

REPUBLIC OF SOUTH AFRICA

**JUDICIAL MATTERS
AMENDMENT BILL**

(As introduced in the National Assembly)

(MINISTER OF JUSTICE)

[B 30-98]

IRIPHABLIKI YOMZANTSI AFRIKA

**UMTHETHO OYILWAYO
WOFAKELO SILUNGISO
KWIMIBANDELA
YASENKUNDLENI**

(Njengoko wandlaliwe kwiNdlu yoWiso-mthetho)

(UMPHATHISWA WEZOBULUNGISA)

[M 30-98]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Supreme Court Act, 1959, so as to further regulate persons over whom and matters in relation to which High Courts have jurisdiction; to amend the Attorneys Act, 1979, so as to provide for any board of executors or trust company to receive remuneration for the preparation of a will or other testamentary writing; to amend the Recognition of Foreign Legal Qualifications and Practice Act, 1993, so as to fix a date on which the Act shall cease to be of force; to provide for the centralisation of certain offences; to provide for the extension of the rules of the Supreme Court to the former Republics of Transkei, Bophuthatswana, Venda and Ciskei; to repeal an obsolete law; and to provide for matters connected therewith.

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

Amendment of section 19 of Act 59 of 1959, as amended by section 6 of Act 15 of 1969, section 2 of Act 41 of 1970 and section 6 of Act 105 of 1982

1. Section 19 of the Supreme Court Act, 1959, is amended by the addition in subsection (1) of the following paragraph:

“(c) Subject to the provisions of section 28 and the powers granted under section 4 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), any High Court may—

- (i) 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
- (ii) where the plaintiff is resident or domiciled within its area of jurisdiction, but the cause of action arose outside its area of jurisdiction and the property or person concerned is 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.”

Amendment of section 83 of Act 53 of 1979, as amended by section 6 of Act 76 of 1980, section 5 of Act 60 of 1982, section 30 of Act 87 of 1989 and section 1 of Act 49 of 1996

2. Section 83 of the Attorneys Act, 1979, is amended by the addition in subsection (12) of the following paragraph: 5

“(g) any board of executors or trust company which, on 27 October 1967, was licensed as such under the Licences Act, 1962 (Act No. 44 of 1962), and carrying on business of which a substantial part consisted of the liquidation or distribution of the estates of deceased persons, if the person in the service of any such institution, who draws up or prepares or causes to be drawn up or prepared the documents referred to in subsection (8)(a)(ii), satisfies all the academic requirements to be admitted as an advocate or attorney in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or this Act, as the case may be.” 10

Amendment of section 9 of Act 114 of 1993 15

3. (1) Section 9 of the Recognition of Foreign Legal Qualifications and Practice Act, 1993, is amended by the addition of the following subsection:

“(4) Despite the preceding provisions of this section, this Act shall operate for a further period of six months calculated from 30 September 1997, after which this Act shall cease to have effect.” 20

(2) Subsection (1) shall be deemed to have come into operation on 30 September 1997.

Removal of certain trials to jurisdiction of other attorneys-general

4. Despite the provisions of section 13 of the Justice Laws Rationalisation Act, 1996 (Act No. 18 of 1996), the provisions of section 111 of the Criminal Procedure Act, 1977 25 (Act No. 51 of 1977), as made applicable to certain areas of the national territory of the Republic of South Africa by section 2 of the Justice Laws Rationalisation Act, 1996, shall also be applicable in respect of any offence committed in any such area prior to the commencement of the last-mentioned Act.

Repeal of laws, and savings 30

5. (1) The laws mentioned in the second column of the Schedule are repealed to the extent indicated in the third column thereof.

(2) Rules of court made under any provision of a law repealed by this Act and in force at the commencement of this Act, shall, subject to the provisions of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), and despite the repeal of that provision 35 by subsection (1), remain in force until repealed or appropriately amended in terms of the Rules Board for Courts of Law Act, 1985.

