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THE PRESIDENCY

No. 1234 21 November 2001

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

No. 34 of 2001: Constitution of the Republic of South Africa Amendment Act, 2001



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GENERAL EXPLANATORY NOTE:

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

(English text signed by the President.)
(Assented to 20 November 2001.)

ACT

To amend the Constitution of the Republic of South Africa, 1996, so as to change the title of the President of the Constitutional Court to that of Chief Justice; to provide for the offices of Deputy Chief Justice, President of the Supreme Court of Appeal and Deputy President of the Supreme Court of Appeal; to provide for the extension of the term of office of a Constitutional Court judge; to further regulate the appointment of Deputy Ministers; to make provision for municipal borrowing powers and to enable a Municipal Council to bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality; and to provide for matters connected therewith.

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

Amendment of section 51 of Act 108 of 1996

1. Section 51 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is hereby amended by the substitution for subsection (1) 5 of the following subsection:

“(1) After an election, the first sitting of the National Assembly must take place at a time and on a date determined by the [**President of the Constitutional Court**] Chief Justice, but not more than 14 days after the election result has been declared. 10
The Assembly may determine the time and duration of its other sittings and its recess periods.”.

Amendment of section 52 of Act 108 of 1996

2. Section 52 of the Constitution is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The [**President of the Constitutional Court**] Chief Justice must preside 15 over the election of a Speaker, or designate another judge to do so. The Speaker presides over the election of a Deputy Speaker.”.

Substitution of section 54 of Act 108 of 1996

3. The following section is hereby substituted for section 54 of the Constitution:

“Rights of certain Cabinet members and Deputy Ministers in the National Assembly

54. The President, and any member of the Cabinet or any Deputy Minister who is not a member of the National Assembly, may, subject to the rules and orders of the Assembly, attend and [may] speak in the Assembly, but may not vote.” 5

Amendment of section 58 of Act 108 of 1996

4. Section 58 of the Constitution is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“Cabinet members, Deputy Ministers and members of the National Assembly—”. 10

Amendment of section 64 of Act 108 of 1996

5. Section 64 of the Constitution is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The [President of the Constitutional Court] Chief Justice must preside over the election of the Chairperson, or designate another judge to do so. The Chairperson presides over the election of the Deputy Chairpersons.”. 15

Amendment of section 86 of Act 108 of 1996

6. Section 86 of the Constitution is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) The [President of the Constitutional Court] Chief Justice must preside over the election of the President, or designate another judge to do so. The procedure set out in Part A of Schedule 3 applies to the election of the President. 20

(3) An election to fill a vacancy in the office of President must be held at a time and on a date determined by the [President of the Constitutional Court] Chief Justice, but not more than 30 days after the vacancy occurs.”. 25

Substitution of section 93 of Act 108 of 1996

7. The following section is hereby substituted for section 93 of the Constitution:

“Deputy Ministers

93. (1) The President may appoint—
(a) any number of Deputy Ministers from among the members of the National Assembly; and 30

(b) no more than two Deputy Ministers from outside the Assembly, to assist the members of the Cabinet, and may dismiss them.

(2) Deputy Ministers appointed in terms of subsection (1)(b) are accountable to Parliament for the exercise of their powers and the performance of their functions.”. 35

Amendment of section 110 of Act 108 of 1996

8. Section 110 of the Constitution is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) After an election, the first sitting of a provincial legislature must take place at a time and on a date determined by a judge designated by the [President of the Constitutional Court] Chief Justice, but not more than 14 days after the election result has been declared. A provincial legislature may determine the time and duration of its other sittings and its recess periods.”. 40

Amendment of section 111 of Act 108 of 1996

9. Section 111 of the Constitution is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A judge designated by the **[President of the Constitutional Court] Chief Justice** must preside over the election of a Speaker. The Speaker presides over the election of a Deputy Speaker.”. 5

Amendment of section 128 of Act 108 of 1996

10. Section 128 of the Constitution is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) A judge designated by the **[President of the Constitutional Court] Chief Justice** must preside over the election of the Premier. The procedure set out in Part A of Schedule 3 applies to the election of the Premier. 10

(3) An election to fill a vacancy in the office of Premier must be held at a time and on a date determined by the **[President of the Constitutional Court] Chief Justice**, but not later than 30 days after the vacancy occurs.”. 15

Amendment of section 167 of Act 108 of 1996

11. Section 167 of the Constitution is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Constitutional Court consists of **[a President, a Deputy President] the Chief Justice of South Africa, the Deputy Chief Justice and nine other judges.**” 20

Amendment of section 168 of Act 108 of 1996

12. Section 168 of the Constitution is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) The Supreme Court of Appeal consists of a **[Chief Justice, a Deputy Chief Justice] President, a Deputy President** and the number of judges of appeal determined **[by] in terms of** an Act of Parliament. 25

(2) A matter before the Supreme Court of Appeal must be decided by the number of judges determined **[by] in terms of** an Act of Parliament.”.

