

LEGAL PRACTICE BILL

(As introduced by the Minister of Justice and Constitutional Development)

BILL

To provide a legislative framework for the fundamental transformation and restructuring of the legal profession in line with constitutional imperatives; to provide for the establishment, powers, functions and duties of a single South African Legal Practice Council and Regional Councils in order to regulate legal practitioners and set norms and standards; to provide for the admission, enrolment and registration of legal practitioners; to regulate the professional conduct of legal practitioners in an accountable manner; to provide for the establishment of an Office of a Legal Services Ombud and the appointment, powers, functions and duties of a Legal Services Ombud; to provide for an Attorneys Fidelity Fund and an Attorneys Fidelity Fund Board of Control; to provide for the establishment, powers, functions and duties of a Transitional South African Legal Practice Council; and to provide for matters connected therewith.

Preamble

WHEREAS section 22 of the Bill of Rights of the Constitution establishes the right to freedom of trade, occupation and profession, and that the practice of a trade, occupation or profession may be regulated by law;

AND BEARING IN MIND THAT—

- * the legal profession is regulated by different laws which apply in different parts of the national territory and, as a result thereof, is fragmented and divided;
- * access to affordable legal services is not a reality for most South Africans;
- * the legal profession is not representative of the demographics of South Africa;
- * entry into the legal profession is, in some respects, dependent on compliance with outdated, unnecessary, and overly restrictive prescripts;
- * access to legal services is limited;

AND IN ORDER TO—

- * provide a legislative framework for the fundamental transformation and restructuring of the legal profession into a unified profession which is representative of the Republic's demographics;
- * ensure that the values underpinning the Constitution are embraced and that the rule of law is upheld;
- * ensure that legal services are affordable and within the reach of the citizenry.

- * regulate the legal profession, in the public interest, by means of a single statute;
- * remove any barriers for entry into the legal profession;
- * strengthen the independence of the legal profession; and
- * ensure the accountability of the legal profession to the public.

Parliament of the Republic of South Africa enacts as follows:—

CONTENTS OF THE ACT

CHAPTER 1: DEFINITIONS, APPLICATION AND PURPOSE OF ACT

Sections

1. Definitions
2. Application of Act
3. Purpose of Act

CHAPTER 2: SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Part 1: Establishment, powers duties and functions of South African Legal Practice Council

4. Establishment of Council
5. Objects of Council
6. Powers, duties and functions of Council
7. Composition of Council
8. Qualification for membership of Council
9. Chairperson and Deputy Chairperson
10. Term of office
11. Termination of office
12. Vacation of office
13. Filling of vacancies
14. Registration with Council as legal practitioner
15. Cancellation or suspension of registration as legal practitioner
16. Conversion of registration

Part 2: Operation of Council

17. Meetings of Council
18. Quorum and procedure at meetings of Council
19. Decisions of Council
20. Committees of Council
21. Executive officer and employees of Council
22. Executive committee of Council
23. Delegation of powers and assignment of duties or functions of Council
24. Finances, expenditure and accountability of Council
25. Reports by Council
26. Establishment of Regional Councils
27. Recognition of voluntary associations

CHAPTER 3: REGULATION OF LEGAL PRACTITIONERS

28. Admission and enrolment as legal practitioner
29. Legal practitioners entitled to practise throughout Republic
30. Admission as legal practitioner
31. Minimum qualifications and practical vocational training applicable to legal practitioners
32. Practical vocational training
33. Assessment of practical vocational training
34. Prescription of community service
35. Authority to render legal services
36. Forms of legal practice
37. Charging of fees by legal practitioners, juristic entities and justice centres

CHAPTER 4: PROFESSIONAL CONDUCT AND ESTABLISHMENT OF DISCIPLINARY BODIES

38. Code of conduct
39. Establishment of disciplinary bodies
40. Procedure for dealing with complaints of misconduct
41. Disciplinary hearing
42. Proceedings after disciplinary hearing and remedial action

43. Review by Legal Services Ombud
44. Appeal against decision of disciplinary committee
45. Further role of Legal Services Ombud
46. Urgent legal proceedings
47. Powers of High Courts

CHAPTER 5: LEGAL SERVICES OMBUD

48. Establishment of Office of Legal Services Ombud
49. Objects of Ombud
50. Appointment and independence of Ombud
51. Remuneration and other terms and conditions of employment of Ombud
52. Removal from office and filling of vacancies
53. Powers, duties and functions of Ombud
54. Staff, finances and accountability of Office of Legal Services Ombud
55. Annual report

CHAPTER 6: ATTORNEYS FIDELITY FUND

Part 1: Establishment of Fund and founding provisions

56. Continued existence of Attorneys Fidelity Fund
57. Revenue of Fund
58. Liability of Fund
59. Limitation of liability of Fund
60. Purpose and application of Fund
61. Money to be deposited into banking account and investment of money
62. Financial year of Fund
63. Fund exempt from certain tax and insurance laws

Part 2: Operation of Fund

64. Establishment of Board
65. Composition of Board
66. Qualification for membership of Board

67. Appointment of chairperson and vice-chairperson of Board
68. Vacancies in Board
69. Term of office of members of Board
70. Vacation of office
71. Meetings and resolutions of Board
72. Committees of Board
73. Powers, duties and functions of Board
74. Certificate in respect of liabilities of Fund and investment of money in Fund
75. Annual review by actuary
76. Contributions to Fund by attorneys
77. Audit
78. Re-insurance
79. Provision of insurance cover and suretyships

Part 3: Claims against Fund

80. Procedure for instituting claims against Fund
81. Actions against Fund
82. Subrogation
83. Claims may be charged against future revenue of Fund
84. Indemnification in respect of certain acts
85. Preservation and disposal of records and documents in possession of Board

CHAPTER 7: HANDLING OF TRUST MONIES

86. Obligations of attorney where money is entrusted by client or any person
87. Application for and issue of Fidelity Fund certificates
88. Attorneys obliged to open trust accounts
89. Accounting
90. Trust money and trust property do not form part of assets of trust account practice
91. Court may prohibit operation of trust account
92. Appointment of *curator bonis* in respect of trust account
93. Rights of banks in respect of trust accounts

CHAPTER 8: GENERAL PROVISIONS

- 94. Recovery of costs by attorneys rendering free legal services
- 95. Senior Legal Practitioner
- 96. Offences and penalties

CHAPTER 9: REGULATIONS AND RULES

- 97. Regulations
- 98. Rules

CHAPTER 10: TRANSITIONAL PROVISIONS

- 99. Transitional South African Legal Practice Council
- 100. Terms of reference of Transitional Council
- 101. Powers, duties and functions of Transitional Council
- 102. Qualification for membership of Transitional Council
- 103. Chairperson and Deputy Chairperson
- 104. Termination of office
- 105. Vacation of office
- 106. Filling of vacancies
- 107. Meetings of Transitional Council
- 108. Quorum and procedure at meetings of Transitional Council
- 109. Decisions of Transitional Council
- 110. Finances, expenditure and accountability of Transitional Council
- 111. Rules and regulations for purposes of Transitional Council/Chapter 10
- 112. Abolition of Fidelity Funds of former TBVC States and transfer of assets, rights, liabilities and obligations to Attorneys Fidelity Fund
- 113. Transitional provisions in relation to existing Attorneys Fidelity Fund Boards of Control
- 114. Transitional provisions in relation to qualifications
- 115. Transitional provisions in relation to obtaining Fidelity Fund certificates
- 116. Existing advocates, attorneys, conveyancers, notaries and senior counsel
- 117. Persons entitled to be admitted and enrolled as advocates, attorneys, conveyancers or notaries
- 118. Pending proceedings
- 119. Interpretation of certain references in laws
- 120. Repeal of laws and savings
- 121. Short title and commencement

SCHEDULE 1

Laws repealed by section 120

CHAPTER 1: DEFINITIONS, APPLICATION AND PURPOSE OF ACT

Definitions

1. In this Act, unless the context otherwise indicates—

“**Admission of Advocates Act**” means the Admission of Advocates Act, 1964 (Act No. 74 of 1964);

“**advocate**” means a legal practitioner practising without a Fidelity Fund certificate who was duly admitted and enrolled as an advocate in terms of the Admission of Advocates Act, 1964, or any law providing for the admission of advocates in any area in the Republic which remained in force by virtue of item 2 of Schedule 6 to the Constitution or is admitted and enrolled as such under this Act;

“**appeal tribunal**” means an appeal tribunal established in terms of section 39(5);

“**articles of clerkship**” means any contract in writing under which any person is bound to serve an attorney for a specified period in accordance with this Act;

“**assessment**” means the process of measuring/determining whether a candidate legal practitioner has successfully attained an adequate level of competence referred to in section 33;

“**attorney**” means a legal practitioner practising with a Fidelity Fund certificate who was duly admitted and enrolled as an attorney in terms of the Attorneys Act or any law providing for the admission of attorneys in any area in the Republic which remained in force by virtue of item 2 of Schedule 6 to the Constitution or is admitted and enrolled as such under this Act;

“**Attorneys Act**” means the Attorneys Act, 1979 (Act No. 53 of 1979);

“**bank**” means a bank 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 bank in terms of Chapter III of that Act;

“**Board**” means the Attorneys’ Fidelity Fund Board established in terms of section 64;

“**candidate attorney**” means a person undergoing practical vocational training with the view to being admitted and enrolled as an attorney;

“**candidate legal practitioner**” means a person undergoing practical vocational training, either as a candidate attorney or as a pupil;

“**chairperson**” means the chairperson of the Council appointed in terms of section 9;

“**Charter**” means the Legal Services Sector Charter as adopted by the legal profession of the Republic and the Minister in December 2007;

“**code of conduct**” means a written code setting out rules and standards relating to ethics, conduct and practice for legal practitioners and its enforcement through the Council and its structures;

“community service” means community service as provided for in section 34;

“contingency fees agreement” means any agreement as defined in section 1 of the Contingency Fees Act, 1997 (Act No. 66 of 1997);

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

“Council” means the South African Legal Practice Council established in terms of section 4;

“court” means any court in the Republic as defined in section 166 of the Constitution;

“day” means an ordinary day;

“disciplinary body” means—

- (a) an investigating committee;
- (b) a disciplinary committee; or
- (c) an appeal tribunal;

“existing society” means any law society which, immediately before the date referred to in section 121(4), existed under any laws repealed by this Act;

“Fidelity Fund certificate” means the certificate referred to in section 87;

“financial year” means the financial year of the Fund referred to in section 62;

“Fund” means the Attorneys Fidelity Fund referred to in section 56;

“justice centre” means an office of Legal Aid South Africa where legal services are delivered to indigent persons primarily by full-time legal staff in the employ of Legal Aid South Africa and includes a satellite office;

“law clinic” means –

- (a) a centre for the practical legal education of students in the faculty of law at a university in the Republic; or
- (b) a law centre controlled by, or which is, a non-profit making organisation, which, subject to section 36(8), provides legal services to the public free of charge;

“Legal Aid South Africa” means the Legal Aid Board established in terms of section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969);

“legal practitioner” means an advocate or attorney registered as such in terms of section 14, and

“practitioner” has a corresponding meaning;

“Legal Services Ombud” means a person appointed as such in terms of section 50, and

“Ombud” has a corresponding meaning;

“magistrates’ court” means a regional court or a district court established in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);

“Master” means a Master of the High Court acting within the powers conferred upon him or her by law;

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

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

“**patent attorney**” means an attorney who is registered and enrolled to practise as a patent attorney in terms of this Act;

“**practical vocational training**” means training required to qualify a candidate attorney or pupil to be admitted and enrolled as an attorney or advocate in terms of this Act;

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

“**Regional Council**” means a Regional Council established in terms of section 26;

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

“**Roll of Legal Practitioners**” means the Roll of Legal Practitioners referred to in section 14(3) and “**Roll**” has a corresponding meaning;

“**rules**” means the rules made by the Council or Transitional Council;

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

“**trademark attorney**” means an attorney who is registered and enrolled to practise as a trademark attorney in terms of this Act;

“**Transitional Council**” means the Transitional South African Legal Practice Council referred to in Chapter 10;

“**trust account**” means a trust account referred to in section 88;

“**trust account practice**” means a practice conducted by one or more attorneys who are, in terms of this Act, obliged to hold a Fidelity Fund certificate;

“**voluntary association**” means an association of legal practitioners only, recognised by the Council in terms of section 27 and includes a corporation, a foundation or an institute.

Application of Act

2. This Act is applicable to all legal practitioners.

Purpose of Act

3. The purpose of this Act is to—
 - (a) provide a legislative framework for the fundamental transformation and restructuring of the legal profession that embraces the values underpinning the Constitution;
 - (b) broaden access to justice –

- (i) by putting in place a mechanism to determine fees chargeable by legal practitioners for legal services rendered that are affordable and within the reach of the citizenry;
 - (ii) by putting in place measures to provide for the rendering of community service by candidate legal practitioners and practising legal practitioners;
 - (iii) by putting in place measures that provide equal opportunities for all aspirant legal practitioners in order to have a legal profession that reflects the demographics of the Republic;
- (c) create a single unified statutory body to regulate the affairs of all legal practitioners in pursuit of the goal of a unified, accountable, efficient and independent legal profession;
 - (d) protect and promote the public interest;
 - (e) protect and promote the interests of consumers of legal services by the establishment of an Office of Legal Services Ombud;
 - (f) provide a fair, effective, efficient and transparent procedure for the resolution of complaints against legal practitioners; and
 - (g) create a framework for the—
 - (i) development and maintenance of appropriate professional and ethical norms and standards for the rendering of legal services by legal practitioners;
 - (ii) regulation of the admission and enrolment of legal practitioners; and
 - (iii) development of adequate training programmes for legal practitioners and candidate legal practitioners.

CHAPTER 2: SOUTH AFRICAN LEGAL PRACTICE COUNCIL

Part 1: Establishment, powers, duties and functions of South African Legal Practice Council

Establishment of Council

4. The South African Legal Practice Council is hereby established as a body corporate with full legal capacity.

Objects of Council

5. The objects of the Council are to—

- (a) facilitate the realisation of the goal of a transformed and restructured legal profession that is unified, accountable, efficient and independent;

- (b) ensure that fees chargeable by legal practitioners for legal services rendered are reasonable and promote access to legal services;
- (c) promote and protect the public interest;
- (d) regulate legal practitioners;
- (e) preserve and uphold the independence of the legal profession;
- (f) enhance and maintain the integrity and status of the legal profession;
- (g) determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners;
- (h) promote high standards of legal education and training;
- (i) promote access to the legal profession in pursuit of a profession that reflects the demographics of the Republic;
- (j) ensure accessible and sustainable training of legal graduates aspiring to be admitted and enrolled as legal practitioners;
- (j) uphold and advance the rule of law, the administration of justice, and the Constitution of the Republic;
- k) implement the Charter; and
- (l) give effect to the provisions of this Act in pursuit of the goals set out in section 3.

Powers, duties and functions of Council

6. (1) The Council may, and where required in the circumstances, must, do all that is necessary or expedient to achieve its objects referred to in section 5, including the following, having due regard to Government policies and the views of the Ombud and Parliament, where appropriate and relevant:

- (a) Acquire or hire movable or immovable property;
- (b) develop, hypothecate, let, sell or otherwise dispose of movable or immovable property;
- (c) make donations and grants to support projects relating to its objects;
- (d) perform any act in respect of negotiable instruments or the electronic transfer of moneys;
- (e) institute or defend legal proceedings on behalf of the Council;
- (f) impose monetary penalties;
- (g) invest Council funds;
- (h) borrow or raise money;
- (i) insure against any risk;
- (j) delegate any of its powers, duties and functions to its committees, Regional Councils, or employees, subject to any conditions it may impose, which delegation does not—

- (i) divest the Council of the power, duty or function so delegated; and
- (ii) preclude the Council from varying or setting aside any decision made under a delegation;
- (k) recognise voluntary associations as provided for in section 27;
- (l) develop norms and standards that guide the conduct of legal practitioners and the legal profession;
- (m) advise the Minister with regard to matters concerning the legal profession and legal practice;
- (n) provide financial support to organisations or institutions providing legal education and training with the object of enhancing the standards of legal services and increasing access to justice;
- (o) provide financial support to legal practitioners, organisations or institutions for the purpose of providing work-place training opportunities for candidate legal attorneys and pupils in deserving cases;
- (p) provide financial support to non-profit organisations and institutions promoting access to justice for poor people;
- (q) pay bursaries and loans to students, candidate legal practitioners and legal practitioners for the purpose of legal education and research;
- (r) pay for services rendered at the request of the Council with the object of enhancing the professional standards of legal practitioners;
- (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;
- (t) determine any remuneration and allowances payable to Council members; and
- (u) do all things necessary for or conducive to, the attainment of the objects of the Council and the Charter, as may be prescribed.

