

No. 74, 1964.]

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ACT

To provide for the admission of persons to practise as advocates of the Supreme Court of South Africa and for matters incidental thereto.

(Afrikaans text signed by the State President.)
(Assented to 18th June, 1964.)

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

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

	Definitions.
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 - (i) "advocate" means an advocate of the Supreme Court; (i)
 - (ii) "division" means a division of the Supreme Court; (ii)
 - (iii) "enrolled" means enrolled on the roll of advocates; (v)
 - (iv) "Minister" means the Minister of Justice; (vi)
 - (v) "Republic" includes the territory; (viii)
 - (vi) "roll of advocates" means the roll of advocates referred to in section *eight*; (ix)
 - (vii) "rules" means rules made or remaining in force in terms of section *forty-three* of the Supreme Court Act, 1959 (Act No. 59 of 1959); (vii)
 - (viii) "Supreme Court" means the Supreme Court of South Africa as constituted by section *two* of the Supreme Court Act, 1959 (Act No. 59 of 1959); (iv)
 - (ix) "the territory" means the territory of South-West Africa, including the area known as the Eastern Caprivi Zipfel and referred to in sub-section (3) of section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and that portion of the territory of South-West Africa known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of that territory. (iii)

2. (1) After the commencement of this Act no person shall be admitted to practise as an advocate save in accordance with the provisions of this Act.

	Persons to be admitted to practise as advocates only under this Act, and manner of making applications.
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 (2) Any application pursuant to the provisions of this Act shall be made in the manner prescribed in the rules.

3. (1) Subject to the provisions of any other law, any division shall admit to practise and authorize to be enrolled as an advocate any person who upon application made by him satisfies the court—

	Admission of persons to practise as advocates.
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 - (a) that he is over the age of twenty-one years and is a fit and proper person to be so admitted and authorized;
 - (b) that he is duly qualified;
 - (c) that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;
 - (d) in the case of any person who has at any time been admitted to practise as an attorney in any court in the Republic or elsewhere, that his name has been removed from the roll of attorneys on his own application and that for a continuous period of not less than six months immediately before the date of his application to be so admitted he has in no way been associated or connected with the practice of, or acted directly or indirectly as, an attorney, notary or conveyancer in the Republic or elsewhere; and
 - (e) in the case of a person who has at any time been a clerk or assistant, whether for remuneration or not, to any person practising as an attorney, notary or conveyancer in the Republic or elsewhere, that for a continuous period of not less than six months im-

mediately before the date of his application to be so admitted he has in no way been associated or connected with the practice of, or acted directly or indirectly as a clerk or assistant to an attorney, notary or conveyancer in the Republic or elsewhere.

(2) The following persons shall for the purposes of paragraph (b) of sub-section (1) be deemed to be duly qualified, namely:

(a) Any person who—

- (i) has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after pursuing a course of study for that degree of not less than five years which included not less than one course in the Afrikaans language, not less than one course in the English language and not less than one course in the Latin language; or
- (ii) after he has satisfied all the requirements for the degree of bachelor of any university in the Republic in any faculty other than the faculty of law after pursuing a course of study for that degree which included not less than one course in the Afrikaans language, not less than one course in the English language and not less than one course in the Latin language or after he has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university; or
- (iii) has been admitted by any university in the Republic to the status of the degree of *baccalaureus legum* referred to in sub-paragraph (i) or (ii);

(b) any person who before the commencement of this Act passed any examination or satisfied all the requirements for any degree which in terms of any law repealed by section *thirteen* would immediately before such commencement have entitled him to be admitted to practise as an advocate of any division on compliance with any other requirement of the said law with regard to matters other than such examination or degree;

(c) any person who—

- (i) at the commencement of this Act was registered as a student at a university referred to in section *one* of the Admission of Advocates Act, 1921 (Act No. 19 of 1921), and was engaged in a course of study with a view to obtaining a certificate, diploma or degree referred to in the said section; and
- (ii) has satisfied all the requirements for the said certificate, diploma or degree and has on or before the thirty-first day of December, 1974, passed the examination in Roman-Dutch law and the statute law of the Republic referred to in section *two* of the said Act or is in terms of the said section not required to pass the examination in both or either of the said subjects;

