

LEGAL PRACTICE BILL

FIRST WORKING DRAFT¹

2009

DRAFT WORKING BILL

BILL

To regulate legal practitioners; to provide for the establishment, powers, functions and duties of the South African Legal Practice Council; to provide for the admission and enrolment of legal practitioners; to provide for the Legal Practice Fidelity Fund; to provide for the establishment of a Legal Services Ombud; 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;
- * 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- * entry into the legal profession is, in some respects, dependent on compliance with outdated, unnecessary, and overly restrictive prescripts; and
- * access to legal services is limited;

AND IN ORDER TO—

- * transform and unite the legal profession;
- * regulate the legal profession, in the public interest, by means of a single statute;
- * remove unnecessary barriers for entry into the legal profession;
- * ensure that the legal profession is representative of the demographics of South Africa;
- * strengthen the independence of the legal profession;
- * ensure the accountability of the legal profession to the public; and
- * facilitate access to legal services,

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

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CHAPTER 1

Definitions

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

“appeal tribunal” means an appeal tribunal established in terms of section 58(5);

“assessment” means the process of measuring whether a candidate legal practitioner has successfully attained an adequate level of competence referred to in section 36;

“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 Board of the Legal Practice Fidelity Fund established in terms of section 82;

“candidate legal practitioner” means a person undergoing practical vocational training;

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

“code of conduct” means a written code setting out rules and standards relating to ethics, conduct and practice for legal or paralegal practitioners, and their enforcement through the Council and its delegated bodies;

“contingency fees agreement” means any agreement referred to in section 113;

“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 of this Act and includes any substructure or committee of the Council acting on behalf of the Council;

“day” means an ordinary day;

“disciplinary body” means—

- (a) an investigating committee;
- (b) a disciplinary committee;
- (c) an appeal tribunal; or
- (d) a disciplinary body established by an voluntary organisation;

“existing society” means any law society which immediately before the fixed date, existed under any laws repealed by this Act;

“Fidelity Fund Certificate” means the certificate contemplated in section 94;

“financial year” means the financial year of the Fund as contemplated in section 80;

“fixed date” means the date of commencement of this Act ;

“Fund” means the Legal Practice Fidelity Fund referred to in section 74;

“justice centre” means an institution which renders legal services to members of the public who are unable to pay a fee, and which operates on behalf of and under the control of the Legal Aid Board established in terms of section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969);

“legal practitioner” means a person registered as such in terms of section 14;

“legal services” means the provision of advice or assistance to the public relating to the enforcement, protection or interpretation of legal rights or obligations, which is not provided purely incidentally to the provision of other advice or assistance;

“Legal Services Ombud” means a person appointed as such in terms of section 70;

"magistrates' court" means a regional court or a district court established in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and "magistrates' courts" has a corresponding meaning;

"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 practice as a notary in terms of this Act;

"Panel" means the Panel for the Recognition of Legal Qualifications instituted in terms of section 31;

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

"prescribed" means prescribed by regulation and "prescribe" bears a corresponding meaning;

"Republic" means the Republic of South Africa;

"Roll of Legal Practitioners" means the Roll of Legal Practitioners referred to in section 14(4) and **"Roll"** has a corresponding meaning;

"this Act" includes any regulation or notice issued in terms of any provision of this Act;

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

"trust account" means a trust account referred to in section 106;

"trust account practice" means a practice conducted by one or more legal practitioners who are in terms of this Act obliged to hold a Fidelity Fund certificate;

"voluntary association" means an association accredited by the Council in terms of section 28 of this Act and includes a trust, 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) create a single, unified body to regulate the affairs of persons rendering legal services;
 - (b) protect and promote the public interest;
 - (c) protect and promote the interests of consumers of legal services;
 - (d) improve access to justice;

- (e) provide a fair, effective, efficient and transparent procedure for the resolution of complaints against legal practitioners; and
- (f) create a framework for the—
 - (i) development and maintenance of appropriate professional and ethical norms and standards for the rendering of legal service by legal practitioners and para-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

Part 1

Legal Practice Council

Establishment of Council

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

Objects of Council

- 5.** The objects of the Council are to—
- (a) promote and protect the public interest;
 - (b) regulate legal practitioners;
 - (c) preserve and uphold the independence of the legal profession;
 - (d) enhance and maintain the integrity and status of the legal profession;
 - (e) determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners;
 - (f) promote high standards of legal education and training;
 - (g) promote access to the legal profession;
 - (h) promote access to legal services;
 - (i) uphold and advance the rule of law, the administration of justice, and the Constitution of the Republic;
 - (j) implement the Legal Services Sector Charter; and
 - (k) give effect to the provisions of this Act.

Powers of Council

6. (1) The Council may do all that is necessary or expedient to achieve its objects referred to in section 5, including to—

- (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;
- (k) delegate any of its duties, functions or powers to its committees, Regional Councils, or employees, provided that it may impose conditions on delegations and may not be divested of any power or duty by virtue of a delegation and may vary or set aside any decision made under a delegation;
- (l) develop norms and standards that must guide the conduct of legal practitioners and the legal profession;
- (m) advise the Minister on the procedure and criteria for the nomination of legal practitioners to serve as Council members;²
- (n) advise the Minister with regard to matters concerning the legal profession and legal practice;
- (o) 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;
- (p) do all things necessary for or conducive to the attainment of the objects of the Council; and
- (q) in conducting its business have due regard to the views of the Minister, the Ombud, and Parliament.

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

- (a) employ an executive officer and such officials or staff as may be necessary to enable it to carry out its functions and to determine the remuneration and other conditions of service of its officials and staff;
- (b) establish, promote, arrange, administer or assist in the establishment, promotion, arrangement or administration of insurance, medical-aid, pension, provident or benevolent schemes for the benefit of its officials and staff and the dependants of such officials and staff;

- (c) 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) enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers;
- (e) 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 provisions of 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 such legal practitioners;
- (f) 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) pay honoraria or an allowance to any person to cover expenses reasonably incurred by him or her in connection with any act performed at its request or in terms of its directions on behalf of or for the benefit of the Council and the furtherance of its objects;
- (h) 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 as—
 - (i) executor in the estate of a deceased person;
 - (ii) a trustee in an insolvent estate;
 - (iii) 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 case of any other similar capacity, by any other person in such capacity where a legal practitioner acts as agent for the person concerned; and
- (i) 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—

- (a) consider and decide on any application for registration; 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 thereto may be effected.

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

- (a) application fees;
- (b) registration fees;
- (c) annual fees, or portion thereof, in respect of a part of a year;
- (d) the date on which any fee is payable;
- (e) the fees, or portion thereof, payable in respect of any examination referred to in section 34(c), conducted by the Council or on behalf of the Council;
- (f) 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 legislation repealed by this Act; and
- (g) any other fee or charge it considers necessary.

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

- (a) subject to sections 5 and 7 of the Higher Education Act 1997,³ (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty of law, but must conduct at least one such visit during its term of office: Provided that if the Council does not conduct an accreditation visit within that term of office, it must notify the member of the Cabinet responsible for Higher Education accordingly and provide him or her with reasons for the failure to do so;
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation with regard to all educational institutions and their educational programmes with regard to law;
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education in law;
- (d) consult with the South African Qualifications authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it, to determine competency standards for the purpose of registration;
- (e) conduct any examination for the purposes of section 34(c);
- (f) determine, after consultation with the voluntary associations and legal practitioners, conditions relating to the nature and extent of continuing education and training⁴;
- (g) accredit training institutions which offer practical legal training courses which qualify, or contribute towards the qualification of legal practitioners and candidate legal practitioners; and
- (h) accredit training institutions which offer training courses for aspirant paralegal practitioners and paralegal practitioners.

Composition of Council

7. (1) The Council must be representative and must consist of the following members, namely—

- (a) 12 legal practitioners, comprising of eight practising with Fidelity Fund Certificates and four practising without Fidelity Fund Certificates, appointed by the Minister after he or she has received nominations from practitioners, voluntary associations, or consumers of legal services or representative bodies;
- (b) two paralegal practitioners appointed by the Minister after he or she has received nominations from paralegal practitioners or organisations representing the interests of paralegal practitioners;
- (c) one teacher of law or legal academic appointed by the Minister from nominations received from law teachers, legal academics or organisations representing law teachers or legal academics;
- (d) one person appointed by the Minister, who, by virtue of his or her knowledge and experience, and who in the opinion of the Minister is able to represent the interests of users of legal services; and
- (e) one person who, in the opinion of the Minister, by virtue of his or her knowledge and experience, must promote the objects of the Council.

(2) In making the nominations referred to in subsection (1), regard must be given to—

- (a) the objects of the Council;
- (b) achieving representivity in regard to—
 - (i) race;
 - (ii) gender; and
 - (iii) disability;
- (c) ensuring adequate provincial representation when making a nomination in respect of subsection (1)(a);
- (d) an equitable representation of legal practitioners, taking into consideration the number of legal practitioners practising with Fidelity Fund Certificates and those practising without Fidelity Fund Certificates; and
- (e) ensure that the members of the Council, must, between them, have experience 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 workings of court;
- (v) the maintenance of the professional standards of persons who provide legal services;
- (vi) the handling of complaints; and
- (vii) the differing needs of consumers.

(3) The Minister may refuse to make an appointment to the Council on the grounds that there is a lack of representivity.

(4) (a) The Minister may, in consultation with the Council and the Chief Justice make regulations to determine the procedure for nomination of legal practitioners to serve on the Council.

(b) Any regulation made under this section must be approved by Cabinet.

(c) Any regulation made under this section must be tabled in Parliament 30 days before publication thereof in the *Gazette*, if Parliament is then in session, and if Parliament is not then in session, the regulations must be submitted to the Speaker of Parliament, 30 days before publication thereof in the *Gazette*.

OR

(4) The procedure for the nomination of legal practitioners to serve on the Council, upon the recommendation of the Council and after it has been approved of by the Minister, is referred to in Schedule ?

OR

(4) The procedure for the nomination of legal practitioners to serve on the Council must be determined by the Minister after considering the recommendations of the Council, by notice in the *Gazette*.

Qualification for membership to Council

8. (1) A member of the Council must—

- (a) be a South African citizen;
- (b) be a fit and proper person to hold office as a member of the Council;
- (c) subscribe to the objects of the Council;

(2) The following persons are disqualified from becoming or remaining a member of the 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, 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: Provided that a disqualification under this paragraph ends five years after the sentence has been completed; and
- (d) a person who has been removed from office in terms of section 12.

Chairperson and Deputy Chairperson

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

Or

9. (1) At the first meeting of the newly constituted Council, the members of the Council must elect a [Chairperson and Deputy Chairperson from the members constituting non legal practitioners on the Council](#).

(2) The Chairperson and the Deputy Chairperson hold office for a period of three years from the date of their election, which must coincide with the term of office of the Council and may be re-elected for one further term, unless the Chairperson and the Deputy Chairperson resigns or ceases to be a member of the 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 a leave of absence, the members of the Council must elect one of their number 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 thereafter as may be convenient, elect from among themselves a new Chairperson and Deputy Chairperson, as the case may be, and the member so elected must hold office for the unexpired portion of the period for which his or her predecessor was elected.

(7) A Chairperson and Deputy Chairperson may vacate office as such without such vacation by itself terminating his 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) is removed from office in terms of section 12.

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

Removal from office

12. (1) The Minister may, at the instance of the Council, remove a member from office on account of—

- (a) misconduct;
- (b) inability to perform the duties and functions of his or her office efficiently; or
- (c) absence from three consecutive meetings of the Council without the permission of the Chairperson, except on good cause shown.

(2) If the Council has commenced proceedings for the removal of a member, as prescribed, the Minister must, if so requested by the Council, suspend that member from office.

(3) A member who is suspended from office may not perform any 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 is removed from 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.

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

Registration

14. (1) (a) A person duly admitted by the High Court as a legal practitioner, must apply, in the prescribed application form, to the Council for registration.

(b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.

(2) (a) The Council must enrol the applicant in the category of legal practitioners practising—

- (i) with a Fidelity Fund Certificate;
- (ii) without a Fidelity Fund Certificate;
- (iii) senior Legal Practitioner;
- (iv) paralegal practitioner; or
- (v) candidate legal practitioner.

(b) The Council must enrol any legal practitioner who meets the requirements as prescribed for conveyancers, as a conveyancer.

(c) The Council must enrol any legal practitioner who meets the requirements as prescribed for notaries, patent practitioners and trademark practitioners as a notary, patent practitioner or trademark practitioner, as the case may be.

