the said interrogatories;

(d) take down or cause to be taken down the evidence so obtained; and

(e) transmit the evidence, certified as correct, to the registrar of the court wherein the proceedings in question are pending.

(4) The commissioner must further transmit to the said registrar a certificate showing the amount paid to the person concerned in respect of the expenses of his or her appearance, and the cost of the issue and service of the process for summoning such person before him or her.

(5) Any person summoned to appear in terms of subsection (3) who without reasonable excuse fails to appear at the time and place mentioned in the summons is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

(6) Any interrogatories taken and certified under the provisions of this section shall, subject to all lawful exceptions, be received as evidence in the proceedings concerned.

Manner of dealing with commissions *rogatoire*, letters of request and documents for service originating from foreign countries

58. (1) Whenever a commission *rogatoire* or letter of request in connection with any civil proceedings received from any State or territory or court outside the Republic, is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto without requiring an application to be made to such court by the agents, if any, of the parties to the action or matter, the registrar must submit the same to a judge in chambers in order to give effect to such commission *rogatoire* or letter of request.

(2) Whenever a request for the service on a person in the Republic of any civil process or citation received from a state, territory or court outside the Republic, is transmitted to the registrar of a Division by the Director-General of the Department, together with a translation in English if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto, the registrar must cause service of the said process or citation to be effected in accordance with the rules of court by the sheriff or a deputy-sheriff or any person specially appointed thereto by a judge of the court concerned.

(3) The registrar concerned must, after effect has been given to any such commission *rogatoire*, letter of request, process or citation, return all relevant documents, duly verified in accordance with the rules of court, to the Director-General of the Department for transmission.

(4) Except where the Minister directs otherwise, no fees other than disbursements shall be recovered from any state, territory or court on whose behalf any service referred to in this section has been performed.

Court may order removal of certain persons

59. (1) Any person who, during the sitting of any Superior Court—

(a) wilfully insults any member of the court or any officer of the court present at the sitting, or who wilfully hinders or obstructs any member of any Superior Court or any officer thereof in the exercise of his or her powers or the performance of his or her duties;

(b) wilfully interrupts the proceedings of the court or otherwise misbehaves himself or herself in the

place where the sitting of the court is held; or

(c) does anything calculated improperly to influence any court in respect of any matter being or to be considered by the court,

may, by order of the court, be removed and detained in custody until the rising of the court.

(2) Removal and detention in terms of subsection (1) does not preclude the prosecution in a court of law of the person concerned on a charge of contempt of court.

Part 3

Process of Superior Courts

Scope and execution of process

60. (1) The process of the Constitutional Court, the Supreme Court of Appeal and any Special Division runs throughout the Republic, and their judgments and orders must, subject to any applicable rules of court, be executed in any area in like manner as if they were judgments or orders of the General Division or the magistrate's court having jurisdiction in such area.

(2) The civil process of a General Division runs throughout the Republic and may be served or executed within the jurisdiction of any General Division.

(3) Any warrant or other process for the execution of a judgment given or order issued against any juristic person, partnership or firm may be executed by attachment of the property or assets of such juristic person, partnership or firm.

Execution of process by sheriff

61. (1) The sheriff must, subject to the rules referred to in section 30, execute all sentences, judgments, writs, summonses, rules, orders, warrants, commands and processes of any Superior Court directed to the sheriff and must make return of the manner of execution thereof to the court and to the party at whose instance they were issued.

(2) The return of the sheriff or a deputy-sheriff of what has been done upon any process of a court, shall be *prima facie* evidence of the matters therein stated.

(3) The sheriff must receive and cause to be detained all persons arrested by order of the court or committed to his or her custody by any competent authority.

(4) A refusal by the sheriff or a deputy-sheriff to do any act which he or she is by law required to do, is subject to review by the court concerned on application *ex parte* or on notice as the circumstances may require.

Transmission of summonses, writs and other process and of notice of issue thereof

62. (1) (a) In any civil proceedings before a Superior Court, any summons, writ, warrant, rule, order, notice, document or other process of a Superior Court, or any other communication which by any law, rule of court or agreement of parties is required or directed to be served or executed upon any person, or left at the house or place of abode or business of any person, in order that such person may be affected thereby, may be transmitted by telegraph, fax, or by means of any other electronic media as may be provided for by the rules of that court.

(b) The document received or printed as a result of the transmission contemplated in paragraph (a) is of the same force and effect as if the original had been shown to or a copy thereof served or executed upon the person concerned, or left as aforesaid, as the case may be.

(2) (a) A notice sent by telegram, fax, or any other electronic media as may be authorised by the rules of the court—

(i) from any judicial or police officer, registrar, assistant registrar, sheriff, deputy-sheriff or clerk of the court; and

(ii) stating that a warrant or writ has been issued for the arrest or apprehension of any person required to appear in or to answer any civil suit, action or proceeding,

is sufficient authority to any officer authorised by law to execute any such warrant or writ for the arrest and detention of such person.

(b) A person arrested as contemplated in paragraph (a) may be detained until a sufficient time, but not exceeding 14 days, has elapsed to allow for the original warrant or writ to be delivered at the place where such person was arrested or detained, unless the discharge of such person is ordered by a judge of a Superior Court.

(c) A judge of a Superior Court may upon good cause shown order the further detention of a person referred to in paragraph (b) for a period to be stated in such order, but not exceeding 28 days from the date of the arrest of such person.