(2) The Council, in order to perform its functions properly—

- (a) must employ an executive officer and such officials or staff as may be necessary to enable it to carry out its functions and determine the remuneration and other conditions of service of its officials and staff;
- (b) may 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 officials and staff;
- (c) may 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 Council;

- (d) may enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
- (e) 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, subject to the Short Term Insurance Act, 1998 (Act No. 53 of 1998), to legal practitioners in respect of any claims which may arise from the professional conduct of legal practitioners;
- (f) may enter into a contract with a company or scheme referred to in subparagraph (e) 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;
- (g) may pay an honorarium 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 Council and the furtherance of its objects;
- (h) may enter into deeds of suretyship to the satisfaction of the Master in order to provide security on behalf of a legal practitioner in respect of work done by such legal practitioner—
 - (i) as an executor in the estate of a deceased person;
 - (ii) as a trustee or liquidator in an insolvent estate;
 - (iii) as a curator to the person or property in the case of a person who is unable to manage his or her own affairs; or
 - (iv) in any other similar capacity or by any other person in such capacity where a practitioner acts as agent for the person concerned; and
- (i) may publish or cause to be published periodicals, pamphlets and other printed material for the benefit of practitioners or the public.

(3) The Council must, subject to this Act and in the prescribed manner—

- (a) register and enrol a duly admitted legal practitioner as such; and
- (b) keep a Roll of registered legal practitioners and decide on—
 - (i) the form of the certificates and the Roll to be kept;
 - (ii) the maintenance of the Roll or issuing of certificates; and
 - (iii) the reviewing of the Roll and the manner in which alterations may be made to the Roll.

(4) The Council may, in the rules, with regard to fees and charges which are payable to the Council, determine—

- (a) application fees as provided for in this Act;

- (b) annual fees, or portion thereof, in respect of a part of a year, payable by attorneys for Fidelity Fund certificates and payable by all legal practitioners to the Council;
- (c) the date on which any fee is payable;
- (d) the fees, or portion thereof, payable in respect of any examination conducted by the Council or on behalf of the Council;
- (e) premiums and fees for the provision of insurance or security through any scheme established or public company administered by it in terms of the provisions of this Act or any law repealed by this Act; and
- (f) any other fee or charge it considers necessary.

(5) The Council, with regard to education in law and legal practice generally —

- (a) may, subject to sections 5 and 7 of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct visits to any educational institution which has a department, school or faculty of law;
- (b) may advise the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in law;
- (c) may consult with the South African Qualifications Authority established by the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), or any body established by it, to determine competency standards for the purpose of registration;
- (d) may conduct any examination for the purposes of practical vocational training;
- (e) may determine, after consultation with relevant roleplayers and legal practitioners in general, conditions relating to the nature and extent of continuing education and training;
- (f) must, in the prescribed manner, establish a mechanism to –
 - (i) provide proper, appropriate and transformational legal education and training, having due regard to our inherited legacy and new constitutional dispensation; and
 - (ii) offer legal education and training to aspiring and newly appointed legal practitioners, as well as continued training for experienced legal practitioners;
- (g) may accredit training institutions which offer practical vocational training courses which contribute towards the qualification of legal practitioners and candidate legal practitioners;
- (h) must report annually to the Minister on its activities, with particular reference to measures to enhance access to justice, among others, on –
 - (i) the fee structure for legal services rendered by legal practitioners, as provided for in section 37 and any review thereof by the Council;
 - (ii) the number of new legal graduates registered with the Council;
 - (iii) the effectiveness of the training requirements for entry into the profession; and

(iv) measures adopted to enhance entry into the profession, including the remuneration of candidate legal practitioners and continuing legal education to develop skills of legal practitioners,

with the view to making recommendations to the Minister regarding legislative and other interventions to improve access to the profession and access to justice broadly; and

(i) must advise the Minister on the following issues:

(i) the right of appearance of attorneys in the High Courts, the Supreme Court of Appeal and the Constitutional Court immediately after being admitted and enrolled as an attorney;

(ii) the right of foreign legal practitioners to appear in courts in the Republic and to practise as legal practitioners in the Republic;

(iii) multi-disciplinary legal practices; and

(iv) the revision of the Contingency Fees Act, 1997 (Act No 66 of 1997), with the view to addressing current disparities in its application,

with the view to promoting legislative and other interventions in respect of these issues.

Composition of Council

7. (1) The Council consists of the following members:

(a) 16 legal practitioners, comprising of ten practising attorneys and six practising advocates, elected in accordance with a procedure as may, on the advice of –

(i) the Transitional Council for purposes of the election of the first Council; or

(ii) the Council after the date referred to in section 121(4), as may be required from time to time,

be prescribed by the Minister;

(b) one teacher of law or legal academic nominated by law teachers, legal academics or organisations representing law teachers or legal academics;

(c) two fit and proper persons appointed by the Minister, who, in the opinion of the Minister and by virtue of their knowledge and experience, are able to assist the Council in achieving its objects;

(dc) one fit and proper person appointed by the Minister who, in the opinion of the Minister, will represent the interests of Government; and

(e) one person nominated by Legal Aid South Africa.

(2) In constituting the Council as provided for in subsection (1), consideration must be given to—

- (a) the objects of the Council;
- (b) achieving representivity with regard to—
 - (i) race;
 - (ii) gender; and
 - (iii) disability;
- (c) ensuring adequate regional representation when making a nomination in respect of subsection (1)(a); and
- (d) ensuring that the members of the Council, between them, have experience in and knowledge of—
 - (i) the provision of legal services;
 - (ii) legal education and legal training;
 - (iii) consumer affairs;
 - (iv) civil and criminal proceedings and the functioning of the courts;
 - (v) the maintenance of professional standards of persons who provide legal services; and
 - (vi) the handling of complaints

Qualification for membership of Council

8. (1) A member of the Council must—

- (a) be a South African citizen;
- (b) be a fit and proper person;
- (c) subscribe to the objects of the Council; and
- (d) be a person of good standing.

(2) The following persons are disqualified from becoming or remaining members of the Council:

- (a) Unrehabilitated insolvents;
- (b) persons declared to be of unsound mind by a court of the Republic;
- (c) persons who are convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; or
- (d) persons who have vacated office in terms of section 12.

Chairperson and Deputy Chairperson

9. (1) At the first meeting of the Council, the members of the Council must elect and appoint a Chairperson and Deputy Chairperson from among themselves.

(2) The Chairperson and the Deputy Chairperson hold office for a period of three years from the date of their election and may be re-elected for one further term, unless they resign or cease to be a member of the Council.

(3) The Deputy Chairperson must, if the Chairperson is absent or is for any reason unable to act as Chairperson, perform all the functions and exercise all the powers of the Chairperson.

(4) If both the Chairperson and Deputy Chairperson are absent from any meeting, the members present must elect a person from among themselves to preside at that meeting and the person so presiding must, during that meeting and until the Chairperson or Deputy Chairperson resumes duty, perform all the functions and exercise all the powers of the Chairperson.

(5) If both the Chairperson and Deputy Chairperson have been given leave of absence, the members of the Council must elect a person from among themselves to act as Chairperson until the Chairperson or Deputy Chairperson resumes duty or vacates office.

(6) If the office of Chairperson or Deputy Chairperson becomes vacant, the members of the Council must, at the first meeting thereafter or as soon as may be convenient, elect from among themselves a new Chairperson or Deputy Chairperson, as the case may be.

(7) A Chairperson and Deputy Chairperson may vacate office as such, without relinquishing his or her membership of the Council.

Term of office

10. A member of the Council holds office for a term of three years, but may be reappointed at the end of that term for one further term.

Termination of office

11. (1) A person ceases to be a member of the Council when that person—

- (a) is no longer eligible in terms of section 8 to be a member;
- (b) resigns; or
- (c) vacates his or her office in terms of section 12.

(2) A member may resign after giving at least three months' written notice to the Council, but the Council may accept a shorter period in a specific case.

Vacation of office

- 12.** (1) A member of the Council must vacate his or her office on account of—
- (a) a conviction of any misconduct under this Act or a conviction of any offence which, in the opinion of the Council, debars him or her from serving as a member of the Council;
 - (b) incapacity or incompetency;
 - (c) absence from three consecutive meetings of the Council without the permission of the chairperson, except on good cause shown;
 - (d) a request by the body which or person who nominated, elected or appointed that member in terms of section 7, on good cause shown;
 - (e) engaging in any activity that may, in the opinion of the Council, undermine the integrity of the Council; or
 - (f) the sequestration of his or her estate.

(2) If the Council has commenced proceedings for the removal of a member, it may suspend that member from office.

(3) A member who is suspended from office may not perform or exercise any of the powers, duties or functions of that office or receive any allowances.

Filling of vacancies

- 13.** (1) A vacancy in the Council occurs when—
- (a) a member's term of office expires;
 - (b) a member dies;
 - (c) a member vacates his or her office in terms of section 12; or
 - (d) a member's resignation takes effect.

(2) A vacancy must be filled as soon as practicably possible in accordance with the procedure referred to in section 7.

Registration with Council as legal practitioner

14. (1) (a) A person duly admitted by the High Court as a legal practitioner must apply in the prescribed manner to the Council for registration and for enrolling his or her name on the Roll of Legal Practitioners.

(b) The application referred to in paragraph (a) must—

- (i) be accompanied by the fee determined in the rules;
- (ii) indicate whether the applicant intends to practise as an attorney or an advocate; and
- (iii) be submitted to the Council in the manner determined in the rules through the Regional Council.

(2) The Council must enrol the applicant as an attorney, advocate, notary, conveyancer, patent attorney or trademark attorney, as the case may be, if he or she complies with the provisions of this Act.

(3) The Council must keep a Roll of Legal Practitioners, as prescribed, which must reflect-

- (a) the particulars of practising and non-practising legal practitioners;
- (b) the name of every person admitted as a legal practitioner in terms of this Act and the particulars of the order of court in terms of which he or she was admitted;
- (c) the name of every person readmitted as a legal practitioner and the particulars of the order of court in terms of which he or she was readmitted;
- (d) the names of all persons who were admitted and enrolled as legal practitioners before the commencement of this Act, and the particulars of the orders of court admitting them;
- (e) the particulars of any order of court in terms of which any legal practitioner has been suspended, whether the order was made before or after the commencement of this Act, or in terms of which the name of any such person has been ordered to be struck off the Roll; and
- (f) any amendment or endorsement against the enrolment of a legal practitioner as provided for in section 42(3)(a)(v).

(4) Any document issued by the Council in terms of which it is certified that—

- (a) any person has been admitted and enrolled to practise as a legal practitioner;
- (b) any person has been readmitted to practise as a legal practitioner;
- (c) any person has been suspended from practice as a legal practitioner; or
- (d) the name of any person has been struck off the Roll,

is, on its mere production, *prima facie* proof of the facts stated therein.

(5) The registrar of the High Court which makes an order—

- (a) admitting and authorising any person to practise and be enrolled as a legal practitioner;
- (b) readmitting and authorising any person to practise and be enrolled as a legal practitioner;
- (c) that the name of any person be struck off the Roll or that suspends any person from practice as a legal practitioner under this Act or any other law,

must immediately, after the making of that order, forward a certified copy thereof to the Council through the Regional Council having jurisdiction.

Cancellation or suspension of registration as legal practitioner

15. (1) The Council must cancel or suspend the registration of a legal practitioner if—

- (a) a High Court orders that his or her name be struck off the Roll or that he or she be suspended from practice; or
- (b) he or she has erroneously been registered, or has been registered on information that is subsequently proved to be false.

(2) The Council must, in the prescribed manner, notify the person referred to in subsection (1) of the cancellation or suspension of registration.

(3) The Council must, at the written request of any registered legal practitioner, cancel his or her registration and remove his or her name from the Roll, but where an investigation into any alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.

(4) Despite the cancellation or suspension of the registration of a person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the Council for the period that he or she was registered.

Conversion of registration

16. (1) A legal practitioner may, at any time and in the prescribed manner and upon payment of the fee determined by the Council in the rules, apply to the Council to convert his or her registration as an attorney to that of an advocate and *vice versa*.

(2) The Council may impose any conditions as it considers appropriate to give effect to the conversion and the provisions of this Act relating to registration.

(3) The Council must make rules setting out the circumstances in which a legal practitioner can apply for the conversion of his or her registration and the criteria to be complied with by him or her.

Part 2: Operation of Council

Meetings of Council

17. (1) The Council must hold at least four meetings in each year at venues to be determined by the Council and may, in addition, hold any further meetings as the Council may, from time to time, determine.

(2) The Council must, as soon as practicable after the appointment of its members, meet for the first time at the time and place determined by the Minister.

Quorum and procedure at meetings of Council

18. (1) The majority of the members of the Council constitutes a quorum at any meeting of the Council.

(2) The Council must determine a procedure in the rules for convening meetings and the procedure for the conduct of meetings.

(3) The Council must keep a record of its proceedings.

Decisions of Council

19. (1) The decision of the majority of the members present at a meeting constitutes the decision of the Council.

(2) In the event of a deadlock in the voting the Chairperson has a casting vote in addition to a deliberative vote.

Committees of Council

20. (1) The Council may—

(a) establish one or more committees, consisting of—

- (i) members of the Council only;
- (ii) members of the Council and employees; or
- (iii) other persons,

to assist the Council in the performance or exercise of its powers, duties and functions; and

(b) dissolve a committee at any time.

(2) The Council—

(a) must determine the powers, duties and functions of a committee;

(b) must appoint a member of a committee as chairperson;

(c) may remove a member of a committee at any time; and

(d) may determine a committee's procedure.

(3) The Council may, in the rules, determine the procedure for the conduct of meetings of a committee.

Executive officer and employees of Council

21. (1) The Council must appoint an executive officer to—

(a) perform or exercise the powers, duties and functions determined by the Council;

(b) supervise the employees of the Council; and

(c) account for the assets and liabilities of the Council.

(2) The Council may appoint any other employees as it deems necessary to assist the executive officer.

(3) The procedure for the appointment of the executive officer and other employees must be determined by the Council in the rules.

(4) The Council must have due regard to representivity with reference to race, gender and disability when appointing the executive officer and other employees.

(5) The Council must, in the rules, determine the conditions of service of the executive officer and the other employees of the Council.

Executive committee of Council

22. (1) The Council must establish an executive committee and determine its powers, duties and functions.

(2) The executive committee consists of—

(a) the chairperson of the Council; and

(b) four other members appointed by the Council.

(3) The Council must have due regard to representivity with reference to race, gender, disability, attorneys, advocates and regional representation, when establishing an executive committee.

(4) The executive committee is responsible for the day to day functioning and administration of the Council in between meetings of the Council.

(5) The Council may direct the executive committee to perform such tasks as it considers appropriate.

(6) A member of the executive committee holds office for so long as he or she is a member of the Council, unless he or she is removed as a member of the executive committee by the Council.

(7) The Council must, from among the executive committee members, designate a chairperson and deputy chairperson of the executive committee.

(8) The executive committee may meet as often as it deems necessary and dispose of its business in the manner it considers appropriate.

Delegation of powers and assignment of duties or functions of Council

23. (1) The Council may delegate any of its powers or assign any of its duties or functions to—

- (a) a member of the Council;
- (b) an employee of the Council;
- (c) a committee of the Council;
- (d) the executive committee; or
- (e) a Regional Council established in terms of this Act.

(2) A delegation or assignment in terms of subsection (1)—

- (a) is subject to any conditions and directions as the Council may impose; and
- (b) does not divest the Council of the responsibility for the exercise of the power or the performance of the duty or function.

(3) The Council may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Finances, expenditure and accountability of Council

24. (1) The funds of the Council consist of—

- (a) fees payable in terms of this Act;
- (b) an annual appropriation made by the Fund, the amount of which is determined by the Board in consultation with the Council; and
- (c) any other monies received by the Council in terms of this Act or accruing to the Council from any other source.

(2) Expenditure incidental to the exercise of the powers or the performance of the duties and functions of the Council in terms of this Act or any other law must be defrayed from the funds of the Council.

(3) The Executive Officer—

- (a) must deposit all monies received by the Council with the bank approved by the Council;
- (b) may invest any monies of the Council which are not required for immediate use with a bank approved by the Council or in such other manner as the Council may determine;
- (c) is charged with the responsibility of accounting for money received or paid out for or on account of the Council; and
- (d) must cause the necessary accounting and other related records to be kept, including proper records of all the assets and liabilities of the Council.

