



OPENING AND OPERATING AN ATTORNEY LAW PRACTICE IN SOUTH AFRICA

What you need to know

LAW SOCIETY OF SOUTH AFRICA

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1. PURPOSE OF THIS BROCHURE

The brochure is aimed at explaining the key formal requirements pursuant to the Legal Practice Act of 2014 (the LPA) which a legal practitioner as an attorney must comply with to open and operate a law practise for his or her account.

In summary, before an attorney can do so, he or she must:

- 1) Be admitted as such by the High Court.
- 2) Be enrolled to practise by the South African Legal Practice Council (LPC).
- 3) Operate a trust account.
- 4) Be in possession of a Fidelity Fund certificate.
- 5) Not receive or hold funds or property belonging to any person unless in possession of a Fidelity Fund certificate.
- 6) Keep the required accounting records for the trust account practice.
- 7) Have completed a legal practice management course approved by the LPC, if practising for the first time.

The brochure must not be interpreted as legal advice and not all exceptions to the general requirements are addressed in this brochure.

2. THE LEGAL PRACTICE COUNCIL

One of the purposes of the LPA is to create a single unified statutory body to regulate the affairs of all legal practitioners and all candidate legal practitioners in pursuit of the goal of an accountable, efficient and independent legal profession.

Pursuant to this, the LPC has been established as a body corporate in terms of section 4 of the LPA with full legal capacity and jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in the LPA. The LPC has the mandate to, amongst other:

- a) regulate all legal practitioners and all candidate legal practitioners;
- b) preserve and uphold the independence of the legal profession, and

- c) determine, enhance and maintain appropriate standards of professional practice and ethical conduct of all legal practitioners and all candidate legal practitioners.

The LPC may also delegate any of its powers and functions to the Provincial Councils, but the ultimate authority to regulate legal practitioners, vests with the LPC.

3. PRACTISING AS A LEGAL PRACTITIONER

Section 24 (1) of the LPA provides that a person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this LPA.

The word 'practise' is not defined in the LPA.

In the matter of *NW Civil Contractors CC vs Anton Ramaano Inc and Another*, Limpopo Local Division, Thohoyandou (Case no 993/2016) judgment handed down 14 May 2018, AML Phatudi J, stated:

"The word practise in the context of the legal practitioner means to carry out or perform (or purports to act) or execute the mandate as instructed by his/her client."

In the matter of *South African Legal Practice Council v Chalom* (18445/2020) [2020] ZAGPPHC 663 (26 November 2020), Mudau, J stated that:

"A legal practitioner is expected to scrupulously observe and comply with the provisions of the Act, the Rules promulgated thereunder and the Code of Conduct."

Mudau, J, further observed that: "The courts and the LPC have a duty to act where a legal practitioner's conduct falls short of what is expected and to curb the erosion of values in the profession. The protection of the public goes hand in hand with a court's obligation to protect the integrity of the courts and the legal profession. Public confidence in the legal profession and in the courts is undoubtedly undermined when the strict requirements for membership to the profession are weakened."

An attorney who intends to practise for his or her own account must only do so once all the relevant requirements have been complied with and, after having done so, continue to comply with the ongoing strict regulatory requirements.

Who are eligible to be legal practitioners?

The phrase 'legal practitioner' is defined as an advocate or attorney:

- a) Admitted by the High Court in terms of section 24; and
- b) Enrolled by the LPC in terms of sections 30.

The LPA recognises the following legal practitioners:

- attorneys (including notaries and conveyancers), and
- advocates

Admission by the High Court in terms of section 24 of the LPA

Section 24 (2) of the LPA provides that the High Court must admit to practise and authorise to be enrolled as a legal practitioner, conveyancer or notary or any person who, upon application, satisfies the Court that he or she:

- a) is duly qualified as set out in section 26 of the LPA;
- b) is a South African citizen; or permanent resident in South Africa;
- c) is a fit and proper person to be so admitted; and
- d) has served a copy of the application on the LPC, containing the information as determined in the rules within the time period determined in the rules.

