

LEGAL PRACTICE BILL, 2002

Law Society of South Africa Final Draft

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CHAPTER 1

DEFINITIONS, PURPOSE AND APPLICATION OF THIS ACT

1. Definitions

5 In this Act, unless the context indicates otherwise-

“accredited public interest legal centre” means a public interest legal centre accredited in terms of section 30;

“allied legal practitioner” means a legal practitioner who is a conveyancer, notary, patent practitioner or trademark practitioner;

10 *“banking institution”* means a banking institution as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), and registered, otherwise than provisionally, or regarded as having been registered as a banking institution in terms of Chapter III of that Act;

“Board” means the Board of the Legal Practice Fidelity Fund established in terms of section 96;

15 *“candidate legal practitioner”* means a person undergoing practical legal training as contemplated in section 28;

“commercial juristic entity” means a juristic person established as contemplated in section 26(7);

20 *“conveyancer”* means any person who is registered and enrolled to practise as a conveyancer in terms of this Act;

“day” means an ordinary day;

“fee, commission, gain or reward” excludes-

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(a) the salary or emoluments of an employee if no fee, gain or reward is sought or obtained by his or her employer from the person on whose behalf the document was drawn or prepared; or

(b) any commission or other remuneration to which any person is or may be entitled by law or otherwise for services rendered in his or her capacity as executor, administrator, trustee, curator, tutor or guardian by virtue of his or her appointment in that capacity by a court of law or under the provisions of a will or other testamentary document, or as agent for any person holding such appointment;

10 “*Fidelity Fund*” means the Legal Practice Fidelity Fund established in terms of section 90;

“*Fidelity Fund Certificate*” means the certificate contemplated in section 32;

“*juristic entity*” means the entities contemplated in sections 26(7) and 26(8);

15 “*justice centre*” means a centre providing legal services to indigent persons on behalf of or under the control of the Legal Aid Board established in terms of the Legal Aid Act, 1969 Act No. 22 of 1969;

“*law clinic*” means a law clinic established by any university in the Republic for purposes of providing legal services to indigent persons;

“*Legal Practice Protector*” means the person appointed in terms of section 53;

20 “*legal practitioner*” means a person admitted and enrolled to render legal services in terms of section 9 and 10 of this Act;

“*legal services*” means the giving of advice or assistance to the public in relation to legal rights or obligations including the creation, protection, interpretation, enforcement, transfer or dissolution of such rights or obligations;

“*Minister*” means the member of Cabinet responsible for Justice;

25 “*National Council*” means the National Legal Practice Council established in terms of section 62;

“*non-profit juristic entity*” means a voluntary association or law clinic association established as contemplated in section 26(8) and 26(9);

“*notary*” means any person who is registered and enrolled to practice as a notary in terms of this Act;

5 “*Para-legal Executive Committee*” means the committee established in terms of section 82;

“*Para-legal Forum*” means the South African Para-legal Forum established in terms of section 79;

“*para-legal practitioner*” means any person registered and enrolled to render legal services in terms of section 13 of this Act;

10 “*patent practitioner*” means any person who is registered and enrolled to practice as a patent practitioner in terms of this Act;

“*practice certificate*” means the certificate contemplated in section 14;

“*practitioner*” includes legal and para-legal practitioner;

15 “*practitioner’s roll*” means the roll of enrolled practitioners contemplated in section 22 and “*roll*” has the corresponding meaning;

“*prescribed*” means prescribed by regulation and “*prescribe*” bears a corresponding meaning;

“*Regional Chapter*” means the regional chapter established by the National Council in terms of section 70;

20 “*Regional Council*” means the regional council established by a Regional Chapter in terms of section 73;

“*Republic*” means the Republic of South Africa;

“*rules*” means the Society rules made by the National Council in terms of section 124;

25 “*Sectoral Chamber*” means a sectoral chamber established by a Regional Council in terms of section 65(2)(a)(v);

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“*Society*” means the South African Legal Practice Society established in terms of section 59;

“*this Act*” includes any regulation or notice issued in terms of any provision of this Act;

5 “*trademark practitioner*” means any person who is registered and enrolled to practice as a trademark practitioner in terms of this Act; and

“*voluntary association*” includes a trust, a corporation, a foundation or an institute.

2. Purpose of this Act

The purpose of this Act is to-

- 10
- (a) integrate, unify and regulate the affairs of persons engaged in legal practice;
 - (b) to create a framework for the –
 - (i) increase in the entry of persons into legal practice;
 - (ii) development and maintenance of appropriate professional and ethical norms and standards for the rendering of legal services by legal and para-legal practitioners;
 - 15 (iii) engendering of public confidence regarding services to be rendered by legal and para-legal practitioners; and
 - (iv) participation of legal and para-legal practitioners in regulating the affairs of the legal fraternity;
 - (c) enhance access to justice; and
 - 20 (d) promote and protect the public interest in respect of legal matters.

3. Interpretation of this Act

- (1) Any person applying this Act, must interpret its provisions to give effect to its purpose.

- (2) If any conflict, relating to a matter dealt with in this Act, arises between this Act and the provisions of any other law, except a law amending this Act, the provisions of this Act will prevail.

CHAPTER 2

5 **ADMISSION, REGISTRATION AND ENROLMENT OF LEGAL AND PARA-LEGAL PRACTITIONERS**

Part I - Introductory provisions

4. Admission and enrolment required to practice as a legal practitioner

10 A person may only practice as a legal practitioner if admitted and enrolled to practice as such in terms of this Act.

5. Registration and enrolment required to practice as a para-legal practitioner

A person may only practice as a para-legal practitioner if registered and enrolled to practice as such in terms of this Act.

6. Persons who may apply to be admitted and enrolled as legal practitioners or registered and enrolled as para-legal practitioners

15

(1) Subject to Part II and subsections (2) and (3), any citizen or person who is ordinarily resident in the Republic may apply to be admitted and enrolled as a legal practitioner or registered and enrolled as a para-legal practitioner.

20

(2) The Minister after consultation with the panel establish in terms of section 7 may determine the categories of persons who may be exempted whether conditionally or unconditionally or wholly or in part from the citizenship and residency requirement or the qualification and training requirements referred to in subsection (1) and section 7 respectively-

(a) for the purposes of giving effect to reciprocal inter-governmental agreements regulating such matters; or

(b) if it is in the public interest to permit the person or category of person concerned to expeditiously commence practising as a legal practitioner by virtue of his or her academic qualifications or professional experience.

5

(3) The Minister upon the advice of the National Council, may prescribe the procedure for acquiring an exemption from the requirements contemplated in subsection (2) and for withdrawing or amending any exemption granted in terms of the Act.

7. Panel for recognition of legal qualifications and exemption purposes

10

(1) A Panel for the recognition of legal qualifications is hereby established.

(2) The function of this Panel is to assist the Minister in respect of exemptions contemplated in section 6(2) by-

(a) developing criteria for recognising foreign and other legal qualifications;

(b) developing criteria for granting permanent or temporary exemptions; and

15

(c) considering applications for exemptions or amendments to the terms of any exemption and making recommendations on the merits of such applications.

(3) The Panel is composed of-

(a) three persons appointed by the Minister, two of who must be legal academics employed at any university established in the Republic; and

20

(b) two persons appointed by the National Council.

(4) The Minister may determine the terms and conditions applicable to persons appointed to the Panel.

(5) The Panel must conduct its business on such terms as may be determined by the Minister.

Part II – Admission and enrolment of legal practitioners

8. Minimum qualifications and training applicable to legal practitioners

Subject to section 6 and item 13 of Schedule III, any person may be admitted and enrolled to render legal services as a legal practitioner, the person concerned has-

- 5 (a) satisfied all the requirements for the degree of-
- (i) *baccalaureus legum* at any university in the Republic after completing a period of study of not less than four years for that degree; or
 - (ii) a bachelor degree other than the degree of *baccalaureus legum* at any university in the Republic and after having been admitted to the status of
10 any such degree has satisfied all the requirements for the degree of *baccalaureus legum* at any such university after completing a period of study for all such degrees of not less than five years in aggregate or four years in aggregate if the other degree was substantially a degree in law; and
- 15 (b) satisfied all the vocational training requirements as may be prescribed by the Minister upon the advice received from the National Council¹; and
- (c) passed a competency based examination or assessment determined and conducted under the auspices of the Society.

9. Application for admission as a legal practitioner

- 20 (1) Any person who has met the minimum requirements contemplated in section 8 or is exempted in terms of section 6, may apply to be admitted as a legal practitioner to the High Court in whose jurisdiction he or she ordinarily intends to practice in the manner prescribed by the rules.
- (2) A copy of this application must be served and filed on the Society.

¹ This could include remunerated compulsory community service regulations.

- (3) Within one month of obtaining service of the application, the Society must either file-
- (a) a certificate report to the relevant High Court indicating that it does not object to the application; or
- 5 (b) if it objects to the application, an affidavit setting out the basis for the objection.
- (4) A copy of the certificate or affidavit as the case may be, must be served on the applicant concerned.
- (5) If the Society files an affidavit as contemplated in subsection (3)(b), the applicant concerned may by way of an affidavit reply to the objection within two weeks of obtaining service of the affidavit.
- 10 (6) Upon considering the application, the High Court may order the admission of the applicant concerned as a legal practitioner if satisfied that-
- (a) the status of the applicant is in compliance with sections 6 and 8; and
- 15 (b) the applicant is fit and proper to serve as a legal practitioner.
- (7) The High Court may grant an order of admission on such terms and conditions as it considers appropriate.
- (8) Within seven days of granting the order contemplated in subsection (6), the registrar of the High Court concerned must notify the Society and the applicant of the order.

20 **10. Enrolment of legal practitioners and allied legal practitioners**

- (1) At the time of submitting an application in terms of section 9(1), or upon receipt of the court order contemplated in section 9(6), the applicant or admitted legal practitioner as the case may be, may apply to the Society to be enrolled in the category of legal practitioners practising –
- 25 (a) with a Fidelity Fund Certificate; or
- (b) without a Fidelity Fund Certificate.

- (2) The application contemplated in subsection (2) must-
- (a) specify the physical address at which the legal practitioner intends to ordinarily practice; and
 - (b) provide proof that the legal practitioner has met all requirements as may set by the National Council for enrolment as a legal practitioner practising with or without a Fidelity Fund Certificate as the case may be.
- (3) A legal practitioner who practices with a Fidelity Fund Certificate and who meets the training requirements as may be prescribed for conveyancers and has passed a competency based examination or evaluation conducted under the auspices of the Society applicable to conveyancers, may apply in the prescribed manner to the Society to be enrolled as a conveyancer.
- (4) Any legal practitioner who meets the training requirements as may be prescribed for notaries, patent practitioners and trademark practitioners as the case may be and has passed a competency based examination or evaluation conducted under the auspices of the Society applicable to notaries, patent practitioners or trademark practitioners as the case may be, may apply in the prescribed manner to the Society to be enrolled also as a notary, patent practitioner or trademark practitioner as the case may be.
- (5) The application contemplated in subsection (3) or (4) must specify whether enrolment is sought as a conveyancer, notary, patent practitioner or trademark practitioner as the case may be or any combination of these sub-category of legal practitioners.
- (6) If satisfied that all requirements for enrolment have been met, the Society must enter the name of the applicant on the roll of practitioners contemplated in section 22 in the prescribed manner within seven days of-
- (a) receiving the written notice contemplated in section 9(8), in respect of an enrolment application made at the same time of an application made in terms of section 9(1); and
 - (b) receiving an enrolment application made subsequent to receipt of the court order contemplated in section 9(6).

11. Conversion of enrolment

- (1) A legal practitioner may at any time apply to the Society to convert his or her enrolment from a legal practitioner practising with a Fidelity Fund Certificate to a legal practitioner practising without a Fidelity Fund Certificate and vice versa.
- 5 (2) The Society may impose such conditions as it considers appropriate to give effect to the conversion and the provisions of this Act relating to enrolment.

Part III – Registration and enrolment of para-legal practitioners**12. Minimum qualifications and training requirements applicable to para-legal practitioners**

- 10 (1) In order to be registered, enrolled and authorised to render legal services as a para-legal practitioner, the person concerned must have satisfied the qualification and training requirements for para-legal practitioners² as may be prescribed by the Minister upon the advice received from the National Council.
- 15 (2) The qualification and training requirements as contemplated in subsection (1) must be determined with due regard to the need for para-legal practitioners to be able to-
- (a) communicate effectively, orally and in writing;
 - (b) assist clients to comply with administrative requirements, such as the completion of official forms;
 - (c) understand fundamental legal concepts;

20 (d) provided basic legal advice;

 - (e) understand the circumstances in which it is appropriate to refer matters to a legal practitioner;
 - (f) advise and educate members of communities on human rights issues;

² This may make provision for compulsory community service regulations.

- (g) in the case of qualifications to provide services in a specialised area of law, to research, understand and apply the relevant law;
- (h) understand and apply rules of professional conduct and practice management; and
- 5 (i) promote access to justice.

13. Application for registration and enrolment as a para-legal practitioner

- (1) Any person who has met the requirements contemplated in section 12 may apply to the Para-legal Forum to be registered and enrolled as a para-legal practitioner in the prescribed manner.
- 10 (2) If not satisfied that the relevant requirements have been met, the Para-legal Forum must refuse to register the applicant and notify the applicant in writing of this decision and the reasons for it.
- (3) If satisfied that the relevant requirements have been met, the Para-legal Forum must register the applicant and notify the Society in the prescribed manner that it has done so.
- 15 (4) Upon receiving the notice contemplated in subsection (3), the Society must enter the name of the applicant on the roll of para-legal practitioners in the prescribed manner.

Part IV – General provisions pertaining to enrolment

14. Practice certificate

- 20 (1) Upon entering the name of a legal practitioner on the relevant prescribed roll, the Society must issue a prescribed practice certificate to the legal practitioner concerned.
- (2) Upon the Society entering the name of a para-legal practitioner on the relevant prescribed roll, the Para-legal Forum must issue a prescribed practice certificate to the para-legal practitioner concerned and provide a copy of the certificate to the
- 25 Society.

- (3) The Society must ensure that copies of the practice certificate-
- (a) are available for inspection by any person; and
 - (b) may be obtained at the prescribed fee.
- (4) The practice certificate of a person is sufficient proof that the person-
- (a) has met all the requirements of enrolment;
 - (b) has been enrolled in terms of this Act; and
 - (c) is entitled to render legal services in terms of this Act as a legal practitioner or para-legal practitioner as the case may be.

15. Validity of enrolment

- (1) Enrolment comes into operation on the date on which the practice certificate is issued.
- (2) The practice certificate remains valid until the enrolment is cancelled in terms of this Act.

16. Cancellation of enrolment

Subject to sections 17-21, the enrolment of a person will be cancelled upon the-

- (a) voluntary cancellation of enrolment;
- (b) sequestration of the practitioner;
- (c) death, insolvency or incapacity of the practitioner; or
- (d) person being suspended or being struck-off from the roll pursuant to legal proceedings initiated in terms of sections 18(3)(b) and 20 consequent on complaint proceedings initiated in terms of Chapter 4.

17. Voluntary cancellation

- (1) An enrolled practitioner may voluntarily cancel his or her enrolment by sending to the Society or the Para-legal Forum as the case may be, his or her practice certificate and a notice in writing-
- 5 (a) stating the practitioners intention and reason for cancelling the enrolment; and
- (b) specifying a date, at least 60 days after the date of the notice, on which the voluntary cancellation is to take effect.
- (2) Upon receiving the notice contemplated in subsection (1), the Society or the Para-legal Forum as the case may be, must on the date specified in the notice cancel the practice certificate of the practitioner concerned.
- 10 (3) The Para-legal Forum must give notice in writing to the Society of any voluntary cancellation of the practice certificate of a para-legal practitioner.
- (4) Upon receiving a notice contemplated in subsections (2) or (3), the Society must-
- (a) amend the relevant roll accordingly;
- 15 (b) notify the person in writing of the date on which the roll was amended; and
- (c) in respect of legal practitioners, also convey this fact in writing to the registrar of the High Court at which the legal practitioner applied to be admitted and enrolled as a legal practitioner.
- (5) Notwithstanding the voluntary cancellation of enrolment-
- 20 (a) any complaint process initiated prior to voluntary cancellation may be continued with in terms of this Act and the practitioner concerned is bound by the provisions of this Part and Chapter 4 until the finalisation of the complaint process; and
- (b) a legal practitioner practising with a Fidelity Fund Certificate is deemed to be
- 25 enrolled as such for purposes of regulating trust accounts operated by him or her prior to the voluntary cancellation and attending to its settlement and closure.

- (6) Any person who has voluntarily cancelled his or her enrolment may apply to the Society to be re-enrolled and the provisions of section 10 or 13 as the case may be with the changes required by the context applies to such application for re-enrolment.

