



## REPUBLIC OF SOUTH AFRICA



# GOVERNMENT GAZETTE

## STAATSKOERANT

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No. 1499.

3 July 1991

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

No. 103 of 1991: Short Process Courts and Mediation in Certain Civil Cases Act, 1991

#### KANTOOR VAN DIE STAATSPRESIDENT

No. 1499.

3 Julie 1991

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 103 van 1991: Wet op Howe vir Kort Proses en Bemiddeling in Sekere Siviele Sake, 1991

**ACT**

To provide for an alternative forum for the adjudication of certain civil cases; mediation in certain civil cases; and for matters connected therewith.

*(Engelse teks deur die Staatspresident geteken.)  
(Goedgekeur op 27 Junie 1991.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

**Definitions**

1. In this Act, unless the context otherwise indicates—
  - (i) “adjudicator” means an Adjudicator for Short Process referred to in section 5, appointed under section 6; (iii)
  - (ii) “clerk of the court” means a clerk of the magistrate’s court appointed in terms of section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944); (viii)
  - (iii) “court” means a court established under section 4; (vii)
  - (iv) “district” means a district established under section 2(1)(a) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944); (v)
  - (v) “magistrate’s court” means a court established under section 2(1)(f) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944); (ix)
  - (vi) “mediation proceedings” means the proceedings contemplated in section 3; (ii)
  - (vii) “mediator” means a mediator appointed under section 2; (i)
  - (viii) “Minister” means the Minister of Justice; (x)
  - (ix) “prescribed” means prescribed by the rules; (xii)
  - (x) “record” means to take down in writing or in shorthand or to record by mechanical means; (xi)
  - (xi) “the rules” means the rules made and in force under section 13; (iv) and
  - (xii) “this Act” includes the rules. (vi)

**CHAPTER I****Mediation**

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**Appointment of mediators**

2. (1) The Minister may appoint one or more mediators for an area or district for which a court has been established from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice. 30

(2) The provisions of sections 6(1)(b), (2), (3) and (4) and 7 shall apply *mutatis*

*mutatis mutandis* to the appointment of mediators for an area or district for which a court has been established from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice.

No. 103 of 1991 - Short Process Courts and Mediation in Certain Civil Cases Act, 1991  
Geselskappe se Suid-Afrikaanse Rechtsgeselskappe word geskep om die geselskappe se rechte te behou.

No. 103 of 1991 - Short Process Courts and Mediation in Certain Civil Cases Act, 1991  
Geselskappe se Suid-Afrikaanse Rechtsgeselskappe word geskep om die geselskappe se rechte te behou.

**WET OP HOWE VIR KORT PROSES EN  
BEMIDDELING IN SEKERE SIVIELE SAKE, 1991**

Wet No. 103, 1991

# WET

**Om voorsiening te maak vir 'n alternatiewe forum vir die beregting van sekere siviele sake; bemiddeling in sekere siviele sake; en vir aangeleenthede wat daar mee in verband staan.**

*(English text signed by the State President.)  
(Assented to 27 June 1991.)*

**DAAR WORD BEPAAL** deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:

## Woordomskrywing

1. In hierdie Wet, tensy die samehang anders aandui, beteken—
  - (i) "bemiddelaar" 'n bemiddelaar kragtens artikel 2 aangestel; (vii)
  - (ii) "bemiddelingsverrigtinge" die verrigtinge beoog in artikel 3; (vi)
  - (iii) "beregter" 'n Beregter vir Kort Proses bedoel in artikel 5, kragtens artikel 6 aangestel; (i)
  - (iv) "die reëls" die reëls kragtens artikel 13 uitgevaardig en van krag; (xi)
  - (v) "distrik" 'n distrik kragtens artikel 2(1)(a) van die Wet op Landdros-howe, 1944 (Wet No. 32 van 1944), ingestel; (iv)
  - (vi) "hierdie Wet" ook die reëls; (xii)
  - (vii) "hof" 'n hof kragtens artikel 4 ingestel; (iii)
  - (viii) "klerk van die hof" 'n klerk van die landdroshof ingevolge artikel 13 van die Wet op Landdroshewe, 1944 (Wet No. 32 van 1944), aangestel;
  - (ix) "landdroshof" 'n hof kragtens artikel 2(1)(f) van die Wet op Landdros-howe, 1944 (Wet No. 32 van 1944), ingestel; (v)
  - (x) "Minister" die Minister van Justisie; (viii)
  - (xi) "notuleer" om skriftelik of in snelskrif af te neem of op meganiese wyse op te neem; (x) en
  - (xii) "voorgeskrewe" deur die reëls voorgeskryf. (ix)

## HOOFSTUK I

### Bemiddeling

#### 25 Aanstelling van bemiddelaars

2. (1) Die Minister kan vir 'n gebied of distrik waarvoor 'n hof ingestel is een of meer bemiddelaars aanstel uit persone wie se name vir dié doel voorgelê is deur die Vereniging van Prokureursordes van die Republiek van Suid-Afrika, die Algemene Balieraad van Suid-Afrika en die Departement van Justisie.
- 30 (2) Die bepalings van artikels 6(1)(b), (2), (3) en (4) en 7 is *mutatis mutandis*

*mutandis* in relation to any mediator appointed or to be appointed under subsection (1).

