

# ***CAREER GUIDE TO THE LEGAL PROFESSION***

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## 1. THE ADMINISTRATION OF JUSTICE IN SOUTH AFRICA

The legal administration, i.e. those persons and institutions involved in the application and execution of the law and the judgments of the Court, is no less essential to the administration of justice than is the law, and is as much part of our legal heritage as the law itself.<sup>1</sup>

**The legal administration in South Africa is comprised of:**

### 1.1. The Courts:

- i) Constitutional Court;
- ii) Supreme Court of Appeal;
- iii) High Court;
- iv) Labour Appeal Court;
- v) Labour Court;
- vi) Land Claims Court;
- vii) Special Income Tax Court;
- viii) Competition Appeal Court;
- ix) Magistrates' Court;
- x) Divorce Court;
- xi) Equality Court;
- xii) Small Claims Court;
- xiii) Community Courts and Courts of Chiefs and Headmen; and
- xiv) Other specialised courts/tribunals.

### 1.2 Officers of the Court in the Private Sector:

- i) Attorneys; and
- ii) Advocates.

### 1.3 Administrative Officers under various Governmental Departments:

*Department of Justice and Constitutional Development:*

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<sup>1</sup> JA van S de Oliveira *Our Legal Heritage*.

- i) Registrars of the High Court; and
- ii) Clerks of the Magistrates' Court.

*Department of Trade and Industry:*

Registrars of Close Corporations, Companies, Patents, Trademarks, Copyright, Designs.

*Department of Land Affairs:*

Registrar of Deeds

1.4 Other Officials in the Administration of Justice in the Public Service under various Governmental Departments:

*Department of Justice and Constitutional Development:*

- i) Presiding Officer – Judge or Magistrate;
- ii) Family Advocate;
- iii) Master of the High Court;
- iv) Public Prosecutor;
- v) State Attorney; and
- vi) State Law Adviser.

*Department of Safety and Security:*

Top ranking officials in the South African Police Services:

- i) National Commissioner; and
- ii) Deputy National Commissioners.

*Department of Correctional Services:*

Top ranking officials:

- i) Minister of Correctional Services;
- ii) Deputy Minister;
- iii) Commissioner of Correctional Services;
- iv) CDC Finance;
- v) CDC Development and Care;
- vi) CDC Corrections;
- vii) CDC Central Services; and
- viii) CDC Corporate Services.

1.5 Law Commissions:

- i) South African Law Reform Commission;
- ii) South African Human Rights Commission;
- iii) The Commission on Gender Equality;
- iv) South African Competition Commission;
- v) Water Research Commission;
- vi) Financial and Fiscal Commission;
- vii) Public Service Commission; and
- viii) Other commissions.

1.6 Legal Aid and Advice:

- i) Legal Aid Board;
- ii) Legal Aid Clinics (at some universities);
- iii) Legal Aid Bureau; and
- iv) Legal Resources Centre.

It should be noted that the qualifications and entry requirements in respect of all the above institutions differ: Further that, in addition to career opportunities in these fields, there are a wide variety of opportunities available for law graduates as legal academics and as legal advisers in the commercial, public service and non government service sectors.

## 2. **THE LEGAL PROFESSION**

The legal profession in South Africa offers a variety of career possibilities to the person interested in the field of law. Before embarking on this exciting and rewarding career, it is, however, necessary to know what the academic requirements, the nature of work and the promotion possibilities are for each of the careers available within the legal profession. All people who earn their living by practicing the law are called lawyers, including judges, magistrates, advocates, attorneys, and university lecturers.

The transformation of the legal profession in South Africa is currently a ‘hot’ debate, with professional legal practitioners’ (ie attorneys’ and advocates’) designated fields of work and statutory oversight bodies possibly being changed in the future – see the Legal Practice Bill. There is a strong drive, from some parties, for the legal profession to be more ‘service-orientated’ than what it currently is. In doing so, however, the Law Society of South Africa is striving for independence of the legal profession to be left unscathed.

Since people with legal qualifications are found in almost all sectors of employment, it will be impossible to discuss ALL the career possibilities available to them. However, the current state of the economy and the high rate of unemployment have also had an effect on the careers available to law graduates. This guide is, therefore, limited to the following careers available in the legal profession: the attorneys' profession, the advocates' profession, the legal adviser and positions available in the Department of Justice.