(d) The Council must enrol and register as a candidate legal practitioner an applicant who meets the requirements as prescribed for candidate legal practitioners.

(4) The Council must keep the Roll as prescribed.

(5) The Roll of Legal Practitioners must reflect—

- (a) the name of every person enrolled as a legal practitioner in terms of this Act, and particulars of the order of court whereby he or she was admitted;
- (b) the name of every person readmitted and enrolled as a legal practitioner as contemplated in subsection (9)(b), and the particulars of the order of court readmitting him or her;
- (c) the names of all persons deemed in section 32 to have been admitted and enrolled as legal practitioners, and particulars of the orders of court admitting the legal practitioner;
- (d) particulars of any order of court whereby any legal practitioner has been suspended, whether the order was made before or after the commencement of this Act, or whereby the name of any such person has been ordered to be struck off the Roll;

(e) any amendment or endorsement against the enrolment of a legal practitioner contemplated in section 61(3)(a)(v).

(6) When registering a candidate legal practitioner, the original of any articles of clerkship or contract of service must be lodged within two months by the principal concerned with the Council of the province in which the service under such articles or contract of service is to be performed.

(7) Any legal practitioner practising without a Fidelity Fund Certificate cannot register articles or a contract of service in terms of the provisions of this Act, unless he or she deregisters from the Council as a legal practitioner practising without a Fidelity Fund Certificate and registers as a legal practitioner practising with a Fidelity Fund Certificate.

(8) Any document issued by the Council whereby 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.

(9) 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 suspending any person from practice as a legal practitioner under this Act or any other law,

must immediately after the making of such order forward a certified copy thereof to the Council.

(10) A person duly qualified in terms of this Act must apply to the Council in the prescribed manner to be registered and enrolled as a paralegal practitioner⁵.

(11) Upon receiving the application in subsection (10), the Council must enter the name of the applicant on the roll of paralegal practitioners in the prescribed manner.

Cancellation of registration

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

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

(2) The Council must provide the registered person with a notice of a cancellation.

(3) If a person who is registered as a candidate legal practitioner qualifies to be registered as a legal practitioner in terms of this Act, the Council must cancel his or her registration as a candidate legal practitioner.

(4) 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 alleged improper conduct by that person is in progress or to be held, the registration may not be cancelled until the investigation has been concluded.

(5) Despite cancellation of the registration of a registered 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.

Authorised titles⁶

16. (1) A person who is registered in any of the categories referred to in section 14(2) may describe himself or herself and use the title—

- (a) Legal Practitioner;
- (b) Senior Legal Practitioner;
- (c) Candidate Legal Practitioner; or
- (d) Paralegal Practitioner. **OR**
- (a) Legal Practitioner with a Fidelity Fund Certificate;
- (b) Legal Practitioner without a Fidelity Fund Certificate; **OR**
- (a) Attorney;
- (b) Advocate;
- (c) Candidate Attorney;
- (d) Pupil; or
- (e) Paralegal.

(2) A registered person may use a title prescribed by the Council for the specified category.

(3) The Council may determine abbreviations or acronyms for the titles referred to in subsection (1).

Conversion of registration

17. (1) A legal practitioner may at any time apply, in the prescribed manner, to the Council to convert his or her registration from a legal practitioner practising with a Fidelity Fund Certificate to a legal practitioner practising without a Fidelity Fund Certificate and vice versa.

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

Part 2

Operation of Council

Meetings

18. (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 such 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

19. (1) The majority of the members of the Council constitute a quorum at any meeting of the Council.

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

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

Decisions

20. (1) In matters relating to the general affairs of the Council and the legal profession, as prescribed, the decision of the majority of the members present at the meeting constitutes the decision of the Council: Provided that the Chairperson has a casting vote in addition to a deliberative vote. **OR**

(1) In matters affecting the affairs of practitioners practising without Fidelity Fund Certificates, the weight of the vote of each member practising without a Fidelity Fund Certificate must count as two votes: Provided that in the event of a deadlock in the voting, the Chairperson has a casting vote in addition to a deliberative vote **OR** the non-practising member of the Council has a casting vote in addition to a deliberative vote. **OR**

(1) In the event of a deadlock in the voting in matters relating to the general affairs of the Council, and in matters relating to the affairs of practitioners practising without Fidelity Fund Certificates—

- (a) The Chairperson must refer the matter to a panel or *ad hoc* committee constituted for the purpose of deliberating on the matter.
- (b) The committee, consisting of the Chief Justice/Deputy Chief Justice/Judge of the High Court, one representative of practitioners practising with a Fidelity Fund Certificate, one practitioner practising without a Fidelity Fund Certificate, one non-legal practitioner, one paralegal, must be constituted by the Chairperson as soon as practicably possible after a deadlock has been reached.
- (c) The panel/*ad hoc* committee must be chaired by the Chief Justice/Deputy Chief Justice/Judge of the High Court, who has a casting as well as a deliberative vote.
- (d) A decision of the majority of the panel/*ad hoc* committee constitutes the decision of the Council.

OR

(1) In all matters relating to the general affairs of the Council the members must strive to reach consensus: Provided that two members of the Council practising with a Fidelity Fund Certificate and two members of the Council practising without a Fidelity Fund Certificate, and one paralegal practitioner must consent to a proposed motion.

Committees of Council

21. (1) The Council may—

- (a) establish one or more committees consisting of—
 - (i) members only;
 - (ii) members and staff; or
 - (iii) other persons,
 to assist the Council in the performance of its functions; and
- (b) dissolve a committee at any time.

(2) The Council—

- (a) must determine the functions of a committee;
- (b) must appoint a member of a committee as the Chairperson of the committee;
- (c) may remove a member of a committee at any time; and
- (d) may determine a committee's procedure.

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

Executive officer and employees of Council

- 22.** (1) The Council must appoint an executive officer to—
- (a) perform the 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 such 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.
- (4) The Council must have due regard to representivity on grounds of race, gender and disability when appointing the executive officer and other employees.
- (5) The Council must determine the conditions of service of the executive officer and the other employees of the Council.

Executive committee of the Council

- 23.** (1) The Council must establish an Executive Committee and determine its functions.
- (2) The Executive Committee consists of—
- (a) the chairperson of the Council; and
 - (b) four other members appointed by the Council.
- (3) In establishing the Executive Committee, the Council must have regard to representivity in respect of—
- (a) race;
 - (b) gender;
 - (c) disability;
 - (d) legal practitioners practising with Fidelity Fund Certificates, and those practising without Fidelity Fund Certificates; and
 - (e) regional/provincial distribution.
- (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 removed from office by the Council.

(7) The Council must from amongst its Executive Committee members designate a person who must serve as the 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

- 24.** (1) The Council may—
- (a) delegate any of its powers to—
 - (i) a member of the Council;
 - (ii) a member of the Council's staff;
 - (iii) a committee of the Council;
 - (iv) the Executive Committee; or
 - (v) a provincial structure of the Council set up in terms of this Act; and
 - (b) assign the performance of any of the Council's duties to any member, staff member or committee.

- (2) A delegation or assignment in terms of subsection (1)—
- (a) is subject to such 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.

(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

- 25.** (1) The funds of the Council consist of—
- (a) fees payable in terms of this Act;
 - (b) an annual appropriation made by the Fidelity 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 performance of the 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 is 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

26. (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 such report to be tabled in Parliament as soon as practicable after receipt thereof.

Establishment of Regional/Provincial Council ⁷

27. (1) The Minister may establish not more than nine Regional/Provincial Councils, upon the recommendation of the Council.

(2) The Council, in making the recommendations to the Minister must take into account the following factors—

- (a) the efficient attainment the Council's objects;
- (b) cost effectiveness;
- (c) the interests of legal practitioners;
- (d) regional /provincial needs, interests and sensitivities;
- (e) availability of resources; and
- (f) the interests of the public.

OR

27. (1) The establishment of Regional/Provincial structures are as set out in the Schedule to this Act.

(2) The Minister may establish not more than nine Regional/Provincial Councils, upon the recommendation of the Council.

(3) The Council, in making the recommendations to the Minister must take into account the following factors—

- (a) the efficient attainment the Council's objects;
- (b) cost effectiveness;

- (c) the interests of legal practitioners;
- (d) local needs, interests and sensitivities; and
- (e) availability of resources.

Recognition of voluntary associations

28. (1) Legal practitioners or paralegal practitioners may form and join any voluntary association of their choice.

(2) The requirements for the recognition of voluntary associations by the Council are set out in the Schedule to this Act. **OR**

(2) The Minister must, after consultation with the Council, make regulations setting out the requirements for the recognition of voluntary associations. **OR**

(2) (a) The Council must, within 90 days from the date of its first meeting, submit the framework for recognition of a voluntary association to the Minister for approval.

(b) The Minister must make regulations setting out the requirements for the recognition of voluntary associations, after receipt of the framework for the recognition of a voluntary association from the Council.

(3) Any voluntary association may, in the manner prescribed and upon payment of the prescribed fee, apply to the Council to be recognised as such.

(4) A certificate of recognition is valid for a period of five years from the date of issue.

(5) A voluntary association must display its certificate of recognition in a prominent place at its head office.

(6) The recognition of a voluntary association lapses—

(a) if that association no longer complies with the requirements contemplated in the Schedule/regulation ; or

(b) at the expiry of the five year period referred to in subsection (4).

(7) A voluntary association must, at least three months prior to the expiry of its recognition, in the prescribed manner, apply to the Council for the renewal thereof.

(8) A voluntary association whose recognition has lapsed must, within 30 days from the date on which it is so directed in writing by the Council, return its certificate of recognition.

CHAPTER 3
REGULATION OF LEGAL PRACTITIONERS

Part 1

Legal Practitioners

Admission and enrolment required to practice as a legal practitioner

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

Persons who may apply to be admitted as legal practitioners or as paralegal practitioners

30. (1) Any citizen of the Republic or person who is ordinarily resident in the Republic may apply to be admitted as a legal practitioner or as a paralegal practitioner, subject to section 32 and subsections (2) and (3).

(2) The Minister may, after consultation with the Panel established in terms of section 31, determine the categories of persons who may be exempted, whether conditionally or unconditionally, wholly or in part, from the citizenship and residency requirement referred to in subsection (1) or the qualification and training requirement referred to in sections 34(1) and 36 respectively—

- (a) for the purposes of giving effect to reciprocal inter-governmental agreements regulating such matter; or
- (b) if it is in the public interest to permit the person or category of person concerned to expeditiously commence practising as a legal practitioner by virtue of his or her academic qualifications or professional experience.

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

Panel for Recognition of Legal Qualifications and exemption purposes

31. (1) A Panel for the Recognition of Legal Qualifications is hereby established.

(2) The function of this Panel is to assist the Minister in respect of exemptions contemplated in section 30(2) by—

- (a) developing criteria for recognising foreign and other legal qualifications;
- (b) developing criteria for granting permanent or temporary exemptions; and
- (c) considering applications for exemptions or amendments to the terms of any exemption and making recommendations on the merits of such applications.

(3) The Panel is composed of—

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

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

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

Admission as legal practitioner

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

- (a) is duly qualified;
- (b) is—
 - (i) a South African citizen;
 - (ii) ordinarily resident in the Republic;
 - (iii) a member of a category of persons whom the Council has declared, by notice in the *Gazette*, may be allowed to be admitted to practise in the Republic; or
 - (iv) certified by the Council as being a person who by virtue of his or her special circumstances qualifies to practise in South Africa; and
- (c) is a fit and proper person to be so admitted.

(2) A person applying for admission in terms of subsection (1) must do so in the prescribed manner [OR](#) as set out in the Schedule to this Act.

Admission as paralegal practitioner

33. Any person who has met the requirements as prescribed, may apply to the Council to be registered and enrolled as a paralegal practitioner.

Minimum qualifications and training applicable to legal practitioners

34. A person may qualify to be admitted and enrolled to render legal services as a legal practitioner, if that person has—

- (a) satisfied all the requirements for the degree of—
 - (i) *baccalaureus legum* at any university in the Republic after completing a period of study of not less than four years for that degree; or

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

Minimum qualifications and training applicable to paralegal practitioners

35. A person may qualify to be admitted and enrolled to render legal services as a paralegal practitioner, if that person has satisfied the qualification and training requirements for paralegal practitioners as may be prescribed by the Minister upon the advice received from the Council.

Practical Legal Training

36. (1) The Council must determine the minimum conditions and procedures for the registration and administration of practical legal training.

