

QUALIFICATION OF FOREIGNERS AS ATTORNEYS IN SOUTH AFRICA

Academic requirements

Unless a person is from a designated country (at present Swaziland, Namibia, Lesotho and the former TBVC states) a person must complete a South African LLB degree and comply with the other requirements with regard to articles or community service, practical legal training and the admission examination.

A person who intends to be admitted in the Republic of South Africa, can submit his/her degree to a South African university for an indication of whether any credit by such university would be given with regard to any part of the foreign law degree.

Further requirements with regard to admission is provided in the Attorneys Act, 1979 as amended (See below). A person must be a South African citizen or permanent resident and be otherwise fit and proper in the opinion of the court to be admitted as an attorney.

Note that:

- An LLM does not give access to the profession.
- A South African Qualification Authority (SAQA) or university certificate that the foreign degree is of the same or higher status as the LLB is not sufficient.
- In the case of a degree from a university in a designated country, a South African university may certify that such degree is of the same or higher status.

REQUIREMENTS FOR ADMISSION OF FOREIGN LAWYERS AS ATTORNEYS IN SOUTH AFRICA

ATTORNEYS

There are no special exemptions or recognition of qualifications that apply in respect of persons qualified as attorneys in any other country in terms of the Attorneys Act, No 53 of 1979 ("the Act"), except for the former TBVC States (being the Transkei, Bophuthatswana, Venda and Ciskei), Lesotho, Swaziland, Namibia and Zimbabwe. One should bear in mind that the admission requirements in these countries are regulated by totally different statutes.

The main requirements for admission as an attorney in South Africa are prescribed by the Attorneys Act, no 53 of 1979 and *inter alia* include the following:

1. A B.Proc (phased out by 31 December 2004) or LLB degree obtained from a South African University;
2. Two years of service under a contract of articles of clerkship with a South African firm of attorneys or community service at an accredited law clinic or approved office of the Legal Aid Board or one year if the person attended the full time practical law school;
3. The successful completion of the Attorneys Admission Examination;
4. South African citizenship or a permit for permanent residence in South Africa;
5. Attendance and successful completion of a legal training course approved by the Law Society;
6. Satisfying the Court that the person applying for admission is a fit and proper person to practise as an attorney.

The minimum statutory academic qualification required for the registration of a contract of articles of clerkship or contract of service in South Africa is a matriculation certificate with full unconditional University exemption (or a certificate issued by the Joint Matriculation Board to that effect).

The only academic qualifications recognised and accepted for admission of persons as attorneys in South Africa are the B.Proc degree (until 31 December 2004) and the LLB degree, obtained from a South African University (see above).

Consequently a foreign lawyer will have to approach a South African University to ascertain the further requirements to be complied with in relation to his/her law degree for his/her admission as an attorney in South Africa. In this regard they can communicate with the University of South Africa, P O Box 392, PRETORIA, 0001.

Exemptions provided for in terms of the Attorneys Act, 1979

The Attorneys Act makes provision for the Minister of Justice to designate certain countries in terms of Section 2, 13 and 17 of the Act.

Section 2

The significance of designation in terms of Section 2 is that any graduate of a law faculty from a designated country can register a contract of articles in South Africa if a South African University certifies that the law degree of that University is of the same or of a higher standard than the appropriate law degree conferred by South African Universities.

Section 13

Section 13 provides for the exemption from articles of clerkship and/or the attorneys admission examination, subject to certain conditions such as the designation of countries and classes of persons possibly designated.

Section 17

Section 17 provides for cross border practising rights in respect of certain designated countries.

SCHEDULE OF DESIGNATIONS IN TERMS OF THE ATTORNEYS ACT, 1979

1. Section 2(1)(aB) – certification of law degree
 - (a) TBVC States and Swaziland

2. Section 13 – exemption: articles of clerkship / admission examination
 - 2.1 Section 13(1) and 13 (1)(a)(ii)
 - (a) Zimbabwe / Namibia (Regulation 1A)
5 years practice [or without: 3 years as a Professional Assistant in South Africa – Section 13 A]
exempted from articles of clerkship

 - 2.2 Section 13(1)(b) – certification of law degree

2.3 Section 13(1)(c) – by regulation: exempted from the attorneys admission examination

Class designated: Namibia - Section 13(1)(a)(i) & (ii)

Contract registered before 21/03/1990 and examination completed or admitted in Namibia after 28 February 1994.

Exempted from articles of clerkship and training course – Section 15(i)(b)(ivA)

3. Section 17 (Cross border practising rights)

TBVC States and Lesotho

4. Regulations

4.1 7A – Zimbabwe

If designated Section 13 – examination passed before 22 May 1981 – exempted from examination.

MVB/15/1/04