Property not liable to be seized in execution

63. The sheriff or a deputy-sheriff may not seize in execution of any process—

(a) the necessary beds and bedding and wearing apparel of the person against whom execution is levied or any member of his or her family;

(b) the necessary furniture, other than beds, and household utensils in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

(c) stock, tools and agricultural implements of a farmer in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

(d) any food or drink sufficient to meet the needs of such person and the members of his or her family for one month;

(e) tools and implements of trade in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

(f) professional books, documents or instruments necessarily used by the debtor in his profession in so far as they do not exceed in value the amount determined by the Minister from time to time by notice in the *Gazette*;

(g) such arms and ammunition as the debtor is in terms of any law, regulation or disciplinary order required to have in his or her possession as part of his or her equipment:

Provided that the Court concerned may in exceptional circumstances and on such conditions as it may determine, in its discretion increase the amount specified in paragraph (b), (c), (e) or (f).

Offences relating to execution

64. Any person who—

(a) obstructs a sheriff or deputy-sheriff in the execution of his or her duty;

(b) being aware that goods are under arrest, interdict or attachment by a Superior Court, makes away with or disposes of those goods in a manner not authorized by law, or knowingly permits those goods, if in his or her possession or under his or her control, to be made away with or disposed of in such a manner;

(c) being a judgment debtor and being required by a sheriff or deputy-sheriff to point out property to satisfy a warrant issued in execution of judgment against such person—

(i) falsely declares to that sheriff or deputy-sheriff that he or she possesses no property or insufficient property to satisfy the warrant; or

(ii) although knowing of such property neglects or refuses to point out such property or to deliver it to the sheriff or deputy-sheriff when requested to do so; or

(d) being a judgment debtor refuses or neglects to comply with any requirement of a sheriff or deputy-sheriff in regard to the delivery of documents in his or her possession or under his or her control relating to the title of the immovable property under execution,

shall be guilty of an offence and liable on conviction to a fine or in default of payment to imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine.

Issuing of summons or subpoena in civil proceedings against judge

65. (1) Notwithstanding any other law, no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served on any judge of a Superior Court, except with the consent of the Chief Justice or, in the case of the Chief Justice, with the consent of the President of the Supreme Court of Appeal.

(2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, the date upon which such judge must attend court must be determined in consultation with the relevant head of court.

Regulations

66. (1) The Minister may, after consultation with the Chief Justice, make regulations regarding-

(a) any matter that may be necessary or expedient to prescribe regarding the administrative functions of courts and the efficient and effective functioning and administration of the courts, including the furnishing of periodical returns of statistics relating to any aspect of the functioning and administration of courts and the performance of judicial functions;

(b) the criteria to be applied for determining the number of judges to be appointed to the Supreme Court of Appeal and to any specific General Division;

(c) a protocol to regulate any matter referred to in section 16, in respect of which the establishment of a protocol is indicated;

(d) any matter that may be necessary or expedient to prescribe regarding the functioning of the Office of the Chief Justice;

(e) periods of absence of judicial officers from courts, including the recesses of the Superior Courts, especially in respect of the number of, and the method of allocation of, judges who must continue ordinary judicial services at the Courts during any recess period;

(f) any other matter that may be necessary or expedient to prescribe in order to promote the efficient implementation of this Act.

(2) Any regulation made under subsection (1) must be approved by Parliament before publication thereof in the *Gazette*.

CHAPTER 9

Transitional provisions, amendment and repeal of laws, and commencement

Existing High Courts

67. (1) On the date of the commencement of this Act, the High Court seated in—

- (a) Bisho becomes a local seat of the Eastern Cape General Division;
- (b) Bloemfontein becomes the main seat of the Free State General Division;
- (c) Cape Town becomes the main seat of the Western Cape General Division;
- (d) Durban becomes a local seat of the KwaZulu-Natal General Division;
- (e) Grahamstown becomes the main seat of the Eastern Cape General Division;
- (f) Johannesburg becomes the main seat of the Southern Gauteng General Division;
- (g) Kimberley becomes the main seat of the Northern Cape General Division;
- (h) Mmabatho becomes the main seat of the North West General Division;
- (i) Pietermaritzburg becomes the main seat of the KwaZulu-Natal General Division;
- (j) Port Elizabeth becomes a local seat of the Eastern Cape General Division;
- (k) Pretoria becomes the main seat of the Northern Gauteng General Division;
- (l) Thohoyandou becomes a local seat of the Limpopo General Division; and
- (m) Umtata becomes a local seat of the Eastern Cape General Division,

of the High Court of South Africa, and the area of jurisdiction of each of those seats is as contained in Schedule 1.

(2) (a) Notwithstanding section 7, the Northern Gauteng General Division shall also function as the Limpopo and Mpumalanga General Divisions, respectively, until a date to be determined by the President by proclamation in the *Gazette*.

(b) Paragraph (a) lapses two years after the commencement of this section.

(3) Any circuit court established under any law repealed by this Act and in existence immediately before the commencement of this Act, shall be deemed to have been duly established in terms of this Act as a Circuit Court of the General Division concerned.

(4) Anyone holding office as the Judge President, a Deputy Judge President or a judge of a High Court referred to in subsection (1) when this Act takes effect, becomes the Judge President, a Deputy Judge President or a judge of the General Division in question as contemplated in subsection (1).

(5) The President may, with the view to facilitate and promote the effective and efficient administration of justice in

the General Divisions established in terms of this Act, after consultation with the Chief Justice and the Minister, transfer any judge of a General Division to the Limpopo, Mpumalanga or North West General Division.

Labour Court and Labour Appeal Court

68. (1) Any judge of a Superior Court who, immediately before the commencement of section 74, holds concurrent tenure of office as—

- (a) Judge President of the Labour Court and the Labour Appeal Court;
- (b) Deputy Judge President of the Labour Court and the Labour Appeal Court; or
- (c) judge of the Labour Court or the Labour Appeal Court,

ceases to hold the latter office on the date of the commencement of section 74, and must be entered on the list of judges referred to in section 24(1).

(2) The remuneration of a judge referred to in subsection (1) is not affected on account of the discontinuation of his or her holding of an office referred to in paragraphs (a), (b) or (c) of that subsection.

