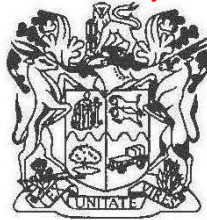


Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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CAPE TOWN, 14 JUNE 1989

KAAPSTAD, 14 JUNIE 1989

No. 11939

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1200.

14 June 1989

No. 1200.

14 Junie 1989

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 87 of 1989: Attorneys Amendment Act, 1989.

No. 87 van 1989: Wysigingswet op Prokureurs, 1989.

Act No. 87, 1989

ATTORNEYS AMENDMENT ACT, 1989

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Attorneys Act, 1979, so as to replace the designation "articled clerk" with "candidate attorney"; to redefine "building society"; to define "trust account"; to make other provision relating to the engagement and service of candidate attorneys; to further regulate the admission and readmission of attorneys and the removal of attorneys from the roll; to change the name of the Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund; to make further provision relating to the convening of meetings of the board of control of the said fund; to authorize the said board of control to appoint committees; to further regulate payments from the said fund; to extend the powers of the councils of law societies; to further regulate the keeping of a trust account by a practising practitioner; to increase various maximum fines; and to rectify certain incorrect or obsolete references; to amend the Magistrates' Courts Act, 1944, so as to make other provision in relation to the appearance of candidate attorneys in magistrates' courts; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 1 June 1989.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 53 of 1979

1. Section 1 of the Attorneys Act, 1979 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the deletion of the definition of "articled clerk";
- (b) by the substitution for the definition of "board of control" of the following definition:
- "board of control" means the Attorneys **[Notaries and Conveyancers]** Fidelity **[Guarantee]** Fund Board of Control referred to in section 27;";
- (c) by the substitution for the definition of "building society" of the following definition:
- "building society" means—
- (a) a mutual building society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), and finally registered or deemed to be registered as a permanent building society in terms of section 5 of that Act; or
- (b) a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 82 of 1986), and finally registered as a building society in terms of section 18 of that Act;";

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- (d) by the insertion after the definition of "building society" of the following definition:
 "candidate attorney" means any person bound to serve under articles of clerkship;"
- (e) by the substitution for the definition of "fund" of the following definition: 5
 "fund" means the Attorneys [Notaries and Conveyancers] Fidelity [Guarantee] Fund referred to in section 25;"
- (f) by the substitution for the definition of "getrouheidswaarborgsertifikaat" in the Afrikaans text of the following definition:
 "[getrouheidswaarborgsertifikaat] 'getrouheidsfondssertifikaat' 'n sertifikaat ingevolge artikel 42 uitgereik;" 10
- (g) by the substitution for the definition of "principal" of the following definition:
 "principal", in relation to a [clerk under articles of clerkship] candidate attorney, means the attorney who is being served [in terms of] by such 15
 candidate attorney under articles of clerkship, and, in relation to a former candidate attorney referred to in section 8 (4), means the practitioner concerned so referred to;" and
- (h) by the insertion after the definition of "Territory" of the following definition: 20
 "trust account", in relation to a practising practitioner, means an account comprising—
 (a) that practitioner's trust banking account referred to in section 78 (1); and
 (b) any trust savings or other interest-bearing account referred to in 25
 section 78 (2) or (2A) opened by that practitioner;"

Substitution of section 3 of Act 53 of 1979, as amended by section 2 of Act 108 of 1984

2. The following section is hereby substituted for section 3 of the principal Act:

"By whom candidate attorneys may be engaged

3. (1) **[An articulated clerk]** A candidate attorney shall only be engaged or 30
 retained by a person practising the profession of attorney—
 (a) on his own account; or
 (b) as a partner in a firm of attorneys; or
 (c) as a member of a professional company; or
 (d) as State Attorney; or 35
 (e) as **[one of the four most senior professional assistants]** Deputy State Attorney, Senior Assistant State Attorney or Assistant State Attorney in the office of the State Attorney **[at Pretoria]** or any branch thereof; **[or]** and—
[(f)] as professional assistant in charge of any branch of the said office; or 40
 (g) as one of the two most senior professional assistants to such professional assistant in charge of such branch; or
 (h) in the case of the Johannesburg branch of the said office, as one of the four most senior professional assistants to the professional assistant in charge of that branch; and— 45
 (i) who has—
 (i) if he is an attorney so practising on his own account or as a partner in a firm of attorneys or as a member of a professional company, so practised for a period of three years or periods of three years in the aggregate during the preceding four years; 50
 (ii) if he is the State Attorney or any **[professional assistant]** 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 **[three]** four years immediately prior to taking 55
 such **[clerk]** candidate attorney under articles.