(2) A legal practitioner, practising with a Fidelity Fund Certificate, supervising a candidate legal practitioner must have at least three years' experience as a practising legal practitioner during the preceding five years: Provided that the Council may, upon application made to it, accredit as a supervisor a legal practitioner who does not satisfy this requirement if it is satisfied that he or she will be a competent supervisor.⁸

Assessment of practical legal training

37. (1) The Council, must from time to time determine a procedure and issue directions pertaining to the assessment of persons undergoing practical legal training.

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

(3) The assessment referred to in subsection (1) must be carried out by the Council: Provided that the Council may engage an appropriate institution or organisation to conduct such assessment on its behalf.

(4) The Council must determine the criteria for a person to qualify to conduct an assessment in terms of this section.

Prescription of legal community service

38. (1) The Minister may, on the recommendation of the Council, prescribe legal community service, which may include—

- (a) remunerated service as a component of practical legal training from a date determined by the Minister on the advice of the Council; or
- (b) a minimum period of service by legal practitioners.

(2) A minimum period of service contemplated in subsection (1)(b), may be a recurring annual requirement upon which continued registration is dependant.

(3) For the purposes of this section, but subject to subsection (1)(a), “community service” may include unremunerated service involving—

- (a) the delivery of 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 accredited in terms of this Act; or
- (f) such other service as may be determined by the Council.

Authority to render legal services

39. (1) Subject to the provisions of section 53 or any other law, no person other than a legal practitioner 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 subsection (1)(a) or (b) or (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Legal Practitioners

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

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

- (a) a legal practitioner enrolled to practise with a Fidelity Fund Certificate; or
- (b) directly from the public only in circumstances or on conditions as may be determined by the Council.

(3) Legal practitioners enrolled to practise with a Fidelity Fund Certificate may only practise—

- (a) for their own account;
- (b) as part of a commercial juristic entity contemplated in subsection (5) and as such, may only make over to, share or divide any portion of their professional fee whether by way of partnership, commission, allowance, or otherwise with a legal practitioner enrolled to practise with a Fidelity Fund Certificate;
- (c) as part of a non-profit juristic entity established in terms of subsection (6);
- (d) as part of a justice centre; or
- (e) at a public interest legal centre.

(4) Legal practitioners enrolled to practise without a Fidelity Fund Certificate 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 (6) ;
- (c) as part of a justice centre; or
- (d) public interest legal centre.

(5) 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 legal practitioners enrolled to practise with a Fidelity Fund Certificate;
- (b) provision must be made for legal services to be rendered only under the supervision of admitted and enrolled legal practitioners; 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.

(6) 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 a legal practitioner who is a holder of a Fidelity Fund Certificate;
- (d) it may not make over to, share or divide any portion of its professional fee whether by way of partnership, commission, allowance or otherwise;
- (e) its income and property is not distributable to its members or governors except as reasonable compensation for services rendered; and
- (f) upon its winding-up or dissolution, any asset remaining after all liabilities have been met, must be transferred to another non-profit organisation having similar objectives to it.

(7) A law clinic may be established by any university in the Republic provided that—

- (a) it is constituted and governed as part of the faculty of law at that university;
- (b) all legal services at the law clinic are rendered by a legal practitioner who is a holder of a Fidelity Fund Certificate or rendered under the supervision of such a person;
- (c) the legal services rendered by it are accessible to the public without restriction;
- (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.

(8) 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.

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

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

- (a) the importance, significance and complexity of the legal services required;
- (b) the volume of work required and time spent in respect of services rendered;
- (c) the financial implications of the matter at hand; and
- (d) the qualifications and professional expertise of the legal practitioner concerned.

(2) The provisions of subsection (1) do not preclude a legal practitioner, juristic entity or justice centre from entering into a contingency fee arrangement: Provided that such an arrangement is valid only if—

- (a) recorded in writing in the form prescribed by the Minister upon the advice received from the Council; and
- (b) the fee payable does not exceed the amounts prescribed by the Minister upon the advice received from the Council.

(3) Despite subsections (1) and (2), the Minister, upon the advice received from the Council, may prescribe a procedure for the settlement and review of the contingency fee arrangements contemplated in this section. [OR SEE MORE DETAILED PROVISIONS ON CONTINGENCY FEES IN CHAPTER 9 BELOW](#)

Rendering of services by a legal practitioner, conveyancer, notary, patent practitioner and trademark practitioner

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

(2) Any person who is admitted and enrolled as a legal practitioner, conveyancer or notary in terms of this Act is entitled to practise as such throughout the Republic unless a court having jurisdiction has ordered that his or her name be struck off the Roll or unless he or she is subject to an order suspending him or her from practice as a legal practitioner, conveyancer or notary, as the case may be.

Part 2

Candidate Legal Practitioners⁹

Duration of articles of clerkship

43. (1) Any person intending to be admitted as a legal practitioner practising with a Fidelity Fund Certificate, must serve under articles of clerkship for a period of—

- (a) two years after he or she has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after pursuing for that degree a course of study of not less than four years;
- (b) two years after he or she has satisfied all the requirements for the degree of 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;
- (c) two years after he or she has satisfied all the requirements for a degree or degrees of a university in a country which has been designated by the Minister, upon the recommendation of the Panel;
- (d) three years after he or she has satisfied all the requirements for any degree, other than an honorary degree, of any university in the Republic, but has not satisfied the requirements of paragraph (a), (b) or (c); or
- (e) three years after he or she has satisfied all the requirements for any degree other than an honorary degree, or for other such degrees, of a university in a country designated under paragraph (c), and in respect of which degree or degrees a university in the Republic

has certified that the syllabus of instruction and the standard of training thereof are equivalent or superior to those required for a corresponding degree of such university in the Republic, but has not satisfied the requirements of paragraph (a), (b), (c) or (d).

(2) Any person intending to be admitted as a legal practitioner and who has not served articles of clerkship in terms of subsection (1), and has satisfied all the requirements for a degree referred to in subsection (1)(a), (b) or (c), must serve under articles of clerkship for a period of one year and must in addition thereto—

- (a) attend a training course approved by the Council for an uninterrupted period of at least four months and complete such course to the satisfaction of the Council; or
- (b) perform community service approved by the Council in terms of a contract of service for an uninterrupted period of at least one year to the satisfaction of the Council.

(3) Subject to the provisions of this Act, any period of service performed before the passing of any examination or the obtaining of any degree referred to in subsection (1), will not be regarded as good or sufficient service for the purposes of this Act.

Exemption from service under articles of clerkship

44. Any person intending to be admitted as a legal practitioner and who has satisfied all of the requirements for a degree referred to in section 43(1)(a), (b) or (c), and who has—

- (a) (i) attended a training course approved by the Council for an uninterrupted period of at least four months and has completed such course to the satisfaction of the Council; and
- (ii) performed community service in terms of a contract of service for an uninterrupted period of at least one year to the satisfaction of the Council; or
- (b) has performed community service in terms of a contract of service for an uninterrupted period of at least two years to the satisfaction of the Council; or
- (c) has, to the satisfaction of the Council, gained at least five years' appropriate legal experience,

is exempted from service under articles of clerkship in terms of section 43(1), and from the provisions of section 43(2).

By whom candidate legal practitioners may be engaged

45. A candidate legal practitioner can be engaged by a legal practitioner practising with a Fidelity Fund Certificate—

- (a) on his own account;
- (b) as a partner in a firm of legal practitioners;

- (c) as a member of a professional company;
- (d) as State Attorney;
- (e) as Deputy State Attorney, Senior Assistant State Attorney or Assistant State Attorney in the office of the State Attorney or any branch thereof; or
- (f) in the full-time employment of a law clinic, and if the Council certifies that the law clinic concerned complies with the requirements as determined by the Council for the operation of such clinic; and
- (g) who has—
 - (i) if he or she is a legal practitioner so practising on his own account or as a partner in a firm of legal practitioners or as a member of a professional company, or is employed full-time at a law clinic, so practised or been so employed for a period of three years or periods of three years in the aggregate during the preceding four years;
 - (ii) if he or she is the State Attorney or any Deputy State Attorney, Senior Assistant State Attorney or Assistant State Attorney as aforesaid, practised the profession in the office of the State Attorney or any branch thereof continuously for a period of four years immediately prior to taking such candidate legal practitioner under articles.

(2) Service by any candidate legal practitioner to any legal practitioner while such legal practitioner is not practising the profession as referred to in subsection (1), is not sufficient service for the purposes of this Act.

(3) A legal practitioner must not have more than three candidate legal practitioners under articles, except where—

- (a) on the death or retirement from practice of any legal practitioner, any of his surviving or remaining partners, any member of the professional company of which he or she was a member or any other person who as a legal practitioner is employed full-time at the law clinic concerned;
- (b) a legal practitioner has been debarred under section 50(2)(h) from continuing with a contract of articles, any of his partners, any other member of the professional company of which he or she is a member or any other person who as a legal practitioner is employed full-time at the law clinic concerned,

he or she may take cession of the articles of any candidate legal practitioner articulated to such legal practitioner, although the cessionary will then have more than three candidate legal practitioners in his or her employment.

Supervision over candidate legal practitioner

46. (1) Any candidate legal practitioner must, except where there is a cession of articles in terms of section 50, for the whole term of service as specified in the articles of clerkship, serve—

- (a) in the office of his or her principal under his or her direct personal supervision or under that of a legal practitioner who is a partner or manager of his or her principal;
- (b) in the case of a candidate legal practitioner articulated to the State Attorney or to a member of his or her staff referred to in section 45(1)(g)(ii), in the office of the State Attorney or in any branch thereof and under the direct personal supervision of the State Attorney or a member of his or her staff referred to in section 45(1)(g)(ii); or
- (c) in the case of a candidate legal practitioner articulated to a legal practitioner employed full-time at a law clinic, under the direct personal supervision of that legal practitioner or another legal practitioner who is also employed full-time at the law clinic concerned.

(2) For the purposes of subsection (1) 'office' does not include a branch office which is under the control of a legal practitioner who is not entitled to have a candidate legal practitioner under articles.

(3) A candidate legal practitioner performing community service must during the whole term of service specified in the contract of service, serve—

- (a) in the office of the law clinic under the direct personal supervision of his or her principal, or of a legal practitioner, who is also employed full-time at the law clinic concerned; or
- (b) in the office of the Legal Aid Board under the direct personal supervision of his or her principal, or of a legal practitioner, who is also employed full-time at the relevant office of the Legal Aid Board.

Absence of candidate legal practitioner

47. (1) A candidate legal practitioner may, subject to the provisions of subsection (2), with the consent of his or her principal, absent himself from office for a period which does not, or for periods which in the aggregate do not, exceed thirty working days in any one year of the articles of clerkship or contract of service.

(2) (a) A court /The Council may on the application of an candidate legal practitioner in any case—

- (i) where his principal refuses to grant him leave of absence from office;

(ii) where the period of absence from office exceeds, or the periods of absence from office in the aggregate exceed, thirty working days in any one year of the articles of clerkship or contract of service,

grant an order authorising leave of absence from office for the period in question, if the court/Council is satisfied that the principal and the Council received due notice of the application and that sufficient cause for the absence from office exists or existed, as the case may be.

(b) An order referred to in paragraph (a) may be granted before, during or after the period of absence.

(3) If any period of absence from office exceeds, or the periods of absence from office in the aggregate exceed, thirty working days in any one year of articles of clerkship or contract of service, the period in excess of thirty working days must be added to the period for which the candidate legal practitioner is bound to serve under articles or contract of service.

(4) Notwithstanding the provisions of subsection (1), any period of absence not exceeding six months of a candidate legal practitioner from the office of his principal for the purpose of attending a training course approved by the Council, must, if that candidate legal practitioner has completed that course to the satisfaction of the Council, be deemed to have been served under articles of clerkship or contract of service, except where the Act makes provision for articles of clerkship for a one year period or exempts articles of clerkship.

(5) Notwithstanding the provisions of subsection (1), any period of absence not exceeding 12 months of a candidate legal practitioner from the office of his or her principal for the purposes of service, in terms of a contract with terms and conditions similar to those of his articles of clerkship, under the direct supervision of another legal practitioner who is entitled to engage a candidate legal practitioner in terms of section 46, must, provided the Council has approved such service in advance in writing, be deemed to have been served by the candidate legal practitioner concerned under articles of clerkship with his principal.

Appearance of candidate legal practitioner in court and before other institutions

48. (1) Any candidate legal practitioner who has satisfied all the requirements for the degree referred to in section 34 (a), will be entitled to appear in any court, other than any division of the High Court, and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear, instead of and on behalf of such principal, who will be entitled to charge the fees for such appearances as if he or she himself or herself had appeared.