18. Sequestration, insolvency or judicial management of legal practitioners

- 5 (1) For purposes of this section, an administrator of an estate includes-
- (a) an administrator or liquidator of an insolvent estate; and
 - (b) a judicial manager.
- 10 (2) If an enrolled legal practitioner is sequestrated, or becomes insolvent or is placed under judicial management, that person or the administrator of that person's estate must within 30 days of the order of court confirming the sequestration submit to the Society the practitioners practice certificate and a written notice-
- (a) stating that fact;
 - (b) containing certified copies of all relevant documents confirming the sequestration; and
 - 15 (c) show cause why he or she should not be struck-off from the roll or specify the conditions that should be imposed to enable the legal practitioner to continue to render legal services and the period in respect of which such condition should be made applicable.
- (3) Upon receiving a notice contemplated in subsection (2), the Society may-
- 20 (a) impose such conditions as it considers appropriate on the continued operation by the person concerned as a legal practitioner, endorse the practice certificate to this effect and return the practice certificate to the person concerned or the administrator of that person's estate; or
 - (b) institute proceedings in the High Court at which the person concerned applied 25 to be admitted and enrolled as a legal practitioner for that person to be struck-off from the roll.

- (4) The Society must notify the legal practitioner in writing of its decision in terms of subsection (3). This notice must contain the Society's reasons for the decision.
- (5) The proceedings contemplated in subsection (2)(b) must be instituted in the prescribed manner.
- 5 (6) If the High Court orders that the legal practitioner be struck-off from the roll³, the Society must-
- (a) cancel the practice certificate of the legal practitioner and amend the roll accordingly; and
- (b) notify the legal practitioner in writing of the date on which the cancellation
10 was effected on the roll.
- (7) If the High Court-
- (a) does not order that the legal practitioner be struck-off the roll, the Society must return the practice certificate to the person concerned; or
- (b) does not order that the legal practitioner be struck-off from the roll, but
15 imposes terms and conditions on the continued operation by a legal practitioner, the Society must endorse the practice certificate to this effect and return the certificate to the person concerned.

19. Death or incapacity

- (1) For the purposes of this section, an administrator of an estate includes-
- 20 (a) an administrator of a deceased estate; and
- (b) curator.
- (2) If a person enrolled in terms of this Chapter, dies, or is placed under curatorship, the administrator of that person's estate must notify the Society in the prescribed form of

³ The procedure for resolving jurisdictional disputes between a liquidator of the sequestrated estate and the curator of a legal practitioner's trust account would have to be resolved in the regulations contemplated in section 40.

that fact within 30 days of the death, insolvency, judicial management or curatorship and return the practitioner's practice certificate to the Society.

(3) Within two weeks of receiving the notice contemplated in subsection (2), the Society must-

5 (a) cancel the practice certificate of the person concerned, and amend the roll accordingly; and

(b) notify the administrator in writing of the date on which the cancellation was effected on the roll; and

10 (c) in respect of legal practitioners, also convey this fact in writing to the registrar of the High Court at which the person applied to be admitted and enrolled as a legal practitioner.

20. Suspension or striking-off from the roll

15 (1) If pursuant to complaint proceedings initiated in terms of Chapter 4 of this Act, it is recommended that the practitioner concerned should be suspended or struck-off from the roll and the practitioner has not reviewed or appealed against the recommendation in terms of section 48 or the review or appeal is unsuccessful, the Society must-

(a) in respect of para-legal practitioners,-

20 (i) notify the para-legal of the decision, the reasons therefor and the date on which the suspension or striking-off is to take effect; and

(ii) cancel the practice certificate of the para-legal practitioner and amend the roll accordingly; and

25 (b) in respect of legal practitioners, institute proceedings in the High Court at which the legal practitioner was admitted and enrolled as a legal practitioner to effect such suspension or striking-off.

(2) If pursuant to a review in terms of section 49, the Office of the Legal Practice Protector is of the view that a practitioner should be suspended or struck-off from the roll, it may-

- (a) in respect of para-legal practitioners recommend to the Society to cancel the practice certificate and amend the roll accordingly; or
- (b) in respect of legal practitioners, recommend to the Society to institute proceedings in the High Court at which the legal practitioner was admitted and enrolled as a legal practitioner, to effect such suspension or striking-off.
- 5
- (3) The proceedings contemplated in subsections (1) and (2) in respect of legal practitioners must be instituted in terms of the ordinary rules of the High Court and in respect of para-legal practitioners in the prescribed manner.
- (4) If the High Court orders that the legal practitioner be suspended or struck-off from the roll, the Society must-
- 10
- (a) immediately cancel the practice certificate of the legal practitioner and amend the roll accordingly; and
- (b) notify the legal practitioner in writing of the cancellation and amendment.
- (5) Upon receipt of the notice referred to subsection (4)(b), the legal practitioner must forthwith return his or her practice certificate to the Society.
- 15
- (6) In the event of a suspension from the roll, the practitioner concerned may in the prescribed manner apply to be re-enrolled as a legal or para-legal practitioner in terms of section 10 or 13 as the case may be upon the expiry of the period of suspension or upon the fulfilment of any condition applicable to the suspension.
- (7) In the event of a striking-off from the roll, the practitioner concerned may apply afresh in terms of section 9 and 10 or 13 to be admitted and enrolled or registered or enrolled as the case may be.
- 20
- (8) If the High Court does not order that the legal practitioner be struck-off from the roll, but imposes terms and conditions on his or her continued operation as a legal practitioner, the Society must endorse the practitioner's practice certificate to this effect and issue an endorsed certificate to the person concerned.
- 25

21. Date and effect of cancellation

The cancellation of enrolment takes effect on the date that the National Council cancels the practice certificate, except that in respect of suspensions and strikings-off, the cancellation takes effect on the day the High Court orders the suspension or striking-off as the case may be.

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22. Roll of enrolled practitioners

(1) The Society must create and maintain a roll in the prescribed form of all practitioners that have-

(a) enrolled as practitioners in terms of this Act specifying the category, and if applicable, the sub-category in terms of which they have been enrolled and date of enrolment;

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(b) had their enrolment converted as contemplated in section 11; and

(c) had their enrolment cancelled, specifying the reason and date for the cancellation and the category of sub-category in respect of which the cancellation has occurred.

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(2) The practitioners roll must also specify-

(a) the Regional Chapter in whose jurisdiction a legal practitioner ordinarily renders legal services;

(b) in respect of legal practitioners, whether the legal practitioner is exempted from rendering legal services with a Fidelity Fund Certificate; or

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(c) the Fidelity Fund Certificate has been cancelled.

(3) Any person may inspect the practitioners roll at the principal office of the National Council at any time during the normal business hours of the National Council and obtain a copy or extract from the practitioners roll on such terms and conditions as may be determined by the National Council.

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- (4) Within 60 days after the end of each financial year, the Society must submit a copy of the practitioners roll to -
- (i) the Director of the Constitutional Court;
 - (ii) the Registrar of the Supreme Court of Appeals;
 - 5 (iii) the Registrar of all divisions of the High Court; and
 - (iv) the Registrar of Deeds appointed in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

CHAPTER 3

RIGHTS, PRIVILEGES, DUTIES OBLIGATIONS AND ACCOUNTING PRACTICES OF 10 PRACTITIONERS

Part I – Appearance in courts and rendering of specialised legal services

23. Authority to appear in court or tribunal

- (1) A legal practitioner who has been admitted in accordance with sections 9 and 10 and is a holder of a valid practice certificate issued in terms of section 14(1) is authorised
15 to-
- (a) appear in any court of law or tribunal in which the public is entitled by law to legal representation; and
 - (b) appear in any tribunal in which the parties to the dispute have by agreement validity permitted legal representation, or the tribunal has validly permitted
20 legal representation at the proceedings of the tribunal.
- (2) Subject to section 28(2)(b), a candidate legal practitioner is authorised to appear in any court or tribunal referred to in subsection (1) if he or she has obtained the prescribed Certificate of Appearance from the Society in the prescribed manner.

24. Services that may be rendered only by a conveyancer, notary, patent practitioner and trademark practitioner

A person may not perform any act or render any services which in terms of any other law may only be done or rendered by a conveyancer, notary, patent practitioner or trademark practitioner unless that person is enrolled as a conveyancer, notary, patent practitioner or trademark practitioner in terms of this Act.

25. Limitations pertaining to the drawing-up and execution of certain documents and instruments

(1) Subject to any other law and subsection (3), only legal practitioners may draw-up and execute the following documents or instruments in expectation of any fee, commission, gain or reward-

(a) any instrument or document relating to or required or intended for use in any action, suit or other proceedings in a court of criminal or civil jurisdiction within the Republic;

(b) any contract, deed or instrument relating to the creation of a partnership including a variation of the terms thereof;

(c) any contract, deed or instrument for the acquisition, disposal, exchange or lease of immovable property or a right relating to immovable property, other than a contract for the lease of immovable property for a period less than five years; and

(d) the memorandum or articles of association or prospectus of a company.

(2) A para-legal practitioner may draw up and execute the documents or instruments contemplated in subsection (1)(b)–(1)(d) only if drawn-up or executed under the supervision of a legal practitioner.

(3) The following persons may also draw-up or execute the documents or instrument referred to in subsection (1) in expectation of any fee, commission gain or reward-

(a) a trustee under the law relating to insolvency or any executor, administrator or curator, or liquidator or judicial manager of a company if they draw-up or

execute the contemplated document or instrument in the course of their statutory duties and they receive such fees, commission, gain or reward as may be allowed by law for such service; and

(b) the employees of a legal practitioner if drawing-up or executing the contemplated document or instrument in the course and scope of their employment.

(4) A document or instrument referred to in subsection (1) is not invalid by reason only of the fact that it has been drawn up or prepared in contravention of the provisions of this section.

Part II – Rendering legal services

26. Legal Practitioners

(1) A legal practitioner enrolled to practice with a Fidelity Fund Certificate may render legal services in expectation of any fee, commission, gain, or reward upon receipt of a request directly from the public for such service.

(2) A legal practitioner enrolled to practice without a Fidelity Fund Certificate may only render legal services in expectation of a fee, commission, gain or reward upon receipt of a brief from-

(a) a legal practitioner enrolled to practice with a Fidelity Fund Certificate; or

(b) directly from the public only in circumstances or on conditions as may be determined by the National Council.

(3) Legal practitioners enrolled to practice with a Fidelity Fund Certificate may only practice-

(a) for their own account;

(b) as part of a commercial juristic entity contemplated in subsection (7) or a multi-disciplinary practice contemplated in section 31, and as such, may only make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance, or otherwise with a legal

practitioner enrolled to practice with a Fidelity Fund Certificate or the multi-disciplinary practice contemplated in section 31;

(c) as part of a non-profit juristic entity established in terms of subsection (8) or (9);

5 (d) as part of a justice centre; or

(e) public interest legal centre accredited by the National Council in terms of section 30.

(4) Legal practitioners enrolled to practice without a Fidelity Fund Certificate may only practice-

10 (a) on their own account and as such may not make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance or otherwise;

(b) as part of a non-profit juristic entity established in terms of subsection (8) or (9);

15 (c) as part of a justice centre; or

(d) public interest legal centre accredited by the National Council in terms of section 30.

(5) Legal practitioners enrolled to practice with a Fidelity Fund Certificate may refer to themselves or be referred to as attorneys.

20 (6) Legal practitioners enrolled to practice without a Fidelity Fund Certificate may refer to themselves or be referred to as advocates.

(7) A commercial juristic entity may be established to conduct a legal practice provided that in terms of its founding documents-

25 (a) its shareholding, partnership or membership as the case may be, is comprised exclusively of legal practitioners enrolled to practice with a Fidelity Fund Certificate or allied practitioners;

- (b) provision must be made for legal services to be rendered only under the supervision of admitted and enrolled legal practitioners;
- (c) all present and past shareholders, partners or members as the case may be are liable jointly and severally together with the commercial juristic entity for-
- 5 (i) the debts and liabilities of the commercial juristic entity as are or were contracted during their period of office; and
- (ii) in respect of any theft as contemplated in section 92(1) committed during their period of office; and
- (d) its present shareholders, partners or members as the case may be are all
10 holders of a valid Fidelity Fund Certificate.
- (8) A voluntary association may be established to conduct a legal practice provided that in terms of its founding documents-
- (a) its governing body is comprised exclusively of legal practitioners;
- (b) provision is made for legal services to be rendered only under the supervision
15 of admitted and enrolled legal practitioners;
- (c) provision is made for at least one person in its employ to be a legal practitioner who is a holder of a Fidelity Fund Certificate;
- (d) it may not make over to, share or divide any portion of its professional fee whether by way of partnership, commission, allowance or otherwise;
- 20 (e) its income and property is not distributable to its members or governors except as reasonable compensation for services rendered; and
- (f) upon its winding-up or dissolution, any asset remaining after all liabilities have been met, must be transferred to another non-profit organisation having similar objectives to it.
- 25 (9) A law clinic may be established by any university in the Republic provided that-
- (a) it is constituted and governed as part of the faculty of law at that university;

- (b) all legal services at the law clinic are rendered by a legal practitioner who is a holder of a Fidelity Fund Certificate or rendered under the supervision of such a person;
- (c) the legal services rendered by it are accessible to the public without restriction;
- 5 (d) the legal services rendered by it must be rendered to the recipient of such service free of charge, whether direct or indirect, except that the law clinic may recover any amounts actually disbursed on behalf of the recipient of the service;
- 10 (e) it may not undertake work in connection with the administration or liquidation or distribution of the estate of any deceased or insolvent person, mentally ill person or any person under any other legal disability, or the judicial management or the liquidation of a company, nor in relation to the transfer or mortgaging of immovable property, nor in relation to the lodging or processing of claims under the Motor Vehicle Accidents Act, 1986, or any amendment thereof or such other works as the National Council may from time to time determine;
- 15 (f) its income and property is not distributable to its governors or employees except as reasonable compensation for services rendered; and
- (g) it may not make over to, share or divide any portion of its professional fee whether by way of partnership, commission, allowance or otherwise.
- 20
- (10) The Minister, upon the advice of the National Council and the Fidelity Fund Board, may prescribe-
- (a) a framework for the creation and recognition of limited liability legal practices; and
- 25 (b) the terms and conditions applicable to such practices.

27. The charging of fees by legal practitioners, juristic entities and justice centres

- (1) A legal practitioner, juristic entity or justice centre may charge such fees in respect of legal services provided by them as is commensurate with-

- 5
- (a) the importance, significance and complexity of the legal services required;
 - (b) the volume of work required and time spend in respect of services rendered;
 - (c) the financial implications of the matter at hand; and
 - (d) the qualifications and professional expertise of the legal practitioner concerned.
- 10
- (2) The provisions of subsection (1) do not preclude a legal practitioner, juristic entity or justice centre from entering into a contingency fee arrangement. Such an arrangement is valid only if-
- (a) recorded in writing in the form prescribed by the Minister upon the advice received from the National Council; and
 - (b) the fee payable does not exceed amounts prescribed by the Minister upon the advice received from the National Council.
- 15
- (3) Despite subsection (1) and (2), the Minister upon the advice received from the National Council may prescribe a procedure for the settlement and review of the contingency fee arrangements contemplated in this section.

28. Candidate Legal Practitioners

- 20
- (1) The Minister upon the advice received from the National Council may prescribe⁴-
- (a) the procedure including minimum requirements that must be met by any person when applying to become a candidate legal practitioner;
 - (b) the terms and conditions for the appointment of a supervisor in respect of such candidate legal practitioner;
 - (c) the terms and conditions of engagement by a supervisor of such candidate legal practitioner;

⁴ These regulations may be different in respect of “pupilage” and “clerkship” and will regulate who may be able to serve as supervisors and will also deal with the supervisor-candidate ratio.

- 5
- (d) the circumstances under which the engagement by a supervisor may be transferred or ceded to another supervisor;
 - (e) the fulfilment of additional training requirements; and
 - (f) any other matter relevant to regulating a persons tenure as a candidate legal practitioner.
- 10
- (2) The National Council may-
 - (a) determine norms and standards applicable to regulating the relationship between candidate legal practitioners and supervisors; and
 - (b) set conditions pertaining to Certificates of Appearance including the extent of its validity.
 - (3) A legal practitioner serving as supervisor to a candidate legal practitioner may avail the services of the candidate legal practitioner in expectation of a fee, commission, gain or reward.
 - (4) For purposes of giving effect to any court order pertaining to costs, the legal services rendered by a candidate legal practitioner must be deemed as having being rendered by the supervisor concerned.
- 15

29. Para-legal practitioners

- 20
- (1) Subject to subsection (2) and (3), para-legal practitioners may render legal services upon receipt of a request directly from the public for such service.
 - (2) Unless exempted by the National Council, whether conditionally or unconditionally para-legal practitioners may only render legal services if-
 - (a) supervised by a legal practitioner; or
 - (b) such services are rendered in the course of employment at a law clinic or voluntary association accredited by the National Council in terms of section
- 25
- (3) Para-legal practitioners may not-

- (a) practice for their own account; and
- (b) render a legal service in expectation of a personal fee, commission, gain or reward.