(4) The records referred to in subsection (3)(d) must be audited by a registered accountant and auditor appointed by the Council.

Reports by Council

25. (1) The Council must report to the Minister at least once every year on its activities, the achievement of its objects and its financial affairs.

(2) The Minister must cause that report to be tabled in Parliament as soon as practicable after receipt thereof.

Establishment of Regional Councils

26. (1) Regional Councils are established as provided for in this section, on the advice of the Transitional Council or the Council, as the case may be.

(2) Regional Councils and their areas of jurisdiction are established as may, on the advice of -

- (a) the Transitional Council for purposes of the establishment of the first Regional Councils;
or
- (b) the Council after the date referred to in section 121(4), as may be required from time to time,

be prescribed by the Minister.

(3) The Regional Councils must carry out any operational powers, duties and functions of the Council as—

- (a) may, on the advice of –

- (i) the Transitional Council for purposes of the establishment of the first Regional Councils; or
 - (ii) the Council after the date referred to in section 121(4), as may be required from time to time,
- be prescribed by the Minister; or

(b) set out in this Act.

(4) Regional Councils must be elected in accordance with a procedure as may, on the advice of -

- (a) the Transitional Council for purposes of the election of the first Regional Councils; or.
- (b) the Council after the date referred to in section 121(4), as may be required from time to time,

be prescribed by the Minister.

(5) Regional Councils must be constituted in such a manner -

- (a) so as to reflect the composition of the Council as far as legal practitioners are concerned; and
- (b) after taking into account the following factors:
 - (i) the efficient attainment of the Council's objects;
 - (ii) cost effectiveness;
 - (iii) the interests of legal practitioners;
 - (iv) regional needs, interests and sensitivities;
 - (v) availability of resources; and
 - (vi) the interests of the public.

(6) The Minister -

- (a) must, on the advice of the Transitional Council for purposes of the first Regional Councils; and
- (b) may, after the date referred to in section 121(4), as may be required from time to time, on the advice of the Council,

prescribe the operation of Regional Councils in respect of the matters dealt with in sections 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24 and 25, in so far as it is necessary and relevant.

Recognition of voluntary associations

27. (1) The Council may recognise a voluntary association if it is satisfied that the voluntary association—

- (a) has a written constitution providing for appropriate financial controls, an executive structure, a secretariat, and other necessary operational measures in place as the Council considers reasonably necessary for the efficient functioning of the association in accordance with the objects of this Act;
- (b) has a code of conduct consistent with this Act;
- (c) has the capacity to effectively enforce its code of conduct and exercise discipline over its members in respect of a breach of its code of conduct; and
- (d) has sufficient resources to exercise the powers and perform the duties and functions to the satisfaction of the Council.

(2) Every recognised voluntary association—

- (a) must exercise discipline over its members in accordance with its code of conduct;
- (b) must make its code of conduct available to the Council and members of the public upon request;
- (c) must make rules not inconsistent with this Act, including rules of professional ethics, which are binding on all its members;
- (d) must receive and decide on applications for membership and accept all applicants who qualify for membership, with or without such conditions as it may set according to criteria determined by the Council in the rules;
- (e) must maintain a register of its members which must, at all times, reflect the names of all its members;
- (f) must make the register referred to in paragraph (e) available to the Council and to members of the public upon request;
- (g) must report annually to the Council, in accordance with rules determined by the Council, on its activities;
- (h) must provide the prescribed information regarding legal practice by its members;
- (i) must cooperate with the Council and the Legal Services Ombud; and
- (j) may advise the Council on matters relating to legal practice in any area relating to its particular field of expertise.

(3) The Council may, from time to time, on any conditions it deems fit, in seeking to utilise the resources and expertise of a recognised voluntary association, assign any of its powers, duties and functions to a voluntary association, except for those powers, duties and functions that in any way directly or indirectly, regulate entry to the profession or discipline.

(4) The Council may, at any time on good cause shown and in the prescribed manner, revoke the recognition of a voluntary association or the assignment of its powers, duties and functions conferred on a voluntary association.

CHAPTER 3: REGULATION OF LEGAL PRACTITIONERS: ADMISSION AND RIGHT OF APPEARANCE OF LEGAL PRACTITIONERS

Admission and enrolment as legal practitioner

28. A person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.

Legal practitioners entitled to practise throughout Republic

29. (1) Any person who has been admitted and enrolled to practise as a legal practitioner in terms of this Act, is, subject to subsections (2) and (3), entitled to practise throughout the Republic, unless his or her name has been ordered to be struck off the Roll or he or she is subject to an order suspending him or her from practising.

(2) An advocate has the right to appear on behalf of any person in any court in the Republic.

(3) (a) An attorney has the right to appear on behalf of any person in any court in the Republic, except in a High Court, the Supreme Court of Appeal or the Constitutional Court.

(b) An attorney who wishes to acquire the right to appear on behalf of any person in a High Court, the Supreme Court of Appeal or the Constitutional Court must apply to the registrar of the High Court in the area of jurisdiction in which he or she practises, in the manner provided for in paragraph (d).

(c) An attorney who has been granted the right of appearance as provided for in paragraph (b) is also be entitled to discharge the other functions of an advocate in any proceedings in a High Court, the Supreme Court of Appeal or the Constitutional Court, as the case may be.

(d) An application by an attorney to appear in a High Court, the Supreme Court of Appeal or the Constitutional Court must be in writing, be signed by him or her and be accompanied by-

(i) documentary proof that he or she has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic or a degree which is the equivalent of the *baccalaureus legum* degree and in respect of which an exemption contemplated in

section 2 of the Recognition of Foreign Legal Qualifications and Practice Act, 1993 (Act 114 of 1993), has been granted, despite the repeal of that Act by section 120; or

- (ii) a certificate issued by the Council to the effect that the applicant has been practising as an attorney or has been performing full time service as an attorney at any law clinic or on behalf of and under the control of Legal Aid South Africa, for a continuous period of not less than three years; and
- (iii) a certificate signed by the Council to the effect that no proceedings to strike the applicant's name off the roll of attorneys, or to suspend him or her from practice as an attorney, have been instituted against him or her.

(e) If the registrar is satisfied that an application referred to in paragraph (d) complies with the provisions of this section, he or she must issue a prescribed certificate to the effect that the applicant has the right of appearance in any High Court, the Supreme Court of Appeal and the Constitutional Court and must notify the Council thereof, as prescribed.

(f) A High Court may, upon application of any person, order the withdrawal or suspension of an attorney's right of appearance in a High Court, the Supreme Court of Appeal and the Constitutional Court if the court is satisfied that he or she is not a fit and proper person so to appear: Provided that if such an application is not brought by the Council, due notice of such an application must also be given to the Council.

(g) The court which made an order referred to in paragraph (f) may, upon application of an attorney whose right to appear on behalf of any person in a High Court, the Supreme Court of Appeal and Constitutional Court has been withdrawn or suspended, and upon submission by that attorney of proof that the person who brought the application, and the Council, if applicable, have been notified of the application, grant to the attorney the right so to appear if that court is satisfied that the grounds for the withdrawal or suspension no longer exist and that the attorney is a fit and proper person to have such a right.

(h) An attorney who has not acquired the right to appear on behalf of any person in a High Court, the Supreme Court of Appeal and the Constitutional Court or an attorney whose right so to appear has been withdrawn or suspended, may not appear in such court or hold himself or herself out as, or pretend to be, or make use of any name, title, addition or description implying or tending to induce the belief that he or she is an attorney who has the right so to appear.

(i) An attorney who contravenes paragraph (h) is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment, and any contravention of that paragraph by an attorney, in addition, constitutes unprofessional conduct.

Admission as legal practitioner

30. (1) A High Court must admit to practise and authorise to be enrolled as a legal practitioner any person who, upon application, satisfies the court that he or she—

- (a) is duly qualified as set out in section 31;
- (b) is—
 - (i) a South African citizen; or
 - (ii) ordinarily resident in the Republic;
- (c) is a fit and proper person to be so admitted; and
- (d) has served a copy of the application on the Council, containing the information as prescribed within the prescribed time period.

(2) A person applying for admission in terms of subsection (1) must do so in the prescribed manner.

Minimum qualifications and practical vocational training applicable to legal practitioners

31. A person qualifies to be admitted and enrolled as a legal practitioner, if that person has—

- (a) satisfied all the requirements for the degree of –
 - (i) *baccalaureus legum* of any university in the Republic after pursuing for that degree a course of study of not less than four years; or
 - (ii) bachelor other than the degree of *baccalaureus legum* of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university and has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in aggregate;
- (b) undergone all the practical vocational training requirements as a candidate legal practitioner as may, on the advice of -
 - (i) the Transitional Council; or
 - (ii) the Council after the date referred to in section 121(4), as may be required from time to time,,
be prescribed by the Minister;
- (c) passed a competency based examination or assessment for candidate legal practitioners as may be determined in the rules-

- (i) by the Transitional Council; or
- (ii) by the Council after the date referred to in section 121(4), as may be required from time to time.

Practical vocational training

32. The -

- (a) Transitional Council must; and
- (b) Council may, after the date referred to in section 121(4), as may be required from time to time,

in the rules, determine the minimum conditions and procedures for the registration and administration of practical vocational training.

Assessment of practical vocational training

33. (1) The -

- (a) Transitional Council must; and
- (b) Council may, after the date referred to in section 121(4), as may be required from time to time,

in the rules, determine a procedure and issue directions pertaining to the assessment of persons undergoing practical vocational training.

(2) The purpose of assessment in terms of subsection (1) is to establish whether, in the opinion of the Council, the person has attained an adequate level of competence as determined in the rules, for admission and enrolment as a legal practitioner.

(3) The assessment referred to in subsection (1) must be carried out by the Council or an appropriate institution or organisation engaged by the Council to conduct the assessment on its behalf.

(4) The –

- (a) Transitional Council must; and
- (b) Council may, after the date referred to in section 121(4), as may be required from time to time,

in the rules, determine the criteria for a person, institution, organisation or association to qualify to conduct an assessment in terms of this section.

Prescription of community service

34. (1) The Minister must, after consultation with the Council, prescribe the requirements for community service from a date to be determined by the Minister on the advice of the Council, which may include—

- (a) community service as a component of practical vocational training by candidate legal practitioners; or
- (b) a minimum period of recurring community service by legal practitioners upon which continued registration as a legal practitioner is dependent.

(2) For the purposes of this section, “community service” includes service involving—

- (a) the delivery of free legal services to the public;
- (b) the provision of legal education and training on behalf of the Council, or an academic institution or non-governmental organisation approved by the Council;
- (c) service as a judicial officer, including as a commissioner in the small claims court;
- (d) service to the National Prosecuting Authority or any other state institution approved by the Council;
- (e) service on regulatory structures established or recognised in terms of this Act; or
- (f) any other service as may be determined by the Council in the rules.

Authority to render legal services

35. (1) No person other than a legal practitioner who has been admitted and enrolled as such in terms of this Act may—

- (a) render legal services for reward or hold out that he or she is entitled to do so; or
- (b) hold himself or herself out as a legal practitioner or make any representation or use any title or description indicating or implying that he or she is a legal practitioner.

(2) A legal practitioner who is struck off the Roll or suspended from practice may not—

- (a) render legal services as a legal practitioner directly or indirectly for his or her own account, or in partnership, or association with any other person, or as a member of a legal practice; or
- (b) be employed by, or otherwise be engaged, in a practice without the prior written consent of the Council, which may be given in exceptional circumstances and on such terms and conditions as the Council may determine.

(3) Any person who contravenes the provisions of this section is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Forms of legal practice

36. (1) An attorney may render legal services in expectation of any fee, commission, gain, or reward upon receipt of a request directly from the public for that service.

(2) An advocate may only render legal services in expectation of a fee, commission, gain or reward upon receipt of a brief from an attorney.

(3) The Council must determine the rules relating to the briefing of advocates.

(4) Attorneys may only practise—

- (a) for their own account;
- (b) as part of a commercial juristic entity referred to in subsection (6) 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 an attorney;
- (c) as part of a non-profit juristic entity established in terms of subsection (7);
- (d) as part of Legal Aid South Africa; or
- (e) at a public interest legal centre.

(5) Advocates may only practise—

- (a) for 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 (7);
- (c) as part of Legal Aid South Africa; or
- (d) at a public interest legal centre.

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

- (a) its shareholding, partnership or membership as the case may be, is comprised exclusively of attorneys;
- (b) provision is made for legal services to be rendered only under the supervision of admitted and enrolled attorneys; and
- (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—
 - (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 committed during their period of office.

(7) A non-profit juristic entity 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 of admitted and enrolled legal practitioners;
- (c) provision is made for at least one person in its employ to be an attorney;
- (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;
- (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, are transferred to another non-profit organisation having similar objectives to it.

(8) 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 an attorney or rendered under the supervision of such a person;
- (c) the legal services rendered by it are accessible to the public;
- (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;
- (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 Road Accidents Fund Act, 1996 (Act No. 56 of 1996), or any amendment thereof or such other work as the Council may from time to time determine;
- (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.

(9) The Minister, upon the advice of the Council and the Board, may prescribe—

- (a) a framework for the creation and recognition of limited liability legal practices; and
- (b) the terms and conditions applicable to such practices.

Charging of fees by legal practitioners, juristic entities and justice centres

37. (1) A legal practitioner, juristic entity or Legal Aid South Africa may only charge fees in respect of legal services as –

- (a) are in accordance with the fee structure as determined in the rules -
 - (i) by the Transitional Council; or
 - (ii) after the date referred to in section 121(4), by the Council, taking into account—
 - (aa) the importance, significance and complexity of the legal services required;
 - (bb) the volume of work required and time spent in respect of services rendered;
 - (cc) the financial implications of the matter at hand; and
 - (dd) the qualifications and professional expertise of the legal practitioner concerned;
- (b) may be determined in law.

(2) The provisions of subsection (1) do not preclude a legal practitioner, juristic entity or Legal Aid South Africa from entering into a contingency fee arrangement as provided for in the Contingency Fees Act, 1997 (Act No. 66 of 1997).

(3) The Council may make rules regarding the setting and collection of fees by legal practitioners.

CHAPTER 4: PROFESSIONAL CONDUCT AND ESTABLISHMENT OF DISCIPLINARY BODIES

Code of conduct

38. (1) The -

- (a) Transitional Council must prepare and publish a code of conduct; and
 - (b) Council, after the date referred to in section 121(4), may review and amend the code of conduct,
- for legal practitioners and juristic entities.

(2) The code serves as the prevailing standard of conduct, which legal practitioners and juristic entities must adhere to, and failure to do so constitutes misconduct.

(3) The code of conduct may contain different provisions for advocates and attorneys and for different categories of legal practitioners.

(4) The Council or Transitional Council, as the case may be, must take all reasonable steps to—

- (a) publicise the existence of the code;
- (b) inform members of the public of the contents of the code, including its enforcement procedures; and
- (c) inform members of the public of how and where to obtain a copy thereof.

(5) The code and every subsequent amendment must be published in the *Gazette* and the rules.

Establishment of disciplinary bodies

39. (1) Each Regional Council must, from time to time when necessary, establish investigating committees to conduct investigations of complaints against legal practitioners, candidate legal practitioners or juristic entities as determined by the Council in terms of section 40.

(2) An investigating committee must, after investigating a complaint, if it is satisfied that the legal practitioner, candidate legal practitioner or juristic entity concerned —

- (a) may be guilty of misconduct, refer the matter to a disciplinary committee;
- (b) is not guilty of misconduct, inform the complainant and the legal practitioner, candidate legal practitioner or juristic entity of its finding and the reasons for it;
- (c) was subject to a disciplinary enquiry conducted by a recognised voluntary association, consider the outcome of this enquiry during its investigation, and decide whether to proceed with its investigation or not, in consultation with the Regional Council or Council.

(3) Each Regional Council must, from time to time when necessary, establish disciplinary committees to adjudicate complaints as determined by the Council in terms of section 40.

(4) Investigating committees and disciplinary committees must be established with due regard to—

- (a) the ease of access by members of the public resident in various parts of the Republic;
- (b) the need to promote the efficient resolution of complaints made in terms of this Act;
- (c) representivity in respect of the constitution of the committee with regard to—
 - (i) race;
 - (ii) gender;
 - (iii) national and regional demographics; and

- (iv) the inclusion of lay persons;
- (d) the need to provide a cost-effective disciplinary system; and
- (e) the requirements of administrative justice.

(5) Where a legal practitioner, candidate legal practitioner or juristic entity is aggrieved by the outcome of a disciplinary hearing, the Regional Council must establish an appeal tribunal or tribunals to hear appeals lodged in terms of section 44.