(2) A candidate legal practitioner is not entitled to appear in a court of a regional division established under section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) unless he or she has—

- (a) previously practised as an advocate for at least one year;
- (b) served for at least one year under his or her articles or contract of service; or
- (c) at least one year's experience as a state advocate, or state prosecutor appointed in terms of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) or a magistrate.

(3) The Council must, upon the written application of the principal of any candidate legal practitioner referred to in subsection (1) and upon the payment of the prescribed fees, and in the prescribed manner, issue to such candidate legal practitioner a certificate that he complies with the relevant provisions of subsection (1).

(4) (a) Any candidate legal practitioner who is entitled to appear as contemplated in subsection (1), will remain so entitled to appear for a period of six months after the expiry of his or her articles or contract of service until he or she is admitted as a legal practitioner, if he or she remains in—

- (i) the employ of the legal practitioner who was his or her principal immediately before such expiry; or
- (ii) the service of the law clinic or the Legal Aid Board concerned, as the case may be.

(b) The provisions of section 46 will apply with the necessary changes in respect of a former candidate legal practitioner referred to in paragraph (a).

(5) A candidate legal practitioner will be entitled, with the written permission of the Council, to serve the remaining period of articles or contract of service with any other legal practitioner, subject to section 50 and to appear as contemplated in subsection (4) under the supervision of that legal practitioner, in the event of the—

- (a) death;
- (b) mental illness;
- (c) insolvency;
- (d) conviction for crime;
- (e) suspension;
- (f) striking off the roll; or
- (g) discontinuance of practice,

of the legal practitioner who was the principal.

Restriction of pecuniary interests of candidate legal practitioners

49. (1) A candidate legal practitioner must not have any pecuniary interest in the practice and service of a legal practitioner, or in the organisation or institution where he or she performs community service, and must not, without the prior written consent of the Council, hold or occupy any office or engage in any other business other than that of candidate legal practitioner.

(2) If any candidate legal practitioner contravenes the provisions of subsection (1), the articles or contract of service must be void *ab initio* and service rendered thereunder must be ineffectual unless the court on good cause shown otherwise directs.

Cession of articles or contract of service

50. (1) Articles or a contract of service may with the consent of a principal and the candidate legal practitioner concerned be ceded to any other principal willing to accept such cession.

(2) The Council may in the event of the—

- (a) death;
- (b) mental illness;
- (c) insolvency;
- (d) conviction for crime,;
- (e) suspension;
- (f) striking off the roll;
- (g) discontinuance of practice of the principal under whom a candidate legal practitioner is serving; or
- (h) the debarring of such principal from engaging or continuing to engage a candidate legal practitioner; or any other cause,

direct that the articles or the contract of service concerned be ceded to any other principal willing to accept such cession, and all service completed under the ceded articles or the contract of service will be effectual for the purposes of this Act.

(3) Articles or a contract of service may be ceded under subsection (2) notwithstanding the fact that the principal who accepts the cession will, as a result of that acceptance, have more than three candidate legal practitioners in his or her employment.

(4) An agreement whereby articles or a contract of service is ceded must within two months of the date on which the services of the candidate legal practitioner concerned have been terminated with the cedent, or within such further period as the court may for good cause allow, be lodged with the Council by the cessionary together with affidavits—

- (a) by the cedent stating whether the provisions of this Act relating to service under articles of clerkship or a contract of service have been complied with during the whole term of service during which the candidate legal practitioner concerned was in his or her service and the date on which the candidate legal practitioner terminated his or her services with him or her; and

(b) by the cessionary stating the date on which the said candidate legal practitioner assumed duty with him or her.

(5) The Council must, thereafter, in the prescribed manner, register the cession.

(6) If articles or a contract of service is ceded in terms of subsection (2), the agreement whereby the articles or the contract of service is ceded must be signed by the legal representative of the legal practitioner concerned or a duly nominated representative of the Council as cedent, and a certificate of such legal representative or representative containing the particulars referred to in subsection (4)(a), will serve as a substitute for the affidavit referred to in subsection (4)(a).

Termination of articles or contract of service

51. (1) If articles of clerkship are, or a contract of service is, for any reason cancelled, abandoned or ceded, the principal with whom the candidate legal practitioner concerned is serving at that time must immediately in writing notify the Council of such cancellation, abandonment or cession.

(2) (a) Where articles of clerkship have or a contract of service has been cancelled or abandoned before completion thereof, the court may in its discretion and on the application of the person so affected order that for the purposes of this Act, the whole or such part of the period served under such articles or contract of service, be added to any period served by the applicant after the first-mentioned articles were or contract of service was cancelled or abandoned, subject to such conditions as the court may impose.

(b) A period so added will for the purposes of this Act be deemed to have been served under the last-mentioned articles or contract of service and continuously with any period served thereunder.

(3) If a person, who has served any period under articles of clerkship which were cancelled or abandoned before completion thereof, has satisfied all the requirements for a degree referred to in section 34, the court may, on the application of that person and subject to such conditions as the court may impose, order—

(a) that, for the purposes of this Act, the whole of the period so served or such part thereof as the court deems fit be added to any period served by that person after he or she satisfied such requirements or became so entitled under articles of clerkship entered into after the first-mentioned articles were cancelled or abandoned, and thereafter any period so added must be deemed to have been served—

(i) after he or she satisfied such requirements; and

- (ii) under the articles entered into after the first-mentioned articles were cancelled or abandoned and continuously with any period served thereunder; or
- (b) if the period served by such person under the first-mentioned articles of clerkship is equal to or exceeds the period which he or she would, at the time of the making of the application, be required to serve under articles of clerkship in terms of this Act, that the period so served be considered as adequate service under articles for the purposes of this Act, and thereafter any period so served by such person will be deemed to have been served after and under articles entered into after he or she satisfied such requirements.

Exemption from service under articles and certain examinations, and powers of court in respect of irregular service and certain other service

52. (1) Any person lawfully admitted to the Republic for permanent residence therein who is ordinarily resident in the Republic and who has been admitted and enrolled as a solicitor or attorney of the supreme or high court of any country or territory which has been approved for the purposes of this subsection by regulation made under section—

- (a) will be exempted from service under articles—
 - (i) if he or she has practised for at least 5 years as a solicitor or an attorney, as the case may be, in the country or territory in which he or she has been so admitted and enrolled and belongs to a class of persons (if any) which has been designated by any such regulation; or
 - (ii) if the country or territory referred to has been designated for the purposes of this subparagraph by regulation made under section 31, without him or her having practised as contemplated in paragraph (i), and if he belongs to a class of persons (if any) which has been designated by any such regulation;
- (b) will be exempted from satisfying the requirements for the degree mentioned section 34, if the Panel recognises the degree earned by that person in accordance with its procedure; or
- (c) may be exempted from the requirement to pass any examination referred to in section 34.

(2) If any person has not served regularly as a candidate legal practitioner, the court, if satisfied that such irregular service was occasioned by sufficient cause and in its discretion, may recognise such service as regular service for the purpose of admission of the legal practitioner.

(3) The court may, on the application of a candidate legal practitioner who has satisfied all the requirements for a degree referred to in section 34, order that the whole or any part of the period served by that candidate legal practitioner under articles before he or she satisfied such requirements, must, for the purpose of his or her admission and enrolment as legal

practitioner, be regarded as having been served after and under articles entered into after he or she satisfied such requirements.

CHAPTER 4 PARALEGALS

Rendering of services by paralegal practitioners

53. (1) The Council must, in consultation with Minister and the Paralegal Committee, within a period of 12 months after its establishment, submit to the Minister legislative proposals to regulate the rendering of legal services by paralegal practitioners.

(2) The Minister must within three months after receipt of the proposals referred to in subsection (1), introduce legislation into Parliament to regulate the rendering of legal services by paralegal practitioners.

Establishment and objects of Paralegal Committee

54. (1) A committee to be known as the Paralegal Committee is hereby established as a Committee of the Council.

(2) The objects of the Paralegal Committee are to—

- (a) promote access to justice for disadvantaged communities;
- (b) promote the development of the paralegal sector;
- (c) make recommendations to the Council and the Minister on matters pertaining to paralegal practice; and
- (d) perform such functions as may be prescribed.

Constitution and functioning of Paralegal Committee

55. (1) The Paralegal Committee consists of the following members appointed by the Minister—

- (a) two members of the Council designated for that purpose by the Council;
- (b) four persons from organisations which represent or employ paralegal practitioners who will, in the opinion of the Minister, promote the development of the paralegal sector and access to justice;
- (c) two persons from tertiary institutions which are involved in the training of paralegal practitioners; and
- (d) two members of communities served by paralegal practitioners, at least one of whom is from a rural community.

(2) The nomination and appointment process of the appointments referred to in subsection (1)(b), (c) and (d), must be prescribed by the Minister in regulations, in consultation with the Council.

(3) (a) At its first meeting the Paralegal Committee must elect a chairperson.

(b) If the chairperson is absent from a meeting, the members must elect one from their number to preside at that meeting.

(5) The term of office of members of the Paralegal Committee is three years.

(6) The Minister may, on the recommendation of the Council, remove a member from the Paralegal Committee if the Minister is satisfied that—

(a) there is good cause for doing so; or

(b) the member concerned has failed, without good cause, to attend three consecutive meetings of the Paralegal Committee.

(7) A vacancy in the Paralegal Committee must be filled as soon as practicable in accordance with subsections (2).

(8) A member of the Paralegal Committee may resign from office by submitting at least three months' prior written notice to the Minister.

(9) A member of the Paralegal Committee who is not in the full-time service of the State must, in respect of his or her services, be paid such allowances as may be determined by the Council.

(10) The majority of the members of the Paralegal Committee form a quorum.

(11) A decision of the majority of the members present at any meeting is the decision of the Paralegal Committee and in the event of an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

(12) (a) The procedure at and the times and places of meetings of the Paralegal Committee are determined by that Committee.

(b) The first meeting of the Paralegal Committee must be held at the time and place determined by the Council.

(13) The Paralegal Committee may, subject to the approval and directions of the Council, form subcommittees to enable it to achieve its objects and perform its functions and the provisions of sections 6(2)(h) and 21 apply with the necessary changes to the Paralegal Committee and its subcommittees.

Powers and functions of Paralegal Committee

56. The powers, duties and functions of the Paralegal Committee are to—

- (a) make recommendations to the Council and the Minister regarding the regulation of the rendering of legal services to the public by paralegal practitioners;
- (b) make recommendations to the Council and the Minister as to what should be the required qualifications for paralegal practitioners generally or paralegal practitioners rendering specific legal services;
- (c) provide training or training programmes for candidate paralegal practitioners and paralegal practitioners and to promote the provision of such training by other institutions;
- (d) make recommendations to the Council regarding applications by institutions for accreditation as training institutions for paralegal practitioners;
- (e) receive, consider and make recommendations to the Council with regard to applications for the enrolment of paralegal practitioners and to levy a reasonable fee in respect of such applications;
- (f) establish disciplinary committees to consider complaints of misconduct against paralegal practitioners and make recommendations to the Council as to what action should be taken in respect of such complaints;
- (g) monitor the legal service needs of disadvantaged communities and make recommendations to the Council as to how such needs can best be addressed;
- (h) promote the development of the paralegal sector with the object of promoting access to justice for all communities and empowering disadvantaged communities;
- (i) on behalf of the Council, maintain a Roll of Registered Paralegal Practitioners; and
- (j) perform any other duty that arises pending the promulgation of the legislation referred to in section 53(2).

CHAPTER 5

PROFESSIONAL CONDUCT, ESTABLISHMENT OF DISCIPLINARY BODIES

Code of Conduct

57. (1) The Council must within 90 days from the date of its first meeting draw up a Code of Conduct for legal practitioners, juristic entities and paralegal practitioners.

(2) The Code of Conduct may contain different provisions for different categories and sub-categories of practitioners.

(3) The Council must take all reasonable steps to—

- (a) publicise the existence of the Code of Conduct developed by the Council in terms of this Act;

- (b) inform the public of the content of the Code of Conduct including its enforcement procedures; and
- (c) inform the public of how and where to obtain a copy of the Code of Conduct.
 - (4) The Council may amend the code from time to time.
 - (5) All legal practitioners, juristic entities and paralegal practitioners must comply with the Code of Conduct, and failure to do so constitutes misconduct.

Establishment of disciplinary bodies

58. (1) The Regional/Provincial Council may from time to time establish investigating committees to conduct preliminary investigations of complaints as prescribed by the Council in terms of section 59.