30. Accreditation of public interest legal centres

- 5 (1) Any voluntary association may apply to the National Council in the prescribed manner for accreditation to render legal services or any specialised legal service as a public interest legal centre.
- 10 (2) The National Council may require further information in support of the application and, for that purpose, may require the applicant to attend one or more meetings of the National Council.
- (3) The National Council may accredit an applicant to perform any function in respect of which it seeks accreditation, after considering the application and any further information provided by the applicant if satisfied that-
- 15 (a) the applicant is registered in terms of the Non-profit Organisations Act, 1997;
 - (b) the services provided by the applicant will meet the National Council's standards;
 - (c) the applicant is able to conduct its activities effectively;
 - (d) the persons appointed by the applicant to perform those functions will do so in an independent manner;
 - 20 (e) the persons appointed by the applicant to perform those functions will be competent to perform those functions and exercise any associated powers;
 - (f) the applicant has an acceptable code of conduct to govern the persons whom it appoints to perform those functions;
 - 25 (g) the applicant will use fair disciplinary procedures to ensure that each person it appoints to perform those functions will subscribe, and adhere, to the code of conduct; and

-
- (h) the applicant promotes a service that is broadly representative of South African society.
- (4) If the National Council decides-
- (a) to accredit the applicant-
- 5 (i) it must-
- (aa) enter the applicant's name in the register of accredited public interest legal centres contemplated in subsection (5);
- (bb) issue a certificate of accreditation in the applicant's name stating the period of its validity;
- 10 (cc) send the certificate to the applicant; and
- (dd) as soon as practicable after the decision, publish the certificate of accreditation in at least one widely circulated means of communication; and
- (ii) it may impose such terms and conditions on the accreditation that it
- 15 deems appropriate; or
- (b) not to accredit the applicant it must advise the unsuccessful applicant in writing of its decision and the reasons for its decision.
- (5) The National Council must in the prescribed manner create, keep and maintain a register of all public interest legal centres accredited in terms of this section.
- 20 (6) Any person may inspect the register of accredited public interest legal centres.
- (7) An accredited public interest legal centre may charge a fee for performing any of the functions for which it is accredited on such terms and conditions and in accordance with such tariff of fees that the National Council may determine.
- (8) An accredited public interest legal centre, or any person engaged by it to perform the
- 25 functions for which it has been accredited, is not liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising those functions.

- 5 (9) A public interest legal centre, or any person engaged by it to perform the functions for which it has been accredited may not disclose to any person or in any court any information, knowledge or document that it or that person acquired on a confidential basis or without prejudice in the course of performing those functions except on the order of a court.
- (10) An accredited public interest legal centre may apply to the National Council in the prescribed form to amend its accreditation. The National Council must treat such an application as an application in terms of subsection (1).
- 10 (11) If an accredited public interest legal centre fails to comply to a material extent with the terms of its accreditation, the National Council may withdraw its accreditation after having given reasonable notice of the withdrawal to that public interest legal centre.
- 15 (12) An accredited public interest legal centre may apply to the National Council in the prescribed form to renew its accreditation either in the current or in an amended form. The National Council must treat the application for renewal as an application in terms of subsection (1).

31. Multi-disciplinary practices

The Minister, upon the advice of the National Council, may prescribe-

- 20 (a) a framework for the creation and recognition of multi-disciplinary practices; and
- (b) terms and conditions in terms of which multi-disciplinary practices may render legal services including its obligations in terms of Part III of Chapter III or exemptions from these obligations.

Part III – Duties and obligations pertaining to the administration, accounting and management of money in the course of conducting a legal practice

32. Obligation to obtain a Fidelity Fund Certificate

- 5 (1) Subject to subsection (2)(b), a legal practitioner who in the course of his or her practice intends to receive, hold or handle money belonging to any person, in anticipation of legal services to be rendered, must apply for a Fidelity Fund Certificate in the manner and form contemplated in subsection (2).
- (2) Subject to the provisions of this section, an application contemplated in subsection (1) must be accompanied by-
- 10 (a) the non-refundable contribution payable by certificate holders in an amount fixed annually by the National Council and the Fidelity Fund Board;
- (b) such non-refundable amount as may be fixed by the Fidelity Fund Board from time to time in respect of the cost of group professional indemnity insurance arranged by the Board as contemplated in section 103(2).
- 15 (3) The Minister, upon the advice received from the National Council and the Fidelity Fund Board, may prescribe-
- (a) the procedure in terms of which a Fidelity Fund Certificate may be obtained by legal practitioners⁵;
- 20 (b) the class or specific legal practitioners that may be exempted from rendering legal services with a Fidelity Fund Certificate;
- (c) the procedure in terms of which an exemption as contemplated in paragraph (b) may be obtained;
- (d) what is to be stipulated on the Fidelity Fund Certificate;

⁵ Regulations must enable an application for a Fidelity Fund Certificate to be made simultaneously with the admission application contemplated in section 9.

- 5
- (e) the procedure and circumstances in terms of which a Fidelity Fund Certificate may be voluntarily cancelled;
 - (f) the procedure for the compulsory return and cancellation of a Fidelity Fund Certificate including pursuant to complaints proceedings initiated in terms of Chapter 4;
 - (g) the period or part thereof, in respect of which a Fidelity Fund Certificate is valid;
 - (h) the fee payable to the Fidelity Fund for obtaining and annually renewing the Fidelity Fund Certificate;

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 - (i) the fee payable for obtaining a certified copy of a Fidelity Fund Certificate; and
 - (j) any other matter relevant to the issuing, utilisation and cancellation of Fidelity Fund Certificates.

33. Duty to keep books of accounts

- 15
- (1) All legal practitioners who practice for their own account and juristic entities must keep such books of account as may be necessary to show and distinguish in connection with such practice-
- (a) moneys received and moneys paid on their own account;
 - (b) moneys received, held or paid by them for or on account of another person;

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 - (c) moneys invested by them in a trust account in circumstances contemplated in section 34(1); and
 - (d) any interest on moneys deposited in their trust account opened in terms of section 34(1) and which is paid over or credited to them.
- 25
- (2) In order to ascertain whether the provisions of subsection (1) and section 34 have been or are being complied with, the Society acting either on its own accord or upon a written complaint lodged with it, may appoint its own personnel or appoint an

auditor who is a member of the South African Institute of Chartered Accountants to inspect the books of account of the legal practitioner or juristic entity concerned.

- 5 (3) The auditor appointed in terms of subsection (2) must report to the Society in such a manner so as not to disclose confidential information entrusted to the legal practitioner or juristic entity whose books of account the auditor has inspected.
- (4) If, upon an inspection in terms of subsection (2), it is found that the legal practitioner or juristic entity has not complied with any of the provisions of subsection (1) or of section 33, the Society may recover from the legal practitioner or juristic entity concerned the costs of the inspection.
- 10 (5) For the purposes of subsections (1) and (2) “books of account” includes any record or document kept by or in the custody or under the control of the legal practitioner or juristic entity concerned which relates to-
- (a) money held in trust;
- (b) money invested in terms of section 34(2);
- 15 (c) interest as contemplated in section 34(4);
- (d) an estate of a deceased person or an insolvent estate or an estate placed under curatorship, in respect of which the legal practitioner concerned is the executor, trustee or curator or which he or she administers on behalf of the executor, trustee or curator; or
- 20 (e) such legal practitioner’s or juristic entity’s practice.

34. Opening of trust saving or other interest-bearing accounts and investments

- 25 (1) All legal practitioners who hold a Fidelity Fund Certificate and juristic entities must open and keep a separate trust current account at a banking institution in which they must deposit all such moneys in accordance with rules as may be determined by the National Council.
- (2) The persons or entities referred to in subsection (1) may-

- 5
- (a) on their own accord invest in a separate trust savings or other interest-bearing account moneys deposited in their trust banking account which is not immediately required for any particular purpose; or
- (b) on the instruction of any person, invest in a separate trust savings or other interest-bearing account moneys deposited in their trust banking account.
- (3) The name of the trust savings or other interest-bearing account referred to in subsection (2)(a) and (2)(b) must contain a reference to these subsections.
- (4) The interest earned on the monies invested in terms of this section accrues to the –
- 10 (a) Fidelity Fund in respect of deposits and investments made in terms of subsection (1) and (2)(a) respectively; and
- (b) depositor in respect of investments made in terms of subsection(2)(b).
- (5) Subject to this Bill, the investment of any moneys referred to in this subsection in a trust savings or other interest-bearing account referred to in subsection (2) does not relieve the legal practitioner or juristic entity concerned of any liability in respect of
- 15 such moneys.

35. Trust account moneys are not part of the assets of legal practitioner or juristic entity

- (1) Subject to subsection (2), an amount standing to the credit in any trust account opened in terms of section 34, may not be-
- 20 (a) regarded as forming part of the assets of the legal practitioner or juristic entity concerned; nor
- (b) attached by a creditor of that legal practitioner or juristic entity.
- (2) Any money held in the trust account of a legal practitioner or juristic entity in respect of which the identity of the owner of the trust account is unknown, must, after the second annual closing of the accounting records of the legal practitioner or juristic
- 25 entity following the date upon which such funds were deposited in the trust account, be paid over to the Fidelity Fund by the legal practitioner or juristic entity.

- (3) Despite subsection (2), the owner of such money is not deprived of the right to claim such portion as he or she may prove an entitlement to.
- (4) Any excess amount remaining on the legal practitioner's or juristic entity's trust account after payment of all claims of person whose moneys have, or should have, been deposited or invested in such trust account and all claims in respect of interest on moneys so invested, including a claim of the fund in respect of interest due to it in terms of section 34(4), is deemed to constitute part of the assets of that legal practitioner or juristic entity concerned and shall be paid to the legal practitioner or juristic entity upon the submission of proof of entitlement to such moneys to the satisfaction of the Fidelity Fund Board.

36. Removal of competence to operate trust accounts

- (1) The Society may submit a written application in the prescribed manner to the Master of the High Court in whose jurisdiction the legal practitioner, or juristic entity was ordinarily enrolled or established as the case may be, for-
- (a) the removal of the legal practitioner's or juristic entity's competence to operate in any way a trust account established in terms of section 34; and
- (b) the appointment of a curator bonis to operate such trust account.
- (2) A curator bonis appointed in terms of subsection (1) has such rights, duties and powers generally associated with operating trust accounts in terms of this Bill.
- (3) The Master may only grant an application-
- (a) on good cause shown by the Society; and
- (b) after having given the legal practitioner or juristic entity concerned an opportunity to respond in writing to the application except that if the legal practitioner is not mentally competent to so respond, the Master may dispense with this requirement.
- (4) For purposes of subsection (3), good cause means-
- (a) in respect of legal practitioners practising on their own account-

- (i) if the practitioner's enrolment is cancelled or the practitioner abandons his or her practice;
- (ii) if sequestrated, whether provisionally or finally;
- (b) in respect of juristic entities-
 - (i) if placed under judicial management;
 - (ii) if liquidated, whether provisionally or finally.

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(5) A person or juristic entity aggrieved by a decision of the Master in terms of subsection (1), may, within 30 days after the decision becomes known to him or her, appeal against that decision to the relevant High Court, and the High Court may confirm or vary the decision or give such other decision as in its opinion the High Court ought to have given.

(6) Nothing contained in this section may be construed as precluding a juristic entity from continuing to operate a trust account if one of its legal practitioners dies, is suspended from or struck off the roll, is declared to be incompetent or incapable of managing his or her own affairs, or abandons or ceases to practice or if a legal practitioner who was practising in the juristic entity is ordered to be incompetent from continuing to operate a trust account for the reasons set out in this subsection.

37. Duties and limitations on banking institutions with respect to trust accounts

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(1) Whenever so directed by the Society, a banking institution at which trust accounts are kept must furnish the Society with a signed certificate indicating the balance of such accounts at the date or dates designated by the Society and a copy of the bank statements pertaining to such trust accounts.

(2) A banking institution referred to in subsection (1) does not have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of any trust account in respect of any liability that a legal practitioner or juristic entity has to the banking institution which is not a liability arising out of or in connection with that trust account.

38. Rights of legal practitioners with respect to moneys held in trust account

The provisions of section 34(2)(b) and 35(2) may not be construed as distinguishing or affecting any just claim, lien, counter-claim, right of set-off, or charge of any kind which a legal practitioner or juristic entity has against a client in respect of whom the money has been received and invested.

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Part IV – Miscellaneous provisions**39. Change in physical address⁶**

(1) All legal and para-legal practitioners must furnish the Society with written particulars of any changes to the physical address at which the practitioner intends to ordinarily practice, within 30 days of such change.

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(2) Within 30 days of receiving the written particulars, the Society must amend its roll accordingly.

(3) For purposes of this Act, the physical address at which the legal or para-legal practitioner ordinarily practices will be deemed to have changed only on the day on which the Society effects the amendment to the roll.

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40. Winding-up of legal practices

(1) The Minister upon the advice received from the National Council may prescribe a procedure for the winding-up of-

(a) any abandoned legal practice; and

(b) the practice of legal practitioners practising on their own account who have had their enrolment cancelled in terms of sections 17-20.

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(2) The procedures contemplated in this section must make provision for-

⁶ This clause is necessary to determine the Regional Chapter at which the organisational and administrative issues pertaining to a legal practitioner will be processed.

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- 10
- (a) the appointment of a curator bonis for purposes of controlling and administering the practice and the trust accounts of the legal practice or the legal practitioner concerned;
 - (b) the protection of the Fidelity Fund and the trust creditors of the legal practice or the legal practitioner concerned in respect of professional, financial or other irregularities;
 - (c) the orderly and appropriate distribution of the files of the legal practice or the legal practitioner concerned; and
 - (d) the orderly interaction between the curator bonis and the trustee, executor liquidator or any other officer appointed in terms of any other law to control or administer the affairs of the practice or the legal practitioner concerned.

CHAPTER 4

MAINTENANCE AND ENFORCEMENT OF GOOD AND ETHICAL CONDUCT

Part I – Introductory provisions

15 **41. Codes of Ethics**

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- 25
- (1) The National Council may develop a Code of Ethics to be made applicable to all legal practitioners and juristic entities.
 - (2) The Para-legal Executive Committee may develop a Code of Ethics to be made applicable to all para-legal practitioners.
 - (3) A Code of Ethics may contain different provisions for different categories and sub-categories of practitioners.
 - (4) The National Council and the Para-legal Executive Committee must take all reasonable steps to-
 - (a) publicise the existence of any Code of Ethics developed by them in terms of this Act;

- (b) inform the public of the content of such Codes of Ethics including its enforcement procedures; and
- (c) inform the public of how and where to obtain a copy of such Codes of Ethics.

42. Binding nature of the Code of Ethics

5 Unless exempted from a particular Code of Ethics or from particular provisions of a Code of Ethics, all practitioners and juristic entities admitted or registered, enrolled or established in terms of this Bill, are bound by any Code of Ethics developed in terms of this Act.

43. Non-compliance with Code of Ethics

10 A practitioner or juristic entity, which does not comply with the provisions of a Code of Ethics developed in terms of this Act may be subjected to disciplinary proceedings as contemplated in Part II.

Part II – Procedural matters

44. Institution of complaint proceedings

- 15 (1) Any person may lodge a complaint concerning the non-compliance with any Code of Ethics developed in terms of this Act against any practitioner or juristic entity admitted or registered and enrolled or established in terms of this Act on-
- (a) the offices of any Regional Chapter in respect of a complaint against a legal practitioner; or
 - (b) the Offices of the Para-legal Forum in respect of complaint against a para-legal practitioner.
- 20 (2) The National Council or the Para-legal Forum as the case may be, may at its own instance institute complaint proceedings against any practitioner or juristic entity admitted or registered and enrolled or established in terms of this Act.
- 25 (3) A complaint of non-compliance with a Code of Ethics in terms of this section must be done in a form and manner and contain the degree of particularity as may be

determined by the National Council in the Practice and Procedure Code contemplated in section 65.

45. Competence to consider complaint

- 5 (1) A Regional Chapter or the Para-legal Forum, as the case may be, may process a complaint only if the practitioner or juristic entity in respect of which the complaint is made, falls within its scope of competence or scope of geographic jurisdiction as the case may be.
- 10 (2) A Regional Chapter or the Para-legal Forum must refer a complaint to the appropriate Regional Chapter or to the Para-legal Forum as the case may be if a complaint is improperly lodged with it and inform the complainant in writing of such referral.