## 2.1 Personal characteristics

Before attention is given to the academic requirements for a career in law, it is necessary to mention the personal characteristics the prospective lawyer should have in order to succeed in a legal career. Apart from general characteristics like ambition, dedication and a disciplined approach, the lawyer-to-be also needs to possess special characteristics like being impeccably honest, decisive, objective in a matter, confident, and able to solve problems. The prospective lawyer must also be able to handle stress and pressure, to resolve any crisis and elicit the utmost trust and respect from his clients and colleagues. It follows that, because of his constant interaction with people, a lawyer must have exceptional communication skills and be able to explain difficult legal concepts in easy terms. However, the most important characteristic of any prospective lawyer is a well-developed sense of fairness and justice and the willingness to serve people.

## 2.2 Academic study

In the past, South African universities traditionally offered a number of different degrees, depending on which legal profession the student wanted to qualify in. These degrees were: BIuris (for public prosecutors and magistrates), BProc (for attorneys) and LLB (for all legal professions).

Those degrees have been abolished and have been replaced with a four-year LLB degree. This degree is offered at all universities and provides access to all legal professions. Some universities offer a two-year LLB curriculum for students who have already obtained a three-year BA or BCom degree (majoring in law), or a three-year LLB curriculum for graduates who took no legal subjects during the course of their first undergraduate degree.

After attainment of the LLB degree, a student may conduct further studies such as:

- LLM;
- LLD; and/or

- Specialised diplomas/certificates eg on Tax, Human Rights, Labour Law.

More details on the content and duration of the different courses can be obtained from any of the university law faculties.

*See annexure 'A' for a list of South African law faculties*

### 2.3 **Bursaries**

Information regarding bursaries is available from the various universities.

The attorneys' profession also offers limited number of bursaries through the Attorneys' Fidelity Fund. The rules and conditions of such bursaries and bursary application forms are available to download at:

[www.fidfund.co.za/pages/bursaries\\_text.htm](http://www.fidfund.co.za/pages/bursaries_text.htm)

## 3. **THE ATTORNEYS' PROFESSION**

### 3.1 **Entry to the Attorneys' Profession**

The practising legal profession is divided into two branches: attorneys and advocates. The attorney is the person with whom you first make contact when you seek legal advice or if you have a legal problem. Therefore, an attorney needs to be readily available to everyone, and the service he or she supplies needs to be broad enough to cover a wide field of legal problems. Advocates, on the other hand, have specialised expertise in various areas of the law - especially in the presentation of cases in court. To obtain the services of an advocate, the client approaches the attorney who then engages the advocate on his behalf to represent the client in court or to give the client the necessary advice.

### 3.1.1 What kind of work does an attorney do?

Attorneys handle a large variety of affairs for individuals, businesses, associations and corporations. These include work in the field of business and corporate law; civil and criminal litigation; property transactions; taxation; estate planning; and business as well as personal advice. Many attorneys consider themselves to be general practitioners, however, as a result of the increasing complexity of life, the trend is towards specialisation. Therefore, there are attorneys who specialise in either commercial or criminal cases, or who focus on litigation, estate planning or tax-related matters.

Attorneys can now also appear in the High Court, just like advocates. To qualify to appear, an attorney must have an LLB degree, or some other appropriate legal qualification, plus three years' experience.

By taking further examinations, an attorney may qualify as a conveyancer and/or notary public. Conveyancers prepare documents for the transfer of land and the registration of mortgage bonds and all other matters pertaining to immovable property. The work of a notary public is to draw up specialised documents such as contracts entered into prior to marriage (antenuptial contracts) or other notarial deeds or bonds.

An attorney may also take further examinations to qualify as patent attorney. Patent attorneys deal with the laws regarding the registration and protection of patents (a patent “may be granted for any new invention which involves an innovative step and which is capable of being used or applied in trade or industry or agriculture”.<sup>2</sup>)

## 3.2 **Specific admission requirements**

The admission requirements for attorneys in South Africa are prescribed by the Attorneys Act 53 of 1979 and the rules promulgated in terms of the Act. The most relevant requirements are the following:

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<sup>2</sup> Section 25(1) of the Patents Act 57 of 1978.