(3) Any person appointed under subsection (1) shall, before commencing with his functions as a mediator for the first time, take an oath or make an affirmation subscribed by him in the form set out below:

I, ..... do hereby swear/solemnly and  
(full name)

sincerely affirm and declare that whenever I may be called upon to perform the functions of a mediator in mediation proceedings, I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of a particular case may require, in accordance with the law and customs of the Republic of South Africa applying to the case concerned.

(4) Such an oath or affirmation shall be taken or made in chambers before the most senior available magistrate of the district in which the seat of the court concerned is situated, and he shall at the foot thereof make a note to the effect that it was taken or made before him, and of the date on which it was so taken or made, and append his signature thereto.

(5) Whenever by reason of absence or incapacity a mediator is unable to complete mediation proceedings, those proceedings shall be commenced *de novo* before another mediator.

(6) Any mediator shall be subject to the administrative control of the magistrate in whose district the seat of the court concerned is situated.

### Mediation proceedings

3. (1) (a) At any time prior to or after the issuing of a summons for the institution of a civil action in a court or magistrate's court, but before judgment, the parties or their legal representatives may—

- (i) in the case of an intended action in the court or magistrate's court, in the prescribed manner give notice to the clerk of the court that the parties have agreed to submit their dispute to mediation proceedings; or
- (ii) in the case of an action which has already been instituted in the court or magistrate's court, in the prescribed manner give notice to the court concerned that the parties have agreed to submit their dispute to mediation proceedings, and request that court to adjourn the action for such mediation proceedings.

(b) Within 14 days after—

- (i) receipt of the notice referred to in subparagraph (i) of paragraph (a); or
  - (ii) the adjournment referred to in subparagraph (ii) of paragraph (a), if the court concerned is satisfied that mediation proceedings will not delay the trial unreasonably and will not prejudice any of the parties,
- the clerk of the court shall in the prescribed manner give notice to the parties or their legal representatives to appear at a specified time, date and place in chambers before a mediator for an interview and investigation for consideration of a settlement out of court between the parties or, if such settlement cannot be reached—

- (i) the simplification of the issues between the parties;
- (ii) the necessity for or desirability of amending the pleadings with a view to the intended or further trial;
- (iii) the possibility of obtaining admissions of—
  - (aa) fact; or
  - (bb) information contained in or on written documents, photographic material, sound recordings, video recordings or computer print-outs, tapes or discs or any other computer storage media, from the parties with a view to avoiding the unnecessary adducing of evidence at the intended or further trial;
- (iv) the limitation of the number of witnesses at the intended or further trial; and
- (v) any other matter which may contribute to the expeditious and cost-saving disposal of the case.

(c) The clerk of the court shall in the prescribed manner make the prescribed

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van toepassing met betrekking tot 'n bemiddelaar wat kragtens subartikel (1) aangestel is of staan te word.

(3) Iemand wat kragtens subartikel (1) aangestel is, moet, voordat hy die eerste maal met sy werksaamhede as bemiddelaar begin, 'n eed of 'n plegtige verklaring in die onderstaande vorm aflê en onderteken:

Ek, ..... verklaar hierby onder eed/plettig en opreg (volle naam)  
dat wanneer ek ook al die werksaamhede van 'n bemiddelaar in bemiddelingsverrigtinge moet verrig, ek aan alle persone op gelyke voet reg sal laat geskied sonder vrees, begunstiging of vooroordeel en, na gelang die omstandighede van 'n bepaalde saak vereis, ooreenkomsdig die reg en gebruikte van die Republiek van Suid-Afrika wat op die betrokke saak van toepassing is.

(4) So 'n eed of plegtige verklaring word afgelê in kamers voor die mees senior beskikbare landdros van die distrik waarin die setel van die betrokke hof geleë is, en hy moet daaronder 'n aantekening aanbring ten effekte dat dit voor hom afgelê is, en die datum van aflegging daarvan meld, en dit onderteken.

(5) Wanneer 'n bemiddelaar weens afwesigheid of onvermoë nie in staat is om bemiddelingsverrigtinge te voltooi nie, neem daardie verrigtinge 'n aanvang *de novo* voor 'n ander bemiddelaar.

(6) 'n Bemiddelaar is onderworpe aan die administratiewe beheer van die landdros in wie se distrik die setel van die betrokke hof geleë is.

**Bemiddelingsverrigtinge**

3. (1) (a) Te eniger tyd voor of na die uitreiking van 'n dagvaarding om 'n siviele aksie in 'n hof of landdroshof aanhangig te maak, maar voor uitspraak, kan die partye of hul regstuurwoordigers—

(i) in die geval van 'n voorgenome aksie in die hof of landdroshof, aan die klerk van die hof op die voorgeskrewe wyse kennis gee dat die partye ooreengekom het om hul geskil aan bemiddelingsverrigtinge te onderwerp; of

(ii) in die geval van 'n aksie wat reeds in die hof of landdroshof 'n aanvang geneem het, die betrokke hof op die voorgeskrewe wyse in kennis stel dat die partye ooreengekom het om hul geskil aan bemiddelingsverrigtinge te onderwerp en daardie hof versoek om die aksie vir sodanige bemiddelingsverrigtinge te verdaag.

