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GENERAL NOTICE

NOTICE 1013 OF 1998

MINISTRY FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT

**CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SECOND AMENDMENT
BILL, 1998**

1. I, Mohammed Valli Moosa, Minister for Provincial Affairs and Constitutional Development, under section 74 (5) (a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), hereby publish the Constitution of the Republic of South Africa Second Amendment Bill, 1998, for public comment.
2. Comments must please be submitted in writing to:
The Director-General
Attention: Dr P. J. Bouwer
Department of Constitutional Development
Private Bag X804
Pretoria 0001.
3. Comments may also be faxed to facsimile number (012) 334~0614 at the above address.
4. Comments must be received by no later than **20 July 1998**.

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.

BILL

To omit the requirement for provincial legislation to determine the different types of municipality to be established in a province; to provide for the determination of municipal boundaries across a provincial boundary; and to provide for matters connected therewith

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

Amendment of section 155 of Act 108 of 1996

1. Section 155 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), is hereby amended—

- a. by the substitution in subsection (5) for the words "Provincial legislation" of the words "A provincial government"; and
- b. by the addition of the following subsection:

"(8) If in applying the criteria referred to in subsection (3)(b) a municipal boundary is determined across a provincial boundary with the concurrence of the provincial governments concerned, national legislation must provide for those provincial governments—

- a. to establish in the area a municipality of a type agreed to between them; and
- b. to exercise their executive authority with regard to that municipality either jointly or on a delegated or agency basis in accordance with an agreement between them."

Short title

2. This Act is called the Constitution of the Republic of South Africa Second Amendment Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SECOND AMENDMENT BILL, 1998

Section 155(5) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996, "the Constitution"), requires provincial legislation for determining the different types of municipality to be established in a particular province. In the absence of existing provincial legislation determining the different types of municipality to be established in a particular province, provincial Acts will have to be enacted before such a determination can be effected. The amendment to section 155(5) of the Constitution, will make it possible for the types of municipality to be determined by means of a provincial notice or provincial proclamation.

Certain communities that exist in adjoining provinces are so closely linked and socially and economically interdependent, that the establishment of a single functional municipality will require the determination of a municipal boundary across the provincial boundary in question. The Bill aims at making it possible for the demarcation authority contemplated in section 155(3)(b) of the Constitution, to be in a position to determine a municipal boundary across a provincial boundary in such an instance (so called cross border municipalities). Although national legislation will set out the manner in which cross border municipalities are to be established, as well as the institutional arrangements for such municipalities, the proposed amendment to the Constitution is based on the following principles:

- a. The determination of a municipal boundary across a provincial boundary must be with the concurrence of the provincial governments concerned.
- b. The establishment of a cross border municipality will be dependent on co-operation between the affected provinces.
- c. The co-operation between affected provinces will entail that one province delegates its executive powers to the administering province.
- d. The legislative authority of the affected provinces may not be compromised. However, the problem of two sets of (conflicting) provincial legislation in the area of the cross border municipality can be overcome by the legislature of one province
 - i. incorporating by reference all laws of the "administering" province in its part of the municipal area; and
 - ii. excluding any future laws it makes from application in that part of the cross border municipality.

Clause 1 of the Bill omits the requirement for provincial legislation to determine the different types of municipality to be established in a particular province, and makes it possible, as provided for in national legislation, for a municipal boundary to be determined across a provincial boundary.

In view of the fact that the Bill is a Bill envisaged in section 74(3)(b) of the Constitution, the Department of Constitutional Development is of the opinion that the legislative procedure provided for in that section, must be followed and that the Bill is to be passed by the National Council of Provinces as well. Since the amendment contained in the Bill will affect all provinces, the Department of Constitutional Development is also of the opinion that the provisions of section 74(8) of the Constitution are not applicable in respect of the Bill.