(d) any person who—

- (i) at the commencement of this Act was registered as a student at any university or university college in the Republic for the degree of *baccalaureus legum*; and
- (ii) has satisfied all the requirements for the said degree;

(e) any person who—

- (i) at the commencement of this Act was registered as a student at any university or university college in the Republic for a degree in any faculty and was engaged in a course of study for such degree, the successful completion of which would in accordance with the regulations of such university or university college then in force, entitle him to be exempted from a portion of the examination for the degree of *baccalaureus legum*; and

- (ii) has satisfied all the requirements for the said degree and the said degree of *baccalaureus legum*.
- (3) The provisions of paragraphs (d) and (e) of sub-section (1) shall not apply to—
- (a) any person referred to in section one of the Natal Advocates and Attorneys Preservation of Rights Act, 1939 (Act No. 27 of 1939), who applies to the Natal Provincial Division or the Durban and Coast Local Division of the Supreme Court to be admitted to practice as an advocate; or
 - (b) any person employed in the office of the State Attorney, or in any branch thereof, established under the State Attorney Act, 1957 (Act No. 56 of 1957), or in the office of the State Attorney established under the State Attorney Proclamation, 1921 (Proclamation No. 46 of 1921), of South-West Africa.
- (4) Any person who is admitted and authorized to practise and to be enrolled as an advocate in terms of sub-section (1), shall be enrolled as an advocate on the roll of advocates.

4. (1) Any person whose name appears on the roll of Existing advocates of any division at the commencement of this Act, whether or not the admission or enrolment of any such person as an advocate has been or is subject to any conditions, shall be deemed to have been unconditionally admitted to practise and authorized to be enrolled as an advocate in terms of sub-section (1) of section three, subject to the terms of any order of court whereby any such person has been suspended from practice as an advocate.

(2) Every person who in terms of sub-section (1) is deemed to have been admitted and authorized to practise and to be enrolled as an advocate, shall be enrolled as an advocate on the roll of advocates, and for that purpose the registrar of every division shall as soon as possible after such commencement furnish the Secretary for Justice with the name of every person whose name appears on the roll of advocates of such division and with particulars of the order of court whereby every such person was admitted to practise as an advocate and of any order of court, if any, whereby any such person has been suspended from practice as an advocate.

5. (1) Notwithstanding anything to the contrary in this Act contained but subject to the provisions of any other law, any division may admit to practise and authorize to be enrolled as an advocate any person who upon application made by him satisfies the court—

Admission to practise in the Republic of advocates practising elsewhere.

- (a) that he has been admitted as an advocate of the Supreme or High Court of any country or territory outside the Republic which the Minister has for the purposes of this section designated by notice in the *Gazette* (in this Act referred to as a designated country or territory);
- (b) that he resides and practises as an advocate in the designated country or territory in which he has been so admitted;
- (c) that he is a fit and proper person to be so admitted; and
- (d) that no proceedings are pending or contemplated to have him suspended from practice or to have him struck off the roll of advocates of the said Supreme or High Court.

(2) Any person who is admitted and authorized to practise and to be enrolled as an advocate in terms of sub-section (1), shall be enrolled as an advocate on the roll of advocates.

(3) Any notice published in the *Gazette* under sub-section (1) whereby any country or territory has been designated for the purposes of this section, may at any time be withdrawn by the Minister by a subsequent notice in the *Gazette*, and thereupon any country or territory referred to in such first-mentioned notice shall cease to be a designated country or territory.

6. Any person who has been or is deemed to have been admitted to practise as an advocate in terms of any provision of this Act, shall be entitled to practise as an advocate throughout the Republic unless his name has been ordered to be struck off the roll of advocates or unless he is subject to an order suspending him from practice as an advocate.

Advocates entitled to practise throughout the Republic.

7. (1) Subject to the provisions of any other law, a court of any division may, upon application, suspend any person from practice as an advocate or order that the name of any person be struck off the roll of advocates—

Suspension of advocates from practice and the removal of their names from the roll of advocates.