(b) Binne 14 dae na—

(i) ontvangs van die kennisgewing bedoel in subparagraph (i) van paragraaf (a); of  
(ii) die verdaging bedoel in subparagraph (ii) van paragraaf (a), indien die betrokke hof oortuig is dat bemiddelingsverrigtinge nie die verhoor onredelik sal vertraag en tot nadeel van enige van die partye sal strek nie,

stel die klerk van die hof op die voorgeskrewe wyse die partye of hul regstuurwoordigers in kennis om op 'n bepaalde tyd, datum en plek voor 'n bemiddelaar in kamers te verskyn vir 'n onderhou en ondersoek ter oorweging van 'n skikking buite die hof tussen die partye of, indien so 'n skikking nie bereik kan word nie—

(i) die vereenvoudiging van die geskilpunte tussen die partye;  
(ii) die noodsaaklikheid of wenslikheid daarvan om die pleitstukke met die oog op die voorgenome of verdere verhoor te wysig;

(iii) die moontlikheid om erkennings van—  
(aa) feite; of  
(bb) inligting vervat in of op skriftelike stukke, fotografiese materiaal, klankopnames, video-opnames of rekenaarbergingsmedia,

-bande of -skywe of enige ander rekenaarbergingsmedia,  
van die partye te verkry met die oog op die vermyding van die onnodige aanbied van getuienis by die voorgenome of verdere verhoor;

(iv) die beperking van die aantal getuies by die voorgenome of verdere verhoor; en

(v) enige ander aangeleentheid wat tot die spoedige en kostebesparende afhandeling van die saak kan bydra.

(c) Die klerk van die hof moet die voorgeskrewe stukke op die voorge-

documents available to the mediator in preparation of mediation proceedings.

(d) A mediator entrusted with mediation proceedings may make such enquiries and institute such investigation as he may deem necessary.

(2) (a) After completion of the interview and investigation referred to in subsection (1) the mediator shall issue an order in respect of—

- (i) the settlement, if any, reached between the parties; or
- (ii) the amendments to the pleadings to which the parties have agreed or which have been allowed by the mediator;
- (iii) the agreements reached by the parties in relation to one or more of the matters considered; and
- (iv) the settlement reached in which the issues with a view to the intended or further trial are restricted to those which were not settled by way of admission or agreement by the parties or their legal representatives.

(b) An order referred to in paragraph (a) shall be recorded by the mediator.

(3) If a civil action is instituted or proceeded with in a court or other court of law after completion of mediation proceedings, the order referred to in subsection (2) shall form part of the record of the case in the court concerned, and such order shall be binding on the parties, unless it is amended at the trial so as to prevent any manifest injustice.

(4) If the parties to a dispute reach a settlement before they appear before a mediator in accordance with subsection (1) or during the mediation proceedings, the mediator may at such appearance or during such proceedings, as the case may be, record such settlement in the prescribed manner, and thereupon it shall be deemed to be an order of the court or magistrate's court, as the case may be, for the area or district in respect of which the court or magistrate's court, as the case may be, has jurisdiction: Provided that if an action in relation to such a dispute has not been instituted yet, such recorded settlement shall be deemed to be an order of the court concerned.

(5) If any party fails to be present at an interview referred to in paragraph (b) of subsection (1) on notice duly given in terms of that paragraph, the mediator may issue any order which he may deem fair in the circumstances, including the granting of judgment for the plaintiff.

(6) A mediator may subject to the rules issue such order as he may deem fit in respect of the costs of any proceedings in terms of this section.

(7) An order issued under any provision of this section shall be final and no appeal shall lie from it.

## CHAPTER II

### Establishment and Nature of Short Process Courts

#### Establishment and nature of courts

4. (1) The Minister may by notice in the *Gazette*—

- (a) establish for any area consisting of one or more districts or a part of a district a court for the adjudication of civil cases in terms of this Act, called a short process court;
- (b) determine the seat of such a court;
- (c) determine one or more places in the area concerned for the holding of sessions of such a court;
- (d) alter the area for which such a court has been established by including therein or excising therefrom any district or districts or part thereof;
- (e) abolish a court established under this section; and
- (f) amend or withdraw any notice issued in terms of this section.

(2) Subject to the provisions of this Act a court established under subsection (1), shall for all purposes be deemed to be a magistrate's court, and an adjudicator shall, in relation to the court for which he has been appointed, have the same powers and jurisdiction as those which a magistrate has in relation to the magistrate's court of the district for which he has been appointed.

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skreve wyse tot die bemiddelaar se beskikking stel in voorbereiding van bemiddelingsverrigtinge.

(d) 'n Bemiddelaar wat belas is met bemiddelingsverrigtinge kan die navrae doen en die ondersoek instel wat hy nodig ag.

5 (2) (a) Na voltooiing van die onderhoud en ondersoek bedoel in subartikel (1) reik die bemiddelaar 'n bevel uit ten opsigte van—

- (i) die skikking, as daar is, wat tussen die partye bereik is; of
- (ii) die wysigings aan die pleitstukke waaroor die partye ooreengekom het of wat deur die bemiddelaar toegelaat is;

10 (iii) die ooreenkomste waartoe die partye met betrekking tot een of meer van die oorwoë sake geraak het; en

(iv) die skikking wat bereik is waarby die geskilpunte met die oog op die voorgenome of verdere verhoor tot dié wat nie deur erkenning of ooreenkoms deur die partye of hulregsverteenvwoerdigers besleg is nie,

15 beperk word.