(6) An appeal tribunal consists of not less than three persons appointed by the Council, subject to subsection (4).

(7) The -

- (a) Transitional Council must; and
- (b) Council may, after the date referred to in section 121(4), as may be required from time to time,

in the rules, determine procedures to be followed by disciplinary bodies established in terms of this section.

(8) Where a complainant is aggrieved by the outcome of a complaint, an application for a review may be lodged with the Legal Services Ombud in terms of section 43.

Procedure for dealing with complaints of misconduct

40. Complaints of misconduct relating to legal practitioners, candidate legal practitioners or juristic entities must be lodged with the Regional Council having jurisdiction and dealt with in the manner and form determined in the rules by –

- (a) the Transitional Council; or
- (b) the Council after the date referred to in section 121(4), as may be required from time to time.

Disciplinary hearing

41. (1) A disciplinary hearing must be conducted by a disciplinary committee, subject to the provisions of this section and the rules determined by the Council or the Transitional Council, as the case may be.

(2) A disciplinary committee may, for the purposes of this section, appoint a person to assist it in the performance of its functions.

(3) (a) A disciplinary committee may, for the purposes of a hearing, subpoena any person who—

- (i) in its opinion may be able to give material information concerning the subject of the hearing; or
 - (ii) it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing,
- to appear before it at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.

(b) A subpoena issued in terms of paragraph (a), must be—

- (i) in the form prescribed by the Minister, on the advice of the Council;
- (ii) signed by the chairperson of the disciplinary committee or, in his or her absence, any member of that committee; and
- (iii) served on the legal practitioner in the manner prescribed by the Minister, on the advice of the Council.

(4) The disciplinary committee may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.

(5) The chairperson of a disciplinary committee may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).

(6) At a hearing the legal practitioner charged—

- (a)
 - (i) may be present at the hearing of the proceedings;
 - (ii) may be assisted or represented by another person in conducting the proceedings;
 - (iii) has the right to be heard;
 - (iv) may call witnesses;
 - (v) may cross-examine any person called as a witness in support of the charge;
 - (vi) may have access to documents produced in evidence;
- (b)
 - (i) may admit at any time before conviction that he or she is guilty of the charge; and
 - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of misconduct as charged.

(7) (a) A witness who has been subpoenaed may not—

- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
- (ii) refuse to be sworn in or to be affirmed as a witness;
- (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge all questions lawfully put to him or her; or

(iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.

(b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary committee from further attendance.

(c) A witness who has been subpoenaed may request that the names of the members of the disciplinary committee be made available to him or her.

(d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law applies, with the necessary changes, in relation to the examination of, or the production of any book, document or object, to any person called in terms of this section as a witness.

(e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false.

(f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.

(8) Any person who—

(a) fails to comply with the provisions of subsection (7)(a)(i), (iii) or (iv);

(b) refuses to comply with the provisions of subsection (7)(a)(ii);

(c) contravenes subsection (7)(b), (e) or (f); or

(d) obstructs or hinders any person in the performance of his or her functions under this section,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(9) The record of evidence which has a bearing on the charge before the disciplinary committee, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if—

(a) the record is accompanied by a certificate from the chairperson of the body or commission; and

(b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

(10) If the misconduct with which the legal practitioner, candidate legal practitioner or juristic entity is charged amounts to an offence of which he, she or it has been convicted by a court of law, a certified copy of the record of the trial and conviction by that court is, on the identification of the legal practitioner, candidate legal practitioner or juristic entity as the

accused person referred to in the record, sufficient proof of the commission by him or her or it of that offence, unless the conviction has been set aside by a superior court.

Proceedings after disciplinary hearing and remedial action

42. (1) (a) After the conclusion of the hearing the disciplinary committee must, within 30 days, decide whether or not the legal practitioner, candidate legal practitioner or juristic entity is guilty of misconduct.

(b) If the disciplinary committee finds that the legal practitioner, candidate legal practitioner or juristic entity is guilty of misconduct it must—

- (i) inform the legal practitioner, candidate legal practitioner or representative of the juristic entity and the Council and Regional Council of the finding; and
- (ii) inform the legal practitioner candidate legal practitioner or representative of the juristic entity of the right of appeal as provided for in terms of section 44.

(2) A legal practitioner, candidate legal practitioner or representative of a juristic entity found guilty of misconduct in terms of this section may—

- (a) address the disciplinary committee in mitigation of sentence; and
- (b) call witnesses to give evidence on his or her behalf in mitigation of sentence.

(3) If found guilty of misconduct, the disciplinary committee concerned may—

- (a) in the case of a legal practitioner—
 - (i) order him or her to pay compensation, with or without interest to the complainant;
 - (ii) impose upon him or her a fine not exceeding the amount determined from time to time by the Minister, on the advice of the Council, and published in the *Gazette*;
 - (iii) temporarily suspend him or her from practising or from engaging in any particular aspect of the practice of law, pending the finalisation of an application referred to in subparagraph (iv)(bb);
 - (iv) advise the Council to apply to the High Court having jurisdiction for—
 - (aa) an order striking his or her name from the Roll;
 - (bb) an order suspending him or her from practice;
 - (cc) an interdict prohibiting him or her from dealing with trust moneys; or
 - (dd) any other appropriate relief;
 - (v) advise the Council to amend or endorse his or her enrolment as provided for in section 14(3)(f);
 - (vi) order that his or her Fidelity Fund certificate be withdrawn, where applicable;

- (vii) warn him or her against certain conduct and order that such warning be endorsed against his or her enrolment; or
 - (viii) caution or reprimand him or her; or
 - (b) in the case of a juristic entity—
 - (i) order it to pay compensation, with or without interest, to the complainant;
 - (ii) impose upon it a fine not exceeding the amount determined from time to time by the Minister, on the advice of the Council, and published in the *Gazette*;
 - (iii) warn it against certain conduct; or
 - (iv) caution or reprimand it; or
 - (c) in the case of a candidate legal practitioner—
 - (i) cancel or suspend his or her practical vocational training;
 - (ii) impose upon him or her a fine not exceeding the amount determined from time to time by the Minister, on the advice of the Council, and published in the *Gazette*; or
 - (iii) caution or reprimand him or her.
- (4) (a) A disciplinary committee may-
- (i) impose a combination of the sanctions in either paragraph (a), (b) or (c) of subsection (3); and
 - (ii) postpone the taking of any steps or suspend the imposition of any sanction on conditions as it may determine.

(b) In addition to the sanctions referred to in subsection (3), a disciplinary committee may order the legal practitioner, candidate legal practitioner or juristic entity to pay the cost of the investigation or the disciplinary hearing.

(c) A disciplinary committee may, when deciding on an appropriate sanction in the case of a conviction for misconduct, take into account any sanction imposed on a legal practitioner, a candidate legal practitioner or juristic entity by a recognised voluntary association in respect of the same complaint which is the subject matter for which a sanction is being considered.

(5) (a) If the taking of any steps or the imposition of any sanction has been postponed or suspended for a particular period, and if at the end of that period the disciplinary committee is satisfied that the legal practitioner, candidate legal practitioner or juristic entity concerned has substantially observed all the relevant conditions, the disciplinary committee must indicate in writing that no further steps will be taken or that the sanction will not be imposed.

(b) If a legal practitioner, candidate legal practitioner or juristic entity fails to comply with any conditions determined in terms of this section, the disciplinary committee may impose a sanction for non-compliance or execute the sanction originally imposed, unless the legal practitioner, candidate legal practitioner or juristic entity satisfies the disciplinary committee that the non-compliance was due to circumstances beyond his or her or its control, in which case the disciplinary committee may set further conditions as it deems fit.

(6) Any court with civil jurisdiction may, on the application of the disciplinary committee, grant an order for the recovery from the legal practitioner concerned of any amount he or she failed to pay in accordance with a sanction imposed in terms of this section, together with any interest thereon, after which the order so granted has the effect of a civil judgment of that court and must be executed in accordance with the law applicable in that court.

(7) At the conclusion of a disciplinary hearing the disciplinary committee must notify the Council and the Regional Council in writing of the outcome of the hearing.

(8) If the legal practitioner is found guilty of misconduct, the Council must publish the finding and the sanction imposed in terms of subsection (3) in the *Gazette*.

(9) The Council must give effect to the advice and decision of the disciplinary committee.

Review by Legal Services Ombud

43. (1) (a) Any complainant, other than the legal practitioner, candidate legal practitioner or juristic entity against whom the complaint has been made, who is aggrieved—

(i) by the manner in which a disciplinary body conducted an investigation or disciplinary hearing; or

(ii) by the outcome of an investigation or disciplinary hearing,

may, in the prescribed manner, lodge a notice of application for review with the Ombud within 60 days of becoming aware of the outcome of the investigation or disciplinary hearing.

(b) The Ombud may, on good cause shown, condone the late filing of a review notice.

(2) A review in terms of subsection (1) must be conducted in accordance with the procedure determined by the Ombud.

(3) Upon reviewing the matter, the Ombud—

(a) may, in respect of a review regarding—

(i) the manner in which an investigation or disciplinary hearing was conducted—

- (aa) confirm the findings of the investigation and disciplinary hearing and the actions taken;
 - (bb) if he or she is satisfied that the procedure was substantially unfair, set aside the findings and actions taken and remit the matter, with or without directions; or
 - (cc) if, in his or her opinion, there has been an unreasonable delay on the part of a disciplinary body, substitute his or her own decision for that of the disciplinary body; or
- (ii) the outcome of an investigation or disciplinary hearing may—
- (aa) confirm the findings and the actions taken; or
 - (bb) if he or she is satisfied that there has been a substantial miscarriage of justice, set aside the finding and substitute his or her own decision for that of the disciplinary body, or remit the matter, with or without directions; and
- (b) must notify the complainant, the legal practitioner, candidate legal practitioner or juristic entity and the disciplinary body in writing of the outcome of the review and the reasons for his or her decision.

Appeal against decision of disciplinary committee

44. (1) A legal practitioner, candidate legal practitioner or juristic entity may, in the prescribed manner and within 30 days of being informed of the decision by a disciplinary committee, lodge an appeal to an appeal tribunal against a finding of the committee or against the sentence, or both.

(2) An appeal tribunal may—

- (a) dismiss the appeal against the decision of a disciplinary committee and confirm the finding or sentence or both; or
- (b) uphold the appeal against the decision of a disciplinary committee wholly or in part and set aside or vary the finding or sentence or both.

(3) If a legal practitioner, candidate legal practitioner or juristic entity who or which has been found guilty of misconduct lodges an appeal in terms of subsection (1), the decision of the disciplinary committee may not be enforced before the appeal tribunal has decided the appeal.

Further role of Legal Services Ombud

45. The Ombud may monitor—

- (a) the investigation of a complaint by an investigating committee; and
- (b) the conduct of a disciplinary committee during a disciplinary hearing.

Urgent legal proceedings

46. Despite the provisions of this Chapter, if upon considering a complaint, a disciplinary body is satisfied that a legal practitioner has misappropriated trust monies or is guilty of other serious misconduct, it must inform the Council thereof with the view to the Council instituting urgent legal proceedings in the High Court having jurisdiction to suspend the legal practitioner from practice and to obtain alternative interim relief.

Powers of High Courts

47. (1) The provisions of this Act do not derogate in any way from the power of a High Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner, candidate legal practitioner or a juristic entity.

(2) Nothing contained in this Act precludes a complainant or a legal practitioner, candidate legal practitioner or juristic entity from applying to the High Court for appropriate relief in connection with any complaint or charge of misconduct against a legal practitioner or any decision of a disciplinary body, the Ombud or the Council in connection with such complaint or charge.

CHAPTER 5: LEGAL SERVICES OMBUD

Establishment of Office of Legal Services Ombud

48. (1) The Office of the Legal Services Ombud for the Republic is hereby established, as a juristic person/ as a body corporate with full legal capacity??.

(2) (a) Subject to paragraph (b), the seat of the Office is at a place to be determined by the Ombud, in consultation with the Minister and the Council.

(b) The Office may, with the approval of the Minister, in consultation with the Council, also conduct its activities away from its seat.

Objects of Ombud

49. The objects of the Ombud are to—

- (a) protect and promote the public interest in relation to the rendering of legal services;
- (b) ensure the fair, efficient and effective investigation of complaints of alleged misconduct against legal practitioners;
- (c) promote high standards of integrity in the legal profession; and
- (d) promote the independence of the legal profession.

Appointment and independence of Ombud

50. (1) The President must, as soon as practicable after the commencement of this Act and whenever it becomes necessary thereafter, after consultation with the Council, appoint a Legal Services Ombud.

(2) The Ombud must be a South African citizen who is a fit and proper person to hold such office and who –

- (a) is admitted as an advocate or an attorney and who has, for a cumulative period for at least ten years after have been so admitted, practised as an advocate or as an attorney;
- (b) is qualified to be admitted as an advocate or as an attorney and who has, for a cumulative period of at least ten years after having so qualified, lectured in law at a university;
- (c) has specialised knowledge of or experience, for a cumulative period of at least ten years, in the administration of justice, the law and the legal profession; or
- (d) has acquired any combination of experience mentioned in paragraphs (a) to (c), for a cumulative period of at least ten years.

(3) The Ombud is independent and subject only to the Constitution and the law and he or she must be impartial and exercise his or her powers and perform his or her functions and duties without fear, favour or prejudice.

(4) The Council must assist and protect the Ombud to ensure his or her independence, impartiality, dignity and effectiveness.

(5) No person may interfere with the functioning of the Ombud.

Remuneration and other terms and conditions of employment of Ombud

51. (1) The remuneration, allowances and other terms and conditions of service and service benefits of the Ombud are, subject to subsections (2) and (3), determined by the President, after consultation with the Minister and the Cabinet member responsible for finance.

(2) The remuneration of the Ombud may not be less than the salary of a judge of a High Court, as determined by the President under section 2 (1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989).

(3) The remuneration and other terms and conditions of service and service benefits referred to in subsection (1) may not be reduced nor adversely altered during his or her term of office.

(4) The Ombud holds office for the period determined by the President at the time of appointment.

Removal from office and filling of vacancies

52. (1) (a) The President may remove the Ombud from office on account of—

- (i) misconduct; or
- (ii) permanent inability to perform the duties of his or her office efficiently.

(b) The President must suspend the Ombud from office after the commencement of any proceedings instituted against the Ombud for misconduct.

(c) If the Ombud is suspended from office, he or she may not exercise or perform any powers, duties or functions or receive any remuneration or allowances in terms of this Act.

(2) If the office of Ombud becomes vacant, the President must, subject to this Chapter, appoint another person to that office.

(3) Whenever the Ombud is for any reason unable to exercise or perform his or her powers, duties or functions, or when the appointment of a person to the office of Ombud is pending, the President may, subject to this Chapter, appoint a person as Acting Legal Services Ombud to exercise the powers and perform the powers, duties and functions of the Ombud.

Powers, duties and functions of Ombud

53. (1) In addition to the other powers, duties and functions conferred on or assigned to him or her in this Act, and for the purposes of achieving the objects referred to in section 49, the Ombud—

- (a) may investigate and make recommendations to the Council and the Minister on any matter which he or she considers may affect the integrity and independence of the legal profession and public perceptions of the integrity and independence of the legal profession;

- (b) may, of his or her own accord or on receipt of a complaint, investigate any alleged failure by the Council or a Regional Council to deal promptly, effectively and fairly with a complaint;
- (c) must investigate any complaint made to him or her by a court and must report to the court on what steps he or she proposes to take in connection therewith;
- (d) may, in the case of a failure by the Council or Regional Council as contemplated in paragraph (b), report and make recommendations to the Minister;
- (e) must, in the case of a failure by a disciplinary body as contemplated in paragraph (b), report and make recommendations to the Council and require the Council to report to him or her regarding what steps it will take in this regard;
- (f) may review a decision of the Board in respect of a rejection, in whole or in part, of a claim arising out of the theft of trust money;
- (g) may make recommendations to the Council and the Minister as to steps that ought to be taken to promote high standards of integrity in the legal profession; or
- (h) may, at any time prior to, during or after an investigation, if he or she is of the opinion that the facts disclose the commission of an offence by any legal practitioner, candidate legal practitioner or juristic entity, bring the matter to the notice of the National Prosecuting Authority.

(2) For the purposes of an investigation the Ombud may—

- (a) summon any person who may be able to furnish any information on the subject of the investigation or who has in his or her possession or under his or her control any book, document or other object relating to the investigation, to appear before the Ombud at a time and place specified in the summons, to be questioned or to produce that book, document or other object; and
- (b) designate a person to question that person, under oath or affirmation administered by the Ombud, and examine or retain for further examination or for safe custody the book, document or other object in question.