Section 24 (3) sets out the procedure in relation to the making of regulations in respect of admission and enrolment to determine the right of foreign legal practitioners to appear in South African courts and to practise as legal practitioners in South Africa.

Minimum qualifications and practical vocational training Section 26 of the LPA

A person can only be admitted and enrolled as a legal practitioner if he or she has:

- a) satisfied all the requirements for the LLB degree obtained at any South African university registered in the Republic, as defined, or
- b) satisfied all the requirements for an equivalent law degree obtained in a foreign country, which is recognised by South African Qualifications Authority, and
- c) undergone all the practical vocational training requirements as a candidate legal practitioner prescribed by the Minister of Justice and Correctional Services, including; community service and a legal practice management course for candidate legal practitioners, as defined, and
- d) passed a competency-based examination or assessment for candidate legal practitioners as may be determined in the Rules.

Attorneys may be enrolled as conveyancers or notaries, if they respectively passed a competency-based examination or assessment of conveyancers/notaries as determined in the Rules by the LPC.

It should be kept in mind that a person who is permanently resident in South Africa and has satisfied all the requirements for a law degree obtained in a foreign country, which:

- is equivalent to the LLB degree;
 - is recognised by the South African Qualifications Authority; and
 - complies with the other admission requirements, including practical vocational training requirements,
- will qualify to be admitted and enrolled as a 'legal practitioner'.

Enrolment with the LPC in terms of section 30 of the LPA

Section 30 (1) (a) of the LPA provides that a person duly admitted by the High Court and authorised to be enrolled to practise as a legal practitioner must apply to the LPC in the manner determined in the rules, for the enrolment of his or her name on the Roll.

In practice, the application pursuant to section 24 (2) of the LPA is made simultaneously with the lodgement of an application in terms of sections 30(1)(a)

of the Act with the LPC, through the Provincial Council where the applicant intends to practise.

Affidavit:

The application for enrolment must be in writing and supported by an affidavit setting out, amongst other, the following with supported information:

- 1) Confirmation of the jurisdiction of the Court;
- 2) The applicant's full names, date of birth, identity number and residential address;
- 3) Confirmation that the applicant is a South African citizen or is a permanent resident in South Africa;
- 4) Confirmation that the applicant has satisfied all the requirements for a degree referred to in section 26(1) of the LPA after pursuing for that degree a course of study referred to in that section;
- 5) A statement that the applicant intends to be enrolled and to practise as an attorney, or
- 6) The physical address of the applicant's main office and of every branch office and of every building at and from which he or she practises, and its postal address, and telephone numbers, mobile telephone numbers, fax numbers, email addresses and other electronic communication contact particulars, if any;
- 7) Whether the applicant conducts practise for his or her own account and if so, whether alone or in partnership (stating the full names of his or her partners) or as a member of a commercial juristic entity (stating the full names of his or her comembers); or as an employee;
- 8) The name under which the firm of which he or she is the proprietor or a member, or by which he or she is employed, conducts practise;
- 9) Confirmation that the applicant had no pecuniary interest in any law practise and that he or she held no other position than that of candidate legal practitioner during the period of service under the contract of practical vocational training or supervision, or proof that the applicant had such pecuniary interest or held such other position with the prior written approval of the LPC;
- 10) Confirmation that the applicant has undergone all the prescribed practical vocational training requirements as a candidate legal practitioner, referred to in section 26(1)(c) of the LPA;

- 11) Confirmation that the applicant has passed the competency-based examination or assessment for candidate legal practitioners, referred to in section 26(1)(d) of the LPA;
- 12) When applicable, confirmation that the applicant has complied with the requirements for community service;
- 13) If a period of more than one year has elapsed between the date of completion of the practical vocational training contract and the date of the application, a statement as to the activities of the applicant during that period; and
- 14) Confirmation that the applicant is a fit and proper person to be admitted, including a prescribed statement pertaining to previous criminal convictions and pending criminal investigations.