46. Consideration of complaint

- 15 (1) If the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be, is of the view that the complaint is defective, it must notify the complainant in writing of this fact and call on the complainant to remedy the defect within the time-period specified in the notice. The relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be, may on good-cause shown extend the period within which the defect must be remedied.
- 20 (2) If upon considering a complaint that is duly lodged or its defect has been remedied pursuant to the notice contemplated in subsection (1), the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be is-
- (a) satisfied that a misdemeanour has not been committed it must inform the complainant and the practitioner or juristic entity of its finding and the reasons for it; or
- 25 (b) satisfied that the misdemeanour may have been committed-
- (i) it must in writing call on the practitioner or juristic entity as the case may be, to file a written reply to the complaint within 14 days of issuing

CHAPTER 4 : MAINTENANCE AND ENFORCEMENT OF GOOD AND ETHICAL CONDUCT

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such written notice. The time period within which the written reply must be filed may be shortened if warranted by the nature of the complaint or be extended on good cause shown; and

- 5 (ii) upon receiving the written reply, it must in writing call on the complainant to respond to the written reply within 14 days of issuing such notice. The time period within which the written response must be filed may be shortened if warranted by the nature of the complaint or be extended on good case shown.
- 10 (3) A failure or refusal by a practitioner or juristic entity as the case may be or the complainant to comply with a written notice issued in terms of subsection (2)(b), does not preclude the relevant structure of the Regional Chapter or the Para-legal Forum as the case may be from further processing the complaint.
- 15 (4) At anytime after receiving the written information contemplated in subsection (2)(b), or upon the expiry of the time periods contemplated in that subsection, the relevant structure of the Regional Chapter or the Para-legal Forum may in order to determine whether a misdemeanour has been committed, direct a practitioner or juristic entity as the case may be, to produce for inspection by them or any person authorised by them, any book, document, record or thing which is in their possession or custody or under their control⁷.
- 20 (5) If upon considering the written information provided in terms of subsection (2)(b) or the book, document, record or thing inspected in terms of subsection (4), the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be is-
- 25 (a) satisfied that a misdemeanour has not been committed it must inform the complainant and the practitioner or juristic entity of its finding and the reasons for it;
- (b) satisfied that a misdemeanour has been committed, it must-

⁷ The Code of Ethics should deem non-compliance with this direction as misconduct.

- 5
- (i) in writing inform the practitioner or juristic entity of its findings and the reasons for it and call on them to file, within 14 days of issuing the written notice, written representations regarding the sanctions if any that ought to be imposed on them. The time period within which the written representations may be filed may be extended on good cause shown;
 - (ii) take those representations into account when determining what action to take against the practitioner or juristic entity as the case may be; and
 - (iii) inform the complainant and the practitioner or juristic entity as the case may be, of the action to be taken; or
- 10
- (c) uncertain as to whether a misdemeanour has been committed, it must cause a disciplinary inquiry to be conducted into the complaint.
- 15
- (6) The relevant disciplinary structure or the Regional Chapter or the Para-legal Forum as the case may be, must inform the complainant and the practitioner or the juristic entity as the case may be of its decision in terms of subsection (5)(c) and the reason for it.
 - (7) The disciplinary inquiry contemplated in subsection (5)(c) must be processed and conducted in a manner determined by the National Council in the Practice and Procedure Code contemplated in section 65.
 - (8) If the disciplinary inquiry contemplated in subsection (5)(c)-
- 20
- (a) reveals that a misdemeanour has not been committed, the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be, must in writing notify the complainant and the practitioner or juristic entity as the case may be of this finding, the reasons for the finding and of the intention not to further process the complaint; or
- 25
- (b) reveals that a misdemeanour has been committed, the provisions of subsection (5)(b) applies with the changes required by the context.

47. Remedial action

(1) If a practitioner or juristic entity as the case may be, is found to have committed the misdemeanour complained of, the following action may be taken against the practitioner or juristic entity concerned-

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- (a) reprimand the practitioner or juristic entity;
 - (b) issue a final written warning to the practitioner or juristic entity;
 - (c) impose a fine not exceeding R50 000.00;
 - (d) any combination of paragraphs (a) - (c); or
 - (e) recommend the suspension or striking-off from the roll of the practitioner
- 10
- concerned.

(2) In addition to the sanctions contemplated in subsection (1), the relevant disciplinary structure of the Regional Chapter or Para-legal Forum as the case may be may order-

- (a) the payment or refund of any amounts due to a complainant with or without interest; and
 - (b) in respect of disciplinary inquiry conducted in terms of this section, the cost of the disciplinary inquiry be paid by the practitioner or juristic entity concerned.
- 15

(3) Any order made in terms of subsection (2) is deemed to be and has the force and effect of a judgment of a Magistrate's Court.

- (4) A practitioner or juristic entity must be informed in writing of the remedial action to be taken and the reasons therefore.
- 20

48. Review and appeal

(1) If action is taken in terms of section 47(1)(a)-47(1)(d) or 47(2) on a practitioner or a juristic entity, or the complainant who is a legal practitioner or juristic entity, is aggrieved by the outcome of a complaint in terms of this section, the practitioner or juristic entity or complainant concerned may within 14 days of being informed of the outcome of the complaint lodge a notice of review to the Regional Council or the

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5 Para-legal Executive Committee as the case may be. The review must be conducted and processed by a specially convened body appointed by the Regional Council or the Para-legal Executive Committee as the case may be in a manner as may be determined by the National Council in the Practice and Procedure manual contemplated in section 65.

(2) The body conducting the review-

(a) may-

10 (i) issue directions to the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be regarding the further processing of the complaint or process the complaint de novo;

(ii) confirm the findings on the complaint and the actions taken; or

15 (iii) if satisfied that there has been a substantial miscarriage of justice, set aside the finding and substitute it with its own decision, make its own findings and take such action that it considers appropriate subject to section 47; and

(b) must notify the practitioner or the juristic entity as the case may be and the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be in writing of the outcome of the review and the reasons for the decision.

20 (3) If a recommendation in terms of section 47(1)(e) is made, the practitioner concerned may within 14 days of being informed of the recommendation lodge an appeal to the National Council or the National Executive Committee as the case may be. The appeal must be conducted and processed by a specially convened body appointed by the National Council or the Para-legal Executive Committee as the case may be in a
25 manner as may be determined by the National Council in the Practice and Procedure Code contemplated in section 65.

(4) If the appeal concerning a practitioner's recommended suspension or striking-off is unsuccessful, the Society may exercise its powers in terms of section 20.

49. Review by the Office of the Legal Practice Protector

- 5 (1) A complainant other than a legal practitioner or juristic entity aggrieved by the manner in which the relevant disciplinary structure of a Regional Chapter or the Para-legal Forum is processing a complaint or aggrieved by the outcome of a complaint lodged in terms of section 44, may lodge a notice of review with the Office of the Legal Practice Protector within 14 days of becoming aware of the irregular processing of the complaint or of being informed of the outcome of the complaint. The Office of the Legal Practice Protector may on good-cause shown condone the late filing of a review notice.
- 10 (2) A review in terms of subsection (1) must be processed in accordance with the procedure determined by the Office of the Legal Practice Protector.
- (3) Upon reviewing the matter, the Office of the Legal Practice Protector-
- (a) may, in respect of a review regarding-
- 15 (i) the manner in which a complaint has been processed, issue directions to the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be regarding the further processing of the complaint or process the complaint de novo; or
- (ii) the outcome of the complaint lodged in terms of section 44,-
- (aa) confirm the findings on the complaint and the actions taken;
- 20 (bb) issue directions to the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be regarding the further processing of the complaint or process the complaint de novo; or
- (cc) if satisfied that there has been a substantial miscarriage of justice, set aside the finding and substitute it its own decision, make its own findings and take such action that it considers appropriate subject to subsection (4); and
- 25 (b) must notify the practitioner or the juristic entity as the case may be and the relevant disciplinary structure of the Regional Chapter or the Para-legal Forum

as the case may be in writing of the outcome of the review and the reasons for the decision.

- (4) The substitution contemplated in subsection (3)(a)(ii)(cc) may only be effected if ratified or personally made by the Legal Practice Protector.
- 5 (5) The relevant disciplinary structure of the Regional Chapter or the Para-legal Forum as the case may be is obliged to give effect to the directions of the Office of the Legal Practice Protector, failing which the Office of the Legal Practice Protector may institute legal proceedings to ensure compliance with its directions.

50. Urgent legal proceedings

10 Notwithstanding sections 45–47, if upon considering a complaint that is duly lodged, or its defect has been remedied pursuant to the notice contemplated in section 46(1), the relevant structure of the Regional Chapter is satisfied that a legal practitioner or juristic entity as the case may be, has misappropriated trust monies or has committed a serious misdemeanour, it may on behalf of the Society institute urgent legal proceedings in the relevant High Court to

15 suspend or strike-off the legal practitioner from the roll and/or obtain alternative interim relief.

Chapter 5

THE LEGAL PRACTICE PROTECTOR

51. Establishment

20 The Office of the Legal Practice Protector is hereby established.

52. Objects of the Office of the Legal Practice Protector

The objects of the Office of the Legal Practice Protector are to-

- (a) ensure the fair, efficient and effective investigation of alleged misconduct against practitioners and juristic entities;

- (b) protect and promote the public interest with respect to the rendering of legal services;
- (c) promote high standards of integrity in the legal profession; and
- (d) promote the independence of the legal profession.

5 **53. Powers of the Legal Practice Protector**

- (1) For purposes of achieving the objects in section 52, the Legal Practice Protector may-
- (a) on his or her own account or on the request of the National Council, investigate and make recommendations to the National Council, the Minister and Parliament on any matter that he or she considers may affect the integrity and the independence of the legal profession and public perceptions relating to the integrity and independence of the legal profession;
 - (b) investigate any alleged failure of the National Council or any of its substructures to deal promptly, effectively and fairly with any complaint of alleged misconduct by a practitioner;
 - (c) report and make recommendations to the National Council on such an alleged failure and require a report from the National Council on remedial steps taken; and
 - (d) make recommendations to the National Council on steps that ought to be taken to provide high standards of integrity in the legal profession.
- (2) The terms of reference of any investigation contemplated in subsection (1)(a) must be determined by the Legal Practice Protector after consultation with the National Council and with the approval of the Chief Justice.
- (3) When exercising any power referred to in subsection (1), the Legal Practice Protector has the powers of a Commissioner appointed in terms of the Commissioners Act 8 of 1947.

54. Appointment of Legal Practice Protector and appointment procedure

- (1) As soon as possible after the commencement of this Act, the President must appoint the Legal Practice Protector upon receipt of a recommendation from the Judicial Services Commission.
- 5 (2) The Legal Practice Protector must be a person who qualifies to be appointed as a judge of the High Court.
- (3) The Legal Practice Protector is independent and impartial and must exercise his or her powers and perform his or her functions without fear, favour or prejudice.
- (4) The National Council and its substructures must assist and protect the Legal Practice
10 Protector to ensure his or her independence, impartiality, dignity and effectiveness.
- (5) No person may hinder or obstruct the Legal Practice Protector in the exercise or performance of his or her powers and functions.

55. Term of office of Legal Practice Protector, vacancy and filling in of vacancy

- 15 (1) The Legal Practice Protector holds office for a period of three years and is eligible for re-appointment.
- (2) The President may allow the Legal Practice Protector to vacate his or here office-
 - (a) on account of continued ill-health; or
 - (b) at his or her request: Provided that such request must be addressed to the
20 President at least three calendar months prior to the date on which he or she wishes to vacate such office, unless the President allows a shorter period in a specific case.
- (3) The President may, on the advice of the Judicial Service Commission, remove the Legal Practice Protector from office on account of-
 - (a) misconduct;
 - 25 (b) permanent inability to perform the duties of his or her office efficiently.

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- (4) The President must, at the instance of the Judicial Service Commission, suspend the Legal Practice Protector from office at any time after the commencement of proceedings of the Judicial Service Commission concerning the removal of that Legal Practice Protector.
- 5 (5) If the Legal Practice Protector is suspended from office, he or she may not exercise or perform any powers or functions or receive any remuneration or allowances in terms of this Act.
- (6) If a vacancy occurs in the Office of the Legal Practice Protector, the President must, subject to the provisions of this section, appoint another person to that Office.
- 10 (7) Whenever the Legal Practice Protector is for any reason unable to exercise or perform his or her powers or functions, or when the appointment of a person to the Office of the Legal Practice Protector is pending, the President may, subject to this section, appoint a person as Acting Legal Practice Protector to exercise the powers and perform the functions of the Legal Practice Protector.
- 15 (8) The Legal Practice Protector must as soon as practicable after his or her appointment and after consultation with the National Council appoint-
- (a) a suitably qualified and experienced person as Chief Administrative Officer for the purpose of assisting the Legal Practice Protector in the performance of all financial, administrative and clerical functions pertaining to the Office of
- 20 the Legal Practice Protector; and
- (b) such staff as may be reasonably necessary to assist the Legal Practice Protector and the Chief Administrative Officer with the work incidental to the performance of their functions.
- (9) Expenditure incidental to the exercise of performance of the powers and functions of
- 25 the Legal Practice Protector in terms of this Act or any other law must be defrayed from moneys appropriated by Parliament for this purpose.

56. Remuneration and allowances to the Legal Practice Protector and the personnel of the Office of the Legal Practice Protector

5 The Minister after consultation with the Minister of Finance must determine the remuneration and allowances payable to the Legal Practice Protector and the personnel attached to the Office of the Legal Practice Protector.

57. Annual report

By no later than 30 June each year, the Office of the Legal Practice Protector must compile and submit an annual report to the Minister and the National Council setting out in respect of the previous calendar year-

- 10 (a) an income and expenditure statement for the Office of the Legal Practice Protector;
- (b) a statistical analysis of the nature and number of complaints processed by the Legal Practice Protector and an indication of how these complaints were processed; and
- 15 (c) recommendations if any regarding the maintenance and improvement of standards for rendering legal services and executing legal attendances by practitioners.

58. Indemnification of the Office of the Legal Practice Protector and its personnel

20 The Legal Practice Protector and the personnel of the Office of the Legal Practice Protector are indemnified in respect of all proceedings, costs and expenses incurred by any person when pursuing legal proceedings pursuant to bona fide actions taken by the Legal Practice Protector and the personnel concerned.

CHAPTER 6**STRUCTURES REGULATING THE LEGAL PRACTICE***Part I – South African Legal Practice Society***59. Establishment of and membership to the South African Legal Practice Society**

- 5 (1) The South African Legal Practice Society is hereby established as a body corporate with full legal capacity.
- (2) Any person who has been enrolled in terms of section 10 and whose enrolment certificate is valid is a member of the Society.
- 10 (3) Members of the Society exercise their membership at the level of the Regional Chapters and Sectoral Chambers of the Society.

60. Object of South African Legal Practice Society

The object of the Society is to-

- (a) protect the public interest by-
- 15 (i) regulating the legal profession;
- (ii) enhancing and maintaining the integrity and status of the legal profession;
- (iii) determining, maintaining and enhancing appropriate standards of professional practice and ethical conduct of all legal practitioners;
- (iv) promoting high standards of legal education and training;
- 20 (v) promoting access to the legal profession for person aspiring to enrol as practitioners;
- (vi) promoting and representing the legitimate interests of all practitioners;
- (vii) preserving and upholding the independence of the legal profession;

- (viii) advising the Minister with regard to matters concerning the legal profession and legal practice; and
- (ix) upholding and advancing the rule of law, the administration of justice and the constitution of the Republic.

- 5
- (b) promote access to justice; and
 - (c) give effect to the provisions of this Act.

61. Funds of the South African Legal Practice Society

The funds of the Society consist of-

- 10
- (a) an annual contribution from the respective Regional Chapters which amount must be determined by the National Council after consultation with the Regional Chapter concerned;
 - (b) fines and monetary penalties imposed and recovered in terms of this Act;
 - (c) any other monies received by the Society in terms of this Act or accruing from any other source including donor funds, investment income and interest income;
 - (d) an annual contribution from the Para-legal Forum, which amount must be determined by the Para-legal Forum after consultation with the National Council; and
 - (e) an annual appropriation made by the Fidelity Fund, which amount must be
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- 20

Part II – National Legal Practice Council

62. Establishment and powers of the National Legal Practice Council

- (1) The National Legal Practice Council is hereby established.

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- (2) In order to order to achieve the purposes of the Act as set out in section 2 and to enable the Society to achieve its objects, the National Council may on behalf of the Society-
- (a) acquire or hire movable or immovable property;
 - 5 (b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property of the Society;
 - (c) make donations and grants-in-aid in support of projects which would achieve any of the objects set out in section 2 and of this Act;
 - 10 (d) accept, draw, endorse, issue, make, pay or perform any other act in respect of negotiable instruments or the electronic transfer of monies;
 - (e) determine the membership subscription fees payable by members or impose fines and monetary penalties on them;
 - (f) invest the funds of the Society which are not immediately required upon such security as may from time to time be determined by the National Council;
 - 15 (g) borrow or raise money, in such a manner as the National Council may think fit, which is required in connection with the performance of its functions;
 - (h) employ a Chief Executive Officer and such officials or staff as may be necessary to enable it to carry out its functions and to determine the remuneration and other conditions of service of its officials and staff;
 - 20 (i) establish, promote, arrange, administer or assist in the establishment, promotion, arrangement or administration of insurance, medical-aid, pension, provident or benevolent schemes for the benefit of its officials and staff and the dependants of such officials and staff;
 - 25 (j) subject to the provisions of the Short Term Insurance Act, 1998 (Act 53 of 1998), acquire or form and administer, a public company, or together with any other person or institution, establish a scheme underwritten by a registered insurer, in order to provide insurance cover to the Society in respect of any claim which may arise from the Society and any of its structures exercising

their powers, performing their functions or carrying out their duties in terms of this Act;

- 5
- (k) conclude agreements with any person or organisation for the performance of any particular act or particular work or the rendering of particular services for the purpose of furthering the objects of the Society;
- (l) entering into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
- (m) institute or defend legal proceedings on behalf of the Society;
- 10
- (n) determine the manner in which the Society and National Council conducts its business;
- (o) pay honoraria or an allowance to any person to cover expenses reasonably incurred by him or her in connection with any act performed at its request or in terms of its directions on behalf of or for the benefit of the Society and the furtherance of its objects;
- 15
- (p) accredit training institutions which offer practical legal training courses which qualify, or contribute towards the qualification of candidate legal practitioners;
- (q) delegate any of its duties, functions or powers to its committees, Regional Councils, Sectoral Chambers or employees, provided that it may impose conditions on delegations and may not be divested of any power or duty by virtue of a delegation and may vary or set aside any decision made under a
- 20
- delegation;
- (r) publish or cause to be published periodicals, pamphlets and other printed material for the benefit of practitioners or the public;
- (s) do all things necessary for or conducive to the attainment of the objects of the
- 25
- Society; and
- (t) do all things necessary for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers.