(3) A summons referred to in subsection (2) must—

- (a) be in the prescribed form;
- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the Ombud;
- (c) be signed by the Ombud or a person authorised by him or her; and
- (d) be served in the prescribed manner.

(4) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court applies in relation to the questioning of a person in terms of subsection (2) and that person is not entitled to refuse to answer any question on the ground that the answer might expose him or her to a criminal charge.

(b) No evidence regarding any questions and answers referred to in paragraph (a) are admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(5) A person appearing before the Ombud by virtue of subsection (2)—

(a) may be assisted at his or her examination by a legal representative; and

(b) is entitled to any witness fees as he or she would be entitled if he or she were a witness for the State in criminal proceedings in a magistrate's court.

(6) Any person who has been summoned to appear before the Ombud and who—

(a) without sufficient cause fails to appear at the time and place specified in the summons or to remain in attendance until he or she is excused by the Ombud from further attendance;

(b) at his or her appearance before the Ombud—

(i) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce; or

(ii) refuses to take an oath or to make an affirmation after he or she has been asked by the Ombud to do so;

(c) having taken an oath or having made an affirmation—

(i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her; or

(ii) gives false evidence knowing that evidence to be false or not knowing or not believing it to be true,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year.

Staff, finances and accountability of Office of Legal Services Ombud

54. (1) In order to perform its functions the Ombud must—

(a) employ a Director as the administrative head of the Office of the Legal Services Ombud;

(b) employ such administrative staff as may be necessary; and

(c) enter into contracts with service providers and accept liability for the expenses incurred as a result of such services being rendered.

(2) The Ombud must appoint a Director for a determined term and on the conditions as the Minister, in consultation with the Minister of Finance, may determine.

(3) The Ombud may re-appoint the Director at the end of the term.

(4) The Director, as the administrative head and chief executive officer of the Office of the Legal Services Ombud, is responsible for the general administration of the Office, and must—

(a) manage and direct the activities of the Office, subject to the direction of the Ombud;

(b) appoint and supervise the administrative staff of the Office; and

(c) provide quarterly management reports to the Director-General: Justice and Constitutional Development.

(5) (a) The Minister must, after consultation with the Minister of Finance, determine the Director's remuneration, allowances, benefits and other terms and conditions of employment.

(b) The Minister must, after consultation with the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of staff.

(6) Expenditure in connection with the administration and functioning of the Office must be defrayed from money appropriated by Parliament for this purpose.

(7) Monies appropriated by Parliament for this purpose—

(a) constitute earmarked funds on the Departmental vote; and

(b) may not be used by the Department for any other purpose unless the Ombud has been consulted and the National Treasury approves.

(8) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General: Justice and Constitutional Development—

(a) is charged with the responsibility of accounting for money received or paid out for or on account of the administration and functioning of the Office in accordance with National Treasury regulations; and

(b) must cause the necessary accounting and other related records to be kept, which must be audited by the Auditor-General.

(9) The financial year of the Office is the period of 1 April in any year to 31 March in the following year, except that the first financial year of the Office begins on the date on which this Chapter comes into operation/referred to in subsection (14), and ends on 31 March of the following year.

(10) The Office may invest or deposit money that is not immediately required for contingencies or current expenditure—

- (a) in a call account or short-term fixed deposit with any registered bank or financial institution in the Republic; or
- (b) in an investment account with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

(11) Within six months after the end of each financial year, the Director must prepare financial statements in accordance with established accounting practice, principles and procedures, comprising-

- (a) a statement, with suitable and sufficient particulars, reflecting the income and expenditure of the Office during the preceding financial year; and
- (b) a balance sheet showing the state of its assets, liabilities and financial position as at the end of that financial year.

(12) The Auditor-General must audit the financial statements of the Office each year.

(13) The Office may, after consultation with the Minister and the Minister of Finance—

- (a) acquire and alienate movable and immovable property; and
- (b) hire and let movable and immovable property.

(14) (a) The Office must commence with its functions as from a date fixed by the Minister by notice in the *Gazette*.

(b) Before the date so fixed, the necessary arrangements must be made for the Office to be accommodated, equipped and staffed in order to perform its functions properly.

Annual report

55. (1) The Office must prepare and submit to the Minister an annual report in the form prescribed by the Minister within six months after the end of the Office's financial year.

(2) The annual report referred to in subsection (1) must include the following documents:

- (a) The audited financial statements prepared in terms of this Act;
- (b) the auditor's report prepared in terms of this Act;
- (c) a report of the activities undertaken in terms of the Ombud's functions set out in this Chapter; and

(d) a statement of the progress made during the preceding year towards achieving the objects of this Chapter.

(3) The Minister must table in Parliament each annual report submitted in terms of this Chapter.

CHAPTER 6: ATTORNEYS FIDELITY FUND

Part 1: Establishment of Fund and founding provisions

Continued existence of Attorneys Fidelity Fund

56. (1) Despite the provisions of section 120, the Attorneys Fidelity Fund established by section 25 of the Attorneys Act continues to exist as a juristic person under the name Attorneys Fidelity Fund.

(2) All assets, rights, liabilities and obligations which immediately prior to the date referred to in section 121(4) vested in the Attorneys Fidelity Fund, including any assets held by any person in trust for the Attorneys Fidelity Fund, pass to the Fund on that date.

Revenue of Fund

57. The Fund consists of —

- (a) each amount which, immediately prior to the date referred to in section 121(4), is or was payable to or held on account of the Fund, and which is paid on or after such date of commencement;
- (b) annual contributions paid by applicants for the issue of Fidelity Fund certificates and any interest on, or penalties in respect of, overdue contributions;
- (c) interest paid to the Fund in terms of this Act;
- (d) income obtained from investments of the Fund;
- (e) money recovered by or on behalf of the Fund in terms of this Act;
- (f) money received by or on behalf of the Fund from any insurer;
- (g) any other money lawfully paid into the Fund; and
- (h) any other money accruing to the Fund from any other source.

Liability of Fund

58. The Fund is liable to reimburse persons who suffer pecuniary loss as a result of theft of any money or other property given in trust to a trust account practice whenever the theft is committed by an attorney in that practice, or any person employed by that practice or supervised by that attorney, including where that attorney or person is 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 a curator to a financial institution in terms of the Banks Act, 1990 (Act No. 94 of 1990) or a liquidator of a mutual bank in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993).

Limitation of liability of Fund

- 59.** (1) The Fund is not liable in respect of any loss suffered—
- (a) by a family member or a member of the household of the attorney found guilty of the theft;
 - (b) by any partner or co-director in the practice in which the theft occurs;
 - (c) as a result of theft committed by an attorney whose fidelity has been otherwise guaranteed by a person, either in general or in respect of a particular transaction, to the extent to which it is covered by the guarantee;
 - (d) by any person as a result of any theft committed after the victim of the theft received notice in writing from the Council or the Board warning against the use or continued use of the legal services of the practice concerned or the giving of any money or property in trust to that practice and the person in question has failed to take reasonable steps after being so warned; or
 - (e) by any person as a result of theft of money which an attorney has been instructed to invest on behalf of the person in question.

- (2) A claim for reimbursement as provided for in section 58 is limited—
- (a) in the case of money given in trust to a trust account practice, to the amount actually handed over, without interest, unless interest has been earned and given in trust to the practice, or unless the Board, in its discretion, decides to pay interest; and
 - (b) in the case of securities or other property, 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.

(3) Only the balance of any loss suffered by any person after deduction from the loss of the amount or value of all money or other benefits received or receivable by that person from any source other than the Fund, may be recovered from the Fund.

(4) Subsection (1)(e) does not apply to money which an attorney is authorised to invest where the attorney acts in his or her capacity as executor, trustee or curator, or in any similar capacity, excluding a curator to a financial institution in terms of the Banks Act, 1990 (Act No. 94 of 1990), or liquidator of a mutual bank in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993).

(5) Subject to subsection (6), an attorney must be regarded as having been instructed to invest money for the purposes of subsection (1)(e), where a person—

- (a) who entrusts money to the attorney; or
- (b) for whom the attorney holds money,

instructs the attorney to invest all or some of that money in a specified investment or in an investment of the attorney's choice.

(6) For the purposes of subsection (1)(e) an attorney is regarded as not having been instructed to invest money if he or she is instructed by a person—

- (a) to pay the money into an account contemplated in section 88(1), if that payment is for the purpose of investing the money in that 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 in respect of which investment the attorney exercises exclusive control as trustee, agent or stakeholder, or in any fiduciary capacity;
- (b) to lend money on behalf of that person to give effect to a loan agreement where that person, being the lender—
 - (i) specifies the borrower to whom the money is to be lent;
 - (ii) has not been introduced to the borrower by the attorney for the purpose of making that loan; and
 - (iii) is advised by the attorney in respect of the terms and conditions of the loan agreement; or
- (c) to utilise money 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).

(7) An attorney who has been instructed to invest money as provided for in subsection (4) must, as soon as practicable after he or she has received that instruction, but prior to the receipt of the money to be invested, notify the person giving the instruction of the provisions of subsection (1)(e) in the form and manner determined by the Board in terms of subsection (8).

(8) For the purposes of subsection (7), the Board must issue directives determining the form and manner in which a notice referred to in that subsection must be given, and it may from time to time review and, if necessary, revise such directives.

(9) Any attorney who contravenes subsection (7) is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding two years.

Purpose and application of Fund

60. Subject to the provisions of this Act, the Fund must be applied for the following purposes:

- (a) Meeting the liability of the Fund referred to in section 58;
- (b) paying expenses incurred in operating the Board and the Fund, including the payment of remuneration or allowances and other service benefits to employees;
- (c) paying expenses incurred by the Board in investigating and establishing the validity of claims referred to in section 58;
- (d) paying all expenses and legal costs incurred by the Board for the purpose of recovering money from the persons whose wrongful conduct gave rise to the claim;
- (e) refunding the costs or any portion thereof incurred by a 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;
- (f) paying legal expenses incurred in defending a claim made against the Fund, or otherwise incurred in relation to the Fund;
- (g) paying premiums in respect of contracts of insurance entered into in terms of section 78;
- (h) paying allowances to members of the Board in relation to their services or their reasonable travelling and accommodation expenses incurred in relation to the affairs of the Board and the Fund;
- (i) paying fees and expenses to the Council or its structures in respect of any function performed as agent for the Fund;
- (j) contributing to the establishment and operating costs of the Council or its structures so far as these cannot be covered by their income derived from other sources;
- (k) paying costs relating to the detection or prevention of theft of trust money;
- (l) refunding the bank charges or any portion thereof paid by an attorney in relation to the keeping of a trust account;
- (m) paying interest in relation to section ???;
- (n) paying expenses relating to any function performed in terms of this Act; and

- (o) paying the costs or a portion of the costs incurred by an attorney in relation to the obtaining of a Fidelity Fund certificate.

Money to be deposited into banking account and investment of money

61. (1) Money of the Fund must be deposited into a banking account held by the Fund at an institution registered as a bank, to the credit of an account to be known as the Attorneys Fidelity Fund Account.

(2) The Board may, from time to time, invest money which is deposited in terms of subsection (1) and which is not immediately required for the purposes mentioned in this Act.

Financial year of Fund

62. The financial year of the Fund is determined by the Board.

Fund exempt from certain tax and insurance laws

63. (1) The revenue of the 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, does not apply to the Fund.

Part 2: Operation of Fund

Establishment of Board

64. (1) An Attorneys Fidelity Fund Board is hereby established to manage and administer the Fund.

(2) The Fund must be held in trust by the Board for the purposes mentioned in this Act.

Composition of Board

65. (1) The Board consists of the following persons:

- (a) Five legal practitioners nominated by the Council;
- (b) two persons, nominated by the Council, who, by virtue of their qualifications, expertise and experience in the field of finance, are designated by the Independent Regulatory Board of Auditors or its successor; and
- (c) two persons fit and proper persons nominated by the Minister.

(2) In making the nominations referred to in subsection (1), the nominating body and the Minister must have due regard to—

- (a) the objects of the Board;
- (b) achieving representivity in regard to—
 - (i) race;
 - (ii) gender; and
 - (iii) disability; and
- (c) ensuring adequate regional representation.

Qualification for membership of Board

66. (1) A member of the Board must—

- (a) be a South African citizen;
- (b) be a fit and proper person; and
- (c) subscribe to the objects of the Board.

(2) The following persons are disqualified from becoming or remaining a member of the Board—

- (a) unrehabilitated insolvents;
- (b) a person declared to be of unsound mind by a court of the Republic;
- (c) a person who is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired; and
- (d) a person who has vacated his or her office in terms of section 70.

Appointment of chairperson and vice-chairperson of Board

67. (1) At the first meeting of the Board referred to in section 64, the members of the Board must elect and appoint a chairperson and vice-chairperson from among themselves.

(2) The chairperson and vice-chairperson hold office for a period of three years from the date of their election and may be re-elected.

(3) (a) When the period of office of a chairperson or vice-chairperson expires, that person remains in office until the next meeting of the Board.

(b) Should the chairperson or vice-chairperson vacate his or her office the office must be filled immediately by the members of the Board who must elect and appoint a chairperson or vice-chairperson from among themselves.

(4) For the purposes of this Part, “chairperson” and “vice-chairperson” mean the chairperson and vice-chairperson of the Board appointed in terms of subsection (1).

Vacancies in Board

68. (1) A vacancy in the Board occurs when—

- (a) a member’s term of office expires;
- (b) a member dies;
- (c) a member vacates his or her office in terms of section 70; or
- (d) a member’s resignation takes effect.

(2) A vacancy in the Board must be filled as soon as practicable in accordance with section 65.

Term of office of members of Board

69. (1) A member of the Board holds office for a term of three years, but is eligible for re-appointment.

(2) A member may, at any time and upon at least three months’ written notice to the Board, resign from office.

(3) Despite subsection (1), a member remains in office after expiry of his or her term of office until the commencement of the term of office of his or her successor.

Vacation of office

70. (1) A member of the Board must vacate his or her office —

- (a) if he or she has been convicted of any -

- (i) misconduct under this Act; or
- (ii) offence,

which, in the opinion of the Board, debars him or her from serving as a member of the Board ;

- (b) on account of incapacity and incompetence;
- (c) on account of absence from three consecutive meetings of the Board without the permission of the chairperson, except on good cause shown;
- (d) pursuant to a request by the body which or person who nominated that member in terms of section 65;
- (e) if he or she has engaged in any activity that may undermine the integrity of the Board; or
- (f) if his or her estate has been sequestrated.

(2) (a) The Board must suspend a member from office after the commencement of the proceedings by the Board concerning the removal of that member.

(b) A member who is suspended from office may not perform any duties or functions or receive any allowances.

Meetings and resolutions of Board

71. (1) (a) The Board may meet at any place in the Republic.

(b) The Board must, as soon as practicable after the appointment of its members, meet for the first time at the time and place determined by the Minister and thereafter at such times and places determined by the Board.

(2) The majority of the members of the Board constitute a quorum for any meeting of the Board.

(3) When the chairperson is absent or is not able to perform his or her functions, the vice-chairperson must act as chairperson, and if both the chairperson and vice-chairperson are absent or not able to perform their functions, the members present must elect one from among themselves to preside at that meeting.

(4) A decision of the majority of the members present at a meeting constitutes a decision of the Board and in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to a deliberative vote.

(5) A resolution in writing of the Board signed by all its members is regarded as if it had been passed at a meeting of the Board.

(6) The Board must determine the procedure for calling a meeting and the procedure to be followed at the meeting.

(7) In any advice or recommendation to the Minister, the minority views of any one or more members of the Board, as well as any report of a committee appointed in terms of section 72, must be included.

(8) The Board must keep a record of its proceedings.

Committees of Board

72. (1) The Board may—

- (a) appoint an executive committee consisting of the chairperson, vice-chairperson and two other members;
- (b) appoint committees relating to matters falling within the scope of its powers, duties and functions, the members of which may be members of the Board or other persons;
- (c) delegate to the executive committee or other committee any powers and functions as it may determine; and
- (d) direct the executive committee or other committee, either generally or in a specific case, to advise the Board.

(2) The members of a committee must elect and appoint a chairperson unless the Board has appointed a chairperson.

(3) A committee exercises its powers and performs its duties and functions in accordance with any policy directions of the Board.

(4) The Board may at any time dissolve any committee.

(5) The provisions of section 71 apply, with the necessary changes, to a meeting of a committee.

(6) The Board is not divested of any power or function delegated to a committee and may amend or rescind a decision of a committee.