(b) 'n Bevel bedoel in paraagraaf (a) moet deur die bemiddelaar genotuleer word.

(3) Indien 'n siviele aksie na voltooiing van bemiddelingsverrigtinge in 'n hof of ander gereghof aanhangig gemaak of voortgesit word, vorm die bevel in subartikel (2) bedoel deel van die oorkonde van die saak in die betrokke hof, en bind so 'n bevel die partye, tensy dit by die verhoor gewysig word ten einde 'n klaarblyklike onreg te voorkom.

(4) Indien die partye in 'n geskil voordat hulle ooreenkomstig subartikel (1) voor 'n bemiddelaar verskyn of tydens die bemiddelingsverrigtinge 'n skikking aangaan, kan die bemiddelaar by sodanige verskyning of tydens sodanige verrigtinge, na gelang van die geval, sodanige skikking op die voorgeskrewe wyse notuleer, en daarop word dit geag 'n bevel van die hof of landdroshof, na gelang van die geval, vir die gebied of distrik ten opsigte waarvan die hof of landdroshof, na gelang van die geval, regsbevoegdheid het, te wees: Met dien verstande dat indien 'n aksie met betrekking tot so 'n geskil nog nie aanhangig gemaak is nie, so 'n genotuleerde skikking geag word 'n bevel van die betrokke hof te wees.

(5) Indien 'n party, na behoorlike kennisgewing ingevolge paraagraaf (b) van subartikel (1), versuim om by 'n onderhoud in daardie paraagraaf bedoel, aanwesig te wees, kan die bemiddelaar die bevel uitreik wat hy in die omstandighede billik ag, met inbegrip van die gee van vonnis vir die eiser.

(6) 'n Bemiddelaar kan ten opsigte van die koste van enige verrigtinge ingevolge hierdie artikel, behoudens die reëls die bevel uitreik wat hy goeddink.

(7) 'n Bevel kragtens 'n bepaling van hierdie artikel uitgereik, is afdoende en daarteen kan nie geappelleer word nie.

## HOOFSTUK II

### Instelling en Aard van Howe vir Kort Proses

#### **Instelling en aard van howe**

4. (1) Die Minister kan by kennisgewing in die *Staatskoerant*—

45 (a) vir 'n gebied bestaande uit een of meer distrikte of 'n deel van 'n distrik 'n hof vir die beregting van siviele sake ingevolge hierdie Wet instel, wat 'n hof vir kort proses heet;

(b) die setel van so 'n hof bepaal;

(c) een of meer plekke in die betrokke gebied vir die hou van sittings van so 'n hof bepaal;

(d) die gebied waarvoor so 'n hof ingestel is, verander deur enige distrik of distrikte of deel daarvan daarby in te sluit of daaruit te sny;

(e) 'n hof kragtens hierdie artikel ingestel, afskaf; en

(f) 'n kennisgewing uitgereik ingevolge hierdie artikel wysig of intrek.

55 (2) Behoudens die bepaling van hierdie Wet word 'n hof kragtens subartikel

(1) ingestel, vir alle doeleindes geag 'n landdroshof te wees, en beskik 'n beregter met betrekking tot die hof waarvoor hy aangestel is oor dieselfde bevoegdhede en regsbevoegdheid as dié waaroor 'n landros beskik met betrekking tot die landdroshof van die distrik waarvoor hy aangestel is.

(3) If the Minister exercises the power contemplated in paragraph (d), (e) or (f) of subsection (1), any partly heard case affected thereby shall be proceeded with as if such power had not been exercised.

#### Presiding officers

5. The officer presiding at a court shall be called an Adjudicator for Short Process and shall be appointed under section 6. 5

#### Appointment of adjudicators

6. (1) (a) Subject to the provisions of this section and section 7 the Minister may, for a court established by him under section 4(1), appoint one or more adjudicators from persons whose names have been submitted for that purpose by the Association of Law Societies of the Republic of South Africa, the General Bar Council of South Africa and the Department of Justice. 10

(b) An officer in the service of the State shall not be appointed as an adjudicator. 15

(c) The Minister may appoint a mediator as an adjudicator and in such case such person shall be competent to exercise or perform the powers, duties and functions conferred or assigned by or in terms of this Act in respect of both such offices: Provided that a mediator who presided at mediation proceedings from which an action arises in a court and in which the same parties are involved, shall not preside at that court in respect of that action unless the parties agree thereto: Provided further that an adjudicator who presided at a court at an action from which mediation proceedings arise and in which the same parties are involved, shall not preside at those mediation proceedings unless the parties agree thereto. 20

(2) (a) An adjudicator shall hold office during the Minister's pleasure and shall vacate his office automatically, unless the Minister specifically otherwise determines. 25

(b) An adjudicator shall vacate his office if at any time after his appointment he no longer meets with the qualifications referred to in section 7. 30

(3) An adjudicator may resign by notice in writing to the Minister. 35

(4) The Minister may at any time withdraw the appointment of an adjudicator if in his opinion there is sufficient reason for doing so. 40

(5) A person appointed under subsection (1)(a) or (c) shall, before commencing with his functions as an adjudicator for the first time, take an oath or make an affirmation subscribed by him in the form set out below:

I, ..... do hereby swear/solemnly and sincerely 35  
(full name)

affirm and declare that whenever I may be called upon to perform the functions of an adjudicator in a court, I will administer justice to all persons alike without fear, favour or prejudice and, as the circumstances of a particular case may require, in accordance with the law and customs 40  
of the Republic of South Africa applying to the case concerned.