### 3.2.1 Personal fitness

A person must be regarded as a fit and proper person by the Law Society and the High Court before he can be admitted as an attorney. This requirement refers mainly to the moral integrity of a person, his characteristics and particularly honesty, which is considered to be an important prerequisite for practising as an attorney.

A person must be older than 21 years and a South African citizen; or be legally entitled to permanent residence in the Republic and be ordinarily resident in the Republic; or be a citizen of a state which formerly formed part of the Republic and belongs to a category of persons and has complied with certain conditions, as determined by the Minister from time to time (*currently being the former 'TBVC' states, Swaziland, Namibia and Zimbabwe*).

### 3.2.2 Academic qualifications

The only academic qualification that is presently recognised for the purpose of admission as an attorney is an LLB degree (the course duration of which is not less than four years) obtained at any university in the Republic.

There are exceptions to this rule.<sup>3</sup> The first exception is if the applicant has obtained a degree/s other than an LLB at university in South Africa, for a study period of not less than five years and has satisfied the requirements of an LLB. The second exception is if the applicant has completed a degree of the same status as the South African LLB degree at a university in a country designated by the Minister (*currently being the former 'TBVC' states, Swaziland, Namibia and Zimbabwe*), which degree has been certified by a university in South Africa and the person has completed a supplementary examination (if required).

The third exception is if the applicant has completed a degree, which does not meet the requirements of an LLB degree, at any university in South Africa, or, fourthly, if the

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<sup>3</sup> See section 2 of the Attorneys Act 53 of 1979.

applicant has completed a degree of the same status as the corresponding South African degree at a university in a country designated by the Minister (*currently being the former 'TBVC' states, Swaziland, Namibia and Zimbabwe*), which degree has been certified by a university in South Africa.

The fifth exception is if the applicant has obtained a matric certificate with full university exemption. Please note that the abovementioned exceptions numbered three to five increase the term of the duration of service of articles of clerkship (see 3.2.4 below).

### 3.2.3 Attorneys' Admission Examination

The attorneys' admission examination, which is presented by the Law Society, must be successfully completed before admission. This examination is practice orientated and can only be written :

- i. once the aspirant attorney has completed a period of six months service under articles of clerkship or a service contract (community service at a law clinic)

OR

- ii. once he/she has attended the full-time School for Legal Practice for a period of approximately six months.

A person has more than one opportunity during the period of articles or community service to write the admission examination, which is scheduled twice per year. A person may also attempt the exam within three years after the contract has expired.

The examination comprises the following sections:

- Paper 1: Practice and procedure (criminal procedure, supreme court procedure, magistrates' court procedure and motor vehicle accident

claims);

- Paper 2: Wills and Estates;
- Paper 3: Attorneys' practice, contracts and rules of conduct; and
- Paper 4: Legal bookkeeping.

### 3.2.4 Service under Articles of Clerkship or Service Contract

There are various methods to obtain the practical qualification to be admitted as an attorney in South Africa<sup>4</sup>. An applicant must complete at least:

3.2.4.1 Two years under a contract of articles (service at a private law firm or state attorney) or a service contract (community service at a legal aid institution), unless he has attended the full-time School for Legal Practice for a period of approximately six months. In the case of such attendance the period of articles or community service will be one year only.

3.2.4.2 Three years under a contract of articles (service at a private law firm or state attorney) or a service contract (community service at a legal aid institution), if the applicant:

- has completed a degree, which does not meet the requirements of an LLB degree, at any university in South Africa, or
- if the applicant has completed a degree of the same status as the corresponding South African degree at a university in a country designated by the Minister (*currently being the former 'TBVC' states, Swaziland, Namibia and Zimbabwe*), which degree has been certified by a university in South Africa, or
- has obtained a matric certificate and has served continuously for a period of at least two years as a clerk to any judge of the High Court, provided that the applicant enters into articles of clerkship within a period of one year after completing such

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<sup>4</sup> See section 2 of the Attorneys Act 53 of 1979.

service.

3.2.4.3 Five years if the applicant does not have a degree, but at least has a matric certificate with full university exemption.

Service under any of the above contracts must be completed on a full-time basis.

### 3.2.5 'Appropriate legal experience'

Provision has also been made that a person can apply for exemption from service under a contract if he has completed a five-year period in an area of 'appropriate experience'. See **annexure 'B'**.