63. Composition of the National Legal Practice Council

(1) The National Council is composed of-

(a) 24 legal practitioners of whom 16 must be legal practitioners practising with Fidelity Fund Certificates and eight must be legal practitioners practising without Fidelity Fund Certificates to be elected by the members through their respective Regional Chapters established in terms of this Act subject to section 65(2)(a)(i);

(b) two persons appointed by the South African Para-legal Forum;

(c) the chairperson of the Board of the Legal Practice Fidelity Fund who has no voting rights at the meeting of the National Council; and

(d) two additional persons appointed by the Minister of which-

(i) one must be a legal academic appointed from amongst nominations received from organisations representing the interests of legal academics or from deans of faculties of law of any university established in the Republic; and

(ii) one must be capable of representing the interest of users of legal services or those requiring the execution of miscellaneous legal attendances.

(2) Within 60 days of the commencement of this Act, and thereafter whenever a vacancy arises in respect of appointments made by the Minister in terms of subsection (1)(d), the Minister must -

(a) publish written notice in at least one widely-circulated means of communication inviting nominations from the organisations and institutions contemplated in this section and any other interest group;

(b) consider the nominations; and

(c) make the appointments from amongst the nominees.

- (3) When making the appointments referred to in subsection (1)(d), the Minister must take into account the extent to which a nominating organisation is representative of the relevant constituency and the need for the National Council to be representative, including in respect of regional distribution, race and gender.
- 5 (4) The Regional Chapters and the South African Para-legal Forum as the case may be when electing or appointing the persons contemplated in subsection (1), must take cognisance of the need of the National Council to be representative, including in respect of regional distributors, race and gender.
- 64. Term of office in National Council, vacancies and filling in of vacancies**
- 10 (1) Subject to subsection (2), a member of the National Council holds office for a period of four years and is eligible for re-appointment.
- (2) One quarter of each of the categories of legal practitioners elected in terms of section 63(1)(a) must annually vacate their office. The persons required to vacate their office at the end of every year must be determined in accordance with the prescribed
- 15 procedure.
- (3) In addition to subsection (2), a vacancy arises if a member -
- (a) dies;
- (b) is removed from office by the National Council as contemplated in subsection (3); or
- 20 (c) resigns by notice addressed to the National Council.
- (4) A member of the National Council may be removed from office-
- (a) on the original request of the body that nominated that member in terms of section (2);
- (b) for serious misconduct;
- 25 (c) for permanent incapacity;

(d) for absence from three meetings of the National Council without prior permission of the National Council unless good cause is shown by the member; or

(e) for engaging in any activity that may undermine the integrity of the National Council.

(5) If a vacancy arises in the National Council before the expiry of the period of office, the Regional Chapters, the Para-legal Forum, the Legal Practice Fidelity Fund Board or the Minister, as the case may be, must in accordance with section 55, appoint a new member for the un-expired portion of that period.

10 **65. Practice and Procedure Code for National Legal Practice Council**

(1) The National Council must, as soon as possible after the appointment of its members, develop a Practice and Procedure Code and submit it to the Chief Justice for ratification. Within 30 days of such ratification, the National Council must submit the Practice and Procedure Code to the Minister for promulgation in the Government Gazette. The Practice and Procedure Code only becomes effective upon such promulgation.

(2) Subject to this Bill, the Practice and Procedure Code must -

(a) provide for -

(i) the procedure for the nomination and election by Regional Chapters of legal practitioners to the National Council and to their respective Regional Councils;

(ii) the appointment of the Chairperson and Deputy-chairperson of the National Council;

(iii) the functions and governance of its Executive Committee established in terms of section 66;

(iv) the establishment, functions, composition and governance of committees of the National Council;

-
- (v) the establishment, functions, composition and governance of Sectoral Chambers by Regional Chapters in respect of-
- (aa) legal practitioners practising with a Fidelity Fund Certificate; and
 - (bb) legal practitioners practising without a Fidelity Fund Certificate;
- 5 (vi) the establishment, functions, composition and governance of a para-legal sub-committee to advise the National Council on matters pertaining to or affecting para-legal practitioners;
- (vii) subject to subsection (3), the rules for convening and conducting of meetings of the National Council, its committees, the Regional Council and Sectoral Chambers including the quorum required and for the
- 10 keeping of minutes;
- (viii) the rules for submitting and investigating complaints, convening and conducting complaints proceedings including convening and conducting disciplinary enquiries and securing the attendance of relevant persons at such enquiries as contemplated in Chapter 4;
- 15 (ix) the receiving, banking, investing and disbursement of monies;
- (x) subject to section 63(1)(c), the voting rights and the manner in which decisions are to be taken by the National Council, its committees, the Regional Council and Sectoral Chambers;
- 20 (xi) the determination through arbitration of any dispute concerning the interpretation or application of the code;
- (xii) subject to subsection (4) and (5), a procedure for amending the code; and
- (b) may provide for -
- 25 (i) the delegation of powers and duties of the National Council to its Regional Chapters, committees, Sectoral Chambers and employees provided that the National Council may impose conditions for delegations and may not be divested of any power or duty by virtue of

the delegation and may vary or set aside any decision made under any delegation; and

(ii) any other matter necessary for the performance of the functions of the National Council.

5 (3) The provisions of the Practice and Procedure Code must have due regard to principles of-

(a) transparency;

(b) procedural fairness; and

(c) representivity, including in respect of regional distribution, race and gender.

10 (4) At least 30 days notice must be given for a meeting of the National Council at which an amendment of the code to be made is to be considered.

(5) A supporting vote of at least two thirds of the National Council members and the ratification of the Chief Justice is required for an amendment to the Code. Within 30 of such ratification the National Council must submit the amendment to the Minister for promulgation in the Government Gazette. The amendment only becomes effective upon such promulgation.

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(6) When determining the rules referred to in subsection (2)(a)(vi), the National Council must do so after consulting with the office of the Legal Practice Protector.

66. Executive Committee of the National Legal Practice Council

20 (1) The National Council must from amongst its number appoint an Executive Committee to be composed of-

(a) the Chairperson of the National Council;

(b) four legal practitioners practising with a Fidelity Fund Certificate any of whom may be allied practitioners;

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(c) two legal practitioners practising without a Fidelity Fund Certificate; and

(d) one para-legal practitioner.

- (2) When appointing its Executive Committee, the National Council must take into account the need for the Executive Committee to be representative, including in respect of regional distribution, race and gender.
- 5 (3) Subject to subsection (5), the Executive Committee is responsible for attending to the day to day functioning and administration of the National Council in between meetings of the National Council.
- (4) The National Council may-
- (a) delegate any of its powers and functions to the Executive Committee on such terms as it considers appropriate; and
- 10 (b) direct the Executive Committee to perform such tasks as it considers appropriate.
- (5) A member of the Executive Committee holds office for so long as he or she is a member of the National Council unless removed from office by the National Council.
- 15 (6) The National Council must from amongst its Executive Committee designate who must serve as its Chairperson and Deputy-chairperson.
- (7) Subject to section 65(2)(a)(i), the Executive Committee may meet as often as it deems necessary and dispose of its business in the manner it considers appropriate.

67. Administration and acquisition of resources by the National Legal Practice Council

- 20 The National Council may acquire personnel, financial and administrative infra-structural services and resources necessary to enable the National Council to effectively perform its functions in terms of this Act.

68. Remuneration and allowances to members of the National Legal Practice Council

- 25 A member of the National Council or any of its committees may be paid such remuneration and allowances determined by the National Council.

69. Indemnification of members of the National Legal Practice Council

The members of the National Council are indemnified in respect of all proceedings, costs and expenses incurred by any person when pursuing legal proceedings pursuant to bona fide actions taken by the member.

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Part III - Regional Chapters of the South African Legal Practice Society**70. Establishment, geographic scope and composition of Regional Chapters**

(1) The National Council must establish as many Regional Chapters of the Society as it considers necessary so as to cover the entire Republic and determine the geographic scope of such Regional Chapters.

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(2) The National Council may at its discretion dissolve any Regional Chapter, amalgamate Regional Chapters, or amend the geographic scope of Regional Chapters.

(3) A Regional Chapter is composed of all members of the Society that ordinarily practice within the geographic scope of the Regional Chapter concerned.

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71. Funds of Regional Chapter

(1) The funds of a Regional Chapter consists of-

(a) annual membership subscription fees as may be determined by the National Council payable by enrolled legal practitioners ordinarily practising within the geographic scope of the Regional Chapter concerned;

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(b) annual regional levies payable by enrolled legal practitioners ordinarily practising within the geographic scope of the Regional Chapter concerned as may be determined by the Regional Council; and

(c) allocations made to it by the National Council.

- (2) The funds of a Regional Chapter must be deposited in an interest bearing banking account which must serve as the medium through which all income and expenses of the Regional Chapter are to be received and disbursed.

72. Objectives of Regional Chapters

- 5 The object of a Regional Chapter is to give effect to and to serve as the operating arm of the Society in the region concerned in the interests of the members of the Society.

73. Establishment and powers of Regional Councils

- (1) A Regional Council is hereby established in respect of each Regional Chapter.
- 10 (2) A Regional Council may establish Sectoral Chambers in accordance with the Practice and Procedure Code of the National Council and has such other powers as may be delegated to it by the National Council.
- (3) The National Council may delegate different powers to different Regional Councils in terms of section 62(2)(q).
- 15 (4) The National Council may at its discretion withdraw whether conditionally or unconditionally, in whole or in part, any power delegated to a Regional Council.

74. Composition of the Regional Councils

- (1) Subject to subsection (2), the Regional Council consists of such number of persons as may be determined by the National Council to be elected by members of the Sectoral Chambers of the Regional Chapter concerned, in accordance with the Code of Practice and Procedure of the National Council.
- 20 (2) As regards the persons to be elected-
- (a) the number of legal practitioners practising with Fidelity Fund Certificates as compared with the number of legal practitioners practising without Fidelity Fund Certificates must reflect the ratio envisaged in section 63(1)(a);

- (b) regard must be had for the need of the Regional Council to be representative, including in respect of regional distribution, race and gender.

75. Term of office in Regional Council, vacancies and filling in of vacancies

- 5 (1) Subject to subsection (2) a member of a Regional Council holds office for a period of four years and is eligible for re-election.
- (2) One quarter of each of the categories of legal practitioners elected in terms of section 74(1) must annually vacate their office. The persons required to vacate their office at the end of every year must be determined in accordance with the prescribed procedure.
- 10 (3) In addition to subsection (2), vacancy arises if a member-
- (a) dies;
- (b) is removed from office by the National Council as contemplated in subsection (3); or
- (c) resigns by notice addressed to the National Council.
- 15 (4) A member may be removed from the Regional Council -
- (a) for serious misconduct;
- (b) for permanent incapacity;
- (c) for absence from three consecutive meetings of the Regional Council without prior permission of the Regional Council unless good cause is shown by the member; or
- 20 (d) for engaging in any activity that may undermine the integrity of the Regional Chapter.
- (5) If a vacancy arises in the Regional Council before the expiry of the period of office, the relevant Regional Council must in terms of section 74, elect a new member for
- 25 the un-expired portion of that period.

76. Administration and provision of resources to Regional Council and its sectoral chambers

The National Council may acquire personnel, financial and administrative infra-structural services and resources necessary to enable the Regional Council and its sectoral chambers to effectively perform its functions in terms of this Act.

77. Remuneration and allowances to members of the Regional Council and its sectoral chambers

A member of the Regional Council and its sectoral chambers may be paid such remuneration and allowances determined by the National Council.

78. Indemnification of members of the Regional Council and its sectoral chambers

The members of the Regional Council and its sectoral chambers are indemnified in respect of all proceedings, costs and expenses incurred by any person when pursuing legal proceedings pursuant to bona fide actions taken by the member.

Part III– South African Para-Legal Forum

79. Establishment and membership of the South African Para-legal Forum

(1) The South African Para-legal Forum is hereby established as a body corporate with full legal capacity.

(2) Any person who has been registered and enrolled in terms of Part III and IV of Chapter 2 and whose practice certificate is valid is deemed to be a member of the Para-legal Forum.

80. Object of South African Para-legal Forum

The object of the Para-legal Forum is to-

(a) protect the public interest by-

(i) regulating the para-legal profession;

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- 5
- (ii) enhancing and maintaining the integrity and status of the para-legal profession;
- (iii) determining, maintaining and enhancing appropriate standards of professional practice and ethical conduct on the part of para-legal practitioners;
- (iv) promoting high standards of legal education and training amongst para-legal practitioners;
- (v) promoting access to the para-legal profession for persons aspiring to enrol as para-legal practitioners;
- 10 (vi) promoting and representing the legitimate interests of enrolled para-legal practitioners;
- (vii) advising the National Council and the Minister with regard to matters concerning the legal profession and para-legal practice; and
- 15 (viii) upholding and advancing the rule of law, the administration of justice and the Constitution of the Republic.
- (b) promote access to justice; and
- (c) give effect to the provisions of this Act.

81. Funds of the South African Para-legal Forum and contributions to the Society

- (1) The funds of the Para-legal Forum will consist of-
- 20 (a) annual subscription fees payable by enrolled para-legal practitioners;
- (b) fines and monetary penalties imposed and recovered by the Para-legal Forum in terms of Chapter 4;
- (c) any other monies received by the Para-legal Forum from any other source including donor funds, investment income and interest income; and
- 25 (d) any monies appropriated by Parliament.

- (2) The Para-legal Forum, after consultation with the National Council must make an annual contribution from its funds to the Society.

82. Establishment and powers of the Para-legal Executive Committee

- (1) The Para-legal Executive Committee is hereby established.
- 5 (2) For purposes of enabling the Para-legal Forum to achieve its objects, the Para-legal Executive Committee may on behalf of the Para-legal Forum-
- (a) acquire or hire movable or immovable property;
 - (b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property of the Para-legal Forum;
 - 10 (c) make donations and grants-in-aid in support of projects which would achieve any of the objects set out in section 80 of this Act;
 - (d) accept, draw, endorse, issue, make, pay or perform any other act in respect of negotiable instruments or the electronic transfer of monies;
 - (e) levy subscription fees on para-legal practitioners;
 - 15 (f) discipline para-legal practitioners, including imposing fines and monetary penalties;
 - (g) invest the funds of the Para-legal Forum which are not immediately required upon such security as may from time to time be determined by it;
 - (h) borrow or raise money, in such a manner as the Para-legal Executive
20 Committee may think fit, which is required in connection with the performance of its functions;
 - (i) employ an Executive Director and such officials and staff as may be necessary to enable it to carry out its functions and to determine the remuneration and other conditions of service of its officials and staff;
 - 25 (j) establish, promote, arrange, administer or assist in the establishment, promotion, arrangement or administration of insurance, medical-aid, pension,

provident or benevolent schemes for the benefit of its officials and staff and the dependants of such officials and staff;

5 (k) conclude agreements with any person or organisation for the performance of any particular act or particular work or the rendering of particular services for the purpose of furthering the objects of the Para-legal Forum;

(l) entering into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;

(m) institute or defend legal proceedings on behalf of the Para-legal Forum;

10 (n) determine the manner in which the Para-legal Forum, its Para-legal Executive Committee, its Regional Structures and their respective committee conduct its business;

15 (o) pay an allowance to any person to cover expenses reasonably incurred by him or her in connection with any act performed at its request or in terms of its directions on behalf of or for the benefit of the Para-legal Forum and the furtherance of its objects;

(p) publish or cause to be published periodicals, pamphlets and other printed material for the benefit of practitioners or the public;

(q) exercise any power or function delegated or assigned to it by the National Council;

20 (r) do all things necessary for or conducive to the attainment of the objects of the Para-legal Forum; and

(s) do all things necessary for the proper and effective carrying out of its duties, the performance of its functions or the exercise of its powers.