Where the applicant has served as candidate legal practitioner, his or her principal must also provide a statement, as required under the Rules.

Supporting documentation:

Copies of the following documents must, amongst other, be attached to the applicant's founding affidavit and must be certified as being true copies of the originals by a notary public or by a commissioner of oaths:

- 1) Applicant's identity document;
- 2) If any discrepancy exists with reference to the applicant's surname on the documents, a marriage certificate or other proof to reflect the reason for the discrepancy;
- 3) The applicant's degree certificate or certificates;
- 4) The applicant's relevant practical vocational training contract;
- 5) Written confirmation from the LPC confirming that the contract of practical vocational training has been registered with the LPC;
- 6) Where applicable, an agreement relating to the cession of the contract of practical vocational training and written confirmation from the LPC that the cession of the contract has been registered;
- 7) The applicant's attendance report in respect of a practical legal training course approved by the LPC.

The original and two copies of the application must lie for inspection with the LPC for a period of not less than one month. The application must be properly prepared and bound with an index, all pages of the application must be paginated at the top

right hand corner of every page, and all attachments must be clearly marked when the application is served on the LPC.

The LPC may require that the information referred under Rule 17 be submitted in a form to be determined by the LPC. The application must be accompanied by proof of payment of the fee payable.

4. FIDELITY FUND CERTIFICATES

Section 84(1) of the LPA provides that an attorney who practises or is deemed to practise for his or her own account either alone or in partnership; or as a director of a practice which is a juristic entity, or an advocate who renders legal services directly to the public – must be in possession of Fidelity Fund certificate.

Section 84(2) provides that no legal practitioner referred above, or person employed or supervised by that 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. This restriction applies to a deposit taken on account of fees or disbursements in respect of legal services to be rendered.

The LPC may withdraw a Fidelity Fund certificate and obtain an interdict against a legal practitioner if he or she fails to comply with the LPA or acts unlawfully or unethically.

Trust Accounts

Attorneys who are required to be in possession of a Fidelity Fund certificate:

Must:

- a) annually apply to the LPC for such a certificate, in terms of the Rules,
- b) operate a trust account and keep a trust account at a bank with which the Fidelity Fund has made an arrangement as provided for in the LPA,
- c) deposit in the bank account, as soon as possible after receipt thereof, money held by such practice on behalf of any person, and
- d) keep proper accounting records containing particulars and information for the trust account practice, as required in terms of the LPA.

May:

- a) invest in a separate trust savings account or other interest-bearing account any money deposited in the trust account pursuant to the provisions of the LPA, and
- b) take a deposit on account of fees or disbursements in respect of legal services to be rendered.

In the matter of *South African Legal Practice Council v Chalom* (18445/2020) [2020] ZAGPPHC 663 (26 November 2020), the Court emphasised that: 'In terms of section 93 (8) of the [LPA], "any person who contravenes sections 84(1) or (2) or section 34, in rendering legal services— (a) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment'."

5. PRACTICE MANAGEMENT COURSE

The legal practitioner who, for the first time, practises as such, must, within the period and after payment of the fee determined by the LPC in the Rules, complete a legal practice management course approved by the LPC determined in the rules.

6. CONCLUSION

In the matter of *NW Civil Contractors CC vs Anton Ramaano Inc and Another*, , AML Phatudi J, reiterated that: "All attorneys practising in South Africa were reminded during 2016 through an article published in *De Rebus* to apply for their Fidelity Fund Certificates."

Given that the *De Rebus* is distributed to all admitted attorneys in South Africa, the Phatudi J concluded that: "The attorney must have received or is reasonably be expected to have received the *De Rebus*. The attorney must have read or is reasonably expected to have read the article. The article brought to the fore of the admitted attorneys what was expected of them in order to secure a valid Fidelity Fund Certificate."