(3) (a) Any person who, immediately before the commencement of section 74, holds office as a judge of the Labour Court but who is not a judge of a Superior Court ceases to hold such office on the date of the commencement of section 74.

(b) In respect of each person who ceases to hold office as contemplated in paragraph (a), a vacancy of the office of a judge shall arise in the General Division having jurisdiction where that person held that office.

(c) Any person referred to in paragraph (a) must be given the first opportunity to apply for a vacancy referred to in paragraph (b) and, should he or she be found to be a fit and proper person for appointment as a judge of a High Court, the Judicial Service Commission must advise the President that he or she be so appointed, in which event his or her name must be entered on the list referred to in section 24(1).

(4) If a person referred to in subsection (3) is not appointed as a judge of the High Court or chooses not to apply for such appointment in terms of subsection (3)(c)—

(a) he or she is entitled to the benefits determined by the President, after consultation with the Judicial Service Commission: Provided that such benefits may not be less than the benefits accruing to judges of the Land Claims Court at the expiry of their term of office, as contemplated in section 26 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (prior to the commencement of section 74); and

(b) any vacancy arising on account of subsection (3)(b) must be dealt with by the Judicial Service Commission in the ordinary manner.

(5) (a) Any vacancy of the office of a—

- (i) judge of the Labour Appeal Court; or
- (ii) judge of the Labour Court,

existing immediately before the commencement of section 74, becomes a vacancy of the office of a judge of the Supreme Court of Appeal or a General Division of the High Court, as the case may be.

(b) When considering the filling of vacancies referred to in this subsection, the Judicial Service Commission must give preference to persons with proven experience and expertise in the adjudication of labour matters.

(6) (a) If a person, other than a person referred to in subsection (4), who is or was a judge of the Labour Court is appointed as a judge of a Superior Court, whether before or after the commencement of this Act, the period of service of that person as a judge of the Labour Court is, for the purposes of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), deemed to be active service as defined in that Act.

(b) No person who received any benefits under subsection (4)(a) may be appointed as a judge of a Superior Court, unless he or she, prior to such appointment, refunds the full amount of such benefits to the Director-General of the Department.

(7) Any person who, immediately before the date of the commencement of section 74, is an officer of the Labour Court or the Labour Appeal Court must, subject to the laws governing the public service, be transferred to an equivalent post as an officer of a Superior Court designated by the Minister after consultation with the Chief Justice.

Transitional arrangement: Special Divisions

69. On the date of the commencement of this Act—

(a) any court established in terms of—

(i) section 36 of the Competition Act, 1998 (Act No. 89 of 1998), becomes the Competition Appeals Special Division of the High Court;

(ii) section 18 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), becomes the Electoral Matters Special Division of the High Court;

(iii) section 83(3) of the Income Tax Act, 1962 (Act No. 58 of 1962), becomes a court of the Income Tax Special Division of the High Court; and

(iv) section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), becomes the Land Claims Special Division of the High Court;

(b) any judge holding office—

(i) as the Judge President or a judge of the court referred to in section 36 of the Competition Act, 1998, becomes the Judge President or a judge of the Competition Appeals Special Division of the High Court, for the remainder of the term, if applicable, for which he or she had been appointed to that office;

(ii) as the Chairperson or a judge of the court referred to in section 18 of the Electoral Commission Act, 1996, becomes the Judge President or a judge of the Electoral Matters Special Division of the High Court, for the remainder of the term, if applicable, for which he or she had been appointed to that office;

(iii) as the president of a court referred to in section 83(3) of the Income Tax Act, 1962, becomes a judge of the Income Tax Special Division of the High Court, for the remainder of the term for which he or she had been appointed to that office; and

(iv) as the President or a judge of the court referred to in section 22 of the Restitution of Land Rights Act, 1994, becomes the Judge President or a judge of the Land Claims Special Division of the High Court, for the remainder of the term, if applicable, for which he or she had been appointed to that office;

(c) any person, not being a judge, holding office—

(i) as a member of the court referred to in section 18 of the Electoral Commission Act, 1996, becomes a special member of the Electoral Matters Special Division of the High Court, for the remainder of the term for which he or she had been appointed to that office; and

(ii) as a member of a court referred to in section 83(3) of the Income Tax Act, 1962, becomes a special member of the Income Tax Special Division of the High Court, for the remainder of the term for which he or she had been appointed to that office; and

(d) any person holding office as the registrar or a member of the staff of any court referred to in paragraph (a), becomes a registrar or a member of the staff of the Special Division contemplated in that paragraph, for the remainder of the term, if applicable, for which he or she had been appointed to that office.

Transitional arrangement: Appeals to full bench of same Division

70. (1) Despite the provisions of sections 26 and 27 and the repeal of the Supreme Court Act, 1959 (Act No. 59 of 1959) by section 74, the provisions relating to an appeal from a judgment or order by a single judge of a General Division, to a court consisting of three judges of the same Division, as in force prior to the commencement of this Act, remain in force until a date set by the President by proclamation in the *Gazette*.

(2) Appeals referred to in subsection (1) that are pending on the date referred to in that subsection, must be continued and concluded in accordance with the provisions referred to in that subsection.

Existing rules and Rules Board

71. (1) The rules applicable to the Constitutional Court, Supreme Court of Appeal, various High Courts, Labour Court, Labour Appeal Court, Competition Appeal Court, Electoral Court, Income Tax courts and the Land Claims Court immediately before the commencement of this Act remain in force to the extent that they are not inconsistent with this Act, until repealed or amended in terms of section 40.

(2) On the date of the commencement of section 40—

(a) the Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), ceases to exist; and

(b) the functions of any committee established under section 5 of the Rules Board for Courts of Law Act, 1985, are transferred to the Board referred to in section 40 or to such committees as may be established by that Board for the purpose of such functions.