Amendment of section 174 of Act 108 of 1996

13. Section 174 of the Constitution is hereby amended by the substitution for subsections (3) and (4) of the following subsections: 30

“(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the **[President and Deputy President of the Constitutional Court] Chief Justice and the Deputy Chief Justice** and, after consulting the Judicial Service Commission, appoints the **[Chief Justice and Deputy Chief Justice] President and Deputy President of the Supreme Court of Appeal.** 35

(4) The other judges of the Constitutional Court are appointed by the President, as head of the national executive, after consulting the **[President of the Constitutional Court] Chief Justice** and the leaders of parties represented in the National Assembly, in accordance with the following procedure: 40

- (a) The Judicial Service Commission must prepare a list of nominees with three names more than the number of appointments to be made, and submit the list to the President.
- (b) The President may make appointments from the list, and must advise the Judicial Service Commission, with reasons, if any of the nominees are unacceptable and any appointment remains to be made. 45
- (c) The Judicial Service Commission must supplement the list with further nominees and the President must make the remaining appointments from the supplemented list.”. 50

Amendment of section 175 of Act 108 of 1996

14. Section 175 of the Constitution is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The President may appoint a woman or a man to be an acting judge of the Constitutional Court if there is a vacancy or if a judge is absent. The appointment must be made on the recommendation of the Cabinet member responsible for the administration of justice acting with the concurrence of the **[President of the Constitutional Court and the]** Chief Justice.”. 5

Amendment of section 176 of Act 108 of 1996

15. Section 176 of the Constitution is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) A Constitutional Court judge **[is appointed]** holds office for a non-renewable term of 12 years, **[but must retire at]** or until he or she attains the age of 70, whichever occurs first, except where an Act of Parliament extends the term of office of a Constitutional Court judge.” 15

Amendment of section 178 of Act 108 of 1996, as amended by section 2 of Act 65 of 1998

16. Section 178 of the Constitution is hereby amended by the substitution—

- (a) for paragraph (b) of subsection (1) of the following paragraph: 20
“(b) the President of the **[Constitutional Court] Supreme Court of Appeal;**”;
- (b) for paragraph (k) of subsection (1) of the following paragraph: 25
“(k) when considering matters **[specifically]** relating to a **[provincial or local division of the] specific** High Court, the Judge President of that **[division] Court** and the Premier of the province concerned, or an alternate designated by each of them.”; and
- (c) for subsection (7) of the following subsection: 30
“(7) If the Chief Justice or the President of the **[Constitutional Court] Supreme Court of Appeal** is temporarily unable to serve on the Commission, the Deputy Chief Justice or the Deputy President of the **[Constitutional Court] Supreme Court of Appeal**, as the case may be, acts as his or her alternate on the Commission.”.

Insertion of section 230A in Act 108 of 1996

17. The following section is hereby inserted in the Constitution after section 230:

“Municipal loans

- 230A.** (1) A Municipal Council may, in accordance with national legislation— 35
- (a) raise loans for capital or current expenditure for the municipality, but loans for current expenditure may be raised only when necessary for bridging purposes during a fiscal year; and 40
- (b) bind itself and a future Council in the exercise of its legislative and executive authority to secure loans or investments for the municipality.
- (2) National legislation referred to in subsection (1) may be enacted only after any recommendations of the Financial and Fiscal Commission have been considered.”. 45

Substitution of Schedule 2 to Act 108 of 1996, as amended by section 2 of Act 35 of 1997

18. The following Schedule is hereby substituted for Schedule 2 to the Constitution:

"Schedule 2

OATHS AND SOLEMN AFFIRMATIONS

Oath or solemn affirmation of President and Acting President

1. The President or Acting President, before the [**President of the Constitutional Court**] Chief Justice, or another judge designated by the [**President of the Constitutional Court**] Chief Justice, must swear/affirm as follows: 5

In the presence of everyone assembled here, and in full realisation of the high calling I assume as President/Acting President of the Republic of South Africa, I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa, and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always— 10

* promote all that will advance the Republic, and oppose all that may harm it; 15

* protect and promote the rights of all South Africans;

* discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;

* do justice to all; and 20

* devote myself to the well-being of the Republic and all of its people.

(In the case of an oath: So help me God.)

Oath or solemn affirmation of Deputy President

2. The Deputy President, before the [**President of the Constitutional Court**] Chief Justice or another judge designated by the Chief Justice, must swear/affirm as follows: 25

In the presence of everyone assembled here, and in full realisation of the high calling I assume as Deputy President of the Republic of South Africa, I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, observe, uphold and maintain the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will always— 30

* promote all that will advance the Republic, and oppose all that may harm it; 35

* be a true and faithful counsellor;

* discharge my duties with all my strength and talents to the best of my knowledge and ability and true to the dictates of my conscience;

* do justice to all; and 40

* devote myself to the well-being of the Republic and all of its people.

(In the case of an oath: So help me God.)