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(2) Service by any **[articled clerk]** candidate attorney to any attorney while such attorney is not practising the profession as referred to in subsection (1), shall not be deemed to be good or sufficient service for the purposes of this Act.

(3) An attorney shall at no time have more than three **[articled clerks]** candidate attorneys under articles: Provided that—

(a) on the death or retirement from practice of any attorney, any of his surviving or remaining partners, or any member of the professional company of which he was a member;

(b) where an attorney has been debarred under section 72 (1) (a) (iii) from continuing with a contract of articles, any of his partners or any other member of the professional company of which he is a member, may take cession of the articles of any **[clerk]** candidate attorney articled to such attorney, although the cessionary will then have more than three **[articled clerks]** candidate attorneys in his employment.”.

Amendment of section 5 of Act 53 of 1979

3. Section 5 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The secretary of the society concerned shall, on payment of the fees prescribed under section 80, examine any articles lodged with him and shall, if he is satisfied that the articles are in order and that the council has no objection to the registration thereof, on payment of the fees so prescribed register such articles and shall advise the attorney and the **[clerk]** candidate attorney concerned of such registration in writing by certified post.”.

Substitution of section 6 of Act 53 of 1979

4. The following section is hereby substituted for section 6 of the principal Act:

“Supervision over candidate attorney

6. (1) Without derogating from the provisions of section 10, any **[articled clerk]** candidate attorney shall during the whole term of service specified in the articles of clerkship, serve—

(a) in the office of his principal under his direct personal supervision or under that of an attorney who is a partner or manager of his principal; or

(b) in the case of a **[clerk]** candidate attorney articled to the State Attorney or to a member of his professional staff, 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 professional staff.

(2) For the purposes of subsection (1) ‘office’ shall not include a branch office which is under the control of an attorney who is not entitled to have a **[clerk]** candidate attorney under articles.”.

Substitution of section 7 of Act 53 of 1979, as amended by section 1 of Act 76 of 1980

5. The following section is hereby substituted for section 7 of the principal Act:

“Absence of candidate attorney

7. (1) Subject to the provisions of subsection (2), **[an articled clerk]** a candidate attorney may, with the consent of his principal, absent himself

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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.

- (2) (a) A court may on the application of **[an articted clerk]** a candidate attorney in any case— 5
- (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, 10
grant an order authorizing leave of absence from office for the period in question, if the court is satisfied that the principal and the society concerned received due notice of the application and that sufficient cause for the absence from office exists or existed, as the case may be. 15
- (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, the period in excess of thirty working days shall be added to the period for which the **[articted clerk]** candidate attorney is bound to serve under articles. 20

(4) Notwithstanding the provisions of section 6, one half of any period of absence from the office of his principal by **[an articted clerk]** a candidate attorney as a result of training undergone by him in the South African Defence Force in terms of section 3 of the Defence Act, 1957 (Act No. 44 of 1957), shall, subject to a maximum period of three months, be deemed to have been served under such articles of clerkship. 25

(5) Notwithstanding the provisions of section 6, any period of absence not exceeding 6 months of **[an articted clerk]** a candidate attorney from the office of his principal for the purpose of attending a training course approved by the society concerned, shall, if that **[articted clerk]** candidate attorney has completed that course to the satisfaction of that society, be deemed to have been served under articles of clerkship. 30

(6) Notwithstanding the provisions of section 6, any period of absence not exceeding 12 months of a candidate attorney from the office of his 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 attorney who is entitled to engage a candidate attorney in terms of section 3, shall, provided the secretary of the society where the articles concerned have been registered has approved such service in advance in writing, be deemed to have been served by the candidate attorney concerned under articles of clerkship with his principal.” 35
40

Substitution of section 8 of Act 53 of 1979, as amended by section 1 of Act 56 of 1983 and section 4 of Act 108 of 1984 45

6. The following section is hereby substituted for section 8 of the principal Act:

“Appearance of candidate attorney in court and before other institutions

8. (1) Any **[articted clerk]** candidate attorney who—

- (a) was admitted as an advocate by any division of the Supreme Court or is entitled to be so admitted; or 50
- (b) has satisfied all the requirements for the degree referred to in paragraph (a) of section 2 (1) or for a degree or degrees referred to in paragraph (aA) of that section in respect of which a certification in accordance with that paragraph has been done **[and has served at least one year under his articles]**, 55

shall be entitled to appear in any court, other than any division of the Supreme Court **[or the court of a regional division established under section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), or an Appeal Court for Commissioners’ Courts constituted under section 13 of the Blacks Administration Act, 1927 (Act No. 38 of 1927), or a Divorce** 60

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Court established under section 10 of the Blacks Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929)], and before any board, tribunal or similar institution in or before which his principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearances as if he himself had appeared; Provided that such a candidate attorney shall not be 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), or a Divorce Court established under section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929), unless he was so admitted as

- (i) has previously practised as an advocate for at least one year; or
- (ii) has served for at least one year under his articles; or
- (iii) has at least one year's experience as a state advocate, state prosecutor or magistrate.