(3) Any person holding office immediately before the date of the commencement of section 42—

(a) as a member of the Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985, may be appointed by the Minister as a member of the Board under section 42(1);

(b) as a member of a committee appointed under section 5(1) of the Rules Board for Courts of Law Act, 1985, may be appointed as a member of a committee of the Board under section 44(1)(b); and

(c) as the Secretary to, or a member of staff of, the Rules Board for Courts of Law referred to in paragraph (a), continues to hold such office as the Secretary to, or a member of staff of, the Board referred to in section 40.

(4) (a) Any person who, immediately before the date of the commencement of section 46, holds office in terms of section 159(2)(c) of the Labour Relations Act, 1995 (Act No. 66 of 1995) as a member of the Rules Board for Labour Courts established in terms of section 159(1) of that Act, is deemed to have been appointed under the corresponding provision of section 46(2)(c) as a member of the Subcommittee on Rules for Labour Matters referred to in section 46(1).

(b) A person referred to in paragraph (a) holds the office referred to in that paragraph for the remainder of the term for which he or she had been appointed originally.

Pending proceedings

72. (1) Subject to section 38, proceedings pending in any court, including any court referred to in sections 68 and 69, at the commencement of this Act, must be continued and concluded as if this Act had not been passed.

(2) Proceedings must, for the purposes of this section, be deemed to be pending if, at the commencement of this Act a summons had been issued but judgment had not been passed.

(3) Subsections (1) and (2) are also applicable, with the changes required by the context, in respect of proceedings pending on the date determined in the notice contemplated in section 67(2).

References in other laws

73. Any reference in any law—

(a) to the Supreme Court Act, 1959, or a provision of the said Act, must be construed as a reference to this Act or a corresponding provision of this Act; and

(b) to a Supreme Court, a High Court, or a provincial or local division of a Supreme Court, must be construed as a reference to the High Court of South Africa or a Division referred to in this Act, as the context may require; and

(c) to the Appellate Division of a Supreme Court, must be construed as a reference to the Supreme Court of Appeal;

(d) to the Labour Court or the Labour Appeal Court, must be construed as a reference to the High Court or the Supreme Court of Appeal, respectively; and

(e) to a court referred to in—

(i) section 36 of the Competition Act, 1998 (Act No. 89 of 1998), must be construed as a reference to the Competition Appeals Special Division of the High Court;

(ii) section 18 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), must be construed as a reference to the Electoral Matters Special Division of the High Court;

(iii) section 83 of the Income Tax Act, 1962 (Act No. 58 of 1962), must be construed as a reference to a court of the Income Tax Special Division of the High Court; and

(iv) section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), must be construed as a reference to the Land Claims Special Division of the High Court.

Repeal and amendment of laws

74. (1) The laws mentioned—

(a) in Schedule 3 are hereby repealed to the extent set out in the fourth column of that Schedule;

(b) in Schedule 4 are hereby amended to the extent set out in the fourth column of that Schedule.

(2) Anything done under any provision of a law repealed or amended by subsection (1), shall be deemed to have been done under the corresponding provision of this Act.

Short title and commencement

75. This Act is called the Superior Courts Act, 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

General Divisions of the High Court, seats and jurisdiction (Section 7)

Name of Division			Seat	Area of Jurisdiction
Kwazulu-Natal Division	General		Pietermaritzburg (main seat)	The magisterial districts of Babanango, Bergville, Camperdown, Dannhauser, Dundee, Eshowe, Estcourt, Glencoe, Impendle, Ixopo, Klip River, Kranskop, Lions River, Matatlele (Maluti), Mooi F, Mount Currie, Msinga, New Castle, New Hanove, Ngotshe, Nqutu, Paul Pietersburg, Pietermaritzb, Polela, Richmond, Umvoti, Umzimkulu, Underbe, Utrecht, Vryheid and Weenen
Kwazulu-Natal Division	General		Durban (local seat)	The magisterial districts of Alfred, Prot Shepston, Umzinto, Eshowe, Umlazi, Umbumbulu, Durban, Pinetown, Chatsworth, Inanda, Ndedwe, Mapum, Lower Umfolozi, Lower Tugela, Mahlabatini, Mtu, Mtonjaneni, New Hanover, Nkandhla, Piet Retief, Hlabisa, Nongoma, Umbombo, Underberg, Utre, Vryheid, Weenen and Ingwavuma
Eastern Division	Cape	General	Grahamstown (main seat)	The magisterial districts of Aberdeen, Albert, Bat, Fort Beaufort, Hofmeyr, Middelburg, Somerset E, Tarka, Wodehouse, Adelaide, Alexandria, Bedfo, Graaff-Reinet, Jansenville, Molteno, Sterkstroom, Venterstad, Albany, Aliwal North, Cradock, Hers, (Sterkspruit), Lady Grey, Pearston, Steynsburg a, Willowmore
Eastern Division	Cape	General	Bisho (local seat)	The magisterial districts of Cathcart, Ntabethem, Stutterheim, East London, King Williams Town, Komgha, Mpofu (Seymour), Queenstown, Hewu, Keiskammahoek, Mdantsane, Middledrift, Peddie, Victoria-East and Zwelitsha
Eastern Division	Cape	General	Port Elizabeth (local seat)	The magisterial districts of Port Elizabeth, Kirkw, Uitenhage, Hankey, Humansdorp, Joubertina an, Steytlerville
Eastern Division	Cape	General	Umtata (local seat)	The magisterial districts of Barkley East, Elliot, Bizana, Butterworth (Gcuwa), Cacadu (Lady Fre, Cala (Xalanga), Cofimvaba (St Marks), Elliotdale (Xhora), Engcobo, Flagstaff (Siphaxeni), Gatyan (Willowvale), Idutywa, Indwe, Kentani, Kwabach, (Mount Frere), Libode, Lusikisiki, Maclear, Maluti (Matatiele), Maxesibeni, Mount Fletcher, Mqandu, Nqamakwe, Nqqeleni, Qumbu, Sterkspruit (Herschell), Thabankulu, Tsolo, Tsomo, Umtata, Umzimkulu, Ugie and Umzimvubu (Port St Johns)
Free State	General		Bloemfontein (main seat)	The magisterial districts of Bethlehem, Boshof, Brandfort, Dewetsdorp, Fauresmith, Frankfort, Henneman, Jagersfontein, Kroonstad, Marquard