### 3.2.6 Compulsory practical legal training

A person must attend a practical legal training course, which is recognised by a law society in South Africa. This can be either a short course of approximately five weeks during or after the period of articles or community service, or attendance of a full-time course at a School for Legal Practice of approximately six months. There are the following branches of the School for Legal Practice:

- Bloemfontein;
- Cape Town;
- Durban;
- East London;
- Johannesburg;
- Polokwane;
- Port Elizabeth;
- Potchefstroom; and
- Pretoria.

### 3.2.7 Language requirements

Although statutory language requirements for qualification have been abolished, it is important to note that individual universities may:

- i) still have language requirements as part of their degree curricula or offer courses in such a language on an elective basis; and/or
- ii) require a minimum symbol at matric level, in certain languages.

The ability to communicate effectively is essential for all lawyers. Prospective lawyers should therefore make use of every opportunity to enhance their oral and written communication skills.

### 3.2.8 Screening of Prospective Candidate Attorneys

A senior member of the Law Society will conduct a personal interview with a prospective candidate attorney before registration of a service contract or contract of articles by the Law Society, in order to determine whether a person can be regarded as a fit and proper person for entering the profession. Specific attention will be given to previous convictions.

### 3.3 **Promotion Possibilities**

- Professional Assistant with a firm of attorneys;
- Junior Partner in a firm of attorneys;
- Senior Partner in a firm of attorneys; or
- Starting one's own firm once admitted as an attorney.

Attorneys can now also be appointed as judges to the High Court and the Constitutional Court.

### 3.4 Where can I get more information?

- *The Law Society of the Northern Provinces, P O Box 1493, **PRETORIA**, 0001*  
*Tel: (012) 338 5800*  
*E-mail: info@lsnp.org.za*
- *The Law Society of the Free State, P O Box 319, **BLOEMFONTEIN**, 9300*  
*Tel: (051) 447-3237*
- *The Cape Law Society, P O Box 4528, **CAPE TOWN**, 8000*  
*Tel: (021) 443 6700*  
*E-mail: cls@capelawsociety.law.za*
- *The Kwa-Zulu Natal Law Society, P O Box 1454, **PIETERMARITZBURG**, 3200*  
*Tel: (033) 345 1304*  
*E-mail: info@lawsoc.co.za*

- *Practical Legal Training, P O Box 27167, SUNNYSIDE, 0132  
Tel: (012) 341-3091*

#### 4. **ADMISSION OF ATTORNEYS/SOLICITORS FROM OTHER COUNTRIES**

It is important to note that the law societies do not have any jurisdiction or authority to evaluate academic qualifications and also do not have a discretion to waive or grant exemptions in respect of the admission requirements as prescribed by the Attorneys Act. There are, however, certain statutory exemptions and concessions in respect of persons partly or fully qualified as legal practitioners in other countries.

##### 4.1 **Neighbouring States**

###### 4.1.1 Cross-border practicing

Section 17 of the Attorneys Act provides for the designation of countries for the purpose of cross-border practicing, in particular as far as categories of persons are concerned. Practitioners who obtain practicing rights in South Africa in terms of section 17, only remain so entitled while they practice in their own countries. They are not permitted to open a practice in South Africa. In other words, permanent residence is not permitted in terms of the Act. Section 17 of the Act states that any person admitted and enrolled as a solicitor or an attorney of the supreme or high court of any country or territory approved for the purposes of this section by a regulation (*currently the former 'TBVC states and Lesotho*), may obtain practising rights in South Africa.

#### 4.1.2 Admission as an attorney in South Africa

##### *Exemption from articles of clerkship and certain examination*

Section 13 of the Attorneys Act relates to exemption from articles of clerkship and certain examinations. In terms of this section, any person lawfully admitted to South Africa for permanent residence and who has been admitted and enrolled as a solicitor or attorney of the supreme or high court of any country or territory which has been approved by the Minister (*currently being Zimbabwe and Namibia*) shall:

- a) if he has practised for at least 5 years as a solicitor or an attorney in the country in which he has been so admitted and enrolled and belongs to a class of persons which has been designated by any regulation (*in the case of Namibia, the class of persons designated are those whose contract of articles were registered before 21 March 1990 and who completed their examinations or were admitted as an attorney in Namibia after 28 February 1994*); or
  - b) if the person has practised for less than 5 years, but has practised for three years as a Professional Assistant in South Africa and belongs to a class of persons which has been designated by any regulation (*the designation in the case of Namibia is the same as stated above*);
- be exempted from serving articles.