(a) in the case of a person who was admitted to practise as an advocate in terms of sub-section (1) of section *three* or is deemed to have been so admitted—

- (i) if he has ceased to be a South African citizen; or
- (ii) in the case of a person who is not a South African citizen, if he has failed to obtain a certificate of naturalization in terms of the South African Citizenship Act, 1949 (Act No. 44 of 1949), within a period of six years from the date upon which before or after the commencement of this sub-paragraph he was admitted to the Republic for permanent residence therein or within such further period as the court either before or after the expiration of the said period for good cause may allow; or

(b) in the case of a person referred to in paragraph (c) of sub-section (2) of section *three* who was admitted to practise as an advocate in terms of sub-section (1) of the said section by virtue of a qualification acquired outside the Republic, if he has failed to pass examinations or tests in the Afrikaans and in the English language certified by a university in the Republic to be equivalent or superior to the examinations or tests in the said languages prescribed for the degree of *baccalaureus legum* referred to in sub-paragraph (i) of paragraph (a) of sub-section (2) of the said section or for the degree of bachelor referred to in sub-paragraph (ii) of the said paragraph within a period of two years after he was so admitted or within such further period as the court either before or after the expiration of the said period for good cause may allow; or

(c) in the case of a person who was admitted to practise as an advocate in terms of section *five*, if it appears to the court that he has ceased to reside or to practise as an advocate in the designated country or territory in which he resided and practised at the time of his admission to practise as an advocate of the Supreme Court or that that country or territory has ceased to be a designated country or territory for the purposes of the said section; or

(d) if the court is satisfied that he is not a fit and proper person to continue to practise as an advocate; or

(e) on his own application.

(2) Subject to the provisions of any other law, an application under paragraph (a), (b), (c) or (d) of sub-section (1) for the suspension of any person from practice as an advocate or for the striking off of the name of any person from the roll of advocates may be made by the General Council of the Bar of South Africa or by the Bar Council or the Society of Advocates for the division which made the order for his admission to practise as an advocate or where such person usually practises as an advocate or is ordinarily resident, and, in the case of an application made to a division other than the South-West Africa Division of the Supreme Court of South Africa under paragraph (c) of sub-section (1), also by the State Attorney referred to in the State Attorney Act, 1957 (Act No. 56 of 1957), or, in the case of an application made to the last-mentioned division under the said paragraph, also by the State Attorney referred to in the State Attorney Proclamation, 1921 (Proclamation No. 46 of 1921), of South-West Africa.

(3) Any person having chambers in any place shall be deemed for the purposes of sub-section (2) to be a person usually practising in that place.

(4) Any person who has been suspended from practice as an advocate under this Act or any other law, whether before or after the commencement of this Act, shall for the duration of such suspension, and any person whose name has been ordered under this Act or any other law to be struck off the roll of advocates, shall, while his name remains removed from the said roll, not be entitled to practise as an advocate.

(5) Upon receipt of the order of a court of any division whereby the name of any person has been ordered under this Act or any other law to be struck off the roll of advocates, the Secretary for Justice shall cause the name of such person to be removed from the said roll.

8. (1) The Secretary for Justice shall keep a register, to be Roll of known as the roll of advocates, in which he shall cause to advocates. be recorded—

- (a) the names of all persons deemed in terms of section four to have been admitted and authorized to practise and to be enrolled as advocates, and particulars of the orders of court whereby they were admitted to practise as advocates;
- (b) the name of every person admitted and authorized to practise and to be enrolled as an advocate in terms of any provision of this Act, and particulars of the order of court whereby he has been so admitted and authorized;
- (c) particulars of any order of court whereby any such person has been suspended from practice as an advocate, whether such 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 of advocates; and
- (d) such other particulars as the Minister may direct.

(2) The registrar of the division which makes an order admitting and authorizing any person to practise and to be enrolled as an advocate or ordering under this Act or any other law that the name of any person be struck off the roll of advocates or suspending under this Act or any other law any person from practice as an advocate, shall immediately after the making of such order forward a certified copy thereof to the Secretary for Justice.

(3) Any document purporting to have been issued by the Secretary for Justice whereby it is certified that any person has been admitted to practise as an advocate or that any person has been suspended from practice as an advocate or that the name of any person has been removed from the roll of advocates, shall on its mere production be *prima facie* proof of the facts stated therein.