Short title and commencement

6. This Act is called the Judicial Matters Amendment Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 40

SCHEDULE**(Laws repealed by section 5)**

No. and year of law	Short title	Extent of repeal
Act No. 59 of 1959 (Venda)	Supreme Court Act, 1959	Section 43(1), (2)(a) and (3)
Act No. 15 of 1976 (Transkei)	Republic of Transkei Constitution Act, 1976	Section 49
Act No. 18 of 1977 (Bophuthatswana)	Republic of Bophuthatswana Constitution Act, 1977	Section 64
Act No. 9 of 1979 (Venda)	Republic of Venda Constitution Act, 1979	Section 47
Act No. 34 of 1985 (Bophuthatswana)	Bophuthatswana Electricity Act, 1985	The whole
Decree No. 43 of 1990 (Ciskei)	Supreme Court Decree, 1990	Section 37
Act No. 18 of 1996	Justice Laws Rationalisation Act, 1996	Section 11(2)

MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS AMENDMENT BILL, 1998

PART 1

OBJECTS AND EXPLANATION

The main object of the Judicial Matters Amendment Bill, 1998, is to encompass in a single Bill a variety of amendments to certain laws which do not require individual Amendment Acts.

PART 2

CLAUSE By CLAUSE ANALYSIS

2.1 The South African Law Commission, in its report on the jurisdictional lacuna in the Supreme Court Act, 1959 (Project 87), recommended that the Supreme Court Act, 1959 (Act No. 59 of 1959), should be amended to provide that in the case where the defendant is a *peregrinus* of the Republic—

- (a) the plaintiff, whether a *peregrinus* of the Republic or of the division where the cause of action arose, will be able to apply to the division in which the cause of action arose for an order for an attachment of property or arrest of the defendant to confirm jurisdiction irrespective of where in the Republic the property or defendant happens to be; and
- (b) the plaintiff, who is a *local peregrinus* (*an incola* of the Republic) will be able to apply to the division where he or she resides or is domiciled for an order for an attachment or arrest to found jurisdiction irrespective of where in the Republic the property or defendant happens to be.

Clause 1 of the Bill seeks to give effect to the above proposals.

2.2 Clause 2 purports to amend section 83(12) of the Attorneys Act, 1979 (Act No. 53 of 1979), so as to empower boards of executors and trust companies to receive remuneration for wills or other testamentary writings which are prepared by such boards and companies.

2.3 Clause 3 proposes an amendment to section 9 of the Recognition of Foreign Legal Qualifications and Practice Act, 1993 (Act No. 114 of 1993), so as to provide for a final extension of the operation of the Act for a further period of six months.

2.4 Clause 4 seeks to provide that the provisions of section 111 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as extended to the former TBVC states, will be applicable in respect of any offence, whether or not it was committed prior to or after the commencement of the Justice Laws Rationalisation Act, 1996 (Act No. 18 of 1996),, and irrespective of within which area it was committed.

2.5 Clause 5 provides that the rules of the Supreme Court of the former RSA will also be applicable to the High Courts of the former TBVC states and further purports to repeal the Bophuthatswana Electricity Act, 1985 (Act No. 34 of 1985).

2.6 Clause 6 provides for the short title and date of commencement.

PART 3

PARTIES CONSULTED

The following interested parties were consulted:

- * The Chief Justice
- * Judges President of the High Courts
- * Attorneys-General
- * Regional Court Presidents
- * Magistrates
- * Regional Heads of the Department of Justice
- * Magistrates' Commission
- * Association of Regional Magistrates of South Africa
- * Magistrates' Association of South Africa
- * General Council of the Bar
- * Black Lawyers Association
- * National Association of Democratic Lawyers

- * Association of Law Societies of the RSA
- * Legal Resources Centre
- * Lawyers for Human Rights
- * Association of Advocates
- * Independent Association of Advocates
- * Human Rights Committee
- * Independent Complaints Directorate
- * The Rules Board for Courts of Law
- * National Association of Independent Lawyers
- * Association of Trust Companies

PART 4

PARLIAMENTARY PROCEDURE

In the opinion of the State Law Advisers and the Department of Justice the procedure set out in section 75 of the Constitution should be followed with regard to this Bill, as it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.