Such persons as mentioned above may apply to the High Court of the particular province in which he or she resides to be admitted to practice as an attorney in that province and register with the Law Society as a member, if the other requirements for admission have been complied with. According to section 13A of the Attorneys Act, a person who falls under (b) above and who has been admitted and enrolled as an attorney in South Africa in terms of the Act, cannot practice as an attorney on his own account, unless he has after his admission and enrolment practised for a period of not less than 3 years.



*Exemption from completing a degree at a university in South Africa*

See 3.2.2 above.

*Exemption from passing any examinations set by the law society*

Section 13(1)(c) of the Attorneys Act states that the Minister may also by regulation exempt a class of persons from a designated country (*currently being a person who passed his/her examination for admission in Zimbabwe prior to 22 May 1981*) from passing the examinations as set by the law society for admission as an attorney.

#### 4.2 **Other foreign countries**

It needs to be mentioned that, subject to the information referred to above under 4.1, there are no other reciprocal practicing rights or recognition of qualifications for the purpose of the admission of persons as attorneys in South Africa as would for instance be the case in respect of countries such as England, the United States and Australia etc. There should still be compliance with all the usual requirements for admission as an attorney in South Africa. The first step to be taken by a person under these circumstances to qualify, would be to approach a South African University which will determine the circumstances under which such a University would confer a South African law degree on the applicant.

A foreign lawyer must comply with South Africa's domestic laws, including the restrictions placed on the practise rights of individuals who are not admitted as attorneys or advocates in South Africa. A foreign lawyer may offer legal advisory services pertaining to international, third country and home country law. However, if such foreign lawyer wishes to practice as a South African practitioner and:

- perform court work; and/or
- conveyancing; and/or
- notarial work; and/or
- draft any of the legal documents as listed under section 83(8)(a) of the Attorneys Act for a fee;

he or she must be duly admitted as either a South African attorney or advocate according to the requirements of the Attorneys Act and the Admission of Advocates Act respectively.

#### 4.3 **England and Wales**

South African attorneys can also qualify to become solicitors in England and Wales. To qualify for this, attorneys must pass the Qualified Lawyers Transfer Test, which is taken by the College of Law of England. More information can be obtained directly from:

Client Services

The College of Law

Brabeouf Manor

Portsmouth Road

St Catherines

Guildford

Surrey GU3 1HA

**Tel** +44 (0) 1483 460430 **Fax** +44 (0) 1483 460306

**E-mail** [QLTT@lawcol.co.uk](mailto:QLTT@lawcol.co.uk) **Website** [www.college-of-law.co.uk](http://www.college-of-law.co.uk)

## 5. THE ADVOCATES' PROFESSION

Apart from attorneys, there is also another 'branch' of legal practitioners in South Africa, namely advocates.

### 5.1 What does an advocate do?

Advocates are primarily experts in the art of presenting and arguing cases in court. Whereas in the past, only advocates were permitted to present cases (appear) in the higher courts, attorneys were granted right of appearance in the High Courts and the Constitutional Court as from 1 November 1995<sup>5</sup>. This requires a mastery of law and fact, good judgement and the ability to present a case clearly and coherently. Advocates also give legal opinions and help with the drafting of legal documents that are required in every walk of life, be they commercial, industrial or domestic.

### 5.2 How do I become an advocate?

The basic requirement is an LLB degree from any South African university.

Having achieved this, the next step is to apply to the High Court to be included on the 'roll' of advocates. To do this, an applicant must satisfy the court that he/she is both qualified and able to be a member of the profession. The applicant will then be able to practice as an advocate in South Africa. Once admitted, it is customary to join one of the 'Bars' (the representative body of the advocates' profession with the main purpose to maintain professional standards among its members).

Professional training to become an advocate is provided by the constituent 'Societies of Advocates' of the General Council of the Bar of South Africa.

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<sup>5</sup> Right of Appearance in Courts Act 62 of 1995.

A period of one year's apprenticeship ('pupillage'), beginning on 15 January and ending 31 December, including an examination is a prerequisite to join the Bar. A person will also have to pass the National Bar Examination of the General Council of the Bar, which is a test of the person's practical ability.