			Petrusburg, Reitz, Senekal, Theunissen, Viljoenskroon, Vrede, Wepener, Witsieshoek, Bethulie, Bothaville, Bultfontein, Edenburg, Ficks, Harrismith, Hoopstad, Koffiefontein, Ladybrand, Odendaalsrus, Phillippolis, Rouxville, Smithfield, Trompsburg, Villiers, Vredefort, Wesselsbron, Zastron, Bloemfontein, Botshabelo, Ciocolan, Excelsior, Fouriesburg, Heilbron, Jacobsdal, Kop, Lindley, Parys, Reddersburg, Sasolburg, Thaba Ventersburg, Virginia, Welkom and Winburg
Limpopo General Division		Polokwane (main seat)	The magisterial districts of Bochum, Bolubedu, Ellisras, Giyani, Hlanganani, Letaba, Lulekani, Malamulele, Mankweng, Mapulaneng, Messina, Mhala, Mokerong, Namakgale, Naphuno, Nebo, Phalaborwa, Phalala, Pietersburg, Potgietersrus, Praktiseer, Ritavi, Sekgosese, Sekhukhuneland, Seshego, Soutpansberg, Thabazimbi, Thabamoo, Warmbaths and Waterberg
Limpopo General Division		Tohoyandou (local seat)	The magisterial districts of Dzanani, Tohoyandou, Tshilwavhisiku, Tshitale, Vuwani and Mutale
Mpumalanga General Division		Nelspruit (main seat)	The magisterial districts of Amersfoort, Baberton, Belfast, Bethal, Carolina, De Eerstehoek, Ermelo, Groblersdal, Highveld F, Kriel, Kwamhlanga, Lydenburg, Mdujana, Middelburg, Mkobola, Moutse, Nelspruit, Nkomo (Kamhlushswa), Nsikazi, Pilgrim's Rest, Piet F, Standerton, Volksrust, Wakkerstroom, Wat Boven, Witbank and White River
Northern Cape General Division		Kimberley (main seat)	The magisterial districts of Barkley West, Brits, Calvinia, Carnarvon, Colesberg, De Aar, Frase, Gordonia, Hanover, Hartswater, Hay, He Hopetown, Kenhardt, Kimberley, Kuruman, Namaqualand, Noupoot, Phillipstown, Postmas, Prieska, Richmond, Sutherland, Victoria, Warrenton and Williston
Northern Gauteng General Division		Pretoria (main seat)	The magisterial districts of Bronkhorstspuit, Cu Pretoria, Soshanguve and Wonderboom
North West General Division		Mmabatho (main seat)	The magisterial districts of Bafokeng, Bloemhof, Christiana, Colligny, Delareyville, Ditsong, Ganyesa, Klerksdorp, Koster, Kudumane (Thlako), Kuruman, Lehurutshe, Lichtenburg, Mafeking, Mankwe, Marico, Molopo (Mafikeng), Moretele, Odi, Potchefstroom, Ruster, Schweizer-Reneke, Swartruggens, T Ventersdorp, Vryburg, Warmbaths and Wolmaras
Southern Gauteng General Division		Johannesburg (main seat)	The magisterial districts of Alberton, Brakpan, Germiston, Heide, Johannesburg, Kempton Park, Krugersdorp, Oberholzer, Randburg, Randfontein, Roode Springs, Vanderbijlpark, Vereeniging and Weston

Western Division	Cape	General	Cape Town (main seat)	The magisterial districts of Beaufort West, Be Bredasdorp, Caledon, Calitzdorp, Cape, C Clanwilliam, George, Goodwood, Heide Hermanus, Hopefield, Knysna, Kuils River, Ladi Laingsburg, Malmesbury, Mitchells Plain, mor Moorreesburg, Mossel Bay, Murray Oudtshoorn, Paarl, Piketberg, Prince / Riversdale, Robertson, Simonstown, Somerset Strand, Stellenbosch, Swellendam, Tul Uniondale, Van Rhynsdorp, Vredenburg, Vred Wellington, Worcester and Wynberg
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SCHEDULE 2

Appointment of special members (Section 8(3)(b) and (c))

Part 1

Special members of Electoral Matters Special Division

1. The President must, on the advice of the Judicial Service Commission, appoint two or more fit and proper persons, who must be South African citizens, as special members of the Electoral Matters Special Division.
2. Any special member referred to in item 1 must be appointed for a fixed term determined by the President at the time of the appointment, and may, upon the expiry of that term, be re-appointed.
3. The need for the Electoral Matters Special Division to reflect broadly the racial and gender composition of the Republic must be taken into account when appointing special members of that Division.
4. Any appointment made in terms of item 1 must be announced in the *Gazette*.