[(2) The principal of any clerk referred to in subsection (1) shall pay to the clerk a salary of not less than R50 per month from the date on which the clerk becomes entitled to appear in court.]

(3) The secretary of the society concerned shall, upon the written application of the principal of any [clerk] candidate attorney referred to in subsection (1) and upon the payment of the fees prescribed under section 80 (bA), issue to such [clerk] candidate attorney a certificate that he complies with the relevant provisions of subsection (1).

(4) (a) Any candidate attorney who is entitled to appear as contemplated in subsection (1), shall at the expiry of his articles, and provided he remains in the employ of the attorney who was his principal immediately before such expiry, remain so entitled until he is admitted as an attorney, but not for longer than six months.

(b) The provisions of section 6 shall apply *mutatis mutandis* in respect of a former candidate attorney referred to in paragraph (a).

(5) In the event of the death, mental illness, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the roll or discontinuance of practice of the attorney who was the principal of a former candidate attorney referred to in subsection (4) immediately before the expiry of his articles, such former candidate attorney shall with the written permission of the secretary of the society of the province in which the candidate attorney served under articles, be entitled to take service with any other attorney and to appear as contemplated in subsection (4) under the supervision of that attorney.”.

Substitution of section 9 of Act 53 of 1979

7. The following section is hereby substituted for section 9 of the principal Act:

“Restriction of pecuniary interests of candidate attorneys

9. (1) **[An articed clerk]** A candidate attorney shall not have any pecuniary interest in the practice and service of an attorney and shall not, without the prior written consent of the council of the society of the province in which he performs service under the articles, hold or occupy any office or engage in any other business other than that of **[articed clerk]** candidate attorney.

(2) If any **[articed clerk]** candidate attorney contravenes the provisions of subsection (1), the articles shall be void *ab initio* and service rendered thereunder shall be ineffectual unless the court on good cause shown otherwise directs.”.

Amendment of section 10 of Act 53 of 1979

8. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

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- “(1) Articles may with the consent of a principal and the **[clerk]** candidate attorney concerned be ceded to any other principal willing to accept such cession.”;
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) The society concerned may in the event of the death, mental illness, 5
 insolvency, conviction for crime, imprisonment for debt, suspension,
 striking off the roll or discontinuance of practice of the principal under
 whom **[the clerk]** a candidate attorney is serving or the debarring of such
 principal from engaging or continuing to engage a candidate attorney, or
 any other cause, direct that the articles concerned be ceded to any other 10
 principal willing to accept such cession, and all service completed under the
 ceded articles shall be effectual for the purposes of this Act.”;
- (c) by the substitution for subsection (3) of the following subsection:
 “(3) Articles may be ceded under subsection (2) notwithstanding the fact
 that the principal who accepts the cession will, as a result of that 15
 acceptance, have more than three **[articled clerks]** candidate attorneys in
 his employment.”;
- (d) by the substitution for subsection (4) of the following subsection:
 “(4) An agreement whereby articles are ceded shall within two months of
 the date on which the services of the **[articled clerk]** candidate attorney 20
 concerned have been terminated with the cedent, or within such further
 period as the court may for good cause allow, be lodged with the society of
 the province wherein service under the said articles so ceded is to be
 performed, by the cessionary together with affidavits—
- (a) by the cedent stating whether the provisions of this Act relating to 25
 service under articles of clerkship have been complied with during the
 whole term of service during which the **[articled clerk]** candidate
 attorney concerned was in his service and the date on which the
[articled clerk] candidate attorney terminated his services with him;
 and 30
- (b) by the cessionary stating the date on which the said **[clerk]** candidate
 attorney assumed duty with him.”; and
- (e) by the substitution in subsection (5) for the words following on paragraph
 (b) of the following words:
 “and shall advise the attorney and the **[articled clerk]** candidate 35
 attorney concerned of such registration in writing by certified post.”.

Amendment of section 11 of Act 53 of 1979, as amended by section 5 of Act 108 of 1984

9. Section 11 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) If articles of clerkship are for any reason cancelled, abandoned or 40
 ceded, the attorney to whom **[such clerk]** the candidate attorney concerned
 is articled at that time shall forthwith in writing notify the secretary of the
 society of such cancellation, abandonment or cession.”.