Powers, duties and functions of Board

73. In addition to the powers conferred upon it in this Act, and in the furtherance of the purpose of the Fund, the Board may—

- (a) invest any moneys which are not required for immediate use in Government and other securities as may be prescribed by regulation;
- (b) insure itself against risk;
- (c) conclude agreements;
- (d) institute or defend legal proceedings;

- (e) inspect or cause to be inspected the accounts of any attorney;
- (f) make rules relating to—
 - (i) contributions to the Fund and the issuing and costs of Fidelity Fund certificates; and
 - (ii) any other matter concerning the Fund;
- (g) make an arrangement with a bank for the keeping of trust accounts opened in terms of section 88(2) and for the investment of money in separate trust savings or other interest bearing accounts opened in terms of section 88(3) and (4) to provide for one or more of the following—
 - (i) the payment of interest to the Fund on the whole or any part of the money deposited in terms of section 88(2) and the money invested in terms of section 88(3) and (4);
 - (ii) the manner in which the Fund is informed of amounts held in the accounts opened in terms of section 88(2), (3) and (4);
 - (iii) the auditing of interest calculations and account balances in the accounts opened in terms of section 88(2), (3) and (4) in the bank accounts; and
 - (iv) any other relevant matter; and
- (h) generally take any other steps and perform any other acts as may be necessary for or conducive to the achievement of the objects of the Fund.

Certificate in respect of liabilities of Fund and investment of money in Fund

74. (1) The Board must appoint an actuary to make recommendations to it on or before 31 March in any year regarding the amount which, in that actuary's opinion, will be required during the next ensuing year ending on 31 December, for the purposes of the Fund's obligations in terms of section 58, and the actuary must furnish the Board on or before the first-mentioned date with a certificate setting out the amount so recommended.

(2) The Board must, within 30 days after receipt of the certificate referred to in subsection (1), determine the amount required in the ensuing year for the purposes referred to in subsection (1).

(3) So much of the amount determined in terms of subsection (2) as is not immediately required for the purposes referred to in subsection (1) in any financial year must be invested in Government and other securities as may be prescribed by regulation.

Annual review by actuary

75. (1) Within three months after the end of each financial year, the actuary referred to in section 74(1) must review the financial soundness of the Fund and submit an actuarial valuation report to the Board and the Minister.

(2) The actuarial valuation report must contain—

(a) a statement—

- (i) reflecting the actuarial value of the assets and liabilities of the Fund;
- (ii) on the financial soundness of the Fund; and
- (iii) on whether in the financial year concerned, a surplus or deficit was present in the Fund and, if a deficit is present, specifying the amount required to enable the Fund to meet its obligations; and

(b) an indication of—

- (i) the basis and method used to value the assets and liabilities of the Fund;
- (ii) any changes to the basis and method used to value the 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 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 Fund, the value of the assets of the Fund is insufficient or is not increasing at a sufficient rate to meet payments for benefits that may be reasonably anticipated and the Minister must immediately submit that report to Parliament.

Contributions to Fund by attorneys

76. (1) (a) Subject to the provisions of this section, every attorney, practising on his or her own account or in partnership, must, annually when he or she applies for a Fidelity Fund certificate, pay to the Fund—

- (i) the amount as may be fixed by the Board from time to time in respect of the cost of group professional indemnity insurance arranged by the Board pursuant to the provisions of section 79(2); and
- (ii) any other non-refundable amount as may be fixed by the Board from time to time.

(b) Any attorney referred to in paragraph (a) who commences to practise on or after 1 July in any year must, in respect of that year pay half of the contribution which is payable in terms of that paragraph for that year.

(2) An attorney who applies under section 87(1) for the first time for a Fidelity Fund certificate must pay to the Fund, in addition to any contributions payable in terms of subsection (1), any single non-refundable contribution as the Board may determine.

(3) The Board may require an attorney in respect of whom the Fund has been applied as a result of any of the circumstances referred to in section 60 to pay an additional annual contribution to the Fund of such amount and for any period as the Board may determine.

(4) (a) An attorney who is not in possession of a Fidelity Fund certificate and who intends to commence to practise on his or her own account or in partnership, must, before commencing to practise, give notice of his or her intention to the Council and thereafter becomes liable to pay to the Fund the amount of the contribution referred to in subsections (1) and (2).

(b) Any attorney who is in possession of a Fidelity Fund certificate but who intends to commence to practise for his or her own account or in partnership in the area of jurisdiction of any High Court other than that in which he or she usually practises for his or her own account or in partnership, must give notice of his or her intention to the Council.

(5) All contributions payable under this section must be paid to the Council, and the Council must remit the contributions to the Board within seven days of receipt thereof.

Audit

77. (1) The accounts of the Fund must be audited by a registered accountant and auditor appointed by the Board.

(2) A person appointed under subsection (1) must, in respect of each financial year of the Fund, draw up a balance sheet and income statement of the Fund and immediately submit certified copies thereof, together with his or her report thereon, to the chairperson of the Board and to the Council.

(3) Within one month of receiving the audited financial statements, the Board must submit an annual report to the Council and the Minister which must at least set out and contain—

- (a) the total number of persons who made claims in terms of this Act;
- (b) the total number of attorneys who paid contributions in terms of this Act;
- (c) the total number of persons who were paid claims and the monetary value of claims paid in terms of this Act; and

(d) any other matters as may be prescribed by the Minister.

Re-insurance

78. (1) The Board may, in its discretion, enter into a contract with any person or corporation carrying on fidelity insurance business in terms of which the Fund will be indemnified to the extent and in the manner provided in that contract against liability to pay claims under this Act.

(2) A contract referred to in subsection (1) must be entered into in respect of attorneys referred to in section 87(1).

(3) A claimant against the Board does not have any right—

(a) of action against any person or corporation with whom a contract of indemnity has been entered into in terms of this section; or

(b) to any money paid by the insurer in accordance with that contract.

(4) Any money paid by an insurer in accordance with a contract of indemnity must be paid into the Fund for appropriation by the Board.

Provision of insurance cover and suretyships

79. (1) The Board may—

(a) acquire or form, and administer a public company; or

(b) together with any other person or institution, establish a scheme, underwritten by a registered insurer,

in order to provide insurance cover, subject to the provisions of the Short Term Insurance Act, 1998 (Act No. 53 of 1998), to attorneys in respect of any claims which may arise from the professional conduct of those attorneys.

(2) The Board may 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 attorneys to the extent and in the manner provided in the contract.

(3) The Board may enter into deeds of suretyship to the satisfaction of the Master in order to provide security on behalf of an attorney in respect of work done by that legal practitioner as—

(a) executor in the estate of a deceased person;

(b) a trustee in an insolvent estate;

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

(4) The Board may levy premiums and fees for the provision of any insurance or security through any scheme established or public company administered by it in terms of the provisions of this Act or legislation repealed by this Act.

Part 3: Claims against Fund

Procedure for instituting claims against Fund

80. (1) No person has a claim against the Fund in respect of any theft contemplated in section 58, unless—

- (a) written notice of the claim is given to the Council and to the Board within three months after the claimant became aware of the theft or, by the exercise of reasonable care, should have become aware of the theft; and
- (b) within six months after a written demand has been sent to him or her by the Board, the claimant furnishes the Board with proof as it may reasonably require.

(2) If the Board is satisfied that, having regard to all the circumstances, a claim or the proof required by it has been lodged or furnished within a reasonable period, it may in its discretion extend any of the periods referred to in subsection (1).

Actions against Fund

81. (1) The Fund is not obliged to pay any portion of a claim which could reasonably be recovered from any other person liable.

(2) The Fund may pay all reasonable expenses and legal costs incurred by a claimant in exhausting his or her rights of action against another person.

(3) The Fund may, before deciding whether to make full payment of a claim or any part of it, in its discretion make an interim payment to the claimant of a portion of the amount for which his or her claim has been admitted.

(4) Any action against the Board in respect of loss suffered by any person as a result of theft committed by an attorney, candidate attorney or employee of any attorney, must be instituted within one year of the date of a notification directed to that person or his or her legal

representative by the Board, informing him or her that the Board rejects the claim to which the action relates.

(5) In any action against the Fund all defences which would have been available to the person against whom the claim arose, are available to the Fund.

(6) Any action against the Fund may, subject to the provisions of this Act, be brought in any court having jurisdiction in respect of the claim.

Subrogation

82. (1) On payment out of the Fund of money in settlement in whole or in part of any claim under this Chapter, the Fund is subrogated, to the extent of the payment, to all rights and legal remedies of the claimant against any attorney 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 to administer his or her estate.

(2) A claimant who fails to co-operate with the Fund in the exercise of its subrogated rights is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Claims may be charged against future revenue of Fund

83. (1) If the Fund at any time has insufficient assets to settle all claims and judgments, the claims and judgments must, to the extent to which they are not settled, be charged against future revenue of the Fund.

(2) The Board may determine the order in which claims and judgments referred to in terms of subsection (1) are settled, and may, if the revenue of the Fund is not sufficient to settle all claims in full, settle any claim or judgment in whole or in part.

(3) Without limiting the discretion of the Board, it must, in applying the Fund towards the settlement of claims and judgments, consider the following, namely—

- (a) the relative degrees of hardship suffered or likely to be suffered by the various claimants should their claims against the 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 Board, as the case may be.

Indemnification in respect of certain acts

84. No action for damages may be instituted—

- (a) against the Fund, the Board or any member, official or employee of the Board in respect of anything done in the *bona fide* exercise or performance of its or his or her powers or functions in terms of the provisions of this Act; or
- (b) against the Council, a member of the Council or official or employee thereof, in respect of any notification issued in good faith for the purposes of section 81(4).

Preservation and disposal of records and documents in possession of Board

85. (1) Any record or document in possession of the Board relating to any claim instituted against the Fund must, subject to the provisions of subsection (2), be preserved at the office of the Board.

(2) The Board may, after the lapse of five years from the date which any claim to which any record or document relates is settled by the Board or adjudicated upon by the court or rendered unenforceable by lapse of time, direct that the record or document be removed to some other place of custody or be destroyed or otherwise disposed of.

CHAPTER 7: HANDLING OF TRUST MONIES

Obligations of attorney where money is entrusted by client or any person

86. (1) Every attorney who practises—

- (a) for own account either alone or in partnership; or
- (b) as a director of a practice which is a juristic person,

and who receives or holds money or property belonging to any person, must be in possession of a Fidelity Fund certificate.

(2) No attorney or person employed or supervised by an attorney may receive or hold funds or property belonging to any person unless the attorney concerned is in possession of a Fidelity Fund certificate.

(3) The provisions of subsections (1) and (2) apply to a deposit taken on account of fees or disbursements in respect of legal services to be rendered.

(4) Any person who contravenes subsections (1), (2) or (3) in rendering legal services, is—

- (a) guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years;
- (b) liable to be struck off the Roll; and
- (c) not entitled to any fee, reward or reimbursement in respect of the legal services rendered.

(5) A Fidelity Fund certificate must indicate that the attorney concerned is obliged to practise subject to the provisions of this Act, and the fact that an attorney holds such a certificate must be endorsed against his or her enrolment by the Council.

(6) An attorney who—

- (a) transfers from one practice to another; or
- (b) ceases to practise,

must give notice of this fact to the Council and comply with the Council's relevant requirements in relation to the closure of that attorney's trust account and in the case of paragraph (b) return his or her certificate to the Council.

(7) The Council may withdraw a Fidelity Fund certificate and, where necessary, obtain an interdict against an attorney if he or she fails to comply with the provisions of this Act or in any way acts unlawfully or unethically.

(8) The provisions of this section do not apply to an attorney who practises in the full time employ of Legal Aid South Africa.

Application for and issue of Fidelity Fund certificates

87. (1) An attorney who is obliged in terms of section 86(1) to be in possession of a Fidelity Fund certificate must apply to the Council for such a certificate as determined in the rules.

(2) An application in terms of subsection (1) must be accompanied by the contribution payable by applicants as determined in the rules.

(3) The Council must, in consultation with the Board, determine the amount of the contribution for the ensuing year, if any, and in the event of a contribution being levied give notice thereof by publication in the *Gazette*.

(4) In determining the amount of the contribution, the Council and the Board must take into account the value of the Fund, the extent of the expenses and liabilities which the Fund is likely to incur in the ensuing year and future years, and the report referred to in section 75(2).

(5) The Council may, in consultation with the Board, and taking into account the performance of community service which promotes access to justice—

- (a) exempt a category of attorneys from paying the whole or part of the contribution; or
- (b) exempt a particular attorney from paying the whole or part of the contribution after consideration of a written application from that attorney, if it is satisfied that there is good reason to do so.

(6) Upon receipt of an application in terms of subsection (1) the Council must, if it is satisfied that the applicant has—

- (a) complied with the provisions of this Chapter;
- (b) paid the required contribution to the Fund;
- (c) discharged all liabilities in respect of registration fees; and
- (d) completed the prescribed application form in every respect,

immediately issue to the applicant a Fidelity Fund certificate in the prescribed form.

(7) A Fidelity Fund certificate is valid until 31 December of the year in respect of which it was issued.

(8) A document purporting to be a Fidelity Fund certificate which has been issued contrary to the provisions of this Act is null and void and must be returned to the Council on demand.

Attorneys obliged to open trust accounts

88. (1) Every attorney referred to in section 86 must operate a trust account.

(2) Every trust account practice must keep a trust account at a bank with which the Fund has made an arrangement as provided for in section 73(g) and must deposit therein, as soon as possible after receipt thereof, money held by it on account of any person.

(3) (a) A trust account practice may, of its own accord, invest in a separate trust savings account or other interest-bearing account any money which is not immediately required for any particular purpose.

(b) Any trust savings account or other interest-bearing account referred to in paragraph (a), must contain a reference to this subsection.

(4) (a) A trust account practice may, on the instructions of any person, open a separate trust savings account or other interest-bearing account for the purpose of investing therein any money deposited in the trust account of that practice over which the practice exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity.

(b) Any trust savings account or other interest-bearing account referred to in paragraph (a), must contain a reference to this subsection.

(5) Interest accrued on money deposited in terms of this section must, in the case of money deposited in terms of subsections (2), (3)(a) and (4)(a), be paid over to the Fund.

(6) An attorney may not deposit money in terms of subsection (2), nor invest money in terms of subsection (3) and (4) in accounts held at a bank which is not a party to an arrangement as provided for in section 73(g), unless prior written consent of the Fund has been obtained.

(7) An attorney must comply with the terms of an arrangement concluded between a bank and the Fund as provided for in section 73(g).

Accounting

89. (1) A trust account practice must keep proper accounting records containing particulars and information in respect of—

- (a) money received and paid on its own account;
- (b) any money received, held or paid on account of any person;
- (c) money invested in a trust account or other interest-bearing account referred to in section 88; and
- (d) any interest on money so invested which is paid over or credited to it.

(2) (a) The Council may, itself or through its nominee, at the cost of the Council, inspect the accounting records of any trust account practice in order to satisfy itself that the provisions of section 88 and subsection (1) are being complied with.

(b) If on an inspection it is found that these provisions have not been complied with, the Council may write up the accounting records of the trust account practice and recover the costs of the inspection and writing up of the accounting records from the trust account practice concerned.

(3) For the purposes of subsections (1) and (2), “accounting records” includes any record or document kept by or in the custody or under the control of any trust account practice which relates to—

- (a) money held in trust;
- (b) money invested in terms of section 88(3) and (4);
- (c) interest on that money;
- (d) any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which an attorney in the trust account practice is the executor,

trustee or curator or which he or she administers on behalf of the executor, trustee or curator; or

(e) the affairs of the trust account practice.

(4) (a) Any money held in the trust account of a trust account practice in respect of which the identity of the owner is unknown, must, after the second annual closing of the accounting records of the trust account practice following the date upon which those funds were deposited in the trust account practice's trust account, be paid over to the Fund by the trust account practice.

(b) Nothing in this subsection deprives the owner of that money of the right to claim any portion as he or she may prove an entitlement to.

(5) (a) An attorney or an employee of a trust account practice must, at the request of the Council, or the person authorised thereto by the Council, produce a book, document or thing which relates to the accounting records referred to in subsection (1).

(b) The attorney or employee in question may not, subject to the provisions of any other law, refuse to produce the book, document or thing, even though he or she is of the opinion that it contains confidential information belonging to or concerning his or her client.

(6) Any person who performs any function under this section, may not disclose any information which he or she obtained in the performance of such a function except—

- (a) for the purposes of an investigation or hearing by a disciplinary body;
- (b) to any person authorised thereto by the Council who of necessity requires it for the performance of his or her functions under this Act;
- (c) if he or she is a person who of necessity supplies it in the performance of his or her functions under this Act;
- (d) when required to do so by order of a court of law;
- (e) at the written request of the Ombud; or
- (f) at the written request of the National Director of Public Prosecutions or a Director of Public Prosecutions, to any competent authority which requires it for the institution or an investigation with a view to the institution of any criminal prosecution.