(6) Such an oath or affirmation shall be taken or made in open court before the most senior available magistrate of the district in which the seat of the court concerned is situated, and he shall at the foot thereof make a note to the effect that it was taken or made before him, and of the date on which it was so taken or made, 45 and append his signature thereto.

(7) Whenever by reason of absence or incapacity an adjudicator is unable to complete the hearing of a civil case, that hearing shall be commenced *de novo* before another adjudicator.

(8) An adjudicator shall be subject to the administrative control of the 50 magistrate in whose district the seat of the court concerned is situated.

#### Qualifications for appointment as adjudicator

7. No person shall be appointed as an adjudicator unless he is qualified—

- (a) to be admitted to practise as an advocate under the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
- (b) to be admitted to practise as an attorney under the Attorneys Act, 1979 (Act No. 53 of 1979); or

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(3) Indien die Minister die bevoegdheid beoog in paragraaf (d), (e) of (f) van subartikel (1) uitoefen, word 'n deelsverhoorde saak wat daardeur geraak word, voortgesit asof so 'n bevoegdheid nie uitgeoefen is nie.

**Voorsittende beampies**

5 5. Die beampie wat by 'n hof voorsit, heet 'n Beregter vir Kort Proses en moet kragtens artikel 6 aangestel word.

**Aanstelling van beregters**

6. (1) (a) Behoudens die bepalings van hierdie artikel en artikel 7 kan die Minister, vir 'n hof deur hom ingestel kragtens artikel 4(1), een of meer beregters aanstel uit persone wie se name vir dié doel voorgelê is deur die Vereniging van Prokureursordes van die Republiek van Suid-Afrika, die Algemene Balieraad van Suid-Afrika en die Departement van Justisie.

(b) 'n Beampie in diens van die Staat word nie as 'n beregter aangestel nie.

(c) Die Minister kan 'n bemiddelaar as 'n beregter aanstel en in so 'n geval is so iemand bevoeg om die bevoegdhede, pligte en werksaamhede by of ingevolge hierdie Wet verleent of opgedra ten opsigte van beide sodanige ampte uit te oefen of te verrig: Met dien verstande dat 'n bemiddelaar wat voorgesit het by bemiddelingsverrigtinge waaruit 'n aksie in 'n hof voortspruit en waarby dieselfde partye betrokke is, nie in daardie hof voorsit ten opsigte van daardie aksies nie tensy die partye daartoe instem: Met dien verstande voorts dat 'n beregter wat voorgesit het by 'n hof by 'n aksie waaruit bemiddelingsverrigtinge voortspruit en waarby dieselfde partye betrokke is, nie by daardie bemiddelingsverrigtinge voorsit nie, tensy die partye daartoe instem.

(2) (a) 'n Beregter beklee sy amp solank dit die Minister behaag en ontruim sy amp outomatis, tensy die Minister uitdruklik anders bepaal.

(b) 'n Beregter ontruim sy amp indien hy te eniger tyd na sy aanstelling nie meer aan die kwalifikasies in artikel 7 bedoel, voldoen nie.

(3) 'n Beregter kan by skriftelike kennisgewing aan die Minister bedank.

(4) Die Minister kan te eniger tyd die aanstelling van 'n beregter intrek indien daar na sy oordeel voldoende rede is om dit te doen.

(5) Iemand wat kragtens subartikel (1)(a) of (c) aangestel is, moet, voordat hy die eerste maal met sy werksaamhede as beregter begin, 'n eed of 'n plegtige verklaring in die onderstaande vorm aflê en onderteken:

Ek, ..... verklaar hierby onder  
35 (volle naam)

eed/plegtig en opreg dat wanneer ek ook al die werksaamhede van 'n beregter in 'n hof moet verrig, ek aan alle persone op gelyke voet reg sal laat geskied sonder vrees, begunstiging of vooroordeel en, na gelang die omstandighede van 'n bepaalde saak vereis, ooreenkomsdig 40 die reg en gebruikte van die Republiek van Suid-Afrika wat op die betrokke saak van toepassing is.

(6) So 'n eed of plegtige verklaring word afgelê in die ope hof voor die mees senior beskikbare landdros van die distrik waarin die setel van die betrokke hof geleë is, en hy moet daaronder 'n aantekening aanbring ten effekte dat dit voor 45 hom afgelê is, en die datum van aflegging daarvan meld, en dit onderteken.

(7) Wanneer 'n beregter weens afwesigheid of onvermoë nie in staat is om die verhoor van 'n siviele saak te voltooi nie, neem daardie verhoor 'n aanvang *de novo* voor 'n ander beregter.

(8) 'n Beregter is onderworpe aan die administratiewe beheer van die landdros 50 in wie se distrik die setel van die betrokke hof geleë is.