Amendment of section 13 of Act 53 of 1979, as amended by section 2 of Act 76 of 1980, section 1 of Act 60 of 1982, section 2 of Act 56 of 1983 and section 6 of Act 108 of 1984 45

10. Section 13 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) If any person has not served regularly as **[an articled clerk]** a
 candidate attorney, the court, if satisfied that such irregular service was
 occasioned by sufficient cause, that such service is substantially equivalent 50
 to regular service, and that the society concerned has had due notice of the
 application, may permit such person, on such conditions as it may deem fit,
 to apply for admission as an attorney as if he had served regularly under
 articles.”; and
- (b) by the substitution for subsection (3) of the following subsection: 55

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“(3) The court may, on the application of **[an articed clerk]** a candidate attorney who has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2 (1), or for a degree or degrees referred to in paragraph (aA) or (cA) of that section in respect of which a certification in accordance with those respective paragraphs has been done, or is entitled to be admitted as an advocate, and subject to such conditions as the court may impose, order that the whole or any part of the period served by that **[clerk]** candidate attorney under articles before he satisfied such requirements or became so entitled, shall, for the purpose of his admission and enrolment as an attorney, be regarded as having been served after and under articles entered into after he satisfied such requirements or became so entitled.”.

Amendment of section 15 of Act 53 of 1979, as substituted by section 7 of Act 108 of 1984

11. Section 15 of the principal Act is hereby amended by the insertion after subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph: “(ivA) during his term of service under articles or after the expiry of his articles, has attended a training course approved by the society of the province in which he completed his service under articles, and has completed such training course to the satisfaction of that society;”.

Amendment of section 22 of Act 53 of 1979, as amended by section 4 of Act 76 of 1980 and section 9 of Act 108 of 1984

12. Section 22 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraphs, the existing subsection becoming paragraph (a): “(b) Any such process may, if the court so orders, be so published in a form as near as may be in accordance with Form 1 (Edictal Citation) of the First Schedule to the Supreme Court Rules. (c) Any process referred to in paragraph (b), shall before the publication thereof be approved and signed by the registrar concerned.”.

Substitution of heading to Chapter II of Act 53 of 1979

13. The following heading is hereby substituted for the heading to Chapter II of the principal Act: “**FIDELITY [GUARANTEE] FUND**”.

Substitution of section 25 of Act 53 of 1979

14. The following section is hereby substituted for section 25 of the principal Act: “**Continued existence of Fidelity Fund**”

25. The fund established by section 8 of the Attorneys’ Admission Amendment and Legal Practitioners’ Fidelity Fund Act, 1941 (Act No. 19 of 1941), shall, notwithstanding the provisions of section 86, continue to exist under the name the Attorneys **[Notaries and Conveyancers]** Fidelity **[Guarantee]** Fund.”.

Substitution of section 26 of Act 53 of 1979, as substituted by section 3 of Act 60 of 1982

15. The following section is hereby substituted for section 26 of the principal Act:

“**Purpose of fund**”

26. Subject to the provisions of this Act, the fund shall be applied for the purpose of reimbursing persons who may suffer pecuniary loss as a result of—

(a) theft committed by a practising practitioner, his **[clerk]** candidate attorney or his employee, of any money or other property entrusted by or on behalf of such persons to him or to his **[clerk]** candidate attorney or employee in the course of his practice or while acting

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- 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; and
- (b) theft of money or other property entrusted to an employee referred to in paragraph (cA) of the definition of 'estate agent' in section 1 of the Estate Agents Act, 1976 (Act No. 112 of 1976), or an attorney or **[clerk]** candidate attorney referred to in paragraph (d) of the said definition, and which has been committed by any such person under the circumstances contemplated in those paragraphs, respectively, and in the course of the performance—
- (i) in the case of such an employee, of an act contemplated in the said paragraph (cA); and
- (ii) in the case of such an attorney or **[clerk]** candidate attorney, of an act contemplated, subject to the proviso thereof, in the said paragraph (d)."

Amendment of section 27 of Act 53 of 1979

15

16. Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The fund shall vest in and be administered by a board of control to be known as 'The Attorneys **[Notaries and Conveyancers]** Fidelity **[Guarantee]** Fund Board of Control'."