During pupillage, a pupil advocate will be paired with an experienced advocate to see how work is carried out in chambers and in the courts. Information regarding pupillage and of the pupillage syllabus can be obtained from the Bars.

### 5.3 **Promotion possibilities**

- Senior Counsel; or
- Judge of the High Court or Constitutional Court.

### 5.4 **Where can I get more information?**

Further queries of any nature will be answered by writing to or telephoning:

*The Secretary*  
*General Council of the Bar of SA*  
*P O Box 2260*  
**JOHANNESBURG**  
*2000*  
*Tel: (011) 336-3976*  
*E-mail: gcb@mweb.co.za*

## 6. THE LEGAL ADVISER

### 6.1 What is a 'legal adviser'?

The term 'legal adviser' is used to describe lawyers employed by the government, big companies and other organisations to provide legal advice and service to their employees. In other words, 'in-house' lawyers or 'corporate counsel' as they are known in the USA, as compared to attorneys and advocates, who provide their services to the public at large rather than to a single employer.

### 6.2 How do I become a legal adviser?

Most legal advisers are in fact former attorneys or advocates who have chosen the corporate environment rather than the traditional legal profession. For this reason the requirements and training for legal advisers are the same as for advocates and attorneys.

### 6.3 Where can I get more information?

In 1982 the Association of Legal Advisers of South Africa was formed. Further information can be obtained from them at:

*Corporate Lawyers Association of South Africa (CLASA)*

*PO Box 4110*

*Northcliff*

*2115*

*Tel: (011) 476 3217*

*E-mail: info@clasa.org*

## 7. CAREERS OFFERED BY THE DEPARTMENT OF JUSTICE

### 7.1 Family Advocate

#### 7.1.1 Introduction

The Family Advocate assists parties in divorce proceedings to reach an agreement on disputed issues, namely custody, access and guardianship. If the parties are unable to reach an agreement, the Family Advocate evaluates the parties' circumstances in light of the best interests of the child and makes a recommendation to the Court with regard to custody, access or guardianship.

#### 7.1.2 Nature of work

Parents visit the Family Advocate when they have a divorce pending in Court, and have minor or dependent children whose subsequent custody, guardianship or access arrangements are in dispute. There are also other circumstances under which the Family Advocate may be consulted, including any application for the variation of a custody, guardianship or access order, an application for the definition of access, a custody, access or guardianship dispute arising from the dissolution of a customary marriage, an application by an unwed father for custody, access or guardianship to his minor child or any other matter involving minor or dependent children, where the Court has specifically ordered the Family Advocate to intervene.

The Office of the Family Advocate gives the child an opportunity to be heard with regard to his/ her position in the parties' pending divorce. The Family Advocate is a neutral person who focuses solely on the best interests of the child. The atmosphere at the Office of the Family Advocate is less rigid and solemn compared to that of a courtroom – it is thus child-friendly. The Family Advocate uses techniques of alternate dispute resolution and may work in liaison with other professionals (example social workers, psychologists,

psychiatrists, therapists), in assisting the family and to ascertain what is in the best interests of the child.

## 7.2 Master of the High Court

### 7.2.1 Introduction

A Master of the High Court is appointed for every provincial division of the High Court of South Africa. The Master of the High Court is a creature of statute and various Acts regulate the duties and powers of the Master.

The most important of these are the Administration of Estates Act, 1965 (Act 66 of 1965), the Insolvency Act, 1936 (Act 24 of 1936), the Companies Act, 1973 (Act 61 of 1973), the Close Corporations Act, 1984 (Act 69 of 1984) and the Trust Property Control Act, 1988 (Act 57 of 1988).

### 7.2.2 Nature of work

The Master's Offices execute *inter alia* the following functions:

- Administration of estates of deceased and insolvent persons in accordance with the applicable statutory prescriptions;
- Protection of the interests of minors and legally incapacitated persons;
- Protection and administration of the funds of minors, contractually incapacitated and undetermined and absent heirs, which have been paid into the Guardian's Fund;
- Supervision of the administration of companies and close corporations in accordance with the relevant

- statutory prescriptions;
- Determination and assessment of estate duties in terms of the Estate Duty Act, 1955 (Act 45 of 1955), by virtue of a delegation by the South African Revenue Services;
  - Supervision of trusts in terms of the Trust Property Control Act, 1988;
  - Safeguarding of all documentary material received by the Master in respect of estates, insolvencies, liquidations, trusts, etc;
  - Processing of enquiries by executors, attorneys, beneficiaries and other interested parties;
  - Appointment of impartial and capable persons as executors, trustees, curators and liquidators.