Part 2

Special members of Income Tax Special Division

1. The President must, in respect of each of the categories listed in item 2, on the advice of the Minister acting after consultation with the Judge President of the Income Tax Special Division and the Cabinet member responsible for finance, appoint two or more persons of good standing and with appropriate experience as special members of the Income Tax Special Division.
2. Special members of the Division must be appointed in respect of the following categories:
 - 2.1 Accountants;
 - 2.2 Representatives of the commercial community in general;
 - 2.3 Representatives of the commercial community, who must be qualified mining engineers; and
 - 2.4 Representatives of the commercial community, who must be sworn appraisers of property.
3. Any special member referred to in item 1 must be appointed for a fixed term determined by the President at the time of the appointment, and may, upon the expiry of that term, be re-appointed.

4. The need for the Income Tax Special Division to reflect broadly the racial and gender composition of the Republic must be taken into account when appointing special members of that Division.
5. Any appointment made in terms of item 1 must be announced in the *Gazette*.

SCHEDULE 3

Laws repealed (Section 74(1)(a))

Item No.	No. and year of law	Short title	Extent
1	Act No. 59 of 1959	Supreme Court Act, 1959	The whole
2	Act No. 59 of 1959 (Venda)	Supreme Court Act, 1959	The whole
3	Act No. 58 of 1962	Income Tax Act, 1962	Section: 107A.
4	Act No. 15 of 1969	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969	The whole
5	Act No. 15 of 1976 (Transkei)	Republic of Transkei Constitution Act, 1976	Section: and including
6	Act No. 18 of 1977 (Bophuthatswana)	Republic of Bophuthatswana Constitution Act, 1977	Section: and (4); (2); 59 and including (1), (2) ; (1) and (c)(iii) and 93(1)(f).
7	Act No. 9 of 1979 (Venda)	Republic of Venda Constitution Act, 1979	Section: and including section section
8	Act No. 32 of 1982 (Bophuthatswana)	Supreme Court of Bophuthatswana Act, 1982	The whole
9	Act No. 5 of 1983 (Transkei)	Supreme Court Act, 1983	The whole
10	Act 107 of 1985	Rules Board for Courts of Law Act, 1985	The whole
11	Decree No. 43 of 1990 (Ciskei)	Supreme Court Decree, 1990	The whole

12	Decree No. 45 of 1990 (Ciskei)	Republic of Ciskei Constitution Decree, 1990	Section:
13.	Act No. 22 of 1994	Restitution of Land Rights Act, 1994	The rep sections 26A, 28 28D, 28 28H, 28 28L, 28 28O, 32
14	Act No. 13 of 1995	Constitutional Court Complementary Act, 1995	The wh
15	Act No. 66 of 1995	Labour Relations Act, 1995	Section: 153; 15 159, 16 165; 16 169; 17 173; 17 177; 17 182; 18
16.	Act No. 51 of 1996	Electoral Commission Act, 1996	Section:
17	Act No. 75 of 1997	Basic Conditions of Employment Act, 1997	Section
18.	Act No. 89 of 1998	Competition Act, 1998	Section: 39
19.	Act No. 41 of 2001	Interim Rationalisation of Jurisdiction of High Courts Act, 2001	The wh

SCHEDULE 4

Laws amended (Section 74(1)(b))

Item No.	No. and year of law	Short title	Extent of amendment
1	Act No. 58 of 1962	Income Tax Act, 1962	<p>1. Amendment of section 1 by the insertion, after the defir of "taxable capital gain" of the following definition:</p> <p>" 'tax court' means the Income Tax Special Division of the Court of South Africa;"</p> <p>2. Amendment of section 81—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>"(1) Objections to any assessment made under this Act sh be made in the manner and under the terms and within th period prescribed by this Act and the rules [promulgated terms of section 107A] of the tax court by any taxpayer v is aggrieved by any assessment in which that taxpayer ha</p>

interest."; and

(b) by the substitution for subsection (6) of the following subsection:

"(6) Where any dispute between the Commissioner and the person aggrieved by an assessment has been resolved in accordance with the alternative dispute resolution procedure prescribed in the rules **[contemplated in section 107A of the tax court]**, the Commissioner must alter that assessment for the purposes of giving effect to that resolution."

3. Amendment of section 83—

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

"(1) Any person entitled to object to an assessment, may, subject to the provisions of section 83A, appeal against such assessment to the tax court **[established in terms of the provisions of this section]** in the manner and under the terms and within the period prescribed by this Act and the **[promulgated in terms of section 107A]** of the tax court

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

"(a) the matter is heard by the tax board contemplated in section 83A, or the tax court **[contemplated in subsection (2)]**; or";

(c) by the deletion of subsections (2), (3), (4), (4A), (4B), (4D), (5) and (6);

(d) by the substitution for subsection (7) of the following subsection:

"(7) **[Any court established under the provisions of this Act]** The tax court may hear and determine any appeal lodged under the provisions of this Act, or any other Act administered by the Commissioner which provides that the objection and appeal procedures contained in this Part shall apply, **whether or not the appellant is resident or carries on business within the area for which that court is established and whether or not the dispute arose within that area.**";

(e) by the substitution for paragraph (d) of subsection (13) the following paragraph:

"(d) hear any interlocutory application and decide on procedural matters as provided for in the rules of the tax court **[contemplated in section 107A]**.";

(f) by the substitution for subsection (14) of the following subsection:

"(14) Any altered assessment made by the Commissioner result of a referral of an assessment back to the Commissioner, as contemplated in subsection (13)(a)(iii), be subject to objection and appeal as provided in this Part the rules **[promulgated in terms of section 107A]** of the court.";

(g) by the substitution for subsection (19) of the following subsection:

"(19) The Judge President of the court may indicate which judgments or decisions of the court must be published for general information, in such form as does not reveal the identity of the appellant.";

(h) by the substitution for subsection (20) of the following subsection:

"(20) **[There]** Notwithstanding section 15(1)(a) and (d) of the Superior Courts Act, 2005, there shall be a registrar of the court, who shall be appointed by the Commissioner."; and

(i) by the substitution for subsection (21) of the following subsection:

"(21) **[A]** Notwithstanding section 15(1)(a) and (d) of the Superior Courts Act, 2005, a person appointed as registrar shall become an employee of the South African Revenue Service.