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

- (a) may have been guilty of misconduct, refer the matter to a disciplinary committee;
- (b) was not guilty of misconduct, inform the complainant and the practice or legal practitioner of its finding and the reasons for it.

(3) The Provincial Council must from time to time establish disciplinary committees to investigate complaints as prescribed by the Council in terms of section 59.

(4) 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 against legal practitioners;
- (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 or juristic entity is aggrieved by the outcome of the complaint, the Provincial Council must establish an appeal tribunal or tribunals to hear appeals lodged in terms of section 63.

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

(7) The Council may, by notice in the *Gazette*, prescribe procedures to be followed by disciplinary bodies established in terms of this section.

(8) Where a complainant is aggrieved by the outcome of the complaint, an application for a review may be lodged with the Legal Services Ombud in terms of section 62.

Procedure for dealing with complaints of misconduct

59. Complaints of misconduct relating to legal practitioners must be lodged and dealt with in the manner and form prescribed by the Council.

Disciplinary hearing

60. (1) A disciplinary hearing must be conducted by the disciplinary body subject to the provisions of this section and the rules determined by the Council.

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

(3) (a) The disciplinary body may, for the purposes of a hearing, subpoena any person—

- (i) who in its opinion may be able to give material information concerning the subject of the hearing; or
- (ii) who 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 prescribed form;
- (ii) signed by the chairperson of the disciplinary body or, in his or her absence, any member of that body; and
- (iii) served on the legal practitioner concerned personally or by sending it by registered mail.

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

(5) The chairperson of the disciplinary body 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 personally 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; and
 - (vi) may have access to documents produced in evidence; and
- (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 to 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 body from further attendance.

(c) A witness who has been subpoenaed may request that the names of the members of the disciplinary body 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 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 body, 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 is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the legal practitioner as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

Proceedings after hearing and remedial action

61. (1) (a) After the conclusion of the hearing the disciplinary body must within 30 days decide whether or not the legal practitioner is guilty of misconduct.

(b) If the disciplinary body finds that the legal practitioner is guilty of misconduct it must—

(i) inform the legal practitioner and the Council of the finding; and

(ii) inform the legal practitioner of his or her right of appeal in terms of section 63.

(2) A legal practitioner found guilty of misconduct in terms of this section may—

(a) address the disciplinary body in mitigation of sentence; and

(b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.

(3) If the legal practitioner is found guilty of misconduct, the disciplinary body 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 as determined by the Council from time to time and published in the *Government Gazette*;

- (iii) temporarily suspend him or her from practising or from engaging in any particular aspect of the practise of law pending the finalisation of an application referred to in paragraph (iv)(*bb*);
- (iv) advise the Council to apply to the relevant High Court for—
 - (*aa*) an order striking his or her name off the Roll and any other roll on which his or her name is recorded;
 - (*bb*) an order suspending him or her from practice;
 - (*cc*) an interdict to prohibit him or her to deal with trust moneys; or
 - (*dd*) any other appropriate relief;
- (v) advise the Council to amend or endorse his or her enrolment;
- (vi) order that his or her Fidelity Fund certificate be withdrawn;
- (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 person—
 - (i) order it to pay compensation, with or without interest, to the complainant;
 - (ii) impose upon it a fine as determined by the Council from time to time and published in the *Government Gazette*;
 - (iii) order that its Fidelity Fund certificate be withdrawn;
 - (iv) warn it against certain conduct; or
 - (v) caution or reprimand it; or
- (*c*) in the case of a candidate legal practitioner—
 - (i) cancel or suspend his or her practical legal training;
 - (ii) impose upon him or her a fine as determined by the Council from time to time and published in the *Government Gazette*; or
 - (iii) caution or reprimand him or her.

(4) (*a*) The disciplinary body may take decisions under more than one of the subparagraphs of paragraph (*a*), (*b*) and (*c*) of subsection (3).

(*b*) In addition to the sanctions contemplated in subsection (3), the disciplinary body may order the legal practitioner to pay the cost of the investigation or the disciplinary hearing.

(5) (*a*) If the taking of any steps or the imposition of any penalty has been postponed for a particular period, and if at the end of that period the disciplinary body is satisfied that the legal practitioner concerned has substantially observed all the relevant conditions, the

disciplinary body must inform that legal practitioner that no steps will be taken in respect of him or her or that no penalty may be imposed upon him or her.

(b) If the payment of a fine or any part thereof has been suspended by the disciplinary body for a particular period, and if at the end of such period the disciplinary body is satisfied that the legal practitioner concerned has substantially observed all the relevant conditions, the disciplinary body must inform such legal practitioner that the payment of that fine or that part thereof must not be enforced.

(c) If a legal practitioner fails to comply with any conditions determined in terms of subsection (3), the disciplinary body must impose a penalty upon him or her or execute the penalty imposed upon him or her, unless the legal practitioner satisfies the disciplinary body that the non-compliance with such conditions was due to circumstances beyond his or her control.

(6) Any court with civil jurisdiction may on the application of the disciplinary body grant an order for the recovery from the legal practitioner concerned of any amount he or she failed to pay in accordance with the fine imposed under subsection (3)(a)(ii), (b)(ii) or (c)(ii), together with any interest thereon, whereupon the order so granted has the effect of a civil judgment of that court and must be executed in accordance with the law/ with the rules of the relevant court.

(7) At the conclusion of the hearing the disciplinary body must notify the Council and the Legal Practice Ombud of its finding.

(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 body.

Review by Legal Services Ombud

62. (1) (a) Any complainant, other than the legal practitioner against whom the complaint has been made, who is aggrieved—

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

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

may lodge a notice of application for review with the Office of the Legal Services Ombud within sixty days of becoming aware of the allegedly irregular investigation or gaining knowledge of the outcome of the investigation or hearing.

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

(2) A review in terms of subsection (1) is conducted in accordance with the procedure determined by the Legal Services Ombud.

(3) Upon reviewing the matter, the Legal Services Ombud—

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

(i) the manner in which an investigation or hearing has been conducted—

(aa) confirm the findings on the investigation and hearing and the actions taken;
or

(bb) if he or she is satisfied that the procedure has been substantially unfair, set aside the findings and actions taken and remit the matter, with or without directions, if in his or her opinion there has been an unreasonable delay on the part of a disciplinary body, the Legal Services Ombud may substitute his or her own decision for that of the disciplinary body; or

(ii) the outcome of the investigation or 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 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 body

63. (1) If a disciplinary body advises the Council to lodge an application to strike a legal practitioner from the Roll or to suspend him or her, such legal practitioner may within thirty days of being informed of the decision, lodge an appeal to an appeal tribunal against a finding of the body or against the sentence, or both.

(2) The appeal tribunal may—

(a) dismiss the appeal against the decision of the disciplinary body and confirm the finding or sentence or both; or

(b) uphold the appeal against the decision of the disciplinary body wholly or in part and set aside or vary the finding or sentence or both.

(3) If a legal practitioner found guilty of misconduct lodges an appeal in terms of subsection (1), the decision of the disciplinary body may not be put into effect before the appeal tribunal has decided the appeal.

Disciplinary procedures of voluntary associations

64. (1) A voluntary association must adopt a procedure for dealing with complaints against its members in matters not involving a member of the public, and submit such procedure to the Council for its approval.

(2) In considering whether to approve a procedure submitted in terms of subsection (1), the Council must have regard to whether the procedure adequately protects the rights and interests of the public and legal practitioners.

(3) In the case of dispute between the Council and a voluntary association as to whether a proposed procedure should be approved, either party may submit the matter to the Legal Services Ombud for his or her decision, in accordance with a procedure determined by him or her.

(4) The Legal Services Ombud may reject the proposed procedure or approve it, with or without amendments.

Further role of Legal Services Ombud

65. The Legal Services Ombud may monitor—

- (a) the investigation of a complaint by a disciplinary body; and
- (b) the conduct of a disciplinary body in hearing a complaint.

Urgent legal proceedings

66. Notwithstanding 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 may on behalf of the Council institute urgent legal proceedings in the High Court having jurisdiction to suspend the legal practitioner from the Roll and to obtain alternative interim relief.

Powers of High Courts

67. (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.

(2) Nothing contained in this Act precludes a complainant or a legal practitioner 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 Legal Services Ombud or the Council in connection with such complaint or charge.

CHAPTER 6

LEGAL SERVICES OMBUD

Establishment of Office of Legal Services Ombud

68. The Office of the Legal Services Ombud for the Republic is hereby established.

Objects of Legal Services Ombud

69. The objects of the Legal Services 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 Legal Services Ombud

70. (1) The President must as soon as practicable after the commencement of this Act and whenever it becomes necessary thereafter, upon the recommendation of the Judicial Service Commission, appoint a Legal Services Ombud.

(2) The Legal Services Ombud must be a South African citizen who—

- (a) is a retired judge of a court contemplated in sections 166(a) to (c) of the Constitution; or
- (b) qualifies to be appointed as a judge of such a court.

(3) The Legal Services 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 functions without fear, favour or prejudice.

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

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

Remuneration and other terms and conditions of employment of Legal Services Ombud

71. (1) The Legal Services Ombud receives such remuneration, allowances and other employment benefits and is appointed on such terms and conditions as the President, after consultation with the Minister, may determine.

(2) The remuneration determined in terms of subsection (1) may not be—

- (a) less than that of a judge of a High Court; and

(b) reduced, nor may the terms and conditions of employment be adversely altered, during his or her term of office.

(3) The Legal Services Ombud may not perform remunerative work outside his or her official duties.

(4) The Legal Services Ombud holds office for a period of three years from the date of appointment and is eligible for re-appointment.

(5) (a) The President may, on the advice of the Judicial Service Commission, remove the Legal Services 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, at the instance of the Judicial Service Commission, suspend a Legal Services Ombud from office at any time after the commencement of the proceedings of the Judicial Service Commission concerning the removal of that Legal Services Ombud.

(c) A Legal Services Ombud who is suspended from office may not exercise or perform any powers or functions or receive any remuneration or allowances.

(6) If a vacancy occurs in the Office of Legal Services Ombud, the President must, subject to the provisions of this section, appoint another person to that Office.

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

Powers and functions of Legal Services Ombud

72. (1) In addition to the other powers and functions conferred on or assigned to him or her in this Act, and for the purposes of achieving the objectives referred to in section 69, the Legal Services Ombud—

(a) may investigate and make recommendations to the Council, the Minister and Parliament 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 of the Council, or a substructure of the 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 with the alleged failure;
- (d) may, in the case of a failure of the Council or substructure of the Council, report and make recommendations to the Minister on the failure of the Council or substructure of the Council;
- (e) must, in the case of a failure of a disciplinary body, report and make recommendations to the Council on the failure of such disciplinary body and require the Council to report to him or her regarding what steps it will take in this regard;
- (f) 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;
- (g) may refer any complaint concerning a prosecutor to the National Director of Public Prosecutions or the Director of Public Prosecutions concerned; 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, bring the matter to the notice of the National Prosecuting Authority.

(2) For the purposes of an investigation the Legal Services Ombud —

- (a) may summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the Legal Services 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 Legal Services Ombud, and examine or retain for further examination or for safe custody such a book, document or other object.

(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 Legal Services Ombud;
- (c) be signed by the Legal Services 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 such person is not entitled to refuse to answer any question on the ground that the answer would tend to expose him or her to a criminal charge.

(b) No evidence regarding any questions and answers contemplated 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 Legal Services Ombud by virtue of subsection (2)—

- (a) may be assisted at his or her examination by a legal representative; and
- (b) is entitled to such witness fees as he or she would be entitled to 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 Legal Services 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 Legal Services Ombud from further attendance;
- (b) at his or her appearance before the Legal Services 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 be sworn or to make an affirmation after he or she has been asked by the Legal Services Ombud to do so;
- (c) having been sworn 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.

Staff, finances and accountability of Office of Legal Services Ombud¹⁰

73. (1) The Legal Services Ombud must as soon as practicable after his or her appointment and after consultation with the Council and the Board appoint—

- (a) a suitably qualified and experienced person as Chief Administrative Officer for the purpose of assisting the Legal Services Ombud in the performance of all financial, administrative and clerical functions pertaining to the Office of the Legal Services Ombud; and

(b) such staff as may be reasonably necessary to assist the Legal Services Ombud and the Chief Administrative Officer with the work incidental to the performance of their functions.

(2) In making the appointments referred to in subsection (1), the Legal Services Ombud must take into account the need for representivity in respect of race, gender and disability.