9. (1) No person who has not been or is not deemed to have been admitted to practise as an advocate in terms of any provision of this Act or whose name has been removed from the roll of advocates or who is subject to any order suspending him from practice as an advocate, shall in any manner, directly or indirectly, practise as an advocate or hold himself out as, or pretend to be, or make use of any name, title, addition or description implying or tending to induce the belief that he is, an advocate or is recognized by law as such. Offences.

(2) No person who has been or is deemed to have been admitted to practise as an advocate in terms of any provision of this Act, shall make over to or share or divide with any person other than a person practising as an advocate any portion of his professional fees, whether by way of partnership, commission, allowance or otherwise.

(3) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding twelve months with or without the option of a fine, or to both such fine and such imprisonment, and any advocate who contravenes the provisions of sub-section (2) shall, in addition, be guilty of unprofessional conduct and be liable to be suspended from practice or to be struck off the roll of advocates.

10. Notwithstanding anything in this Act or in any other law contained, any court of any division may permit an attorney to discharge the functions of an advocate in any proceedings pending before it if there is no advocate available or willing to act. Power of court to permit attorneys to discharge functions of advocates in particular proceedings.

11. Any power to make rules under the Supreme Court Rules, Act, 1959 (Act No. 59 of 1959), shall be deemed to include the power to make rules for giving effect to the provisions of this Act. Rules.

12. This Act and any amendment thereof shall apply also in the territory. Application of Act in South-West Africa.

13. (1) The laws specified in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule: Provided that notwithstanding the repeal of the Admission of Advocates Act, 1921 (Act No. 19 of 1921), Repeal of laws and savings.

the rules made under section *two* of the said Act and in force at the commencement of this Act, shall remain in force until the thirty-first day of December, 1974.

(2) Nothing in this Act contained shall affect the right to practise as an advocate in the Natal Provincial Division or the Durban and Coast Local Division of the Supreme Court of any person referred to in section *one* of the Natal Advocates and Attorneys Preservation of Rights Act, 1939 (Act No. 27 of 1939).

14. This Act shall be called the Admission of Advocates Act, 1964, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*: Provided that different dates may be so fixed in respect of the several provisions of this Act. Short title and commencement.

Schedule.

LAWS REPEALED.

Province or Republic.	No. and year of Law.	Title or subject matter.	Extent of Repeal.
Cape ..	1832.	Charter of Justice, 1832	So much as is unrepealed.
Cape ..	Act No. 12 of 1858.	An Act for regulating the admission of Barristers, Attorneys, Notaries and Conveyancers.	So much as is unrepealed.
Cape ..	Act No. 30 of 1892.	The Legal Practitioners Act, 1892.	So much as is unrepealed.
Natal ..	Act No. 39 of 1896.	The Supreme Court Act, 1896 ..	So much as relates to admission and the right to practise before the courts.
Orange Free State.	Ordinance No. 4 of 1902.	Administration of Justice Ordinance, 1902.	So much as is unrepealed.
Orange Free State.	Act No. 39 of 1908.	Admission of Advocates, Attorneys and Medical Practitioners Amendment Act, 1908.	So much as is unrepealed.
Orange Free State.	Act No. 14 of 1909.	Advocates Admission Amendment Act, 1909.	The whole.
Transvaal ..	Proclamation No. 14 of 1902.	Administration of Justice Proclamation, 1902.	So much as relates to admission and the right to practise before the courts.
South-West Africa.	Proclamation No. 21 of 1919.	Administration of Justice Proclamation, 1919.	So much as relates to admission and the right of advocates to practise before the courts except sub-section (10) of section <i>eleven</i> .
Republic ..	—	The South Africa Act, 1909 ..	Section <i>one hundred and fifteen</i> except so much as relates to admission and the right of attorneys to practise before the courts.
Republic ..	Act No. 19 of 1921.	Admission of Advocates Act, 1921.	The whole.
Republic ..	Act No. 39 of 1946.	Admission of Advocates Amendment Act, 1946.	The whole.
Republic ..	Act No. 10 of 1949.	Admission of Advocates Amendment Act, 1949.	The whole.
Republic ..	Act No. 62 of 1955.	General Law Amendment Act, 1955.	Section <i>thirty-two</i> .
Republic ..	Act No. 18 of 1956.	Legal Practitioners' Amendment Act, 1956.	Section <i>twenty-three</i> .