4. Amendment of section 83A—

(a) by the substitution for the proviso in subsection (1) of the following proviso:

"Provided that where the Commissioner, at any time prior the hearing of such appeal, or the Chairperson of the board any time prior to or during the hearing of such appeal, is of opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the tax court, such appeal shall set down for hearing *de novo* before the tax court **[referred in section 83]**.";

(b) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) The Minister of Finance shall in consultation with the Judge-President of the **[Provincial Division]** General Division of the High Court within whose area of jurisdiction the board to sit, appoint, by notice in the *Gazette*, advocates and attorneys to a panel, from which a Chairperson of the board shall be nominated from time to time or as required, and such persons shall hold office for five years from the date of the relevant notice: Provided that the appointment of such a person may at any time be terminated by the said Minister

any reason which he or she considers good and sufficient and

(c) the substitution in paragraph (b) of subsection (7) for the words preceding subparagraph (i) of the following words:

"within the period prescribed in the rules **[contemplated in section 107A]** of the tax court, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of—".

5. Amendment of section 86A—

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

"(1) The appellant in a tax court or the Commissioner may in the manner hereinafter provided appeal under this section against any decision of that court to the Supreme Court of Appeal (in this section referred to as the appeal court).

(b) by the deletion of subsection (2);

(c) by the substitution for subsection (3) of the following subsection:

"(3) Any party who in terms of subsection (1) has a right to appeal against a decision of a tax court and intends to lodge appeal against such decision under this section shall, with 21 days after the date of the notice issued by the registrar of the tax court notifying such decision or within such further period as the Judge President of that court may on good cause shown allow, lodge with the said registrar and the opposite party or his or her attorney or agent a notice of his or her intention to appeal against such decision.";

(d) by the substitution for subsection (4) of the following subsection:

"(4) Any such notice of an intention to appeal shall state—

(a) **[in which division of the High Court the intending appellant wishes the appeal to be heard;]**

(b) **[if the intending appellant wishes the appeal to be heard by the Supreme Court of Appeal,]** whether the whole or part only of the judgment is to be appealed against and what part, and the contemplated grounds of the intended appeal, indicating the findings of fact or rulings to be appealed against; and

(c) whether, for the purposes of preparing the record on appeal, a transcript is required of the evidence at the hearing of the case by the tax court or, if only a part of such evidence is required, what part is required.";

			<p>(e) by the substitution for subsection (5) of the following subsection:</p> <p>"(5) If an intending appellant wishes [his] to appeal against the decision of the tax court [to be heard by the Supreme Court of Appeal], the registrar of the tax court shall submit the notices or notices of intention to appeal lodged under subsection (1) to the <u>Judge</u> President of the tax court who shall, having regard to the contemplated grounds of the intended appeal or appeals indicated in the said notice or notices, make an order granting or refusing, as he or she sees fit, leave to appeal against the decision [to the said Court], and the order so made shall be final.";</p> <p>(f) by the deletion of subsections (6), (7), (8), and (9); and</p> <p>(g) by the substitution in subsection (10) for the word "President", wherever it appears, of the word "Judge President".</p>
<p>2</p>	<p>Act No. 22 of 1994</p>	<p>Restitution of Land Rights Act, 1994</p>	<p>1. Amendment of section 1—</p> <p>(a) by the substitution for the definition of "Court" of the following definition:</p> <p>" 'Court' means the Land Claims [Court established by section 22] <u>Special Division of the High Court of South Africa</u>";</p> <p>(b) by the substitution for the definition of "High Court" of the following definition:</p> <p>" 'High Court' means any <u>General Division of the High Court of South Africa</u> referred to in section 166(c) of the Constitution excluding a high court of appeal"; and</p> <p>(c) by the substitution for the definition of "presiding judge" of the following definition:</p> <p>" 'presiding judge' , in relation to a hearing before more than one judge, means the judge designated as such by the <u>Judge</u> President of the Court";</p> <p>2. Substitution for section 22 of the following section:</p> <p>"Jurisdiction of Land Claims Special Division of High Court</p> <p>22. <u>The Land Claims Special Division of the High Court of South Africa has the power, to the exclusion of any other court contemplated in section 166(c), (d) or (e) of the Constitution</u></p> <p><u>(a) to determine a right to restitution of any right in land in accordance with this Act;</u></p>

			<p>(b) to determine or approve compensation payable in respect of land owned by or in the possession of a private person, expropriation or acquisition of such land in terms of this Act;</p> <p>(c) to determine the person entitled to title to land contemplated in section 3;</p> <p>(d) at the instance of any interested person and in its discretion, to grant a declaratory order on a question of law relating to section 25(7) of the Constitution or to this Act or any other law or matter in respect of which the Court has jurisdiction, notwithstanding that such person might not be to claim any relief consequential upon the granting of such order;</p> <p>(e) to determine whether compensation or any other consideration received by any person at the time of any dispossession of a right in land was just and equitable;</p> <p>(f) to determine any matter involving the interpretation or application of this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), with the exception of matters relating to the definition of "occupier" in section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997);</p> <p>(g) to decide any constitutional matter in relation to this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);</p> <p>(h) to determine any matter involving the validity, enforcement, interpretation or implementation of an agreement contemplated in section 14 (3), unless the agreement provides otherwise;</p> <p>(i) to determine all other matters which require to be determined in terms of this Act."</p> <p>3. Amendment of section 25, by the deletion of subsection (2), (3), (7), (8), (9) and (10).</p> <p>4. Amendment of section 28, by the deletion of subsection (2), (3), (7), (8), (9) and (10).</p>
3	Act No. 66 of 1995	Labour Relations Act, 1995	<p>1. Amendment of section 157 by the deletion of subsection (2).</p> <p>2. Amendment of section 213 by the insertion after the definition of "issue in dispute" of the following definitions:</p> <p>"'Labour Appeal Court' means the Supreme Court of Appeal when dealing with a matter arising from the application of this Act;</p> <p>'Labour Court' means any General Division of the High Court of South Africa dealing with a matter arising from the application of this Act;"</p>
4	Act No. 51	Electoral Commission Act,	<p>1. Amendment of section 1 by the substitution for the definition of "Electoral Commission" of the following definition:</p>