(3) The persons appointed in terms of subsection (1) receive such remuneration, allowances and other employment benefits and are appointed on such terms and conditions and for such periods as the Legal Services Ombud, after consultation with the Minister, may determine.

(4) Expenditure incidental to the performance of the functions assigned to the Legal Services Ombud in terms of this Act or any other law must be defrayed from—

- (a) moneys appropriated by Parliament for this purpose;
- (b) the funds contemplated in section 78(2)(g), annually appropriated by the Board after consultation with the Council; and
- (c) fines and penalties imposed by disciplinary bodies in terms of this Act.

(5) The Chief Administrative Officer—

- (a) must deposit all moneys received by the Office of the Legal Services Ombud with a bank approved by the Board;
- (b) may invest any moneys of the Office of the Legal Services Ombud which is not required for immediate use, with a bank approved by the Board or in such other manner as the Board may determine;
- (c) is responsible for the management of and control over the staff of the Office of the Legal Services Ombud appointed in terms of subsection (1)(b) and is for that purpose accountable to the Legal Services Ombud;
- (d) must—
 - (i) be charged with the responsibility of accounting for money received, or paid out for, or on account of the Office of the Legal Services Ombud;
 - (ii) cause the necessary accounting and other related records to be kept; and
 - (iii) cause proper records of all the assets and liabilities of the Office of the Legal Services Ombud to be kept; and
- (e) must perform the functions which the Legal Services Ombud may from time to time assign to him or her in order to achieve the objects of the Office of the Legal Services Ombud, and is in respect thereof accountable to the Legal Services Ombud.

(6) The records referred to in subsection 5(d)(ii) must be audited by a registered accountant and auditor appointed by the Board.

CHAPTER 7
LEGAL PRACTICE FIDELITY FUND

Part 1

Establishment of Fund and founding provisions

Continued existence of Legal Practice Fidelity Fund

74. (1) Notwithstanding the provisions of section 134, the Attorneys Fidelity Fund established by section 25 of the Attorneys Act continues to exist as a juristic person under the name Legal Practice Fidelity Fund.

(2) All assets, rights, liabilities and obligations which immediately prior to the date of commencement of this Act vesting 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

75. The Fund consists of —

- (a) each amount which is, immediately prior to the date of commencement of this Act, 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) money which may be appropriated to the Fund by Parliament on such terms and conditions as the Minister, with the concurrence of the Minister of Finance, may determine;
- (h) any other money lawfully paid into the Fund; and
- (i) any other money accruing to the Fund from any other source.

Liability of Fund

76. 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 a legal practitioner in that practice, or any person employed by that practice or supervised by such a legal practitioner, including where such legal practitioner 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

77. (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 practitioner 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 a legal practitioner 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 such practice and such person has failed to take reasonable steps after being so warned; or
- (e) by any person as a result of theft of money which a legal practitioner has been instructed to invest on behalf of such person.

(2) A claim for reimbursement as contemplated in section 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 a legal practitioner is authorised to invest where the legal practitioner 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), a legal practitioner 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 legal practitioner; or
- (b) for whom the legal practitioner holds money,

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

(6) For the purposes of subsection (1)(e) a legal practitioner must be 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 106(1), if such payment is for the purpose of investing such money in such account on a temporary or interim basis only pending the conclusion or implementation of any particular matter or transaction which is already in existence or about to come into existence at the time that the investment is made and in respect of which investment the legal practitioner 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 legal practitioner for the purpose of making that loan; and
 - (iii) is advised by the legal practitioner 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) A legal practitioner who has been instructed to invest money as contemplated in subsection (4) must, as soon as practicable after he or she has received such 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 prescribed by the Board in terms of subsection (8).

(8) For the purposes of subsection (7), the Board must issue directives prescribing 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 legal practitioner who contravenes subsection (7) is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.

Purpose and application of Fund

78. (1) Subject to the provisions of this Act, the Fund must, in the first instance, be applied for the purpose of—

- (a) meeting the liability of the Fund referred to in section 76; and
- (b) paying expenses incurred in operating the Board and the Fund, including the payment of remuneration or allowances and other service benefits to employees.

(2) After the Fund has fully met its obligations contemplated in subsection (1), the Fund may, in the discretion of the Board, also be applied for the following purposes:

- (a) Paying expenses incurred by the Board in investigating and establishing the validity of claims referred to in section 76;
- (b) paying all expenses and legal costs incurred by the Board for the purpose of recovering monies from the persons whose wrongful conduct gave rise to the claim;
- (c) 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;
- (d) paying legal expenses incurred in defending a claim made against the Fund, or otherwise incurred in relation to the Fund;
- (e) paying premiums in respect of contracts of insurance entered into in terms of section 91(b);
- (f) 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;
- (g) contributing to expenses incurred in establishing and operating the Office of the Legal Services Ombud;
- (h) paying fees and expenses to the Council or its substructures in respect of any function performed as agent for the Fund;
- (i) refunding any expenses incurred by a disciplinary body in relation to the institution of legal proceedings or the taking of disciplinary action against any legal practitioner;
- (j) contributing to the establishment and operating costs of the Council or its substructures 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 a legal practitioner in relation to the keeping of a trust account;
- (m) paying interest in relation to section 76; and
- (n) paying expenses relating to any function performed in terms of this Act.

(3) After the Fund has fully met its obligations contemplated in subsections (1) and (2), and provided that there are sufficient funds available, the Fund may, in the discretion of the Board, also be applied for the following purposes:

- (a) Providing 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 the legal profession;
- (b) providing financial support to legal practitioners, organisations or institutions for the purpose of providing work-place training opportunities for candidate legal practitioners in deserving cases;
- (c) providing financial support to non-profit organisations and institutions promoting access to justice to poor people;
- (d) contributing to the premium or any portion thereof payable in respect of a professional indemnity group insurance policy of any kind in favour of legal practitioners;
- (e) paying bursaries and loans to students, candidate legal practitioners and legal practitioners for the purpose of legal education and research;
- (f) paying the costs or a portion of the costs incurred by a legal practitioner in relation to the obtaining of a Fidelity Fund certificate; and
- (g) paying for services rendered at the request of the Council or its substructures with the object of enhancing the professional standards of legal practitioners.

Money to be deposited into banking account and investment of money

79. (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 Legal Practice 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

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

Fund exempt from certain tax and insurance laws

81. (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 Governance of Fund

Establishment of Board

82. (1) The Legal Practice 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.

Constitution of Board

83. (1) The Board consists of the following persons appointed by the Minister:

- (a) The Legal Services Ombud;
- (b) four legal practitioners, three of whom practise with Fidelity Fund Certificates and one practising without a Fidelity Fund Certificate, appointed by the Minister in the prescribed manner OR appointed by the Minister in the manner as set out in Schedule;
- (c) one teacher of law, appointed by the Minister after consultation with organisations representing the interests of law teachers in tertiary institutions and the Council;
- (d) one paralegal practitioner appointed by the Minister after consultation with organisations representing the interests of paralegal practitioners;
- (e) one person, appointed by the Minister, who, by virtue of his or her qualifications, expertise and experience in the field of finance, is designated by the Public Accountants' and Auditors' Board or its successor; and
- (f) one person appointed by the Minister to represent the interests of users of legal services.

(2) In making the appointments and designations referred to in subsection (1), the designating 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 provincial representation.

Qualification for membership to Board

84. (1) A member of the Board must—

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

(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: Provided that a disqualification under this paragraph ends five years after the sentence has been completed;
- (d) a person who fails to resign as provided for in section 86(d); and
- (e) a person who has been removed from office in terms of section 88.

Appointment of chairperson and vice-chairperson of Board

85. (1) At the first meeting of the Board contemplated in section 83, the members of the Board must elect a chairperson and vice-chairperson from their number.

(2) The chairperson and vice-chairperson hold office for a period of one year 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 a chairperson or vice-chairperson from their number.

(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

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

- (a) a member’s term of office expires;
- (b) a member dies;

- (c) a member is removed from office in terms of section 88; or
- (d) a member's resignation takes effect.

(2) (a) A vacancy in the Board must be filled as soon as practicable in accordance with section 83.

(b) A vacancy so filled is for the unexpired period of the term of office in respect of which the vacancy occurred.

Term of office of members of Board

87. (1) A member of the Board who is not appointed *ex officio* holds office for a term of two years, but is eligible for re-appointment.

(2) A member may at any time, 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.

Removal from office

88. (1) The Minister may, at the instance of the Board, remove a member from office on account of—

- (a) misconduct;
- (b) incapacity and incompetency;
- (c) absence from three consecutive meetings of the Board without the permission of the chairperson, except on good cause shown;
- (d) a request by the body which or person who designated that member in terms of section 83;
- (e) engaging in any activity that may undermine the integrity of the Board; or
- (f) the sequestration of his or her estate.

(2) (a) The Minister must suspend a member from office after the commencement of the proceedings of the Board concerning the removal of that member, if requested by the Board to do so.

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

Meetings and resolutions of Board

89. (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 quorum for any meeting of the Board is 50 percent of the total number of its members.

(3) When the chairperson is absent or 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 their number 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 90, must be included.

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

Committees of Board

90. (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 and functions, the members of which may be members of the Board or other persons;
- (c) delegate to the executive committee or other committee such 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 its chairperson unless the Board has appointed a chairperson.

(3) A committee performs its 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 89 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 of Board

91. 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 legal practitioner;
- (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; and
- (g) generally take such other steps and perform such 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

92. (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 76, and such 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

93. (1) Within three months after the end of each financial year, the actuary referred to in section 92(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.

(4) Upon receipt of a report as contemplated in subsection (1), the Minister may request the Minister of Finance to adjust the national budget to make provision for an allocation to the Fund.¹¹

Contributions to Fund by legal practitioners

94. (1) (a) Subject to the provisions of this section, every practitioner, 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) such 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 78(3)(d); and

(ii) such other non-refundable amount as may be fixed by the Board from time to time.

(b) Any practitioner 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) A practitioner who applies under section 105 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), such single non-refundable contribution as the Board may determine.

(3) The Board may require a practitioner in respect of whom the Fund has been applied as a result of any of the circumstances referred to in section 78 to pay an additional annual contribution to the Fund of such amount and for such period as the Board may determine.

(4) (a) A practitioner 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 so to practise, give notice of such 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 practitioner 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 such 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

95. (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 forthwith 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) a total number of persons who made claims in terms of this Act;
- (b) the total number of legal practitioners 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

96. (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 such contract against liability to pay claims under this Act.

(2) A contract referred to in subsection (1) must be entered into in respect of legal practitioners referred to in section 104(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 such 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

97. (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 legal practitioners in respect of any claims which may arise from the professional conduct of such legal practitioners.

(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 legal practitioners to the extent and in the manner provided in such contract.

(3) The Board 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 as—

- (a) executor in the estate of a deceased person;
- (b) a trustee in an insolvent estate;
- (c) curator to the person or property in the case of a person who is unable to manage his or her own affairs; or

(d) in case of any other similar capacity, by any other person in such capacity where a legal practitioner acts as agent for the person concerned.

(4) The Board may levy premiums and fees for the provision of such 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

98. (1) No person has a claim against the Fund in respect of any theft contemplated in section 76, 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 such 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

99. (1) The Fund is not obliged to pay such 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 a legal practitioner, candidate legal practitioner or employee of any legal practitioner, must be instituted within one year of the date of a notification directed to such person or his or her legal representative by the Board, informing him or her that the Board rejects the claim to which such 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

100. (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 such payment, to all rights and legal remedies of the claimant against any legal practitioner or person in relation to whom the claim arose, or in the event of his or her death or insolvency or other legal disability, against any person having authority 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 on conviction liable to a fine or to imprisonment for a period not exceeding two years.

Claims may be charged against future revenue of Fund

101. (1) If the Fund at any time has insufficient assets to settle all claims and judgments, such 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 such 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

102. 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 99(4)

Preservation and disposal of records and documents in possession of Board

103. (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 such record or document be removed to some other place of custody or be destroyed or otherwise disposed of.

**CHAPTER 8
HANDLING OF TRUST MONIES**

Obligations of legal practitioner where money is entrusted to him or her by a client or any person

104. (1) Every legal practitioner 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 legal practitioner or person employed or supervised by a legal practitioner may receive or hold funds or property belonging to any person unless the legal practitioner 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 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 so rendered.

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

(6) A legal practitioner 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 such practitioner'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 a legal practitioner if such legal practitioner 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 a legal practitioner who practises in a justice centre.

Application for and issue of Fidelity Fund certificates

105. (1) A legal practitioner obliged in terms of section 104(1) to be in possession of a Fidelity Fund certificate must apply to the Council for such certificate in the prescribed form and manner.