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Substitution of section 32 of Act 53 of 1979

17. The following section is hereby substituted for section 32 of the principal Act:

"Meetings of board of control

32. The board of control shall meet at such times and places as it or its chairman may determine from time to time."

25

Insertion of section 34A in Act 53 of 1979

18. The following section is hereby inserted in the principal Act after section 34:

"Committees of board of control

34A. (1) (a) The board of control may appoint one or more committees to assist it in the carrying out of its duties, the performance of its functions and the exercise of its powers, may at any time increase or reduce the membership of any such committee and may fill any vacancy on any such committee.

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(b) The board of control may designate one of the members of a committee appointed by it in terms of paragraph (a) as chairman of that committee and, if no such designation is made, the members of that committee may from among their number elect a chairman.

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(2) The board of control may assign to a committee appointed by it in terms of subsection (1), such of its powers as it may deem fit, but shall not be divested of any power which it may have assigned to a committee, and may amend or withdraw any decision of any such committee.

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(3) The board of control may require any committee appointed in terms of subsection (1) either generally or specially to enquire into and to advise the board of control on any matter in connection with the duties, functions or powers of the board of control."

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Substitution of section 37 of Act 53 of 1979

19. The following section is hereby substituted for section 37 of the principal Act:

“Banking account

37. Money in the fund shall, pending the investment or application thereof in terms of this Act, be paid into an account at a banking institution or building society to the credit of an account to be known as ‘The Attorneys [Notaries and Conveyancers] Fidelity [Guarantee] Fund Account’.”. 5

Amendment of section 45 of Act 53 of 1979, as amended by section 3 of Act 80 of 1985

20. Section 45 of the principal Act is hereby amended— 10

(a) by the insertion after paragraph (b) of subsection (1) of the following paragraph:

“(bA) in the discretion of the board of control, the costs or any portion thereof incurred by a claimant in exhausting the legal remedies contemplated in section 49 (1);” 15

(b) by the substitution for paragraph (g) of subsection (1) of the following paragraph:

“(g) in the discretion of the board of control, the bank charges or any portion thereof paid by a practitioner in connection with the keeping of [a] his trust account [referred to in section 78];” 20

(c) by the deletion of paragraph (a) of the proviso to subsection (2).

Amendment of section 49 of Act 53 of 1979

21. Section 49 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any action against the fund in respect of any loss suffered by any person as a result of any theft committed by any practitioner, his [clerk] candidate attorney or his employee, shall be instituted within one year of the date of a notification directed to such person or his legal representative by the board of control informing him that the board of control rejects the claim to which such action relates.”. 30

Amendment of section 55 of Act 53 of 1979, as substituted by section 1 of Act 116 of 1981

22. Section 55 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) ‘practising practitioner’ shall include any person who exercises a legal profession in Transkei or Ciskei, on his own account or in partnership, similar to that of a practitioner, and— 35

(i) who is required by a law of Transkei or Ciskei, as the case may be, as a prerequisite for exercising such profession, to be in possession of a valid fidelity fund certificate issued to him in terms of section 42 (3); 40

(ii) who is in possession of such a certificate,

and the provisions of this Chapter shall *mutatis mutandis* apply in respect of any theft committed in Transkei or Ciskei, as the case may be, by such a person, his [clerk] candidate attorney or his employee, of any money or other property referred to in section 26: Provided that every action against the board of control in relation to the fund and emanating from such theft may be instituted in any court prescribed by any law of Transkei or Ciskei, as the case may be;” 45

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Amendment of section 69 of Act 53 of 1979

23. Section 69 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (f) of the following paragraph:
 “(f) **[subject to the provisions of section 8 (2)]** prescribe the minimum remuneration payable to **[articled clerks] candidate attorneys;**” and 5
- (b) by the substitution for paragraph (h) of the following paragraph:
 “(h) prescribe the manner of assessment of the fees payable by any person to a practitioner in respect of the performance on behalf of such person of any work other than litigious work and in respect of expenses reasonably incurred by such practitioner in connection with the performance of that work and, at the request of such person or practitioner, assess such fees in the prescribed manner;” 10

Amendment of section 71 of Act 53 of 1979

24. Section 71 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

- “(1) A council may in the prescribed manner inquire into cases of alleged unprofessional or dishonourable or unworthy conduct on the part of any attorney, notary or conveyancer whose name has been placed on the roll of any court within the province of its society, whether or not he is a member of such society, or of any person serving articles of clerkship with a member of its society, or of any former candidate attorney referred to in section 8 (4).” 20

Amendment of section 72 of Act 53 of 1979, as amended by section 5 of Act 80 of 1985