	of 1996	1996	<p>of "Electoral Court" of the following definition:</p> <p>" 'Electoral Court' means the Electoral [Court established by section 18] Matters Special Division of the High Court of South Africa;".</p> <p>2. Amendment of section 20—</p> <p>(a) by the deletion of subsection (3);</p> <p>(b) by the deletion of paragraph (a) of subsection (4); and</p> <p>(c) by the deletion of subsection (8).</p>
5	Act No. 75 of 1997	Basic Conditions of Employment Act, 1997	<p>1. Amendment of section 1—</p> <p>(a) by the substitution for the definition of "Labour Appeal Court" of the following definition:</p> <p>"'Labour Appeal Court' means the [Labour Appeal Court established by section 167 of the Labour Relations Act, 1995] section 166 of the Constitution and</p> <p>(b) by the substitution for the definition of "Labour Court" of the following definition:</p> <p>"'Labour Court' means [the Labour Court established by section 151 of the Labour Relations Act, 1995] any Geographical Division of the High Court of South Africa;".</p>
6	Act No. 89 of 1998	Competition Act, 1998	<p>1. Amendment of section 37 by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:</p> <p>"The <u>Competition Appeals Special Division of the High Court of South Africa (hereinafter referred to as the Competition Appeals Court)</u>, may—".</p>

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MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION FOURTEENTH AMENDMENT BILL, 2005

1. BACKGROUND

The *Constitution of the Republic of South Africa Amendment Bill* [B 60—2003], was introduced in Parliament

during September 2003, together with the *Superior Courts Bill* [B 52—2003], and referred to the Portfolio Committee on Justice and Constitutional Development (National Assembly) (the Committee) for consideration. The Committee embarked on extensive public hearings regarding the draft legislation and received substantial inputs from a wide range of interested parties. Before Parliament adjourned for the April 2004 elections, the Committee issued instructions to the Department of Justice and Constitutional Development regarding amendments to the Bill, as well as the addition of new provisions.

Following the elections in 2004, the *Superior Courts Bill* was revived by the new Parliament. However, the Constitution Amendment Bill in question was allowed to lapse, thereby necessitating the introduction of a new Constitution Amendment Bill in order to mandate the structural changes envisaged in order to rationalise the Superior Courts (the Constitutional Court, Supreme Court of Appeal and the High Courts), as well as to give effect to certain instructions of the Committee.

2. OBJECTS OF THE BILL

The objects of the Bill can be explained as follows:

Clause 1: Section 165 of the Constitution is amended in order to provide that the Chief Justice is the head of the judicial authority and exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts, other than the adjudication of any matter before a court of law. The Cabinet member responsible for the administration of justice, in turn, exercises authority over the administration and budget of all courts. In this way the Commonwealth model of the separation of powers between the Executive and Judiciary is maintained and constitutionally entrenched, with the performance of the judicial functions of our courts being the sole preserve of the judiciary, and the performance of the administrative functions of the courts being the sole preserve of the relevant Minister.

Clauses 2 and 5: Sections 166 and 169 of the Constitution are amended so as to convert the various High Courts into a single "High Court of South Africa", comprising of the Divisions, with the seats and jurisdiction, as determined in terms of an Act of Parliament (the Superior Courts Bill).

Clause 3: Section 167 of the Constitution is amended so as to confirm the status of the Constitutional Court as the apex court, with jurisdiction in all constitutional matters and any other matter in which it may grant leave to appeal.

Clause 4: Section 168 of the Constitution is amended in order to provide for the appointment of a second Deputy President of the Supreme Court of Appeal. This results from the need to appoint a Deputy President of that Court who is dedicated to the management of labour appeals, following the abolition of the Labour Appeal Court (by the Superior Courts Bill).

Clause 7: An important new principle is introduced in section 172 of the Constitution, in that it provides that no court may hear a matter dealing with the suspension of, or make an order suspending, the commencement of an Act of Parliament or a provincial Act. This provision is intended to address the untenable situations which arose in the UDM and Home Affairs cases, where the commencement of Acts of Parliament were suspended, before coming into operation.

Clause 9: The amendment to section 174 of the Constitution provides that the President, as is the case with the judges of the Constitutional Court, will appoint the leadership of the High Court from a list of suitable candidates submitted by the Judicial Service Commission.

Clause 10: Section 175 of the Constitution is amended in order to make provision for the appointment of acting judges in leadership positions.

Other amendments contained in the Bill are of a consequential nature.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill forms part of a package of draft legislation on judicial transformation, which was discussed at a

Colloquium hosted by the Minister for Justice and Constitutional Development, Ms B S Mabandla, MP, during April 2005. Although the whole of the legal fraternity was represented at the Colloquium, it was mainly focused on engaging the judiciary on the proposed legislation, and was followed by a number of discussions between the Minister and representatives of the judiciary. The Bill was published (in draft form) for public comment in the *Gazette* in accordance with section 74(5)(a) of the Constitution.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

Provision is made for the appointment of a second Deputy President to the Supreme Court of Appeal.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 74(3) of the Constitution, since it amends provisions of the Constitution other than section 1, section 74(1) or Chapter 2.

The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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