**Kwalifikasies vir aanstelling as beregter**

7. Niemand word as 'n beregter aangestel nie tensy hy gekwalificeerd is—

- (a) om kragtens die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964), toegelaat te word om as 'n advokaat te praktiseer; of
- 55 (b) om kragtens die Wet op Prokureurs, 1979 (Wet No. 53 van 1979), toegelaat te word om as 'n prokureur te praktiseer; of

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(c) to be appointed as a magistrate under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and for an uninterrupted period of at least five years has practised as an advocate or attorney or has occupied the office of magistrate, or for that period was involved in the tuition of law and also practised as an advocate or attorney for such period as, in the opinion of the Minister, renders him suitable for appointment as an adjudicator, or possesses such other experience as, in the opinion of the Minister, renders him suitable for appointment as an adjudicator.

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**CHAPTER III****Jurisdiction****Area of jurisdiction**

**8.** The area of jurisdiction of a court shall be the area or district for which it was established.

**Additional matters regarding jurisdiction of courts**

**9. (1)** After a dispute has been submitted to mediation proceedings and the parties have not reached a settlement or have only reached a partial settlement, the adjudication of the dispute may thereafter—

(a) if an action has not yet been instituted, be instituted in the ordinary manner in any competent court of law, unless the defendant at the request of the plaintiff consents in writing that the adjudication of the dispute be instituted in the court concerned, whereupon the adjudication of the dispute shall be instituted in the prescribed manner in the court concerned; or

(b) if an action has already been instituted, be proceeded with in the court or court of law concerned, as the case may be: Provided that the adjudication of an action already instituted in the magistrate's court, may, with the written consent of the defendant at the request of the plaintiff, be proceeded with in the court concerned, whereupon the adjudication of the action shall be proceeded with in the prescribed manner in the court concerned.

(2) If the adjudication of an action instituted in the magistrate's court is proceeded with in a court under the proviso to paragraph (b) of subsection (1), the proceedings of the magistrate's court shall form part of the record of that court: Provided that the court may order that any evidence which has been adduced in the magistrate's court, shall be adduced *de novo* before it if it deems it necessary in the interests of justice.

(3) Any provision in an agreement to the effect that the jurisdiction of a court shall be excluded, or that a party thereto shall or may not institute an action in a court, excluding a provision to the effect that a dispute arising from the agreement shall be resolved by mediation or arbitration, shall be void.

**CHAPTER IV****Procedure and Evidence****Procedure in courts**

**10. (1)** A court may, at the request of any of the parties or their legal representatives and in consultation with them, take any steps in relation to the hearing of any action which may lead to the expeditious and cost-saving disposal of the case, including the abandonment of the application of any rule of evidence: Provided that if any party or its legal representative opposes any request directed to the court by any other party and it later appears in the opinion of the court that such opposition delayed the disposal of the proceedings unnecessarily, the court may subject to the rules make such order as to costs as it may deem fit in the circumstances.

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- (c) om kragtens die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944),  
as landdros aangestel te word,  
en vir 'n ononderbroke tydperk van minstens vyf jaar as 'n advokaat of  
prokureur gepraktiseer het of die amp van landdros beklee het, of vir daardie  
tydperk by onderrig in die reg betrokke was en ook as 'n advokaat of prokureur  
gepraktiseer het vir dié tydperk wat hom, na die oordeel van die Minister, gesik  
maak om as 'n beregter aangestel te word, of oor die ander ervaring besik wat  
hom, na die oordeel van die Minister, gesik maak om as 'n beregter aangestel  
te word.

10 **HOOFSTUK III**

**Regsbevoegdheid**

**Regsgebied**

8. Die regsgebied van 'n hof is die gebied of distrik waarvoor hy ingestel is.

**Bykomende aangeleenthede betreffende regsbevoegdheid van howe**

15 9. (1) Nadat 'n geskil aan bemiddelingsverrigtinge onderwerp is en die partye  
nie 'n skikking bereik het nie of slegs 'n gedeeltelike skikking bereik het, kan die  
beregting van die geskil daarna—

(a) indien 'n aksie nog nie aanhangig gemaak is nie, op die gewone wyse in  
'n bevoegde gereghof aanhangig gemaak word, tensy die verweerde  
20 op versoek van die eiser skriftelik instem dat die beregting van die  
geskil in die betrokke hof aanhangig gemaak word, waarop die  
beregting van die geskil op die voorgeskrewe wyse in die betrokke hof  
aanhangig gemaak word; of

(b) indien 'n aksie reeds aanhangig gemaak is, in die betrokke hof of  
25 gereghof, na gelang van die geval, voortgesit word: Met dien ver-  
stande dat die beregting van 'n aksie wat reeds in die landdroshof  
aanhangig gemaak is, met die skriftelike instemming van die verweerde  
op versoek van die eiser, in die betrokke hof voortgesit kan word,  
waarop die beregting van die aksie op die voorgeskrewe wyse in die  
30 betrokke hof voortgesit word.

35 (2) Indien die beregting van 'n aksie wat in die landdroshof aanhangig gemaak  
is, kragtens die voorbehoudsbepaling by paragraaf (b) van subartikel (1) in 'n  
hof voortgesit word, vorm die landdroshofverrigtinge deel van die oorkonde van  
daardie hof: Met dien verstande dat die hof kan gelas dat enige getuenis wat in  
40 die landdroshof aangebied is, *de novo* voor hom aangebied moet word indien hy  
dit in die belang van geregtigheid nodig ag.