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

(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 determination referred to in section 92(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 legal practitioners from paying the whole or part of the contribution; or
- (b) exempt a particular legal practitioner from paying the whole or part of the contribution after consideration of a written application from that legal practitioner, 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,

forthwith 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.

Legal practitioners obliged to hold Fidelity Fund certificates must open trust accounts

106. (1) Every legal practitioner referred to in section 104 must operate a trust account .

(2) Every trust account practice must keep a trust account at a bank in the Republic 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 with any bank for the purpose of investing therein any money deposited in the trust account of such 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 —

- (a) subsections (2) and (3)(a), be paid over to the Fund; or
- (b) subsection (4)(a), be paid over to the person referred to in that subsection.

Accounting

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

- (a) moneys received and paid on its own account;
- (b) any money received, held or paid on account of any person;
- (c) moneys invested in a trust account or other interest-bearing account referred to in section 106; 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 106 and subsection (1) are being complied with.

(b) If on such 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 106(3) and (4);
- (c) interest on such money;
- (d) any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which a legal practitioner 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) 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 such funds were deposited in the trust account practice’s trust account, be paid over to the Fund by the trust account practice: Provided that nothing in this subsection deprives the owner of such money of the right to claim such portion as he or she may prove an entitlement to.

(5) (a) A legal practitioner 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) Such legal practitioner or employee may not, subject to the provisions of any other law, refuse to produce such 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 by a disciplinary tribunal under section 60;
- (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 Legal Services 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 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

108. (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 legal practitioner, 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 a legal practitioner 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 such legal practitioner or trust account practice or other person.

Court may prohibit operation of trust account

109. A 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 such trust account, with such rights, duties and powers in relation thereto as the court may deem fit.

Appointment of curator *bonis* in respect of trust account

110. (1) If any legal practitioner, 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 legal practitioner or trust account practice, appoint a curator *bonis* to control and administer such account, with such rights, duties and powers as the Master may deem fit.

(2) Where the legal practitioner was practising in partnership or as a member of a company with another legal practitioner or other legal practitioners, 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 such account, with such rights, duties and powers as the Master may deem fit.

(4) The Master may only grant an application contemplated 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 such other decision as in its opinion the Master should have given.

(6) Nothing in this section or sections 108 and 109 may be construed as preventing any legal practitioner who was practising in partnership with a legal practitioner referred to in subsection (1), from operating on the trust account of the partnership.

Rights of banks in respect of trust accounts

111. (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 such account or with which such account is credited.

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

(2) Notwithstanding subsection (1), a bank at which a trust account practice keeps his or her or 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 such 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 any such 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 106, 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 such account at the date or dates stated by the Council.

CHAPTER 9¹²
CONTINGENCY FEES

Definitions

112. In this Chapter, unless the context otherwise indicates—

'contingency fees agreement' means any agreement referred to in section 113;

'day' means a court day;

'legal practitioner' means a legal practitioner practising with or without a Fidelity Fund Certificate;

'normal fees', in relation to work performed by a legal practitioner in connection with proceedings, means the reasonable fees which may be charged by such practitioner for such work, if such fees are taxed or assessed on an attorney/legal practitioner and own client basis, in the absence of a contingency fees agreement;

'proceedings' means any proceedings in or before any court of law or any tribunal or functionary having the powers of a court of law, or having the power to issue, grant or recommend the issuing of any licence, permit or other authorisation for the performance of any act or the carrying on of any business or other activity, and includes any professional services rendered by the legal practitioner concerned and any arbitration proceedings, but excludes any criminal proceedings or any proceedings in respect of any family law matter; and

'success fee' means the fee referred to in section 113(1)(b).

Contingency fees agreements

113. (1) Notwithstanding anything to the contrary in any law or the common law, a legal practitioner may, if in his or her opinion there are reasonable prospects that his or her client may be successful in any proceedings, enter into an agreement with such client in which it is agreed that the legal practitioner —

- (a) must not be entitled to any fees for services rendered in respect of such proceedings unless such client is successful in such proceedings to the extent set out in such agreement; and
- (b) may be entitled to fees equal to or, subject to subsection (2), higher than his or her normal fees, set out in such agreement, for any such services rendered, if such client is successful in such proceedings to the extent set out in such agreement.

(2) Any fees referred to in subsection (1)(b) which are higher than the normal fees of the legal practitioner concerned, must not exceed such normal fees by more than 100 per cent: Provided that, in the case of claims sounding in money, the total of any such success fee payable by the client to the legal practitioner, must not exceed 25 per cent of the total amount

awarded or any amount obtained by the client in consequence of the proceedings concerned, which amount must not, for purposes of calculating such excess, include any costs.

Form and content of contingency fees agreement

114. (1) (a) A contingency fees agreement must be in writing and in the form prescribed by the Minister, which must be published in the *Gazette*, after consultation with the Council/and legal practitioners.

(b) The Minister must cause a copy of the form referred to in paragraph (a) to be tabled in Parliament, before such form is put into operation.

(2) A contingency fees agreement must be signed by the client concerned or, if the client is a juristic person, by its duly authorised representative, and the legal practitioner practising with a Fidelity Fund Certificate representing such client and, where applicable, must be countersigned by the legal practitioner practising without a Fidelity Fund Certificate concerned, who must thereby become a party to the agreement.

(3) A contingency fees agreement must state—

- (a) the proceedings to which the agreement relates;
- (b) that, before the agreement was entered into, the client—
 - (i) was advised of any other ways of financing the litigation and of their respective implications;
 - (ii) was informed of the normal rule that in the event of his, her or it being unsuccessful in the proceedings, he, she or it may be liable to pay the taxed party and party costs of his, her or its opponent in the proceedings;
 - (iii) was informed that he, she or it will also be liable to pay the success fee in the event of success; and
 - (iv) understood the meaning and purport of the agreement;
- (c) what will be regarded by the parties to the agreement as constituting success or partial success;
- (d) the circumstances in which the legal practitioner's fees and disbursements relating to the matter are payable;
- (e) the amount which will be due, and the consequences which will follow, in the event of the partial success in the proceedings, and in the event of the premature termination for any reason of the agreement;
- (f) either the amounts payable or the method to be used in calculating the amounts payable;
- (g) the manner in which disbursements made or incurred by the legal practitioner on behalf of the client must be dealt with;

- (h) that the client will have a period of 14 days, calculated from the date of the agreement, during which he, she or it will have the right to withdraw from the agreement by giving notice to the legal practitioner in writing: Provided that in the event of withdrawal the legal practitioner must be entitled to fees and disbursements in respect of any necessary or essential work done to protect the interests of the client during such period, calculated on a legal practitioner and client basis; and
- (i) the manner in which any amendment or other agreements ancillary to that contingency fees agreement will be dealt with.

(4) A copy of any contingency fees agreement must be delivered to the client concerned upon the date on which such agreement is signed.

Settlement

115. (1) Any offer of settlement made to any party who has entered into a contingency fees agreement, may be accepted after the legal practitioner has filed an affidavit with the court, if the matter is before court, or has filed an affidavit with the Council, if the matter is not before court, stating—

- (a) the full terms of the settlement;
- (b) an estimate of the amount or other relief that may be obtained by taking the matter to trial;
- (c) an estimate of the chances of success or failure at trial;
- (d) an outline of the legal practitioner's fees if the matter is settled as compared to taking the matter to trial;
- (e) the reasons why the settlement is recommended;
- (f) that the matters contemplated in paragraphs (a) to (e) were explained to the client, and the steps taken to ensure that the client understands the explanation; and
- (g) that the legal practitioner was informed by the client that he or she understands and accepts the terms of the settlement.

(2) The affidavit referred to in subsection (1) must be accompanied by an affidavit by the client, stating—

- (a) that he or she was notified in writing of the terms of the settlement;
- (b) that the terms of the settlement were explained to him or her, and that he or she understands and agrees to them; and
- (c) his or her attitude to the settlement.

(3) Any settlement made where a contingency fees agreement has been entered into, must be made an order of court, if the matter was before court.

Client may claim review of agreement or fees

116. (1) A client of a legal practitioner who has entered into a contingency fees agreement and who feels aggrieved by any provision thereof or any fees chargeable in terms thereof may refer such agreement or fees to the Council.

(2) The Council may review any such agreement and set aside any provision thereof or any fees claimable in terms thereof if in its opinion the provision or fees are unreasonable or unjust.

Rules

117. The Council may make such rules it may deem necessary in order to give effect to the provisions relating to contingency fees in the Act.

Regulations

118. The Minister may make regulations prescribing further steps to be taken for the purposes of implementing and monitoring the provisions relating to contingency fees in the Act.

CHAPTER 10 GENERAL PROVISIONS

Recovery of costs by legal practitioner rendering free legal services

119. (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 a legal practitioner, costs become payable to such litigant or other person in terms of a judgment of the court or a settlement, or otherwise, such litigant or other person must be deemed to have ceded his or her rights to the costs to that legal practitioner or practice.

(2) (a) A litigant or person referred to in subsection (1) or the legal practitioner 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 such 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 legal practitioner or practice.

(b) Where notice has been given as contemplated in paragraph (a), the legal practitioner concerned may proceed in his or her own name, or the name of his or her

practice, to have such 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 legal practitioner actually incurred the costs of obtaining the services of the legal practitioner acting on his or her behalf in the proceedings or dispute concerned.

Senior Legal Practitioner

120. (1) Any person or organisation/The Council may request the Minister to confer upon a legal practitioner the status of Senior Legal Practitioner.

(2) Such request must be in a form and contain such information as the Minister may prescribe.

(3) The Minister must make a copy of such application available to—

- (a) the Judge President of the High Court having jurisdiction over the area in which the legal practitioner generally practices;
- (b) any registered voluntary association of which the legal practitioner is a member; and
- (c) any other person considered appropriate by the Minister,

and request his, her or its comments on the application.

(4) If, after consultation with the persons referred to in subsection (3), the Minister is satisfied that the legal practitioner concerned is, having regard to the nature of his or her skills, expertise and integrity as a legal practitioner, deserving of the status of Senior Legal Practitioner the Minister may—

- (a) confer such status upon that legal practitioner; or
- (b) recommend to the Judge President that he or she confer such status upon that legal practitioner.

(5) The Minister or the Judge President, as the case may be, must provide the Council with the name of the legal practitioner who has been conferred with the status of Senior Legal Practitioner.

(6) A legal practitioner upon whom the status of Senior Legal Practitioner has been conferred is entitled to use the letters “SLP” after his or her name.

Offences and penalties

121. (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 such person is so struck off or suspended.

(2) Any person who contravenes subsection (1), or sections 72(6)(c) is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

CHAPTER 11 REGULATIONS AND RULES

Regulations

122. (1) The Minister may make regulations relating to—

- (a) any matter which in terms of any provision of this Act is required to be or may be prescribed by regulation;
- (b) generally, all matters which he or she considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved, and the generality of this provision may not be limited by the preceding paragraph of this subsection.

