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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1265.

21 June 1978.

No. 1265.

21 Junie 1978.

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

No. 81 of 1978: Attorneys Amendment Act, 1978.

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

No. 81 van 1978: Wysigingswet op Prokureurs, 1978.

Wet No. 81, 1978

WYSIGINGSWET OP PROKUREURS, 1978.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordeninge aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

WET

Tot wysiging van die Toelating van Prokureurs, Notarisse en Transportbesorgers Wet, 1934, met betrekking tot die toelating van advokate as prokureurs; die registrasie en sessie van leerkontrakte; prokureurs wat klerke onder leerkontrak in diens mag neem; die afwesigheid van diens van klerke onder leerkontrak; die tydperk van diens onder leerkontrak; die koop van aandele in maatskappye wat die praktyk van prokureur, notaris of transportbesorger voortsit; gevolmagtigdes van lede van sulke maatskappye; en trustgoed in naam van prokureurs, notarisse en transportbesorgers geregistreer; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 12 Junie 1978.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 7 van Wet 23 van 1934, soos gewysig deur artikel 4 van Wet 63 van 1964 en artikel 2 van Wet 57 van 1975.

1. Artikel 7 van die Toelating van Prokureurs, Notarisse en Transportbesorgers Wet, 1934 (hieronder die Hoofwet genoem), 5 word hierby gewysig deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:

„(a) indien hy te eniger tyd as 'n advokaat van die Hooggeregshof van Suid-Afrika toegelaat is, dat sy naam daarna op sy eie aansoek van die rol van advokate 10 verwyder is **[en dat hy vir 'n ononderbroke tydperk van minstens ses maande onmiddellik voor die datum van sy aansoek om sodanige toelating op generlei wyse geassosieer was met of verbonde was aan die praktyk van so 'n advokaat nie, of regstreeks of 15 onregstreeks as so 'n advokaat opgetree het nie]; of**”.

Wysiging van artikel 14 van Wet 23 van 1934, soos vervang deur artikel 3 van Wet 67 van 1967 en gewysig deur artikel 3 van Wet 57 van 1975.

2. Artikel 14 van die Hoofwet word hierby deur die volgende artikel vervang:

„Leerkontrak by wetsgenootskap geregistreer te word. 14. (1) Die oorspronklike leerkontrak moet in elke 20 geval binne twee maande vanaf die datum daarvan deur die betrokke prokureur ingedien word by die sekretaris van die wetsgenootskap van die provinsie waarin onder die leerkontrak gedien moet word.

(2) Teen betaling van die gelde kragtens artikel 29 25 voorgeskryf, ondersoek die sekretaris van die betrokke wetsgenootskap 'n leerkontrak wat by hom ingedien is en registreer hy die leerkontrak indien hy oortuig is dat die kontrak in orde is en dat die raad 30 van die genootskap geen beswaar teen die registrasie daarvan het nie, en stel hy die betrokke prokureur en klerk skriftelik en per gesertifiseerde pos in kennis van dié registrasie.

(3) Indien 'n leerkontrak nie binne twee maande 35 vanaf die datum daarvan geregistreer word nie, word enige diens daaronder geag op die datum van registrasie daarvan te begin.”.

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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, Notaries and Conveyancers Admission Act, 1934, with regard to the admission of advocates as attorneys; the registration and cession of articles; attorneys who may have articulated clerks; the absence from office of articulated clerks; the duration of service under articles; the purchase of shares in companies conducting the practice of attorneys, notaries and conveyancers; proxies of members of such companies; and trust property registered in name of attorneys, notaries and conveyancers; and to provide for matters incidental thereto.

(English text signed by the State President.)

(Assented to 12 June 1978.)

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

1. Section 7 of the Attorneys, Notaries and Conveyancers Admission Act, 1934 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) if he has at any time been admitted as an advocate of the Supreme Court of South Africa, that his name was subsequently removed from the roll of advocates on his own application **[and that for a continuous period of not less than six months immediately before the date of his application for such admission he has in no way been associated or connected with the practice of, or acted directly or indirectly as such an advocate];** or”.

2. The following section is hereby substituted for section 14 of the principal Act:

“Articles to be registered with law society.
14. (1) The original of any articles of clerkship shall in every case within two months of the date thereof be lodged by the attorney concerned with the secretary of the law society of the province in which the service under such articles is to be performed.