45 (3) Enige bepaling in 'n ooreenkoms ten effekte dat die regsbevoegdheid van  
'n hof uitgesluit word, of dat 'n party daarby nie 'n aksie in 'n hof sal of mag  
instel nie, uitgesonderd 'n bepaling ten effekte dat 'n geskil wat uit die  
50 ooreenkoms voortspruit deur bemiddeling of arbitrasie besleg moet word, is  
nietig.

**HOOFSTUK IV**

**Prosedure en Bewyslewering**

**Prosedure in howe**

55 10. (1) 'n Hof kan, op versoek van enige van die partye of hul regsverteen-  
woordigers en in oorleg met hulle, enige stappe doen met betrekking tot die  
verhoor van 'n aksie wat kan lei tot die spoedige en kostebesparende afhandeling  
van die saak, met inbegrip van afstanddoening van die toepassing van enige reël  
van die bewysreg: Met dien verstande dat indien 'n party of sy regsverteenvoor-  
diger 'n versoek wat deur 'n ander party tot die hof gerig is, opponeer en dit later  
60 na die oordeel van die hof blyk dat sodanige opponering die afhandeling van die  
verrigtinge onnodig vertraag het, die hof behoudens die reëls die kostbevel kan  
maak wat hy onder die omstandighede gepas vind.

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(2) Evidence to prove or disprove any fact in issue, may be adduced in writing or orally: Provided that a court may, notwithstanding subsection (1), order that evidence shall be adduced orally if it deems it necessary in the interests of justice.

(3) Subject to the provisions of subsections (1) and (2), a party may call one or more witnesses to prove his claim, counterclaim or defence.

(4) No person shall testify or be questioned in a court unless the oath has been administered to him or the affirmation has been accepted from him which is usually administered to a witness or accepted from him in a court of law by the presiding adjudicator or by the clerk of the court, or any person acting in his place, in the presence of that adjudicator, or, if the witness concerned is to give his evidence through an interpreter, by the adjudicator through the interpreter.

(5) A plaintiff may at any time, whether before or during the hearing of his action, withdraw his claim with the consent of the court and on such conditions as the court may determine, whereupon the proceedings shall be ceased.

(6) If proceedings are ceased as contemplated in subsection (5), the plaintiff may in the prescribed manner institute a fresh action with the consent of the court.

**CHAPTER V****Appeal and Review****Judgment or order final**

**11.** The judgment or order of a court shall be final and no appeal shall lie from it.

**Review of mediation proceedings and of proceedings of courts**

**12.** (1) Notwithstanding the provisions of section 24(1) of the Supreme Court Act, 1959 (Act No. 59 of 1959), the grounds upon which mediation proceedings and the proceedings of a court may be brought under review before a provincial or local division of the Supreme Court of South Africa shall be—

- (a) absence of jurisdiction;
- (b) interest in the cause, bias, malice or corruption on the part of the mediator or the presiding adjudicator, as the case may be; and
- (c) gross irregularity with regard to the proceedings.

**CHAPTER VI****Rules of Short Process Courts and Mediation Proceedings****Power of Minister to make rules**

**13.** (1) The Minister may make rules regulating the following matters in respect of courts and mediation proceedings:

- (a) The practice and procedure in respect of an interview with and investigation by a mediator contemplated in section 3;
- (b) the practice and procedure of the court, including the procedure when the proceedings are taken under review;
- (c) fees and costs;
- (d) the payment by the State of remuneration and allowances to a mediator and an adjudicator for services rendered, the method of calculation of such remuneration and allowances, and the recovery or partial recovery by the State of such remuneration and allowances from a party or parties in mediation proceedings or a case in respect of which the services of a mediator or an adjudicator have been so rendered;
- (e) the duties and powers of mediators and adjudicators;
- (f) the duties and powers of officers of the court;
- (g) the establishment, functioning, duties and powers of one or more boards to advise the Minister regarding the functioning of courts and mediation proceedings;

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- (2) Getuienis om 'n feit in geskil te bewys of te weerlê, kan skriftelik of mondeling aangebied word: Met dien verstande dat 'n hof ondanks subartikel (1) kan gelas dat getuienis mondeling aangebied moet word indien hy dit in die belang van geregtigheid nodig ag.
- 5 (3) Behoudens die bepalings van subartikels (1) en (2) kan 'n party een of meer getuies roep om sy eis, teeneis of verweer te bewys.
- (4) Niemand mag in 'n hof getuienis aflê of ondervra word nie tensy hy die eed opgelê is of die bevestiging van hom afgeneem is wat gewoonlik in 'n geregshof 'n getuie opgelê of van hom afgeneem word deur die voorsittende beregter of 10 deur die klerk van die hof, of iemand wat in sy plek optree, in die teenwoordigheid van dié beregter, of, indien die betrokke getuie sy getuienis deur 'n tolk gaan aflê, deur die beregter deur die tolk.
- (5) 'n Eiser mag te eniger tyd, hetsy voor of gedurende die verhoor van sy aksie, met die instemming van die hof en op die voorwaardes wat die hof bepaal, 15 sy eis terug trek, waarna die verrigtinge beëindig word.
- (6) Indien verrigtinge beëindig word soos in subartikel (5) beoog, kan die eiser met die toestemming van die hof opnuut 'n aksie op die voorgeskrewe wyse instel.