25. Section 72 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) A council conducting an enquiry in terms of section 71 may find the person concerned guilty of unprofessional or dishonourable or unworthy conduct and may— 25
- (a) in the case of a practitioner—
- (i) impose upon him a fine not exceeding **[R2 000] R5 000**; or
 - (ii) reprimand him; **[and]** or 30
 - (iii) for a specified period or until otherwise decided by the council, debar him from engaging or continuing to engage a candidate attorney; and
 - (iv) recover from him the costs incurred by the council in connection with such enquiry;
- (b) in the case of **[an articled clerk] a candidate attorney**— 35
- (i) cancel or suspend his articles of clerkship; or
 - (ii) impose upon him a fine not exceeding **[R400] R1 000**; or
 - (iii) reprimand him;
- (c) in the case of a former candidate attorney referred to in section 8 (4)— 40
- (i) debar him from remaining in the employ of the attorney referred to in section 8 (4) or 8 (5), as the case may be; or
 - (ii) impose upon him a fine not exceeding R1 000; or
 - (iii) reprimand him.”

Amendment of section 74 of Act 53 of 1979

26. Section 74 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 45

- “(a) conduct which on the part of any practitioner or **[articled clerk] candidate attorney, or former candidate attorney referred to in section 8 (4), shall constitute unprofessional or dishonourable or unworthy conduct;**”

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Amendment of section 77 of Act 53 of 1979, as substituted by section 2 of Act 116 of 1981

27. Section 77 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The society referred to in subsection (1), may perform in respect of any person who exercises in Transkei or Ciskei a legal profession referred to in that subsection, or who undergoes training in Transkei or Ciskei in order to qualify himself for such profession, such functions as are assigned in terms of this Chapter to the society in respect of practitioners or **[articled clerks]** candidate attorneys, or former candidate attorneys referred to in section 8 (4), if a law of Transkei or Ciskei as the case may be, authorizes it to do so.”

Substitution of section 78 of Act 53 of 1979, as amended by section 1 of Act 103 of 1983 and section 6 of Act 80 of 1985

28. The following section is hereby substituted for section 78 of the principal Act:

“Trust accounts

78. (1) Any practising practitioner shall open and keep a separate trust banking account at a banking institution in the Republic and shall deposit therein the money held or received by him on account of any person.

(2) (a) Any practitioner may invest in a separate trust savings or other interest-bearing account opened by him with any banking institution or building society any money deposited in his trust banking account which is not immediately required for any particular purpose.

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

(2A) Any separate trust savings or other interest-bearing account—
 (a) which is opened by a practitioner for the purpose of investing therein, on the instructions of any person, any money deposited in his trust banking account; and
 (b) over which the practitioner exercises exclusive control as trustee, agent or stakeholder or in any other fiduciary capacity, shall contain a reference to this subsection.

(3) The interest, if any, on money deposited in terms of subsection (1) and the interest on money invested in terms of subsection (2) shall be paid over to the fund by the practitioner concerned at the prescribed time and in the manner prescribed.

(4) Any practising practitioner shall keep proper accounting records containing particulars and information of any money received, held or paid by him for or on account of any person, of any money invested by him in **[terms of]** a trust savings or other interest-bearing account referred to in subsection (2) or (2A) and of any interest **[referred to in subsection (3)]** on money so invested which is paid over or credited to him.

(5) The council of the society of the province in which a practitioner practises may by itself or through its nominee, and at its own cost, inspect the accounting records of any practitioner in order to satisfy itself that the provisions of subsections (1), (2), (2A), (3) and (4) are being observed, and, if on such inspection it is found that such practitioner has not complied with such provisions, the council may write up the accounting records of such practitioner and recover the costs of the inspection or of such writing up, as the case may be, from that practitioner.

(6) For the purposes of subsections (4) and (5), ‘accounting records’ includes any record or document kept by or in the custody or under the control of any practitioner which relates to—

- (a) money invested in **[terms of]** a trust savings or other interest-bearing account referred to in subsection (2) or (2A);
- (b) interest **[referred to in subsection (3)]** on money so invested;
- (c) any estate of a deceased person or any insolvent estate or any estate placed under curatorship, in respect of which such practitioner is the executor, trustee or curator or which he administers on behalf of the executor, trustee or curator; or
- (d) his practice.

(7) No amount standing to the credit of any **[such]** practitioner's trust account **[or savings or other interest-bearing account]** shall be regarded as forming part of the assets of the practitioner **[concerned]**, or may be attached on behalf of any creditor of such practitioner: Provided that any excess remaining after payment of all claims of persons whose money has, or should have, been deposited or invested in such trust account **[or has been invested in terms of subsection (2)]**, and **[any claim by the fund]** all claims in respect of interest **[referred to in subsection (3)]** on money so invested, shall be deemed to form part of the assets of such practitioner.