(7) Any person who—

- (a) refuses or fails to produce a book, document or thing under subsection (5);
- (b) contravenes subsection (6); or
- (c) obstructs or hinders any person in the performance of his or her functions under this section,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding one year.

Trust money and trust property do not form part of assets of trust account practice

90. (1) (a) Subject to paragraph (b), an amount standing to the credit of any trust account of any trust account practice—

- (i) does not form part of the assets of the trust account practice or of any attorney, partner or member thereof; and
- (ii) may not be attached by the creditor of any such trust account practice, partner or member.

(b) Any excess remaining after all claims of persons whose money has, or should have, been deposited or invested in a trust account referred to in paragraph (a), and all claims in respect of interest on money so invested, are deemed to form part of the assets of the trust account practice concerned.

(2) Trust property which is registered in the name of a trust account practice, or jointly in the name of an attorney or trust account practice and any other person in a capacity as administrator, trustee, curator or agent, do not form part of the assets of that attorney or trust account practice or other person.

Court may prohibit operation of trust account

91. The High Court may, on application made by the Council, and on good cause shown, prohibit any trust account practice from operating in any way on its trust account, and may appoint a *curator bonis* to control and administer that trust account, with any rights, duties and powers in relation thereto as the court may deem fit.

Appointment of *curator bonis* in respect of trust account

92. (1) If any attorney, practising on his or her own account or as a partner or member of a trust account practice—

- (a) dies;
- (b) becomes insolvent;
- (c) is struck off the Roll or suspended from practice;
- (d) is declared by a competent court to be incapable of managing his or her own affairs; or
- (e) abandons his or her practice or ceases to practise,

the Master may, on application made by the Council or by any person having an interest in the trust account of that attorney or trust account practice, appoint a *curator bonis* to control and administer that account, with any rights, duties and powers as the Master may deem fit.

(2) Where the attorney was practising in partnership or as a member of a company with another attorney or attorneys, the Master must allow the trust account to remain under the control of the remaining partners or members, unless there is good reason not to do so.

(3) If a trust account practice is sequestrated, liquidated or placed under judicial management, whether provisionally or finally, the Master may, on application made by the Council or by any person having an interest in the trust account of that practice, appoint a *curator bonis* to control and administer that account, with any rights, duties and powers as the Master may deem fit.

(4) The Master may only grant an application provided for in subsection (1) or (2), on good cause shown by the Council or any other person concerned, and after having given the trust account practice an opportunity to respond in writing to the application.

(5) Any person who is prejudiced by a decision of a Master in terms of subsection (1), (2) or (3), may, within 30 days after obtaining knowledge of the decision, appeal against that decision to a High Court, and the court may confirm or vary the decision or give any other decision as, in its opinion, the Master should have given.

(6) Nothing in this section or sections 90 and 91 may be construed as preventing any attorney who was practising in partnership with an attorney referred to in subsection (1), from operating on the trust account of the partnership.

Rights of banks in respect of trust accounts

93. (1) (a) Any bank at which a trust account practice keeps its trust account, or any separate account forming part of a trust account, is not, by reason only of the name or style by which the account concerned is distinguished, deemed to have knowledge that the trust account practice is not entitled to all money paid into that account or with which that account is credited.

(b) The provisions of paragraph (a) do not relieve the bank from any liability or obligation which legally exists and to which it would be subject apart from the provisions of this Act.

(2) Despite subsection (1), a bank at which a trust account practice keeps its trust account, or any separate account forming part of a trust account, does not, in respect of any liability of the trust account practice to that bank not being a liability arising out of, or in

connection with, any such account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against money standing to the credit of that account.

(3) This section does not—

- (a) deprive any bank of any existing right;
- (b) take away or affect any claim, lien, counter-claim, right of set-off, or charge of any kind which a trust account practice has against, or on, any money held or received on account of any person;
- (c) relieve any trust account practice which has invested any money referred to in subsection (1) in a trust or other interest-bearing account referred to in section 88, of any liability in respect thereof.

(4) Any bank at which a trust account practice keeps its trust account or any separate account forming part of its trust account, must, if so directed by the Council, furnish the Council with a signed certificate which indicates the balance of that account at the date or dates stated by the Council.

CHAPTER 8: GENERAL PROVISIONS

Recovery of costs by attorneys rendering free legal services

94. (1) Whenever in any legal proceedings or any dispute in respect of which legal services are rendered for free to a litigant or other person by an attorney, costs become payable to that litigant or other person in terms of a judgment of the court or a settlement, or otherwise, that litigant or other person must be deemed to have ceded his or her rights to the costs to that attorney or practice.

(2) (a) A litigant or person referred to in subsection (1) or the attorney concerned may, at any time before payment of the costs referred to in subsection (1), give notice in writing to—

- (i) the person liable for those costs; and
- (ii) the registrar or clerk of the court concerned,

that the legal services are being or have been rendered for free by that attorney or practice.

(b) Where notice has been given as provided for in paragraph (a), the attorney concerned may proceed in his or her own name, or the name of his or her practice, to have those costs taxed, where appropriate, and to recover them, without being formally substituted for the litigant or person referred to in subsection (1).

(3) The costs referred to in subsection (1) must be calculated and the bill of costs, if any, must be taxed as if the litigant or person to whom the legal services were rendered by the attorney actually incurred the costs of obtaining the services of the attorney acting on his or her behalf in the proceedings or dispute concerned.

Senior Legal Practitioner

95. The Minister must, after consultation with the Council, prescribe the manner of application, procedures and criteria for the conferring of senior status on legal practitioners.

Offences and penalties

96. (1) A practice may not, except with the written consent of the Council, employ in any capacity any person who has been struck off the Roll or suspended from practice, while that person remains struck off or suspended.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine or imprisonment for a period not exceeding one year.

CHAPTER 9: REGULATIONS AND RULES

Regulations

- 97.** (1) The Minister may, make regulations relating to—
- (i) the attainment of the objects of the Council and the Charter, as provided for in section 6(1)(u);
 - (ii) an election procedure for purposes of constituting the Council, as provided for in section 7(1)(a)(ii);
 - (iii) the establishment of Regional Councils and their areas of jurisdiction, as provided for in section 26(2)(b);
 - (iv) the operational powers, duties and functions of the Council which are to be carried out by the Regional Councils, as provided for in section 26(3)(a)(ii);
 - (v) the manner in which Regional Councils are to be elected, as provided for in section 26(4)(b);
 - (vi) the operation of Regional Councils, as provided for in section 26(6)(b);

- (vii) the practical vocational training requirements for candidate legal practitioners, as provided for in section 31(b)(ii);
- (viii) a framework for the creation and recognition of limited liability legal practices and the terms and condition applicable to such practices, as provided for in section 36(9);
- (ix) Government and other securities into which the Board can invest surplus funds, as provided for in sections 73(a) and 74(3); and
- (x) matters which must be included in the annual report of the Board, as provided for in section 77(3)(d).

(2) The Minister must make regulations relating to—

- (i) the manner in which the Council must register and enrol a duly admitted legal practitioner, as provided for in section 6(3)(a);
- (ii) the manner in which the Council must keep the Roll of registered legal practitioners, as provided for in section 6(3)(b);
- (iii) the establishment of a mechanism to provide transformational legal education and training, as provided for in section 6(5)(f);
- (iv) the manner in which an admitted legal practitioner must apply to the Council for registration and enrolment, as provided for in section 14(1)(a);
- (v) the manner in which the Roll of Legal Practitioners must be kept by the Council, as provided for in section 14(3);
- (vi) the manner in which the Council must notify a legal practitioner of the cancellation or suspension of registration in terms of section 15(1), as provided for in section 15(2);
- (vii) the manner in which a legal practitioner must apply to the Council to convert his or her registration as an attorney to that of an advocate and *vice versa*, as provided for in section 16(1);
- (viii) information that a voluntary association must submit to the Council, as provided for in section 27(2)(h);
- (ix) the manner in which the Council may revoke the recognition of a voluntary association or the assignment of its powers, duties and functions conferred on a voluntary association, as provided for in section 27(4);
- (x) the certificate issued by a registrar of a High Court to an attorney who has acquired the right to appear in a High Court, the Supreme Court of Appeal and the Constitutional Court and the information to be submitted by the registrar to the Council, as provided for in section 29(3)(e);

- (xi) the information which must be submitted to the Council when a person applies to court for admission as a legal practitioner and the time period within which that information must be submitted, as provided for in section 30(1)(d);
- (xii) the manner in which a person must apply to court for admission as a legal practitioner, as provided for in section 30(2);
- (xiii) the rendering of community service, as provided for in section 34(1);
- (xiv) the form of a subpoena, as provided for in section 41(3)(b)(i);
- (xv) the manner of service of a subpoena, as provided for in section 41(3)(b)(iii);
- (xvi) the manner in which a notice of application for review must be lodged with the Ombud, as provided for in section 43(1)(a);
- (xviii) the manner in which a legal practitioner, candidate legal practitioner or juristic entity may lodge an appeal to an appeal tribunal, as provided for in section 44(1);
- (xviii) the form of a summons issued by the Ombud, as provided for in section 53(3)(a);
- (xix) the manner of service of a summons issued by the Ombud, as provided for in section 53(3)(d);
- (xx) the form of the Ombud's annual report, as provided for in section 55(1);
- (xxi) the form of the Fidelity Fund certificate issued by the Council, as provided for in section 87(6);
- (xxii) the manner of application for, procedures and criteria for the awarding of senior status, as provided for in section 95; and
- (xxiii) the establishment of a mechanism to monitor and evaluate the implementation of the Charter.

(3) Any regulation made under subsection (1) must, before publication thereof in the *Gazette*, be approved by Parliament.

Rules

98. (1) The Council may, and where required in the circumstances, must, by publication in the *Gazette*, make rules relating to—

- (i) the fees and charges which are payable to the Council, as provided for in section 6(4);
- (ii) the fee to be paid by a person applying to the Council to be registered and enrolled, as provided for in section 14(1)(b)(i);
- (iii) the manner in which an application for registration and enrolment must be submitted to the Council through the Regional Council in question, as provided for in section 14(1)(b)(iii);

- (iv) the fee payable by a legal practitioner to the Council when applying to convert his or her registration, as provided for in section 16(1);
- (v) the circumstances in which and the criteria to be complied with by a legal practitioner referred to in section 16 (1), as provided for in section 16(3);
- (vi) the procedure for convening meetings of the Council and the procedure for the conduct of meetings, as provided for in section 18(2);
- (vii) the procedure for the conduct of meetings of committees of the Council, as provided for in section 20(3);
- (viii) the procedure for the appointment of the executive officer and other employees of the Council, as provided for in section 21(3);
- (ix) the conditions of service of the executive officer and other employees of the Council, as provided for in section 21(5);
- (x) criteria relating to membership of recognised voluntary associations, as provided for in section 27(2)(d);
- (xi) annual reports to be submitted by recognised voluntary associations to the Council, as provided for in section 27(2)(g);
- (xii) competency based examinations or assessments for candidate legal practitioners, as provided for in section 31(c);
- (xiii) the minimum conditions and procedures for the registration and administration of practical vocational training, as provided for in section 32;
- (xiv) procedures and directions pertaining to the assessment of persons undergoing practical vocational training, as provided for in section 33(1);
- (xv) the level of competence to be achieved for admission and enrolment as a legal practitioner, as provided for in section 33(2);
- (xvi) the criteria for a person, institution, organisation or association to qualify to conduct the assessment of practical vocational training, as provided for in section 33(4);
- (xvii) service which qualifies as community service, as provided for in section 34(2)(f);
- (xviii) the briefing of advocates, as provided for in section 36(3);
- (xix) the fee structure, as provided for in section 37(1)(a)(ii) and the collection of fees, as provided for in section 37(3);
- (xx) the procedures to be followed by disciplinary bodies, as provided for in section 39(7);
- (xxi) the manner and form in which complaints of misconduct relating to legal practitioners, candidate legal practitioners or juristic entities must be lodged with the Regional Council and dealt with, as provided for in section 40;
- (xxii) an application for a Fidelity Fund certificate, as provided for in section 87(1); and

(xxiii) the contribution to be paid to the Council when applying for a Fidelity Fund certificate, as provided for in section 87(2).

(2) (a) Before the Council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice, calling on interested persons to comment in writing within a period stated in the notice, which may not be less than 30 days from the date of publication of the notice.

(b) If the Council alters the draft rules as a result of any comments, it need not publish those alterations before making the rule.

(3) The Council may, if circumstances necessitate the publication of a rule without giving notice provided for in subsection (2)(a), publish that rule without prior publication of a draft as provided for in subsection (2), provided that the notice of publication states—

- (a) the reason why circumstances necessitated that publication without prior publication of a draft as provided for in subsection (2); and
- (b) that any person who is aggrieved by the rule may make representations to the Council within a period stated in the notice, which may not be less than 30 days from the date of publication of the notice.

CHAPTER 10: TRANSITIONAL PROVISIONS

Transitional South African Legal Practice Council

99. (1) A Transitional South African Legal Practice Council is hereby established as a body corporate with full legal capacity and comprising of the following members:

- (a) 16 legal practitioners, namely —
 - (i) eight attorneys nominated by the Law Society of South Africa, two of which represent the Black Lawyers Association, two of which represent the National Association of Democratic Lawyers, one of which represents the Law Society of the Cape of Good Hope, one of which represents the Law Society of the Orange Free State, one of which represents the Law Society of the Transvaal and one of which represents the Natal Law Society ;
 - (ii) five advocates nominated by the General Council of the Bar of South Africa;
 - (iii) one advocate nominated by the Independent Advocates Association of South Africa;
 - (iv) one advocate nominated by the National Forum of Advocates; and
 - (v) one advocate nominated by Advocates for Transformation;

- (b) one teacher of law or legal academic nominated by law teachers, legal academics or organisations representing law teachers or legal academics;
- (c) two persons who, in the opinion of the Minister, are fit and proper persons who have knowledge of the legal profession; and
- (d) one person nominated by Legal Aid South Africa.

(2) In constituting the Transitional Council as provided for in subsection (1), regard must be given to—

- (a) the terms of reference of the Transitional Council;
- (b) achieving representivity with regard to—
 - (i) race;
 - (ii) gender; and
 - (iii) disability; and
- (c) ensuring adequate regional representation when making a nomination in respect of subsection (1)(a).

(3) The duration of the Transitional Council is two years and it ceases to exist on the date of commencement of section 7.

(4) Subject to sections 102, 104 and 105, members of the Transitional Council hold office for the two year duration of the Transitional Council.

Terms of reference of Transitional Council

100. The Transitional Council must, within 18 months after the commencement of this Chapter –

- (a) make recommendations to the Minister on the following:
 - (i) An election procedure for purposes of constituting the first Council, as provided for in section 7(1)(a)(i);
 - (ii) the establishment of the first Regional Councils and their areas of jurisdiction, as provided for in section 26(2)(a);
 - (iii) the powers, duties and functions of the first Regional Councils, as provided for in section 26(3)(a)(i);
 - (iv) the manner in which the first Regional Councils must be elected, as provided for in section 26(4)(a);
 - (v) the manner in which Regional Councils function, as provided for in section 26(6);
 - (vi) a process to abolish the law societies existing immediately prior to the date referred to in section 121(4) in terms of the Attorneys Act or any other law and to provide

- for the transfer of the assets, rights, liabilities and obligations of those law societies to the Council or Regional Councils for the benefit the legal profession as a whole;
- (vii) a human resources strategy relating to persons who were in the employment or service of –
 - (aa) the Law Society of South Africa, or an existing law society referred to in subparagraph (vi); or
 - (bb) an Attorneys Fidelity Fund or Board of Control of such a fund, immediately before the date referred to in section 121(4);
 - (viii) all the practical vocational training requirements that candidate attorneys or pupils must comply with before they can be admitted by the court as a legal practitioner, as provided for in section 31(b)(i);
 - (ix) a mechanism to determine a fee structure, as provided for in section 37, including contingency fees; and
 - (x) a mechanism to wind up the affairs of the Transitional Council;
- (b) prepare and publish a code of conduct for legal practitioners, as provided for in section 38(1)(a); and
 - (c) make rules, as provided for in section 111(2).