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

Rules

123. (1) The Council may, by notice in the *Gazette*, make rules relating to—

- (a) the types of work-place training which constitute practical legal training for purposes of section 37;
- (b) the accreditation of courses in general legal practice as contemplated in section 44(a)(i);
- (c) the certification of persons qualified to supervise candidate legal practitioners as contemplated in section 36(2);
- (d) the qualifications for enrolment as a conveyancer as contemplated in section 14(2)(b);
- (e) the qualifications for enrolment as a notary as contemplated in section 14(2)(c);
- (f) the form on which a certificate of the Panel must be submitted to the Council in terms of the regulations prescribed in terms of section 30(3);
- (g) the manner in which a person may apply to the Council to be enrolled as a legal practitioner, paralegal practitioner, conveyancer or notary;
- (h) the manner in which an association or organisation must apply for recognition as contemplated in section 28(3), the recognition of such organisations and the conditions with which such organisations must comply with, to obtain recognition;
- (i) the rights, duties and powers of a curator *bonis* appointed in terms of section 110;
- (j) the time when, and the manner in which, any interest referred to in section 106(5)(a) must be paid to the Fund;

- (k) the certificate which must be endorsed on any document specified in the rules by any person preparing such document for or on behalf of any other person;
- (l) the books, records, certificates or other documents to be kept, maintained or issued by persons admitted and enrolled in terms of this Act, the inspection thereof by persons authorised to do so by the Council, and the circumstances and manner in which alterations may be effected thereto;
- (m) the information to be furnished to the Council by any person admitted and enrolled in terms of this Act who—
 - (i) commences or discontinues to practise as a legal practitioner, paralegal practitioner, conveyancer or notary;
 - (ii) takes up employment or ceases to be employed as a legal practitioner, paralegal practitioner, conveyancer or notary;
 - (iii) enters into or withdraws from a partnership or corporation of legal practitioners; or
 - (iv) while so practising, changes his or her business or residential address;
- (n) the investment of the money contemplated in sections 91(a) and 92(3);
- (o) the form in which, and the periods within which, notice must be given to the Council and the Board in respect of claims lodged against the Fund and the particulars thereof, and the conditions subject to which, and the extent to which, the Board may settle claims without recourse to legal proceedings;
- (p) the form of certificates to be issued to legal practitioners and of declarations, applications, notices and documents to be used in relation to any application or refusal of any application relating to the Fund;
- (q) the obtaining of evidence for the purposes of the Fund that any person has been admitted to practise or is still practising or has ceased to practise, or as to the reason why any person has discontinued practice, and generally for the obtaining of information which is considered necessary or desirable for the purposes of determining the merits of applications for Fidelity Fund certificates or matters related thereto;
- (r) the appointment, remuneration and dismissal of staff of the Council and the Board;
- (s) the opening of offices, and the regulation of the management and administration, of the Board, including the manner and form in which all agreements, deeds and documents must be drawn up and executed by, for or on behalf of the Board;
- (t) the power of the Board or any committee thereof to subpoena and examine under oath or affirmation any person whose evidence is deemed necessary to enable the Board or such committee to decide on the validity of any claim lodged against the Fund;
- (u) the forms contemplated in section 114;

- (v) any matter that is required or permitted to be prescribed by the Council in terms of this Act and any other matter for the better execution of this Act or in relation to any power, duty or function conferred or assigned upon or function imposed on it by this Act; and
- (w) generally, any matter which the Council deems necessary or expedient to prescribe in order to achieve the objects of this Act.

(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 comment 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 contemplated in subsection (2)(a), publish that rule without prior publication of a draft as contemplated in subsection (2), provided that the notice of publication states—

- (a) the reason why circumstances necessitated such publication without prior publication of a draft as contemplated 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 12 TRANSITIONAL PROVISIONS

Transitional Council

124. (1) A Transitional Council is hereby established consisting of the following members appointed by the Minister—

- (a) 12 legal practitioners of whom—
 - (i) eight are designated by the Law Society of South Africa;
 - (ii) three are designated by the General Council of the Bar of South Africa; and
 - (iii) one is to represent legal practitioners not represented by the Law Society of South Africa or the General Council of the Bar of South Africa;
- (b) one person designated by the National Community-Based Paralegal Association/National Alliance for the Development of Community Advice Offices;
- (c) one person who represents the interests of paralegals;
- (d) one teacher of law designated by the Society of Law Teachers of Southern Africa;

- (e) two persons who represent the interests of users of legal services;
- (f) one person who by virtue of his or her knowledge and experience will, in the opinion of the Minister promote the objects of the Council; and
- (g) one person designated by the Board, who will not have the right to vote at meetings and who may not be the chairperson.

(2) In making the appointments referred to in subsection (1)(a)(iii), (c), (e) and (f), the Minister must—

- (a) call for nominations in the *Gazette*;
- (b) have regard to—
 - (i) the objects of the Council;
 - (ii) the principle of openness and transparency; and
 - (iii) the principle of representivity, which includes representivity in relation to—
 - (aa) race and gender; and
 - (bb) regional/provincial representation.

(3) (a) The Minister may refer a designation made in terms of subsection (1)(a)(i) and (ii), (b), (d) and (g) back to the designator for reconsideration if, in his or her opinion, the requirement regarding representivity has not been met or the designated person is not a fit and proper person for appointment.

(b) If after such a referral the designating body designates the same person after reconsidering the matter, the Minister must appoint him or her.

(4) Unless the context indicates otherwise, the provisions of this Act relating to the Council, its members, substructures and staff, also apply in relation to the Transitional Council, its members, substructures and staff.

(5) The Transitional Council may exercise, carry out and perform any of the powers, duties and functions conferred or imposed upon or assigned to the Council in terms of this Act.

(6) Pending the promulgation of the regulations contemplated in section 53, the Minister may, on application and subject to—

- (a) the provisions referred to in section 56;
 - (b) any conditions imposed by the Minister; and
 - (c) the control and directions of the Council,
- allow the rendering of legal services to the public by paralegal practitioners.

Abolition of law societies and transfer of assets, rights, liabilities and obligations to Council

125. (1) Any law society which, immediately before the fixed date, existed under any law repealed by this Act, ceases to exist on the day immediately preceding the date of the first meeting of the Council, and all assets, rights, liabilities and obligations which, on that date, vested in any such existing society, immediately vest in the Council.

(2) Any agreement, deed, bond, certificate or other instrument to which an existing society is a party on the date referred to in subsection (1) or which affects such a society on that date, and whether or not such agreement, deed, bond, certificate or other instrument is of such a nature that the rights, liabilities and obligations acquired or incurred thereunder could be assigned prior to that date, has effect and is enforceable as if the Council is a party thereto or affected thereby instead of the existing society concerned, and every reference in any such agreement, deed, bond, certificate or other instrument to the existing society concerned must be construed as a reference to the Council.

(3) Any proceedings to which any existing society is a party and which proceedings have not been concluded on the date referred to in subsection (1), must be continued and concluded as if the Council is a party thereto in lieu of the existing society concerned.

(4) In respect of the transfer, hypothecation or lease of property or of an agreement or certificate or other instrument which is the subject of registration by virtue of a law, the competent officer of the appropriate registration authority must, upon the request of the Council, without payment of transfer duty, stamp duty or any other fee or charge, make such entry or endorsement or issue such new certificate or take such other action as may be required to give effect to the provisions of this section.

(5) The provisions of this Act shall not affect any legal proceedings in which the Law Society of South Africa, the General Council of the Bar or an existing law society is involved, and which are pending in any court of law immediately prior to the date of commencement of this Act, which proceedings must proceed in all respects until final disposal thereof, as if this Act had not been passed.

(6) (a) Every person who was in the service of the Law Society of South Africa, the General Council of the Bar or an existing society immediately before the commencement of this Act and who was then engaged in functions now vested in the Council must, as from the date of commencement of this Act, be transferred to the service of the Council.

(b) Every person so transferred must be regarded as being appointed in terms of section 6(2).

(c) If, for the purposes of this subsection, the question arises whether any person was engaged in functions now vested in the Council, that question must be decided by

the Legal Services Ombud or, if that person feels aggrieved by the decision, in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

(d) The remuneration and other terms and conditions of service of any person transferred as contemplated in paragraph (a), may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before the commencement of this Act and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including—

- (i) membership of a pension fund;
- (ii) membership of a medical aid scheme;
- (iii) employer contributions in connection with such membership;
- (iv) accrued pensionable service;
- (v) accrued leave benefits; and
- (vi) retirement at a specific age.

(e) Every person transferred as contemplated in paragraph (a) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the fixed date.

(f) Any proceedings against such a person which were instituted immediately before the fixed date, must be disposed of as if this Act had not been enacted.

Abolition of Fidelity Funds and transfer of assets, rights, liabilities and obligations to Legal Practice Fidelity Fund

126. (1) 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 fixed date 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 74(1).

(2) The provisions of section 125(2), (3) and (4) apply, where applicable, with the necessary changes to the Funds referred to in subsection (1) from the date on which those Funds cease to exist as contemplated in that subsection.

Transitional provisions in relation to Legal Practice Fidelity Fund Board of Control

127. (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 fixed date, continue to exist and the members of such Board of Control and any such committee, if any, continue to hold office as if such Board of Control was established or such committee was appointed, and the members, if any, of such board of control and such committee were appointed in terms of Part 2 of Chapter 7 of this Act, until the Board referred to in section 83(1) is established.

(2) At the date on which the Board referred to in section 82(1) is established—

- (a) all assets, rights, liabilities and obligations which, on the date immediately preceding the date of such establishment, vested in any of the Boards referred to in subsection (1)(a), (b) and (c), vest in the Board referred to in section (1); and
- (b) the provisions of section 125(2), (3) and (4) apply, where applicable, with the necessary changes in respect of the Boards of Control referred to in the said paragraphs.

Transitional provisions in relation to qualifications

128. (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,
- before the fixed date for the purpose of training persons to qualify as legal practitioners must be regarded as having been presented or approved pursuant to the provisions of sections 43(2)(a) and 44(a); and
- (b) any period of practical training undergone with an attorney or advocate before the fixed date must be regarded, for the purposes of section 36, as having been a period of practical legal training under supervision of a legal practitioner.

(2) Any person upon whom the degree *baccalaureus procurationis* was conferred by a university of the Republic, will be qualified to be enrolled as a legal practitioner 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

129. Any legal practitioner who is in terms of section 106(1) required to be in possession of a Fidelity Fund certificate and who, at the fixed date, was not in possession of such a certificate issued in terms of any law repealed by this Act, must, within 60 days after the fixed date, apply for such a certificate.

Existing advocates, attorneys, conveyancers and notaries

130. (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 fixed date, whether or not the admission or enrolment of any such person as an advocate, attorney, conveyancer or notary has been, or is subject to, any conditions, must be regarded as having been unconditionally admitted to practise and is authorized 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 authorized 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 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 advocates, roll of attorneys, roll of conveyancers and roll of notaries of such High Court and with particulars of the order of court whereby every such person was admitted to practise as an advocate, attorney, conveyancer or notary and of any order of court, if any, whereby any such person has been suspended from practice as an advocate, attorney, conveyancer or notary.

(3) Any disciplinary proceedings instituted against an attorney or advocate for an alleged breach of the code of professional ethics prior to the commencement of this Act must be continued and concluded in terms of the procedure determined in terms of Chapter 5 of this Act.

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

131. Any person who, immediately before the fixed date, was entitled to be admitted and enrolled as an advocate, attorney, conveyancer or notary will, after the fixed date, be entitled to be admitted and enrolled as such in terms of this Act.

Pending proceedings

132. (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 fixed date, 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 fixed date, must be continued and concluded as if such 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

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

- (a) an advocate, a counsel or an attorney, must be construed as a reference to a legal practitioner;
- (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; and
- (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.

Repeal of laws and savings

134. (1) Subject to subsection (2), the laws specified in Schedule 1 are hereby repealed to the extent indicated in the third column thereof.

(2) Any—

- (a) regulation made under any law referred to in subsection (1) and in force immediately before the fixed date; and

(b) rule, 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 fixed date 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

135. This Act is called the Legal Practice Act, 2009, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

DRAFT WORKING BILL

SCHEDULE 1
(Laws repealed by section 134)

| 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 (Venda) | Admission of Advocates Act, 1964 | The whole |
| 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 |

¹ This document is a working draft and as such the following should be borne in mind: (a) the Minister has not approved of this document; (b) it was drafted bearing in mind that several policy decisions must still be taken; (c) that it was drafted whilst the Department is still in discussions with the profession; and (d) the document consolidates the previous versions of the Bill, and builds on subsequent discussions. The document contains differing options in many instances.

² In relation to this provision and several others, the role of the Minister requires further discussion.

³ These provisions are new and appear neither in the LSSA draft or the Task Team draft. It extends the power of the Council and gives it a greater say in regard to education in law at university level.

⁴ Consideration of a training framework for the legal profession is still under discussion.

⁵ The role of paralegal practitioners must be fully debated. Consideration needs to be given to the impact of regulation on paralegals servicing community-based advice offices. Consideration must be given to the involvement of NADCAO in discussions.

⁶ This is a matter for further discussion with the profession.

⁷ Should the Council have structures per provinces as we know it, or regionally?

⁸ Vocational training for legal practitioners practising without a Fidelity Fund Certificate has not been catered for. This must be addressed.

⁹ These provisions have been inserted and modified from the current Attorney's Act. The LSSA Bill and the Task Team Bill say very little about these matters, and the view is held that these issues (as in the Attorneys Act) are important and should be included in the Bill.

¹⁰ We need to consider important issues relating to the structure and operation of the Ombud and his or her office. As an independent institution, what role will the profession and its structures have on the office of the Ombud? What should the role of the Minister be? The question of funding of the Ombud is also important.

¹¹ A policy decision on the allocation of public funds to the Fund needs to be taken.

¹² The LSSA Bill does not address this issue. The Task Team Bill copies Act 66/1997, with some small changes. In this Bill the Act as it is currently, is reflected. Changes were made to fit the current Bill