## 7.3 Public Prosecutor

### 7.3.1 Introduction

Public Prosecutors are employed by the National Director of Public Prosecutions and are used to conduct prosecutions in criminal proceedings on behalf of the State. Public Prosecutors may be appointed to:

- the Office of the National Director;
- Offices at each High Court in South Africa;
- Investigating Directorates; and
- lower courts in South Africa.<sup>6</sup>

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<sup>6</sup> Section 16 of the National Prosecuting Authority Act 32 of 1998.



### 7.3.2 Nature of work

By nature of the authority vested in him, the public prosecutor decides whether a person should be prosecuted and what charge should be brought against him. It is the duty of the Public Prosecutor to conduct the State's case against the accused and he is responsible for putting evidence before the court to prove the alleged crime in all its elements beyond reasonable doubt. This is done by questioning witnesses, handing in exhibits and cross-examining witnesses for the defence.

The Public Prosecutor works mainly indoors, whether he prosecutes in court or studies a police file in his office. Public Prosecutors are expected to do a considerable amount of research in order to be thoroughly prepared for a given case.

### 7.3.3 Requirements and training

The Minister may from time to time, in consultation with the National Director and after consultation with the Directors, prescribe the appropriate legal qualifications for the appointment of a person as prosecutor in a lower court<sup>7</sup>.

In terms of the current Regulations, the appropriate qualification for the appointment of a person as a prosecutor is a recognized three-year legal degree obtained at a university in South Africa. Prior to 1 January 2006, a three-year legal diploma was accepted, however, a legal diploma is no longer recognized as an appropriate legal qualification.

The exception to this qualification rule is a prosecutor who holds a legal diploma and had the right to appear in any court as at 31 December 2005, will continue to have such right to appear.

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<sup>7</sup> Section 16 of the National Prosecuting Authority Act 32 of 1998.

### 7.3.4 Promotion possibilities

The salary of the Public Prosecutor is fixed according to salary scales for public prosecutors.

The promotion ranks are as follows:

- Public prosecutor;
- Senior Public Prosecutor;
- Deputy Director of Public Prosecutions;
- Director of Public Prosecutions;
- Deputy National Director of Public Prosecutions; and
- National Director of Public Prosecutions.

## 7.4 **State Attorney**

### 7.4.1 Introduction

The State Attorney acts on behalf of the State in legal matters that cover a wide spectrum of the law, in the most cost-effective manner possible. The State Attorney's functions are governed by the State Attorney's Act<sup>8</sup> and Treasury Instructions.

### 7.4.2 Nature of work

The State Attorney performs work on behalf of the government that is by law, practice or custom performed by notaries, conveyancers or parliamentary agents. The State Attorney thus conducts all litigation for or on behalf of the State and performs functions for or on behalf of the administration of any province. Examples of work performed by State Attorneys over the past few years are: urgent applications with regard to gambling and the granting of casino licences; cases involving corruption or probable corruption; and Constitutional Court cases and opinions relating to constitutional rights.

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<sup>8</sup> 56 of 1957.

## 7.5 State Law Advisor

### 7.5.1 Introduction

A State Law Advisor provides cost-effective and efficient legal services to the government.

### 7.5.2 Nature of work

The mission of the Office of the Chief State Law Advisor is to:

- Enhance the state's ability to redress the past imbalances, redistribute resources and transform South African society;
- Reduce government's dependence on private sector, which in turn will minimise costs; and
- Build capacity amongst black attorneys.

The objectives of the Office of the Chief State Law Advisor is to:

- To realign the legal services in order to promote greater cooperation between different sectors;
- Establish a litigation unit;
- Develop legislation and policies in respect of cyber crime, including cyber money laundering;
- Modernise legislative drafting and promote the use of all official languages; and
- Centralise all the state legal services - (State Law

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Advisers, State Attorneys, Family Advocates, Legal Liability and Legal Process).