83. Composition of the Para-legal Executive Committee

25 (1) The Para-legal Executive Committee is composed of-

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- (a) eight persons elected at a general meeting of the Para-legal Forum in accordance with the Practice and Procedure Code contemplated in section 85;
- (b) two persons appointed by the National Council; and
- (c) two additional persons appointed by the Minister at least one of whom must be a user of para-legal services.
- (2) Within 60 days of the commencement of this Act, and thereafter whenever a vacancy arises in respect of appointments made by the Minister in terms of subsection (1)(c), the Minister must -
- 10
- (a) publish written notice in at least one widely circulated means of communication inviting nominations from the organisations and institutions contemplated in this section and any other interest group;
- (b) consider the nominations; and
- (c) make the appointments from amongst the nominees.
- 15
- (3) When making the appointments referred to in this section, the Minister must take into account the need for the Para-legal Executive Committee to be representative, including in respect of regional distribution, race and gender.
- 20
- (4) The general meeting of the Para-legal Forum when electing the person contemplated in subsection (1), must take cognisance of the need for the Para-legal Executive Committee to be representative, including in respect of regional distribution, race and gender.

84. Term of office in Para-legal Executive Committee, vacancies and filling in of vacancies

- (1) Subject to subsection (2), a member of the Para-legal Executive Committee holds office for a period of four years and is eligible for re-appointment.
- 25
- (2) One quarter of the persons elected in terms of section 83(1)(a) must annually vacate their office. The persons required to vacate their office at the end of every year must be determined in accordance with the prescribed procedure.

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- (3) In addition to subsection (2), a vacancy arises if a member-
- (a) dies;
 - (b) is removed from office by the Para-legal Executive Committee as contemplated in subsection (3); or
 - (c) resigns by notice addressed to the Para-legal Executive Committee.
- (4) A member of the Para-legal Executive Committee may be removed from office-
- (a) on the original request of the body that nominated that member in terms of section (2);
 - (b) for serious misconduct;
 - (c) for permanent incapacity;
 - (d) for absence from three meetings of the Para-legal Executive Committee without prior permission of the Para-legal Executive Committee unless good cause is shown by the member; or
 - (e) for engaging in any activity that may undermine the integrity of the Para-legal Executive Committee.
- (5) If a vacancy arises in the Para-legal Executive Committee before the expiry of the period of office, the general meeting of the Para-legal Forum, the National Council, the Legal Practice Fidelity Fund Board or the Minister, as the case may be, must in terms of section 81, elect a new member for the un-expired portion of that period.

85. Practice and Procedure Code for the South African Para-legal Forum

- (1) The Para-legal Executive Committee must as soon as possible after the appointment of its members convene a first general members meeting of the Para-legal Forum to develop a Practice and Procedure Code and submit it to the Minister for ratification. Within 30 days of such ratification the Minister must promulgate the Practice and Procedure Code in the Government Gazette. The Practice and Procedure Code only becomes effective upon such promulgation.

(2) Subject to this Bill, the Practice and Procedure Code-

(a) must provide for -

(i) the procedure for the nomination and election of members of the Para-legal Executive Committee;

5 (ii) the appointment of the Chairperson and Deputy-chairperson of the Para-legal Forum;

(iii) the functions and governance of its Management Committee established in terms of section 86;

10 (iv) the establishment, functions, composition and governance of committees of the Para-legal Executive Committee;

(v) the establishment, functions and governance of Regional Structures of the Para-legal Forum;

15 (vi) subject to subsection (3), the rules for convening and conducting of meetings of the Para-legal Forum, National Executive Council and its Regional Structures;

(vii) the receiving, banking, investing and disbursement of monies;

(viii) the voting rights and the manner in which decisions are to be taken at general meetings of the Para-legal Forum, by its Para-legal Executive Committee and its committees and its Regional Structures;

20 (ix) subject to subsection (4), a procedure for amending the code; and

(b) may provide for -

25 (i) the delegation of powers and duties of the Para-legal Executive Committees to its committees, Regional Structures and employees provided that the Para-legal Executive Committee may impose conditions for delegations and may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and

(ii) any other matter necessary for the performance of the functions of the Para-legal Executive Committee.

(3) The Practice and Procedure Code of the Para-legal Forum must have due regard to principles of-

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(a) transparency;

(b) procedural fairness; and

(c) representivity, including in respect of provincial distribution race and gender.

(4) At least 30 days notice must be given for a meeting of the Para-legal Forum at which an amendment of the code to be made is to be considered.

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(5) A supporting vote of at least two thirds of the members and the ratification of the Minister is required for an amendment to the Code. Within 30 days of such ratification, the Minister must promulgate the amendment in the Government Gazette. The amendment only becomes effective upon such promulgation.

86. Administration and acquisition of resources by the Para-legal Executive Committee

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The Para-legal Executive Committee may acquire personnel, financial and administrative infra-structural services and resources necessary to enable the Para-legal Executive Committee to effectively perform its functions in terms of this Act.

87. Remuneration and allowances to members of the Para-legal Executive Committee

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A member of the Para-legal Executive Committee or any of its committees may be paid such remuneration and allowances determined by the Para-legal Executive Committee.

88. Indemnification of members of the Para-legal Executive Committee

The members of the Para-legal Executive Committee are indemnified in respect of all proceedings, costs and expenses incurred by any person when pursuing legal proceedings pursuant to bona fide actions taken by the member.

CHAPTER 7**LEGAL PRACTICE FIDELITY FUND***Part I – Continued existence of the Fidelity Fund***89. Continued existence**

5 Notwithstanding section 127 the Attorneys Fidelity Fund contemplated in section 25 of the Attorneys Act 53 of 1979 continues to exist under the name the Legal Practice Fidelity Fund.

90. Revenue of the Legal Practice Fidelity Fund

The revenue of the Fidelity Fund consists of-

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- (a) the contributions paid for the issue and renewal of Fidelity Fund Certificates including any interest on and penalties in respect of overdue contributions;
 - (b) interest paid to the Fidelity Fund in terms of this Act;
 - (c) the income obtained by the Fidelity Fund from investments made;
 - (d) money recovered by or on behalf the Fidelity Fund in terms of this Act;

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 - (e) money received by or on behalf of the Fidelity Fund from any insurer;
 - (f) money which may be appropriated to the Fidelity Fund by Parliament;
 - (g) any other money accruing to the Fund from any other source; and
 - (h) any other money lawfully paid into the Fidelity Fund.

91. Purpose and application of Legal Practice Fidelity Fund

20 (1) Subject to the exclusions and limitations contained in sections 110 and 111, the Fidelity Fund must in the first instance be applied for-

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- (a) reimbursing persons who suffer pecuniary loss as a result of theft of any money or other property given in trust to a legal practitioner, in the course of his or her practice in circumstances where the theft is committed by-
- (i) a legal practitioner-
- 5 (aa) who is obliged to hold a Fidelity Fund Certificate; or
- (bb) while acting as executor or administrator in the estate of a deceased person or as a trustee in an insolvent estate or in any other similar capacity, excluding when acting as a curator to a financial institution in terms of the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984) or any other
- 10 similar capacity;
- (ii) any person employed by such a practitioner, by a juristic person of which such practitioner is a shareholder, partner or member or by a law clinic;
- 15 (b) reimbursing persons who may suffer pecuniary loss as a result of the theft of money or other property given in trust to an employee of-
- (i) a legal practitioner, referred to in paragraph (cA) of the definition of “estate agent” in section 1 of the Estate Agency Affairs Act, 1976 (Act 112 of 1976), in respect of conduct contemplated in that paragraph; or
- 20 (ii) a legal practitioner or a person employed by such a legal practitioner, including candidate legal practitioners referred to in paragraph (d) of the definition of “estate agent” as contained in section 1 of the Estate Agency Affairs Act, 1976 (Act 112 of 1976) in respect of conduct contemplated in that paragraph; and
- 25 (c) paying all operating costs incurred by the Board in the exercise of its powers, functions and duties in terms of this Act including remuneration, allowances and employee-related benefits payable to personnel of the Board as may be determined by the Board from time to time.
- (2) At the discretion of the Board, the Fidelity Fund may also be applied for-

- (a) paying expenses incurred by the Board in investigating and establishing the validity of a claim referred to in subsection (1);
- 5 (b) paying all expenses and legal costs incurred by the Board for the purpose of recovering monies paid to claimants in terms of subsection (1), from the persons whose wrongful conduct gave rise to the claim;
- (c) refunding either in full or in part any costs incurred by the claimant in establishing a claim or attempting to recover the whole or a portion of the claim from the person whose wrongful conduct gave rise to the claim;
- 10 (d) refunding the legal expenses incurred in defending a claim made against the Fidelity Fund, or otherwise incurred in relation to the Fidelity Fund;
- (e) paying legal costs and interest on claims payable in terms of subsection (1);
- (f) refunding the bank charges or any portion thereof paid by a legal practitioner or juristic entity in connection with the keeping of a trust account;
- 15 (g) paying the costs or any portion thereof incurred by a legal practitioner in connection with conducting an audit on trust accounts kept by them;
- (h) paying the costs or any portion thereof incurred by a legal practitioner in connection with obtaining a Legal Practice Fidelity Fund Certificate;
- (i) paying premiums in respect of contracts of insurance entered into by the Board in terms of section 104;
- 20 (j) paying expenses incurred in respect of the detection and prevention of theft;
- (k) paying expenses incurred in the administration of the Fidelity Fund and investigations conducted by the Board or its committees in respect of matters which concern the Fidelity Fund;
- 25 (l) paying honoraria or allowances to members of the Board in respect of their services or their reasonable travelling and accommodation expenses incurred in connection with the affairs of the Board;

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- (m) contributing towards expenses incurred in establishing and operating the office of the Legal Practice Protector;
- (n) refunding fees and expenses incurred by the Society in respect of any function performed by the Society as agent for the Fidelity Fund;
- 5 (o) paying any expenses incurred by the Society in connection with the removal or striking-off of any practitioner who fails to comply with the provisions of this Act;
- (p) contributing to the establishment and operating costs of all structures and committees of the Society insofar as these costs cannot be paid for by income
10 derived from the Society from any other source; and
- (q) paying other monies which are payable or may be paid from the Fidelity Fund in accordance with this Act or the regulations made thereunder.
- (3) Provided that there are sufficient funds available after meeting its obligations in terms of subsections (1) and (2), the Board may at its discretion also apply the
15 Fidelity Fund for the following purposes-
- (a) defraying the whole or a portion of the costs and expenses incurred by the Society for the purposes of or in connection with steps taken by it in terms of this Act, or steps taken by it to enforce the provisions of this Act;
- (b) providing financial support to institutions providing legal education and
20 training, with the object of enhancing the professional standards of legal practitioners;
- (c) paying honoraria or compensation to any person for services rendered at the request of the Society with the object of enhancing the professional standards of legal practitioners;
- 25 (d) providing financial support to practitioners, practices or institutions for the purpose of providing workplace practical legal training opportunities for candidate legal practitioners if the Board is satisfied that there is good reason on account of financial need to provide such financial support to them;

- (e) providing financial support to non-profit organisations and institutions rendering free legal services to indigent people or promoting access to justice to such persons;
- (f) paying bursaries and loans to students, candidate legal practitioners and practitioners for the purpose of legal education and/or research; and
- (g) paying the premium or any portion thereof in respect of a professional indemnity group insurance policy of any kind in favour of legal practitioners.

92. Funds of the Legal Practice Fidelity Fund to be deposited into a banking account

- (1) All funds received by the Fidelity Fund must pending its application or investment in terms of this Act, be paid into a banking account held by the Fidelity Fund at a banking institution.
- (2) The banking account must be named the Legal Practice Fidelity Fund Account.

93. Financial year of the Legal Practice Fidelity Fund

The Board must determine the financial year of the Fund.

94. Exemption of the Legal Practice Fidelity Fund from certain provisions of certain laws

- (1) The revenue of the Fidelity Fund is exempt from the provisions of any law relating to payment of income tax or any other tax or levy by the State.
- (2) Any provision of any law relating to insurance (other than a law relating to the compulsory insurance of employees) or the provision of security in connection therewith, is not applicable to the Fidelity Fund.

Part II – Governance

95. Establishment of the Board of the Legal Practice Fidelity Fund

- (1) The Board of the Legal Practice Fidelity Fund must manage and administer the Fund.

- (2) The Fidelity Fund vests in and is held in trust by the Board.

96. Powers and functions of the Board of the Legal Practice Fidelity Fund

- (1) Subject to this Act, the Board must exercise and perform the following powers and functions-

5 (a) make recommendations to the Minister on changes to legislation insofar as it impacts on the Fidelity Fund; and

(b) any other power and function conferred on it in terms of this Act.

10 (2) The powers and functions of the Fidelity Fund Board must be exercised and performed subject to the provisions of this Act and its Practice and Procedure Code as contemplated in section 99.

97. Composition of the Board of the Legal Practice Fidelity Fund

- (1) The Board consists of-

(a) the Legal Practice Protector;

(b) the Chairperson of the National Council;

15 (c) three members of the National Council who hold a Legal Practice Fidelity Fund Certificate;

20 (d) four persons appointed by the National Council who are not members of the National Council who hold a Legal Practice Fidelity Fund Certificate and selected by the National Council from amongst persons nominated by legal practitioners who hold Legal Practice Fidelity Fund Certificates;

(e) one person, who is not a legal practitioner, selected and appointed by the National Council from persons nominated by the Public Accountants' and Auditors' Board by virtue of such person's qualifications, expertise or experience in the field of finance; and

- (f) one person selected by the Minister from persons nominated by organisations representing consumers of legal services or considered by the Minister to be representative of the interests of consumers of legal services and able to represent the interests of such persons.
- 5 (2) In making the appointments referred to in subsection (1)(c)-(1)(e), the National Council or Minister, as the case may be, must take into account the extent to which a nominating organisation is representative of the relevant constituency and the need for the Fidelity Fund Board to be representative of the demographic character of the Republic including in respect of race and gender.
- 10 (3) Members of the Board who are not appointed ex officio hold office for a period of two years, but may be eligible for reappointment provided that the organisation which nominated the member in writing consents to the re-appointment.
- (4) A vacancy arises if a member-
- (a) dies;
- 15 (b) is removed from office by the Board as contemplated in subsection (5); or
- (c) resigns by notice addressed to the Board.
- (5) The Board may remove a fellow member from the Board-
- (a) on the original request of the body that nominated that member in terms of subsection (1);
- 20 (b) for serious misconduct;
- (c) for permanent incapacity;
- (d) for absence in three consecutive meetings of the Board without prior permission of the Board unless good cause is shown by the member; or
- 25 (e) for engaging in any activity that may undermine the functions of the Fidelity Fund Board.

- (6) If a vacancy on the Board arises before the expiry of the period of office, the National Council or Minister as the case may be must in terms of subsections (1) and (2), appoint a new member for the unexpired portion of that period.

98. Practice and Procedure Code of the Board of the Legal Practice Fidelity Fund

- 5 (1) The Board must as soon as possible after the appointment of its members, develop its Practice and Procedure Code and submit it to the Minister for ratification. Within 30 days of such ratification, the Minister must promulgate the Practice and Procedure Code in the Government Gazette. The Practice and Procedure Code only becomes effective upon such promulgation.
- 10 (2) Subject to this Bill, the Practice and Procedure Code-
- (a) must provide for-
- (i) the appointment of office bearers and the terms for such appointment;
- (ii) the establishment and function of committees of the Fidelity Fund Board;
- 15 (iii) subject to subsection (3), the rules for convening and conducting of meetings of the Board and its committees, including the quorum required and for the keeping of minutes;
- (iv) the voting rights of the different members and the manner in which decisions are to be taken by the Board and its committees;
- 20 (v) the determination through arbitration of any dispute concerning the interpretation or application of the Code;
- (vi) subject to subsections (3) and (4), a procedure for amending the Code; and
- (b) may provide for-
- 25 (i) the delegation of powers and duties of the Board to its members, committees and employees provided that the Board may impose

conditions for delegations and may not be divested of any power or duty by virtue of the delegation and may vary or set aside any decision made under any delegation; and

(ii) any other matter necessary for the performance of the functions of the Board.

(3) At least 30 days notice must be give for a meeting of the Board at which an amendment of the Code to be made is to be considered.

(4) A supporting vote of a least two thirds of the Board's members and the ratification of the Minister is required for an amendment to the Code. Within 30 days of such ratification, the Minister must promulgate the amendment in the Government Gazette. The amendment only becomes effective upon such promulgation.

99. Administration and acquisition of resources by the Board of the Legal Practice Fidelity Fund

The Board may acquire the personnel, financial and administrative infra-structural services and resources which are necessary to enable the Fidelity Fund and the Board to effectively perform its functions in terms of this Act.

100. Remuneration and allowances to members of the Board of the Legal Practice Fidelity Fund

A member of the Board may be paid allowances determined by the Board in consultation with the Minister.