(8) The court may on application made by the society of the province concerned, and on good cause shown, prohibit any practitioner from operating in any way on his trust account **[or savings or other interest-bearing account referred to in this section]**, and may appoint a *curator bonis* to control and administer such trust account **[or savings or other interest-bearing account]**, with such rights, duties and powers in relation thereto as the court may deem fit.

- (9) (a) If any practitioner—
- (i) dies;
 - (ii) becomes insolvent;
 - (iii) in the case of a professional company, is liquidated or placed under judicial management, whether provisionally or finally;
 - (iv) is struck off the roll or suspended from practice;
 - (v) is declared by a competent court to be incapable of managing his own affairs; or
 - (vi) abandons his practice or ceases to practise,

the Master of the Supreme Court may, on application made by the society of the province concerned or by any person having an interest in **[such]** the trust account **[or savings or other interest-bearing account]** of that practitioner, appoint a *curator bonis* to control and administer such account, with such of the prescribed rights, duties and powers as the Master may deem fit.

(b) Any person who is of the opinion that he has been prejudiced by a decision of a Master in terms of paragraph (a), may, within 30 days after the decision became known to him, appeal against that decision to the court, and the court may confirm or vary the said decision or give any such other decision as in its opinion the Master should have given.

(c) Nothing in this subsection or in subsection (7) or (8) contained shall be construed as preventing any practitioner who was practising in partnership with a practitioner referred to in paragraph (a) of this subsection, from operating on the trust account **[or savings or other interest-bearing account]** of the partnership.

(10) Any banking institution or building society at which a practitioner keeps **[a]** his trust account or **[savings or other interest-bearing account referred to in this section]** any separate account forming part of his trust account, shall not by reason only of the name or style by which the account concerned is distinguished, be deemed to have knowledge that the practitioner is not entitled to all money paid into such account or with which such account is credited: Provided that the provisions of this subsection shall not relieve such banking institution or building society from any liability or obligation which legally exists and to which it would be subject apart from the provisions of this Act.

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(11) Notwithstanding anything in subsection (10) contained, a banking institution or building society at which a practitioner keeps **[the] his trust account or [savings or other interest-bearing account referred to in this section]** any separate account forming part of his trust account, shall not, in respect of any liability of the practitioner to such banking institution or building society, 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, counter-claim, charge or otherwise, against money standing to the credit of any such account. 5

(12) The provisions of this section shall not be construed— 10

(a) as depriving any banking institution or building society of any existing right;

(b) as taking away or affecting any claim, lien, counter-claim, right of set-off, or charge of any kind which a practitioner has against or on any money held or received by him on account of any person; 15

(c) as relieving any practitioner who has **[in terms of subsection (2)]** invested any money referred to in subsection (1) in a trust savings or other interest-bearing account referred to in subsection (2) or (2A), of any liability in respect thereof. 20

(13) Any banking institution or building society at which a practitioner keeps **[a] his trust account or [savings or other interest-bearing account referred to in this section]** any separate account forming part of his trust account, shall, if so directed by the council of the society of the province in which such practitioner is practising, furnish the council with a signed certificate which indicates the balance of such account at the date or dates stated by the council. 25

(14) This section shall not apply to the State Attorney or a **[professional assistant in his office]** member of his professional staff.”

Amendment of section 81 of Act 53 of 1979, as amended by section 5 of Act 76 of 1980, section 4 of Act 60 of 1982, section 4 of Act 56 of 1983 and section 7 of Act 80 of 1985 30

29. Section 81 of the principal Act is hereby amended—

(a) by the substitution for paragraph (i) of subsection (1) of the following paragraph:

“(i) whether any person exempted under section 13 (1) from service under articles or any category of persons so exempted shall, either temporarily or permanently, be exempted or not from any or both of the examinations referred to in section 15 (1) **[(f)] (b) (v)** and, in the case of any person or category of persons temporarily so exempted, the period of such exemption;”;

(b) by the substitution for the proviso to subsection (3) of the following proviso: 40

“Provided that no exemption granted permanently shall be cancelled or withdrawn unless such cancellation or withdrawal has been approved by resolution of **[the Senate and the House of Assembly]** Parliament.”; and 45

(c) by the substitution for subsection (4) of the following subsection:

“(4) Any regulation made under subsection (1) (h) may provide for penalties by way of a fine not exceeding **[R50] R1 000** or imprisonment for a period not exceeding three months for any contravention thereof or failure to comply therewith.”. 50

Amendment of section 83 of Act 53 of 1979, as amended by section 6 of Act 76 of 1980 and section 5 of Act 60 of 1982