Oath or solemn affirmation of Ministers and Deputy Ministers

3. Each Minister and Deputy Minister, before the [**President of the Constitutional Court**] Chief Justice or another judge designated by the [**President of the Constitutional Court**] Chief Justice, must swear/affirm as follows: 45

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Minister/Deputy Minister with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability. 50

(In the case of an oath: So help me God.) 55

**Oath or solemn affirmation of members of the National Assembly,
permanent delegates to the National Council of Provinces and
members of the provincial legislatures**

4. (1) Members of the National Assembly, permanent delegates to the National Council of Provinces and members of provincial legislatures, before the **[President of the Constitutional Court] Chief Justice** or a judge designated by the **[President of the Constitutional Court] Chief Justice**, must swear or affirm as follows: 5
- I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I solemnly promise to perform my functions as a member of the National Assembly/permanent delegate to the National Council of Provinces/member of the legislature of the province of C.D. to the best of my ability. 10 15
- (In the case of an oath: So help me God.)
- (2) Persons filling a vacancy in the National Assembly, a permanent delegation to the National Council of Provinces or a provincial legislature may swear or affirm in terms of subitem (1) before the presiding officer of the Assembly, Council or legislature, as the case may be. 20

**Oath or solemn affirmation of Premiers, Acting Premiers and members
of provincial Executive Councils**

5. The Premier or Acting Premier of a province, and each member of the Executive Council of a province, before the **[President of the Constitutional Court] Chief Justice** or a judge designated by the **[President of the Constitutional Court] Chief Justice**, must swear/affirm as follows: 25
- I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and will obey, respect and uphold the Constitution and all other law of the Republic; and I undertake to hold my office as Premier/Acting Premier/member of the Executive Council of the province of C.D. with honour and dignity; to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the functions of my office conscientiously and to the best of my ability. 30 35
- (In the case of an oath: So help me God.)

Oath or solemn affirmation of Judicial Officers

6. (1) Each judge or acting judge, before the Chief Justice **[of the Supreme Court of Appeal]** or another judge designated by the Chief Justice, must swear or affirm as follows: 40
- I, A.B., swear/solemnly affirm that, as a Judge of the Constitutional Court/Supreme Court of Appeal/High Court/E.F. Court, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law. 45
- (In the case of an oath: So help me God.) 50
- (2) A person appointed to the office of Chief Justice **[of the Supreme Court of Appeal]** who is not already a judge at the time of that appointment must swear or affirm before the **[President of the Constitutional Court] Deputy Chief Justice**, or failing that judge, the next most senior available judge of the Constitutional Court. 55

- (3) Judicial officers, and acting judicial officers, other than judges, must swear/affirm in terms of national legislation.”.

Amendment of Schedule 3 to Act 108 of 1996, as amended by section 2 of Act 3 of 1999

19. Schedule 3 to the Constitution is hereby amended by the substitution for item 9 of Part A of the following item:

“Rules

9. (1) The **[President of the Constitutional Court]** Chief Justice must make rules prescribing—
- (a) the procedure for meetings to which this Schedule applies; 10
 - (b) the duties of any person presiding at a meeting, and of any person assisting the person presiding;
 - (c) the form on which nominations must be submitted; and
 - (d) the manner in which voting is to be conducted.
- (2) These rules must be made known in the way that the **[President of the Constitutional Court]** Chief Justice determines.”. 15

Amendment of Schedule 6 to Act 108 of 1996, as amended by section 3 of Act 35 of 1997 and section 5 of Act 65 of 1998

20. Schedule 6 to the Constitution is hereby amended—
- (a) by the deletion of subitems (2)(b) and (3)(b) of item 16; and 20
 - (b) by the addition to item 16 of the following subitem:
 - “(7) (a) Anyone holding office, when the Constitution of the Republic of South Africa Amendment Act, 2001, takes effect, as—
 - (i) the President of the Constitutional Court, becomes the Chief Justice as contemplated in section 167(1) of the new Constitution; 25
 - (ii) the Deputy President of the Constitutional Court, becomes the Deputy Chief Justice as contemplated in section 167(1) of the new Constitution;
 - (iii) the Chief Justice, becomes the President of the Supreme Court of Appeal as contemplated in section 168(1) of the new Constitution; 30
 - and
 - (iv) the Deputy Chief Justice, becomes the Deputy President of the Supreme Court of Appeal as contemplated in section 168(1) of the new Constitution.
 - (b) All rules, regulations or directions made by the President of the Constitutional Court or the Chief Justice in force immediately before the Constitution of the Republic of South Africa Amendment Act, 2001, takes effect, continue in force until repealed or amended. 35
 - (c) Unless inconsistent with the context or clearly inappropriate, a reference in any law or process to the Chief Justice or to the President of the Constitutional Court, must be construed as a reference to the Chief Justice as contemplated in section 167(1) of the new Constitution.”. 40

Short title and commencement

21. This Act is called the Constitution of the Republic of South Africa Amendment Act, 2001. 45