101. Indemnification of members and personnel of the Board of the Legal Practice Fidelity Fund

The members of the Board and personnel of the Fidelity Fund are indemnified in respect of all proceedings, costs and expenses incurred by any person when pursuing legal proceedings pursuant to bona fide conduct of the member, or personnel or the performance of their powers and functions in terms of this Act

102. Indemnification contracts

- 5 (1) The Board may in its discretion enter into a contract in respect of legal practitioners who hold a Fidelity Fund Certificate with any person or corporation carrying on a fidelity insurance business in terms of which the Fidelity Fund will be indemnified to the extent and in the manner provided in such contract against liability to pay claims in terms of this Act.
- (2) An indemnification contract as contemplated in subsection (1) may only be entered into in respect of legal practitioners generally.
- 10 (3) In respect of indemnification contracts entered into in terms of subsection (1), a person who has a claim against the Fidelity Fund has no right of action against the insurer in respect of such contract, or any right to any money paid by the insurer in accordance with such contract.
- (4) Any money paid by an insurer in accordance with a contract of indemnity must be paid into the Fidelity Fund.

15 103. Insurance schemes and suretyships for legal practitioners

- 20 (1) Subject to the provisions of the Short Term Insurance Act, 1998 (Act 53 of 1998), the Fidelity Fund may acquire or form and administer, a public company, or together with any other person or institution, establish a scheme, underwritten by a registered insurer, in order to provide insurance cover to legal practitioners in respect of any claims which may arise from the professional conduct of such practitioners.
- (2) The Board may in its discretion enter into a contract with a company or scheme referred to in subsection (1), or any company carrying on professional indemnity insurance business, for the provision of group professional indemnity insurance to legal practitioners to the extent and in the manner provided in such contract.
- 25 (3) The Board may enter into deeds of suretyship to the satisfaction of the Master of the High Court in order to provide security on behalf of a legal practitioner in respect of work done by such practitioner as -
- (a) executor in the estate of a deceased person;

- (b) a trustee in an insolvent estate;
- (c) curator to the person or property in the case of a person who is unable to manage his or her own affairs, or in any other similar capacity; or
- (d) by any other person in such capacity where a practitioner acts as agent for the person concerned.

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- (4) The Board may levy premiums and charges on legal practitioners for the provision of such insurance or security through any scheme established by it or a public company administered by it in terms of the provisions of this Act.

104. Appointment of actuary

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The Board must appoint an actuary who is a member of the Actuarial Society of South Africa to perform the functions designated for an actuary in terms of this Act.

105. Annual actuarial certificate and investment of excess funds

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- (1) The actuary must determine on or before 31 March in any year the amount which in that actuary's opinion will be required by the Fidelity Fund to meet its obligations during the next ensuing year ending on 31 December, for purposes of enabling the Fund to meet its obligations as contemplated in section 92, and furnish the Board and the Minister with a certificate setting out the amount so determined.

- (2) All or part of the money in the Fidelity Fund in excess of the amount determined by the by the actuary, may be invested in the prescribed manner by the Board.

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- (3) So much of the amount determined by the actuary as is not immediately required for the purposes referred to in subsection (1) in any financial year, as well as so much of the money that is not invested as contemplated in subsection (2), must be invested in such Government and other securities as may be prescribed.

106. Annual review by actuary

- (1) Within three months after the end of each financial year, the actuary must review the financial soundness of the Fidelity Fund and submit an actuarial valuation report to the Board and the Minister.
- 5 (2) The actuarial valuation report must contain-
- (a) a statement-
- (i) reflecting the actuarial value of the assets and liabilities of the Fidelity Fund;
- (ii) on the financial soundness of the Fidelity Fund; and
- 10 (iii) on whether in the financial year concerned, a surplus or deficit was present in the Fidelity Fund and if a deficit is present, specifying the amount required to enable the Fidelity Fund to meet its obligations.
- (b) an indication of-
- (i) the basis and method used to value the assets and liabilities of the Fidelity Fund;
- 15 (ii) any changes to the basis and method used to value the Fidelity Fund as compared with the actuarial report of the previous year;
- (iii) any special consideration or restriction that the Board brought to the attention or made applicable to the actuary in performing the function in
- 20 terms of this section; and
- (iv) any explanatory note on any matter relevant to obtaining a true and meaningful reflection of the financial state of the Fund.
- (3) The Board must submit a report to the Minister if at any stage after having regard to the assets and liabilities of the Fidelity Fund, the value of the assets of the Fidelity
- 25 Fund is insufficient or is not increasing at a sufficient rate to meet payments for benefits that may be reasonably anticipated.

- (4) Upon receipt of a report as contemplated in subsection (3), the Minister may request the Minister of Finance to adjust the national budget to make provision for an allocation to the Fidelity Fund.

107. Annual audit and reports to the Minister

- 5 (1) The Board must appoint an auditor who is a member of the South African Institute of Chartered Accountants to conduct an audit of the financial affairs of the Fidelity Fund and prepare an annual financial statement.
- (2) The audit must be conducted as soon as possible after the end of each financial year but not later than three months after the end of the year concerned.
- 10 (3) Within one month of receiving the audited financial statements, the Board must submit an annual report to the Society and the Minister which must at least set out and contain-
- (a) a total number of person who made claims in terms of this Act;
- (b) the total number of legal practitioners who paid contributions in terms of this
15 Act;
- (c) the total number of person who were paid claims and monetary value of claims paid in terms of this Act; and
- (d) any other matters as may be prescribed by the Minister.

108. Preservation and disposal of records and documents in possession of the Board of the Legal Practice Fidelity Fund

- 20 (1) Subject to the provisions of subsection (2), any record or document in possession of the Board relating to any claim instituted against the Fidelity Fund must be preserved at the office of the Board.
- (2) After the lapse of five years from the date on which any claim to which any record or
25 document relates is settled or adjudicated upon by a court of law in terms of this Act

or has prescribed, the Board may remove such record or document to some other place of custody or destroy or otherwise dispose such record or document.

Part III – Claims against the Legal Practice Fidelity Fund

109. Exclusion of liability

- 5 (1) Subject to Part IV, the Fidelity Fund is not be liable in respect of any loss suffered-
- (a) by any person as a result of theft committed by a legal practitioner or candidate legal practitioner where such legal practitioner or candidate legal practitioner is in the employ of any person who is not a legal practitioner obliged to hold a Fidelity Fund Certificate;
- 10 (b) by a family member or a member of the household of the person who committed the theft;
- (c) by any legal practitioner as a result of theft committed by any owner, partner, member or employee of the juristic entity in which that practitioner practises;
- 15 (d) by any person as a result of theft committed by a legal practitioner who is a holder of a valid Fidelity Fund Certificate or candidate legal practitioner attached to such practitioner after the person who suffered the loss has received notice in writing from the Society or the Board, warning him or her against the engagement or continued engagement, or the giving of any money or property in trust to such practitioner or candidate practitioner or juristic entity of which they are a shareholder, owner, partner, member or employee and such person has failed to take reasonable steps to avert their loss after
- 20 being so warned; and
- (e) by any person as a result of theft of money given in trust to a legal practitioner for investments on behalf of such person in accordance with any instruction
- 25 other than instructions as contemplated in subsection (2).
- (2) A person is not subject to the exclusion contemplated in subsection (1)(c), if the instruction is to-
- (a) pay the money into an account contemplated in section 34(2)(b) in circumstances where-

- 5 (i) such payment is for the purpose of investing such money in such account on a temporary or interim basis only pending the conclusion or implementation of any particular matter or transaction which is already in existence or about to come into existence at the time that the investment is made; and
- (ii) the legal practitioner exercises exclusive control as trustee, agent or stakeholder, or in any fiduciary capacity over the investment.
- (b) lend money out of an account contemplated in section 34(1) on behalf of that person to give effect to a loan agreement where that person, being the lender-
- 10 (i) specifies the borrower to whom the money is to be lent;
- (ii) has not been introduced to the borrower by the practitioner for the purpose of making that loan; and
- (iii) is advised by the practitioner in respect of the terms and conditions of the loan agreement; or
- 15 (c) utilise money out of an account contemplated in section 34(1) to give effect to any term of a transaction to which that person is a party, other than a transaction which is a loan or which gives effect to a loan agreement that does not fall within the scope of paragraph (b).
- 20 (3) The exclusion contemplated in subsection (1)(e) does not apply to money which a legal practitioner is authorised to invest where the legal practitioner acts in his or her legal capacity as executor, trustee or curator, except when acting as a curator to a financial institution in terms of the Financial Institutions (Investment of Funds) Act, 1984 (Act 34 of 1984) or in any similar capacity.
- 25 (4) All legal practitioners who hold Fidelity Fund Certificates and juristic entities must notify the depositor of the exclusions contemplated in this section. The notification must be done in accordance with such rules as may be determined by the National Council.

110. Limitation of liability

- (1) A claim for reimbursement against the Fidelity Fund in the case of-
- (a) money given in trust to a legal practitioner or a candidate legal practitioner, is limited to the amount actually handed over, without interest, unless interest has been earned and given in trust to the practitioner, or unless the Fidelity Fund Board, in its discretion, decides to pay interest; and
- (b) in the case of securities or other property given in trust to a legal practitioner or candidate legal practitioner, is limited to an amount equal to the average market value of such securities or property at the date when written demand is first made for their delivery, or if there is no average market value, the fair market value of such securities or other property as at that date, without interest; and
- (2) A claim for reimbursement against the Fidelity Fund may not exceed the balance of any loss suffered by that person after deducting from the loss the amount or value of all money or other benefits received or receivable by that person from any other source including the value of any reimbursement as a result of the fidelity of the legal practitioner having being guaranteed, either in general or in respect of a particular transaction to the extent that the transaction was covered by the guarantee.
- (3) The rate of interest payable on the amount of any judgement obtained against the Fund, or on any claim admitted by the Board against the Fund, may not exceed the prevailing rate of interest prescribed under section 1 (2) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975).

111. Procedure to institute claim against the Fidelity Fund

- (1) A person may institute a claim against the Fidelity Fund in respect of any theft contemplated in section 92(1) by submitting a written claim to the Fidelity Fund and simultaneously submitting a copy of the claim to the Society within three months after becoming aware of the theft, or after the date on which the person ought reasonably to have been aware of the theft.

- (2) The claim to be submitted must be made on a form determined by the Board in consultation with the Society. The form must inter alia make provision for the claimant to specify the steps that have been taken to recover the stolen money.
- 5 (3) If upon considering the claim, the Board is of the view that not all information relevant to the claim has been included in the application or that all reasonable steps have not been taken to recover the money, it may direct the claimant to-
- (a) provide the information; or
- (b) take such steps that it considers appropriate to ensure that all other available avenues to satisfy the claim are taken including the exhaustion of all
- 10 reasonable legal proceedings.
- (4) The directive of the Board must specify the time period within which the directive must be complied with.
- (5) The time-period for compliance may be extended on good cause shown.
- 15 (6) Upon compliance with the directive or if upon considering the claim, the Board is of the view that the content of the application is sufficiently informative, it must consider the claim and notify the claimant in writing of its decision.
- (7) If the decision is to uphold the claim in full, the written notification must have attached to it the payment or proof of payment in satisfaction of the claim.
- 20 (8) If the decision is to uphold the claim in part or to reject the claim, the written notification must have attached to it or contain-
- (a) if applicable, the part-payment; and
- (b) the reasons for the part-payment or rejection of the claim
- 25 (9) A claimant whose claim has been upheld by the Fund, may apply to the Board for interim payments or grants to enable the claimant to pay all reasonable expenses and legal costs incurred by the claimant in pursuing the available avenues to satisfy the claim as contemplated in subsection (3)(b). The Board may at its discretion in whole or in part accept or reject the application for interim payments or grants.

112. Legal proceedings against the Legal Practice Fidelity Fund

- (1) Any legal proceedings against the Board in respect of a claim instituted in term of this section-
- (a) may not be instituted if a directive issued in terms of section 111(3) has not as yet been discharged; and
- (b) must be instituted within one year of the date of the notification as contemplated in section 111(6).
- (2) In any claim or legal proceeding against the Fidelity Fund, all defences which would have been available to the person or juristic entity in respect of whom the claim arose, is available to the Fidelity Fund.

113. Claims may be charged against future revenue of Legal Practice Fidelity Fund

- (1) If the Fidelity Fund at any time has insufficient assets to settle all claims and judgments, such claims and judgments may, to the extent to which they are not settled, be charged against future revenue of the Fidelity Fund.
- (2) The Board may in its discretion determine the order in which claims and judgments referred to in terms of subsection (1) are settled, and may, if the revenue of the Fidelity Fund is not sufficient to settle all claims in full, settle any claim or judgment in whole or in part.
- (3) When applying the Fidelity Fund towards any settlement of claims and judgments, the Board must inter alia consider the following-
- (a) the relative degrees of hardship suffered or likely to be suffered by the various claimants should their claims against the Fidelity Fund not be settled in whole or in part;
- (b) subject to paragraph (a), the full settlement of relatively small claims, except in exceptional circumstances, before relatively large claims are settled to a greater extent than the small claims; and

- (c) in equal circumstances, the priority of claimants according to the dates of the judgments or the dates when the claims were admitted by the Fidelity Fund Board, as the case may be.

114. Subrogation

- 5 (1) On payment out of the Fidelity Fund of money in settlement in whole or in part of
any claim under this Chapter, the Fidelity Fund is subrogated, to the extent of such
payment, to all rights and legal remedies of the claimant against any legal
practitioner or person in relation to whom the claim arose, or in the event of his or
her death or insolvency or other legal disability, against any person having authority
10 to administer his or her estate.
- (2) A claimant is obliged to co-operate with the Fidelity Fund in the exercise of its
subrogated rights.

Part IV - Bank default on trust money

115. Interpretation

- 15 (1) For the purposes of this Part-
- (a) “bank default” means a situation when-
- (i) a banking institution is placed under liquidation (provisionally or
otherwise);
- (ii) a banking institution is placed under curatorship or similar legislative
20 protection; or
- (iii) a banking institution fails to pay to a legal practitioner or juristic entity
any amount due to such practitioner or juristic entity in respect of the
legal practitioner’s or juristic entity’s trust account on due date,
notwithstanding written demand, and without the banking institution
25 claiming any right to withhold such payment;

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(b) “depositor” means any person on whose behalf a legal practitioner or juristic entity receives, holds or handles money in the course of legal practice; and

(c) “loss” includes any loss sustained by reason of delay.

(2) A “bank default” shall be deemed to have occurred upon the occurrence of the earliest of the events described in subsection (1)(a) provided that-

(a) the occurrence of an event contemplated by subsection (1)(a)(i) or (1)(a)(ii) shall be deemed to be a bank default in respect of all legal practitioners or juristic entities who have deposited trust monies with such banking institution; and

(b) the occurrence of an event contemplated by subsection (1)(a)(iii) shall be deemed to be a bank default only in respect of the legal practitioner or juristic entity concerned.

116. Risk lies with depositor

The risk of any loss caused by bank default on trust money held by a legal practitioner who holds a Fidelity Fund Certificate or juristic entity lies with the depositor, except where the loss was caused by the legal practitioner or juristic entity as the case may be by virtue of being in breach of a mandate granted by a depositor.

117. Bearing of risk

(1) Any loss caused by bank default affecting accounts contemplated in section 34 must be divided proportionately amongst the depositors of the legal practitioner or juristic entity as the case may be, having regard to the extent to which, at the time the bank default occurred, each depositor has a claim upon the sum of all amounts then deposited in trust in the name of the legal practitioner or juristic entity in terms of section 34.

(2) Any loss caused by bank default affecting an account contemplated in section 34(2)(b) is borne by the depositor on whose instructions such investment was made.

118. Rules regulating depositors affected by bank defaults

- (1) The National Council may issue rules in terms of which-
- (a) trust accounts affected by a bank default may be cancelled by a legal practitioner or juristic entity who held the affected account and new trust accounts may be opened by such practitioner or juristic entity in respect of the affected depositor; and
- (b) depositors may not be prejudiced by the making of premature payments by legal practitioners or juristic entities to preferred depositors as a safeguard against anticipated default by a bank.

CHAPTER 8**REGULATIONS AND SOCIETY RULES****119. General regulations**

- (1) The Minister may, in addition to the matters listed in Schedule I, in consultation with the National Council, make regulations on-
- (a) remunerated legal compulsory community service to be rendered by legal practitioners and paralegal practitioners;
- (b) any matter necessary or expedient to achieving the purpose of this Act.
- (2) The Minister may, in consultation with the Legal Practice Fidelity Fund Board, make regulations on any matter necessary or expedient to furthering the purpose of the Fidelity Fund.

120. Content of regulations

- (1) A regulation may-
- (a) confer a power or duty on any person, body or public authority;
- (b) contain conditions and provide for exemptions; and

- (c) be made in respect of-
 - (i) different parts of the Republic; or
 - (ii) different categories of persons.

121. Procedure for making regulations

- 5 (1) The Minister, before making or amending regulations in terms of this Act, must-
- (a) announce the intention to make or amend regulations by notice in the Gazette and other appropriate means of communication;
 - (b) specify in the notice-
 - (i) that a draft regulation has been developed for comment; and
 - 10 (ii) where a copy of the draft regulation may be obtained;
 - (c) provide a period for comment which must be at least 30 days;
 - (d) consider the comments received and the content of all discussions and consultations before making or amending the regulations.
- 15 (2) When intending to issue or amend any other regulation, the Minister may hold discussions and consultations with any relevant interest group.
- (3) The provisions of subsections (1) and (2) do not apply in respect of-
- (a) any regulation which the public interest requires to be made without delay; and
 - (b) an amendment to correct a textual error.
- 20 (4) Any regulation affecting State revenue or expenditure must be made in consultation with the member of the Cabinet responsible for Finance.