30. Section 83 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

“(4) Any practitioner who has been struck off the roll or suspended from practice shall not, while he is so struck off or suspended, continue to practise as a practitioner directly or indirectly for his own account or in 55

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partnership or association with any other person, or, except with the written consent of the society concerned, and, if he is a person who, in terms of section **[Squat (1) (b)] 34 (1) (b)** of the Internal Security Act, **[1950 (Act No. 44 of 1950)] 1982 (Act No. 74 of 1982)**, has been struck off the roll, also with the written consent of the Minister, be employed in any capacity 5 connected with the profession of a practitioner.”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) A practitioner shall not, except with the written consent of the society concerned, and, in the case of a person who, in terms of section **[Squat (1) (b)] 34 (1) (b)** of the Internal Security Act, **[1950] 1982**, has been 10 struck off the roll, also with the written consent of the Minister, 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.”;

(c) by the substitution for subsection (7) of the following subsection:

“(7) A person who contravenes any of the provisions of subsections (1) 15 to (6) or of section 13A shall be guilty of an offence and on conviction liable to a fine not exceeding **[R500] R2 000** in respect of each offence.”;

(d) by the substitution in paragraph (a) of subsection (8) for the words following on subparagraph (v) of the following words:

“shall be guilty of an offence and on conviction liable in respect of each 20 offence to a fine not exceeding **[R500] R2 000** and in default of payment thereof to imprisonment not exceeding six months.”;

(e) by the substitution for subsection (9) of the following subsection:

“(9) Any practitioner who does not comply with the provisions of section 78 (1), (2), (2A), (3) or (4), shall be guilty of an offence and on conviction 25 liable to a fine not exceeding **[R200] R1 000**.”;

(f) by the substitution for subsection (10) of the following subsection:

“(10) Any person who directly or indirectly purports to act as a practitioner or to practise on his own account or in partnership without being in possession of a fidelity fund certificate, shall be guilty of an offence 30 and on conviction liable to a fine not exceeding **[R500] R2 000** or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”; and

(g) by the substitution in paragraph (a) of subsection (15) for the words following on subparagraph (iv) of the following words: 35

“shall be guilty of an offence and on conviction liable to a fine not exceeding **[R100] R400**.”.

Amendment of section 86 of Act 53 of 1979

31. Section 86 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (c) of subsection (2) of the following subparagraph: 40

“(i) Any person referred to in subsection (4) of the said section 34 shall notwithstanding the provisions of section 15 (1) **[(d)] (b) (iii)** of this Act be entitled to be admitted as an attorney, provided he complies with all the other requirements of this Act.”.

Substitution of certain words in Act 53 of 1979

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32. The principal Act is hereby amended by the substitution in the Afrikaans text for the words “getrouheidswaarborgsertifikaat” and “getrouheidswaarborgsertifikate” wherever they occur of the words “getrouheidsfondssertifikaat” and “getrouheidsfondssertifikate”, respectively.

Amendment of “Arrangement of Sections” in Act 53 of 1979

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33. The “ARRANGEMENT OF SECTIONS” immediately preceding section 1 of the principal Act is hereby amended by the substitution for the words “Fidelity Guarantee Fund” of the words “Fidelity Fund”.

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Substitution of long title of Act 53 of 1979

34. The following long title is hereby substituted for the long title of the principal Act:

“ACT

To consolidate the laws relating to the admission and practice of attorneys, 5
notaries and conveyancers; the **[Fidelity Guarantee Fund for Attorneys, Notaries
and Conveyancers]** Attorneys Fidelity Fund; and law societies established in
respect of the profession of attorney, notary or conveyancer; and to provide for
matters connected therewith.”.

Substitution of section 21 of Act 32 of 1944, as amended by section 18 of Act 50 of 1956 10

35. The following section is hereby substituted for section 21 of the Magistrates' Courts Act, 1944:

“Candidate attorneys

21. **[An articled clerk referred to in subsection (3) of section *twenty-one*
of the Attorneys, Notaries and Conveyancers Admission Act, No. 23 of 15
1934]** A candidate attorney as defined in section 1 of the Attorneys Act,
1979 (Act No. 53 of 1979), may, subject to section 8 of that Act, appear
instead and on behalf of the attorney to whom he has been articled in any
proceedings in any court **[other than the court of a regional division
established under section *two*, within the jurisdiction of the division 20
concerned]**.”.

Short title and commencement

36. (1) This Act shall be called the Attorneys Amendment Act, 1989, and shall
come into operation on a date fixed by the State President by proclamation in the
Gazette. 25

(2) Different dates may be so fixed in respect of different provisions of this Act.