## HOOFSTUK V

### 20 Appèl en Hersiening

#### Vonnis of bevel afdoende

11. 'n Hof se vonnis of bevel is afdoende en geen appèl kan daarteen aangeteken word nie.

#### Hersiening van bemiddelingsverrigtinge en van verrigtinge van Howe

- 25 12. (1) Ondanks die bepalings van artikel 24(1) van die Wet op die Hooggereghof, 1959 (Wet No. 59 van 1959), is die gronde waarop bemiddelingsverrigtinge en die verrigtinge van 'n hof voor 'n provinsiale of plaaslike afdeling van die Hooggereghof van Suid-Afrika in hersiening gebring kan word—
- 30 (a) gebrek aan regsbevoegdheid;
- (b) belang by die geding, vooroordeel, kwaadwilligheid of korruksie by die bemiddelaar of die voorsittende beregter, na gelang van die geval; en
- (c) growwe onreëlmatigheid in verband met die verrigtinge.

## HOOFSTUK VI

### 35 Reëls van Howe vir Kort Proses en Bemiddelingsverrigtinge

#### Bevoegdheid van Minister om reëls uit te vaardig

13. (1) Die Minister kan reëls uitvaardig tot reëling van die volgende aangeleenthede ten opsigte van Howe en bemiddelingsverrigtinge:
- 40 (a) Die praktyk en prosedure met betrekking tot 'n onderhoud met en ondersoek deur 'n bemiddelaar beoog in artikel 3;
- (b) die praktyk en prosedure van die hof, met inbegrip van die prosedure wanneer verrigtinge in hersiening geneem word;
- (c) gelde en koste;
- (d) die betaling deur die Staat van vergoeding en toelaes aan 'n bemiddelaar en 'n beregter vir dienste gelewer, die wyse van berekening van sodanige vergoeding en toelaes, en die verhaling of gedeeltelike verhaling deur die Staat van sodanige vergoeding en toelaes op 'n party of partye in bemiddelingsverrigtinge of 'n saak ten opsigte waarvan die dienste van 'n bemiddelaar of 'n beregter aldus gelewer is;
- 45 (e) die pligte en bevoegdhede van bemiddelaars en beregters;
- (f) die pligte en bevoegdhede van beamptes van die hof;
- (g) die instelling, funksionering, pligte en bevoegdhede van een of meer rade om die Minister betreffende die funksionering van Howe en bemiddelingsverrigtinge te adviseer;

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to (h) any matter which may or shall be prescribed in terms of the provisions of this Act;

(i) any other matter which he may deem necessary or expedient to prescribe for carrying out the provisions of this Act or the attainment of the objects thereof.

(2) Different rules may be made under subsection (1) in respect of different classes of cases.

(3) No rule relating to State revenue or State expenditure shall be made under subsection (1) except with the concurrence of the Minister of Finance.

(4) No rule and no amendment or repeal of a rule shall come into operation unless it has been published in the *Gazette* at least 30 days before the day upon which it is declared to come into operation.

**CHAPTER VII****General and Supplementary Provisions****Legal representation**

**14.** Any advocate or attorney of any division of the Supreme Court of South Africa may appear at any proceedings in any court, including an interview contemplated in section 3(1)(b), on behalf of any party.

**Short title and commencement**

**15.** This Act shall be called the Short Process Courts and Mediation in Certain Civil Cases Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

**HOOFTURK IV**

Refers to Hoofturk IV. Right of access to premises for the purpose of carrying out investigations

Permitting the Minister or his agent to enter any premises for the purpose of carrying out investigations

(1) The Minister may exercise his power under section 2(1) to require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act.

(2) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

(3) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

(4) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

(5) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

(6) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

(7) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

(8) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

(9) The Minister may require any person to give him information or documents in writing in respect of any matter which he deems necessary for the purposes of this Act if he believes that such information or documents will assist him in carrying out his functions under this Act.

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- (h) enige aangeleentheid wat ingevolge die bepalings van hierdie Wet voorgeskry kan of moet word;
- (i) enige ander aangeleentheid wat hy nodig of dienstig ag om voor te skryf ten einde die bepalings van hierdie Wet uit te voer of die oogmerke daarvan te verwesenlik.
- 5 (2) Verskillende reëls kan kragtens subartikel (1) ten opsigte van verskillende soorte sake uitgevaardig word.
- (3) Geen reël wat op Staatsinkomste of -uitgawes betrekking het, word kragtens subartikel (1) uitgevaardig nie, behalwe met die instemming van die 10 Minister van Finansies.
- (4) Geen reël en geen wysiging of herroeping van 'n reël tree in werking nie tensy dit in die *Staatskoerant* gepubliseer is minstens 30 dae voor die dag waarop dit verklaar word in werking te tree.

## HOOFSTUK VII

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### Algemene en Aanvullende Bepalings

#### **Regsverteenwoordiging**

**14.** 'n Advokaat of prokureur van enige afdeling van die Hooggereghof van Suid-Afrika kan by enige verrigtinge in enige hof, met inbegrip van 'n onderhoud beoog in artikel 3(1)(b), vir 'n party verskyn.

20 **Kort titel en inwerkingtreding**

**15.** Hierdie Wet heet die Wet op Howe vir Kort Proses en Bemiddeling in Sekere Siviele Sake, 1991, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