122. Society rules

- (1) The National Council may make rules which are binding on any member of the Society on-
- (a) any matter which, in terms of this Act, it may or must make rules;
- 5 (b) generally, any matter which it considers necessary or expedient to prescribe in order to achieve the purposes of this Act.
- (2) Any rules contemplated in subsection (1), must be made with the approval of the Chief Justice and come into operation on the date of their publication in the *Gazette* or on a subsequent date fixed in the notice of publication.

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CHAPTER 9**GENERAL PROVISIONS****123. Offences**

- (1) It is an offence to –
- 15 (a) hold oneself out or pretend to be a practitioner or use any name, title, addition or description implying or creating the impression of being a practitioner unless admitted and enrolled or registered and enrolled in terms of this Act;
- (b) hold oneself out or pretend to be an attorney or advocate unless admitted and enrolled as a legal practitioner in terms of this Act;
- 20 (c) render legal services as a legal practitioner contrary to any term and condition of admission or continued operation as a legal practitioner as may be imposed by a High Court;
- (d) subject to any other law, appear in any court or tribunal unless admitted and authorised to do so in terms of this Act or any other law;
- (e) refuse or fail to submit the notice contemplated in sections 18 and 19;

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- (f) refuse or fail to return a practice certificate as contemplated in section 20(5)
- (g) charge a fee or expect a commission, gain or reward for services in contravention of section 27.
- 5 (h) receive, hold or handle money belonging to a client or third party, including whether as a deposit, in anticipation of legal services to be rendered without being a holder of a valid Fidelity Fund Certificate, unless excepted from holding such a certificate;
- (i) refuse or fail to return a Fidelity Fund Certificate in contravention of section 32(3)(f);
- 10 (j) refuse or fail to provide a person with the notice contemplated in section 110(3);
- (k) refuse or fail to co-operate with the Fidelity Fund when exercising its subrogated rights in terms of section 115; and
- 15 (l) commit any other act prohibited in terms of this Act or any regulation or rule issued in terms of this Act.

124. Penalties

- (1) Any person found guilty in a Criminal Court of having committed an offence in terms of this Bill, may be liable on conviction to –
- (a) a fine not exceeding R50 000.00;
- 20 (b) a term of imprisonment not exceeding three years; or
- (c) both.
- (2) A regulation issued in terms of this Act may vary the maximum penalties that may be imposed on any offence created by that regulation.

125. Repeals of law and transitional arrangements

- (1) The laws mentioned in Schedule II are repealed to the extent indicated in this Schedule.
- (2) The repeal of the laws specified in Schedule II does not affect the transitional arrangements made in schedule II.
- (3) The provisions of Schedule III must be read and applied as substantive provisions of this Act.

126. State bound

This Act binds the State.

127. Short title and commencement

This Act is called the Legal Practice Act, 2002, and comes into operation on a date fixed by proclamation in the Gazette.

SUMMARY OF REGULATIONS : GENERAL PROVISIONS

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SCHEDULE I**SUMMARY OF REGULATIONS**

Chapter	Section no.	Section title
2	6(b)	Persons who may apply to be admitted and enrolled as legal practitioners or registered and enrolled as para-legal practitioners
	9(6)	Application for admission as a legal practitioner
	12(1)(b) and (2)	Minimum qualifications and training requirements applicable to para-legal practitioners
	13(2)	Application for registration and enrolment as a para-legal practitioner
	18	Sequestration, insolvency or judicial management of legal practitioners
	20(3) and (5)	Suspension or striking-off from the roll
	27(2) and (3)	Charging of fees
	28(1)	Candidate legal practitioners
	30	Accreditation of public interest legal centres
	31	Multi-disciplinary practices
	40(1)	Winding-up of legal practices
	106	Annual actuarial certificate and investment of excess funds
	108(3)(i)	Annual audit and reports to the Minister

SCHEDULE II

REPEAL OF LAWS

No. and year of law	Title	Extent of repeal
Act No. 24 of 1926	Natal Conveyancers Act, 1926	The whole
Act No. 27 of 1939	Natal Advocates and Attorneys Preservation of Rights Act, 1939	The whole
Act No. 19 of 1941	Attorneys' Admission Amendment and Legal Practitioner's Fidelity Fund Act, 1941	The whole
Act No. 74 of 1964	Admission of Advocates Act, 1964	The whole
Act No. 73 of 1965	Admission of Advocates Amendment Act, 1965	The whole
Act No. 39 of 1977	Admission of Advocates Amendment Act, 1977	The whole
Act No. 25 of 1979	Admission of Advocates Amendment Act, 1979	The whole
Act No. 53 of 1979	Attorneys Act, 1979	The whole
Act No. 76 of 1980	Attorneys Amendment Act, 1980	The whole
Act No. 116 of 1981	Attorneys Amendment Act, 1981	The whole
Act No. 60 of 1982	Attorneys Amendment Act, 1982	The whole
Act No. 56 of 1983	Attorneys Amendment Act, 1983	The whole
Act No. 103 of 1983	Second Attorneys Amendment Act, 1983	The whole
Act No. 29 of 1984	Attorneys, Notaries and Conveyancers Act, 1984	The whole
Act No. 60 of 1984	Admission of Advocates Amendment Act, 1984	The whole
Act No. 108 of 1984	Attorneys Amendment Act, 1984	The whole
Act No. 80 of 1985	Attorneys Amendment Act, 1985	The whole
Act No. 42 of 1987	Attorneys Act, 1987	The whole
Act No. 87 of 1989	Attorneys Amendment Act, 1989	The whole
Act No. 13 of 1990	Attorneys Amendment Act, 1990	The whole

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Act No. 102 of 1991	Attorneys Amendment Act, 1991	The whole
Act No. 106 of 1991	Admission of Advocates Amendment Act, 1991	The whole
Act No. 114 of 1993	Recognition of Foreign Legal Qualifications and Practice Act, 1993	The whole
Act No. 115 of 1993	Attorneys Amendment Act, 1993	The whole
Act No. 55 of 1994	Admission of Advocates Amendment Act, 1994	The whole
Act No. 10 of 1995	Recognition of Foreign Legal Qualifications and Practice Amendment Act, 1995	The whole
Act No. 33 of 1995	Admission of Legal Practitioners Amendment Act, 1995	The whole
Act No. 62 of 1995	Right of Appearance in Courts Act, 1995	The whole
Act No. 66 of 1997	Contingency Fees Act, 1997	The whole
Act No. 78 of 1997	Qualification of Legal Practitioners Amendment Act, 1997	The whole
Act No. 115 of 1998	Attorneys and Matters relating to Rules of Court Amendment Act, 1998	The whole

SCHEDULE III

TRANSITIONAL ARRANGEMENTS

1. Establishment of the Interim National Council

- 5 (1) For the purposes of this item, “interim period” means the period from the date of commencement of this Act until the date that the National Legal Practice Council contemplated in section 62 is established.
- (2) The Interim National Council is hereby established to exercise and perform the following powers and functions of the National Legal Practice Council during the interim period-
- 10 (a) establish the Regional Chapters contemplated in section 71;
- (b) develop the Practice and Procedure Code contemplated in section 65 and submit it to the Chief Justice for ratification;
- (c) prepare and recommend to the Minister the regulations contemplated in Schedule I;
- 15 (d) make the Society rules contemplated in section 122 and submit them to the Chief Justice for approval; and
- (e) exercise and perform such other powers and functions contemplated in this Act as are necessary to promote the purposes of this Act during the interim period.
- (3) The Interim National Council is composed of-
- 20 (a) sixteen legal practitioners designated by the Law Society of South Africa;
- (b) four legal practitioners designated by the General Council of the Bar of South Africa;
- (c) two legal practitioners designated by the Independent Advocates Association of South Africa;

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- (d) one legal practitioner designated by the Advocates for Transformation;
- (e) one legal practitioner designated by the Black Advocates' Forum;
- (f) two persons designated by the National Community-based Para-legal Association;
- 5 (g) one person appointed by the Minister to represent the interests of para-legal practitioners;
- (h) one person designated by the Board of the Legal Practice Fidelity Fund who has no voting rights at meetings of the Interim National Council; and
- (i) two persons appointed by the Minister of which-
- 10 (i) one must be a legal academic appointed from amongst nominations received from organisations representing the interests of legal academics or from Deans of Faculties of Law of any University established in the Republic; and
- (ii) one must be capable of representing the interests of users of legal
15 services or those requiring the execution of miscellaneous legal attendances.
- (4) Subject to their agreement, the Law Society of South Africa and the General Council of the Bar of South Africa will assist the Interim National Council in the exercise and performance of its powers and functions.
- 20 (5) The Interim National Council will continue to exist until the National Legal Practice Council is established in terms of section 62.
- (6) The Interim National Council may impose such levies on legal practitioners, the Law Societies contemplated in item 2, the General Council of the Bar of South Africa and its constituent bars as are required to enable it to perform its functions effectively.
- 25 (7) Any power or function exercised or performed by the Interim National Council during the interim period is deemed to have been performed by the National Council.

2. Law Societies under the Attorneys Act, No 53 of 1979

- 5 (1) The Law Societies referred to in section 56 of the Attorneys Act, No 53 of 1979 continue to exist and to exercise and perform their powers and functions as if that Act had not been repealed, until a date determined by the Minister by notice in the *Gazette*.
- (2) The Minister must determine the date contemplated in subsection (1) only after-
- 10 (a) the Interim National Council has exercised and performed the powers and functions contemplated in items 1(2)(a) - (e);
- (b) the Minister has made the regulations contemplated in item 1(2)(c) and has promulgated the Practice and Procedure Code in the *Gazette* as contemplated in section 65(1); and
- (c) the Society rules have been published in the *Gazette* as contemplated in section 122(2).
- (3) On the date determined by the Minister in sub-item (1)-
- 15 (a) the Law Societies referred to in section 56 of the Attorneys Act, No 53 of 1979, cease to exist; and
- (b) their assets, rights, duties and obligations vest in the South African Legal Practice Society.
- 20 (4) Any transfer of assets or rights contemplated in sub-item (3) is exempt from transfer duty, stamp duty or any other fee, duty, tax or charge.
- (5) The competent officer of the appropriate registration authority must, upon the request of the National Council, make such entry or endorsement or issue such new certificate or take such other action as may be required, arising from the transfer contemplated in sub-item (3).

TRANSITIONAL ARRANGEMENTS : GENERAL PROVISIONS

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3. Law Society of South Africa

- (1) Subject to the consent of the Law Society of South Africa, its assets, rights, duties and obligations will, upon its dissolution, vest in the South African Legal Practice Society.
- 5 (2) Any transfer of assets or rights contemplated in sub-item (1) is exempt from transfer duty, stamp duty or any other fee, duty, tax or charge.
- (3) The competent officer of the appropriate registration authority must, upon the request of the National Council, make such entry or endorsement or issue such new certificate or take such other action that may be required, arising from the transfer
- 10 contemplated in sub-item (1).

4. General Council of the Bar of South Africa

- (1) Subject to the consent of the General Council of the Bar of South Africa, its assets, rights, duties and obligations will, upon its dissolution, vest in the South African Legal Practice Society.
- 15 (2) Any transfer of assets or rights contemplated in sub-item (1) is exempt from transfer duty, stamp duty or any other fee, duty, tax or charge.
- (3) The competent officer of the appropriate registration authority must, upon the request of the National Council, make such entry or endorsement or issue such new certificate or take such other action that may be required, arising from the transfer
- 20 contemplated in sub-item (1).

5. Abolition of the Law Societies of the former Republics of Bophuthatswana and Venda

- (1) The Law Societies which existed under the Attorneys, Notaries and Conveyancers Act, No 29 of 1984 (Bophuthatswana) and the Attorneys Act, No 42 of 1987 (Venda) cease to exist on the commencement of this Act and their assets, rights, duties and obligations vest in the South African Legal Practice Society.
- 25 (2) Any transfer of assets or rights contemplated in sub-item (1) is exempt from transfer duty, stamp duty or any other fee, duty, tax or charge.

(3) The competent officer of the appropriate registration authority must, upon the request of the National Council, make such entry or endorsement or issue such new certificate or take such other action that may be required, arising from the transfer contemplated in sub-item (1).

5 (4) Any legal practitioner who immediately before the commencement of this Act was a member of a Law Society abolished in terms of sub-item (1) is deemed to be a member of the South African Legal Practice Society and must within 90 days of such abolition register with the Interim National Council.

6. Attorneys' Fidelity Funds of the former Republics of Bophuthatswana and Venda

10 (1) The Attorneys' Fidelity Fund contemplated in section 26(1) of the Attorneys, Notaries and Conveyancers Act, No 29 of 1984 (Bophuthatswana) and the Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund contemplated in section 25 of the Attorneys Act, No 42 of 1987 (Venda) are hereby abolished and their assets, rights, duties and obligations vest in the South African Legal Practice Society.

15 (2) Any transfer of assets or rights contemplated in sub-item (1) is exempt from transfer duty, stamp duty or any other fee, duty, tax or charge.

(3) The competent officer of the appropriate registration authority must, upon the request of the Board of the Legal Practice Fidelity Fund make such entry or endorsement or issue such new certificate or take such other action that may be required, arising from
20 the transfer contemplated in sub-item (1).

7. Legal Practice Fidelity Fund Board of Control

(1) The Attorneys Fidelity Fund Board of Control contemplated in section 27 of the Attorneys Act, No 53 of 1979 continues to exist and must exercise and perform the powers and functions of the Board of the Legal Practice Fidelity Fund referred to in
25 section 96 of this Act until that Board is established.

(2) Any Fidelity Fund certificate or its equivalent provided under the Attorneys Act, No 53 of 1979, the Attorneys, Notaries and Conveyancers Act, No 29 of 1984 (Bophuthatswana) and the Attorneys Act, No 42 of 1987 (Venda) that is valid immediately before the commencement of this Act, is deemed to be a Fidelity Fund

certificate contemplated in section 32 for the remainder of the period for which it was issued.

8. Pending legal proceedings

- 5 (1) Any pending legal proceedings to which a Law Society contemplated in items 4 and 5 or the National Council as the case may be is party and which are pending in any court of law at the commencement of this Act, must be proceeded with as if the Act under which the Law Society concerned existed had not been repealed
- (2) Any criminal offence committed by any person under the provisions of any Act repealed by this Act must be dealt with as if that law had not been repealed.

9. Pending professional disciplinary proceedings

- 10 (1) Any inquiry into alleged unprofessional, dishonourable or unworthy conduct under any law repealed by this Act, pending at the commencement of this Act, must be proceeded with as if that law had not been repealed.
- 15 (2) Any legal proceedings in respect of the suspension of any person from practice as an advocate, attorney, conveyancer or notary or for the removal of the name of any person from the roll of advocates, attorneys, conveyancers or notaries under any law repealed by this Act and pending at the commencement of this Act, must be proceeded with as if that law had not been repealed.

10. Persons enrolled as advocates, attorneys, conveyancers and notaries

- 20 (1) Any person whose name appears on the roll of advocates, attorneys, conveyancers or notaries of any High Court at the commencement of this Act, is deemed to be admitted to practice and is entitled to be enrolled as a legal practitioner, conveyancer or notary in terms of this Act, subject-
- (a) to any conditions that attached to that person's admission or enrolment; and
- 25 (b) to the terms of any order of court suspending that person from practice as an advocate, attorney, conveyancer or notary.
- (2) Every person contemplated in subsection (1) must register with the Interim National Council within 90 days of the commencement of this Act.

11. Persons entitled to be admitted and enrolled as advocates, attorneys, conveyancers or notary publics

Any person who at the commencement of this Act was entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary is entitled to be admitted as a legal practitioner, conveyancer or notary as the case may be in terms of this Act.

12. Qualifications and training

(1) Any training course for the purposes of training persons to qualify as legal practitioners which at the commencement of this Act was presented at the Practical Legal Training School of the Law Society of South Africa or was approved by any Law Society for this purpose, is deemed to satisfy the training requirements for admission and enrolment as a legal practitioner in terms of this Act.

(2) Any period of practical legal training with an attorney or advocate recognised by any law repealed by this Act and undergone before the commencement of this Act is deemed to be a period of vocational training as contemplated in section 8(b).

(3) Any person in possession of the degree *baccalaureus procurationis* from a South African university and who registered for that degree by no later than 1999, is qualified to be admitted and enrolled as a legal practitioner in terms of this Act as if that person was in possession of the degree *baccalaureus legum*.

13. Contingency fees agreements

Any contingency fee agreement as contemplated in section 2 of the Contingency Fees Act, No 66 of 1997 in place at the commencement of this Act, continues as if that law had not been repealed.