Powers, duties and functions of Transitional Council

101. (1) The Transitional Council may do all that is necessary or expedient to carry out its terms of reference referred to in section 100, including the following, having due regard to Government policies where appropriate and relevant:

- (a) Establish one or more committees, including an executive committee, consisting of members of the Transitional Council only, members of the Transitional Council and staff members or other persons, to assist the Transitional Council in the performance or exercise of its powers, duties and functions, determine the powers, duties and functions of a committee, appoint a chairperson and deputy chairperson of a committee and determine procedures for the functioning of committees;
- (b) delegate any of its powers, duties and functions to its committees or employees, subject to any conditions it may impose, which delegation does not—
 - (i) divest the Transitional Council of the power, duty or function so delegated; and
 - (ii) preclude the Transitional Council from varying or setting aside any decision made under a delegation;

- (c) appoint an executive officer to perform or exercise the powers, duties and functions determined by the Transitional Council and supervise the staff of the Transitional Council;
- (c) employ or second from existing governance structures in the legal profession so many staff members as may be necessary to enable it to carry out its functions;
- (d) conclude agreements with any person or organisation for the performance of any particular act or any particular work or the rendering of services for the purpose of furthering the objects of the Transitional Council;
- (e) enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
- (f) determine the remuneration and other conditions of service of staff members; and
- (g) pay an honorarium 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 or for the benefit of the Transitional Council and the furtherance of its objects.

.. (2) The Transitional Council must report to the Minister every six months on its activities and the Minister must, immediately on receipt thereof, submit the report to Parliament.

Qualification for membership of Transitional Council

102. (1) A member of the Transitional Council must—

- (a) be a South African citizen; and
- (b) be a fit and proper person.

(2) The following persons are disqualified from becoming or remaining a member of the Transitional Council:

- (a) Unrehabilitated insolvents;
- (b) a person declared to be of unsound mind by a court of the Republic;
- (c) a person who is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; or
- (d) a person who has vacated his or her office in terms of section 105.

Chairperson and Deputy Chairperson

103. (1) At the first meeting of the Transitional Council, the members of the Transitional Council must elect and appoint a Chairperson and Deputy Chairperson from among themselves.

(2) The Chairperson and the Deputy Chairperson hold office for the duration of the Transitional Council.

(3) The Deputy Chairperson may, if the Chairperson is absent or is for any reason unable to act as Chairperson, perform all the functions and exercise all the powers of the Chairperson.

(4) If both the Chairperson and Deputy Chairperson are absent from any meeting, the members present must elect one of their number to preside at that meeting and the person so presiding may, during that meeting and until the Chairperson and Deputy Chairperson resumes duty, perform all the functions and exercise all the powers of the Chairperson.

(5) If both the Chairperson and Deputy Chairperson have been given leave of absence, the members of the Council must elect one person from among themselves to act as Chairperson until the Chairperson and Deputy Chairperson resumes duty or vacates office.

(6) If the office of the Chairperson and Deputy Chairperson becomes vacant, the members of the Council must, at the first meeting after such vacancy occurs or as soon possible thereafter, elect from among themselves a new Chairperson and Deputy Chairperson, as the case may be.

(7) A Chairperson and Deputy Chairperson may vacate office as such, without relinquishing his or her membership of the Transitional Council.

Termination of office

104. (1) A person ceases to be a member of the Transitional Council when that person—

- (a) is no longer eligible in terms of section 102 to be a member;
- (b) resigns; or
- (c) vacates his or her office in terms of section 106.

(2) A member may resign after giving at least three months' written notice to the Transitional Council.

Vacation of office

105. (1) A member of the Transitional Council must vacate his or her office on account of—

- (a) a conviction of any misconduct under this Act or conviction of any offence, which, in the opinion of the Transitional Council, debars him or her from serving as a member of the Transitional Council;
- (b) incapacity or incompetency;
- (c) absence from three consecutive meetings of the Transitional Council without the permission of the Chairperson, except on good cause shown;
- (d) a request by the body which or person who nominated that member in terms of section 99, on good cause shown;
- (e) engaging in any activity that may, in the opinion of the Transitional Council, undermine the integrity of the Transitional Council; or
- (f) the sequestration of his or her estate.

(2) If the Transitional Council has commenced proceedings for the removal of a member it may suspend that member from office.

(3) A member who is suspended from office may not perform or exercise any of the powers, duties or functions of that office or receive any allowances.

Filling of vacancies

106. (1) A vacancy in the Transitional Council occurs when—

- (a) a member dies;
- (b) a member vacates his or her office in terms of section 105; or
- (c) a member's resignation takes effect.

(2) A vacancy must be filled as soon as practicably possible in accordance with the procedure referred to in section 99.

(3) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term.

Meetings of Transitional Council

107. (1) The Transitional Council must hold at least four meetings in each year at venues to be determined by the Transitional Council and may, in addition, hold any further meetings as the Transitional Council may, from time to time, determine.

(2) The Transitional Council must, as soon as practicable after the appointment of its members, meet for the first time at the time and place determined by the Minister.

Quorum and procedure at meetings of Transitional Council

108. (1) The majority of the members of the Transitional Council constitutes a quorum at any meeting of the Transitional Council.

(2) The Transitional Council must determine a procedure for convening meetings and the procedure for the conduct of meetings.

(3) The Transitional Council must keep a record of its proceedings.

Decisions of Transitional Council

109. The decision of the majority of the members present at the meeting constitutes the decision of the Transitional Council: Provided that the Chairperson has a casting vote, in addition to a deliberative vote.

Finances, expenditure and accountability of Transitional Council

110. (1) Expenditure incidental to the exercise of the powers or the performance of the duties and function of the Transitional Council must be defrayed from the funds of the Transitional Council.

(2) The funds of the Transitional Council consist of –

(a) an annual appropriation made by the Fund, the amount of which is determined by the Board, as constituted under the Attorneys Act, in consultation with the Transitional Council;

(b) any other monies received by the Transitional Council or accruing to the Transitional Council from any other source, including disbursements made by existing law societies as may be agreed upon.

(3) Out-of-pocket expenses incurred by members of the Transitional Council in exercising their powers or carrying out their functions and duties under this Chapter are borne by the body which or person who, nominated, elected or appointed that member.

Rules and regulations for purposes of Chapter 10

111. (1) (a) The Minister must, within 6 months after receiving recommendations from the Transitional Council as provided for in section 100, make regulations,

in consultation with the Transitional Council, in order to give effect to the recommendations of the Transitional Council as contemplated in section 100.

(b) If the Transitional Council fails to make recommendations as provided for in paragraph (a), within the timeframe provided for in section 100, the Minister must, within 6 months, make the regulations in question, after consultation with the Transitional Council.

(c) Any regulation made under this subsection must, before publication thereof in the *Gazette*, be approved by Parliament.

(2) (a) The Transitional Council must, within 18 months after the commencement of this Chapter, make rules in respect of the following:

- (i) A competency based examination or assessment for candidate legal practitioners, as provided for in section 31(c)(i);
- (ii) the minimum conditions and procedures for the registration and administration of practical vocational training, as provided for in section 32(a);
- (iii) the procedure and directions pertaining to the assessment of persons undergoing practical vocational training, as provided for in section 33(1)(a);
- (iv) the criteria for a person, institution, organisation or association to qualify to conduct an assessment, as provided for in section 33(4)(a);
- (v) fees chargeable by legal practitioners, as provided for in section 37(1)(a)(i);
- (vi) the procedures to be followed by disciplinary bodies established, as provided for in section 39(7)(a); and
- (vii) the manner and form in which complaints of misconduct relating to legal practitioners, candidate legal practitioners or juristic entities must be lodged with the Regional Council, as provided for in section 40(a).

(b) Before the Transitional Council makes any rule under this subsection, it must publish a draft of the proposed rule in the *Gazette* together with a notice, calling on interested persons to comment in writing within a period stated in the notice, which may not be less than 30 days from the date of publication of the notice.

(c) If the Transitional Council alters the draft rules as a result of any comments, it need not publish those alterations before making the rule.

(d) The Transitional Council may, if circumstances necessitate the publication of a rule without giving notice, as provided for in subparagraph (b), publish that rule without prior publication of a draft as provided for in subparagraph (b), provided that the notice of publication states—

- (i) the reason why circumstances necessitated that publication without prior publication of a draft as provided for in subparagraph (b); and
- (ii) that any person who is aggrieved by the rule may make representations to the Transitional Council within a period stated in the notice, which may not be less than 30 days from the date of publication of the notice.

Abolition of Fidelity Funds of former TBVC States and transfer of assets, rights, liabilities and obligations to Attorneys Fidelity Fund

112. The—

- (a) Attorneys Fidelity Fund referred to in section 26(1) of the Attorneys, Notaries and Conveyancers Act, 1984 (Act No. 29 of 1984), of the former Republic of Bophuthatswana; and
 - (b) Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund referred to in section 25 of the Attorneys Act, 1987 (Act No. 42 of 1987), of the former Republic of Venda,
- cease to exist on the date referred to in section 121(4) and all assets, rights, liabilities and obligations which, on that date, vested in any of the said Funds, vest from that date in the Fund referred to in section 56(1).

Transitional provisions in relation to existing Attorneys Fidelity Fund Boards of Control

113. (1) The—

- (a) Attorneys Fidelity Fund Board of Control referred to in section 27 of the Attorneys Act;
- (b) Attorneys Fidelity Fund Board of Control referred to in section 26(3) of the Attorneys, Notaries and Conveyancers Act, 1984 (Act No. 29 of 1984), of the former Republic of Bophuthatswana; and
- (c) Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund Board of Control referred to in section 27 of the Attorneys Act, 1987 (Act No. 42 of 1987), of the former Republic of Venda,

and any committee of any such Board of Control appointed in terms of any such law and which existed immediately before the date referred to in section 121(4), cease to exist on that date and all assets, rights, liabilities and obligations which, on that date, vested in any of the Boards referred to in subsection (1)(a), (b) and (c), vest in the Board referred to in section 64.

Transitional provisions in relation to qualifications

114. (1) Notwithstanding anything to the contrary in this Act—

- (a) (i) the training course presented at a Practical Legal Training School of the Law Society of South Africa; or
- (ii) any other training course approved by any existing society or the General Council of the Bar,

before the date referred to in section 121(4) for the purpose of training persons to qualify as legal practitioners must be regarded as having been presented or approved pursuant to the regulations pertaining to practical vocational training; and

- (b) any period of practical vocational training undergone with an attorney or advocate before the date referred to in section 121(4) must be regarded, as having been a period of practical vocational training under supervision of a legal practitioner.

(2) Any person upon whom the degree *baccalaureus procurationis* was conferred by a university of the Republic, is regarded as being qualified to be enrolled as an attorney by the Council as if he or she held the degree *baccalaureus legum*: Provided that such person has not later than 1 January 1999 registered for the first-mentioned degree.

Transitional provisions in relation to obtaining Fidelity Fund certificates

115. Any attorney who is in terms of section 86(1) required to be in possession of a Fidelity Fund certificate and who, at the date referred to in section 121(4), was not in possession of such a certificate issued in terms of any law repealed by this Act, must, within 60 days after the said date, apply for such a certificate.

Existing advocates, attorneys, conveyancers, notaries and senior counsel

116. (1) Any person whose name appears on the roll of advocates, roll of attorneys, roll of conveyancers or roll of notaries of any High Court at the date referred to in section 121(4), whether or not the admission or enrolment of any such person as an advocate, attorney, conveyancer or notary was, or is subject to, any conditions, must be regarded as having been unconditionally admitted to practise and is authorised to be enrolled as a legal practitioner, conveyancer or notary in terms of this Act, subject to the terms of any order of court whereby any such person has been suspended from practice as an advocate, attorney, conveyancer or notary.

(2) Every person who, in terms of subsection (1), is regarded as having been admitted and authorised to practise and to be enrolled as a legal practitioner, conveyancer or

notary, must be enrolled as a legal practitioner, conveyancer or notary on the Roll, and for that purpose—

- (a) the Registrar of every High Court must as soon as possible after the appointment of the Council's executive officer, furnish him or her with the name of every person whose name appears on the roll of attorneys, roll of conveyancers or roll of notaries of that High Court and with particulars of the order of court whereby every such person was admitted to practise as an attorney, conveyancer or notary and of any order of court, if any, in terms of which any such person has been suspended from practice as an attorney, conveyancer or notary; and
- (b) the Director-General: Justice and Constitutional Development must as soon as possible after the appointment of the Council's executive officer, furnish him or her with the name of every person whose name appears on the roll of advocates and with particulars of the order of court in terms of which every such person was admitted to practise as an advocate and of any order of court, if any, in terms of which any such person has been suspended from practice as an advocate.

(3) Every person who, on the date referred to in section 121(4), has the status of senior counsel retains that status after the commencement of this Act.

Persons entitled to be admitted and enrolled as advocates, attorneys, conveyancers or notaries

117. Any person who, immediately before the date referred to in section 121(4), was entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary is, after that date, entitled to be admitted and enrolled as such in terms of this Act.

Pending proceedings

118. (1) Any enquiry in terms of any law repealed by this Act into the alleged unprofessional or dishonourable or unworthy conduct of a legal practitioner which has not been concluded at the date referred to in section 121(4), must be referred to the Council which must treat the matter as it deems appropriate.

(2) Any 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 which have been instituted in terms of any law repealed by this Act, and which have not been concluded at the date referred to in section

121(4), must be continued and concluded as if that law had not been repealed and for that purpose a reference in the provisions relating to such suspension or removal to the General Council of the Bar of South Africa, any Bar Council, any Society of Advocates, any society or the State Attorney must be construed as a reference to the Council.

Interpretation of certain references in laws

119. Subject to the provisions of this Act, a reference in any other law to—

- (a) an advocate, a counsel or an attorney, may be construed as a reference to a legal practitioner in this Act;
- (b) a conveyancer admitted in terms of any law repealed by this Act, must be construed as a reference to a conveyancer registered in terms of section 14;
- (c) a notary admitted in terms of any law repealed by this Act, must be construed as a reference to a notary registered in terms of section 14;
- (d) senior counsel, must be construed as a reference to the status of senior counsel as it existed prior to the commencement of this Act; and
- (e) the General Council of the Bar of South Africa, the Association of Law Societies of the Republic of South Africa, the Law Society of South Africa, a law society or similar reference made in any law repealed by this Act, must be construed as a reference to the Council.

Repeal of laws and savings

120. (1) (a) Subject to paragraph (b) and subsection (2), the laws specified in Schedule 1 are hereby repealed to the extent indicated in the third column thereof.

(b) Paragraph (a) takes effect on the date referred to in section 121(4).

(2) Any—

- (a) regulation made under any law referred to in subsection (1) and in force immediately before the date referred to in section 121(4); and
- (b) rule, code, notice, order, instruction, prohibition, authorisation, permission, consent, exemption, certificate or document promulgated, issued, given or granted and any other steps taken in terms of any such law immediately before the date referred to in section 121(4) and having the force of law,

remains in force, except in so far as it is inconsistent with any of the provisions of this Act, until amended or revoked by the competent authority under the provisions of this Act.

- (3) Anything done in terms of a law repealed by this Act—
- (a) remains valid if it is consistent with this Act, until repealed or overridden; and
- (b) is deemed to have been done in terms of the corresponding provision of this Act.

Short title and commencement

121. (1) This Act is called the Legal Practice Act, 2010.

(2) Chapter 10 comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) Section 7 comes into operation two years after the date of commencement of Chapter 10 or on any earlier date fixed by the President by proclamation in the *Gazette*.

(4) The remaining provisions of this Act come into operation on a date, after the commencement of section 7, fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1 (Laws repealed by section 120)

No. and year of law	Short 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 Practitioners' Fidelity Fund Act, 1941	The whole
Act No. 93 of 1962	General Law Further Amendment Act, 1962	Sections 35, 36, 37 and 38
Act No. 74 of 1964	Admission of Advocates Act, 1964	The whole
Act No. 74 of 1964 (Transkei)	Admission of Advocates Act, 1964	The whole
Act No. 74 of 1964 (Bophuthatswana)	Admission of Advocates Act, 1964	The whole
Act No. 74 of 1964	Admission of Advocates Act, 1964	The whole

No. and year of law	Short title	Extent of repeal
(Venda)		
Act No. 74 of 1964 (Ciskei)	Admission of Advocates Act, 1964	The whole
Act No. 73 of 1965	Admission of Advocates Amendment Act, 1965	The whole
Act No. 29 of 1974	General Law Amendment Act, 1974	Section 16
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. 41 of 1979 (Bophuthatswana)	Admission of Advocates Amendment Act, 1979	The whole
Act No. 53 of 1979	Attorneys Act, 1979	The whole
Act No. 29 of 1984	Bophuthatswana Attorneys Act	The Whole
Act No. 114 of 1993	Recognition of Foreign Legal Qualifications and Practice Act	The whole
Act No. 62 of 1995	Right of Appearance in Courts Act	The whole