(2) On payment of the fees prescribed under section 29, the secretary of the law society concerned shall examine any articles lodged with him and shall register such articles if he is satisfied that the articles are in order and that the council of the society has no objection to the registration thereof, and shall advise the attorney and clerk concerned of such registration in writing by certified post.

(3) If articles of clerkship are not registered within two months of the date thereof, any service thereunder shall be deemed to commence on the date of registration thereof.”.

Amendment of section 7 of Act 23 of 1934, as amended by section 4 of Act 63 of 1964 and section 2 of Act 57 of 1975.

Amendment of section 14 of Act 23 of 1934, as substituted by section 3 of Act 67 of 1967 and amended by section 3 of Act 57 of 1975.

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WYSIGINGSWET OP PROKUREURS, 1978.

Herroeping van
artikel 15 van
Wet 23 van 1934.

Wysiging van
artikel 16 van
Wet 23 van 1934,
soos gewysig deur
artikel 7 van
Wet 18 van 1956,
artikel 1 van
Wet 81 van 1962,
artikel 6 van
Wet 26 van 1965
en artikel 4 van
Wet 57 van 1975.

3. Artikel 15 van die Hoofwet word hierby herroep.

4. Artikel 16 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

„(1) **['n Duplikaat-oorspronklike van]** Elke cessie van 'n leerkontrak word binne **[een maand]** twee maande na die datum waarop die dienste van die betrokke klerk by die cedent beëindig is, of binne die verdere tydperk wat die hof om voldoende gronde toelaat, by die wetsgenootskap van die provinsie waarin onder die aldus gecedeerde kontrak gedien moet word, deur die cessionaris ingelewer.”;

- (b) deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

„(2) So 'n cessie moet vergesel word van 'n beëdigde verklaring—”;

- (c) deur subartikel (3) deur die volgende subartikel te vervang:

„(3) **[Op vertoon van die oorspronklike cessie en beëdigde verklarings en]** Teen betaling van die gelde kragtens die bepalings van artikel 29 voorgeskryf, ondersoek die sekretaris van voornoemde wetsgenootskap **[daardie stukke]** die cessie en beëdigde verklarings en **[maak]** registreer hy **[nadat]** die cessie indien hy oortuig is dat die cessie in orde is en dat die raad van genoemde genootskap geen beswaar maak nie **[, op daardie oorspronklike cessie 'n aantekening ten effekte dat aan die bepalings van hierdie artikel voldoen is en dat die cessie goedgekeur is]** en stel hy die betrokke prokureur en klerk onder leerkontrak skriftelik en per gesertifiseerde pos in kennis van die cessie.”.

5. Artikel 17 van die Hoofwet word hierby herroep.

6. Artikel 18 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (i) van subartikel (1) deur die volgende paragraaf te vervang:

„(i) indien hy 'n prokureur is wat aldus vir eie rekening of as vennoot in 'n prokureursfirma of as 'n lid van 'n professionele maatskappy praktiseer, vir 'n tydperk van drie jaar **[onmiddellik voordat sodanige klerk onder leerkontrak geneem word of is, onafgebroke]** of tydperke wat in totaal drie jaar beloop tydens die voorafgaande vier jaar aldus gepraktiseer het;”;

- (b) deur subartikel (4) deur die volgende subartikel te vervang:

„(4) Wanneer 'n leerkontrak om enige rede ingetrek, laat vaar of gecedeer word, moet die prokureur by wie sodanige klerk op die tydstip van sodanige intrekking, laatvaarding of cessie onder leerkontrak is, onverwyld **[die griffier van die provinsiale afdeling en]** die sekretaris van die wetsgenootskap **[by wie sodanige leerkontrak geregistreer of ingelewer is,]** skriftelik van sodanige intrekking, laatvaarding of cessie, na gelang van die geval, in kennis stel.”.

7. Artikel 19 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikels te vervang:

„(2) 'n Klerk onder leerkontrak kan—

- (a) met die toestemming van die prokureur onder wie hy dien, vir 'n tydperk wat, of tydperke wat in totaal, nie dertig werksdae in enige jaar van die leerkontrak te bowe gaan nie, van diens afwesig wees;

Herroeping van
artikel 17 van
Wet 23 van 1934.

Wysiging van
artikel 18 van
Wet 23 van 1934,
soos vervang deur
artikel 2 van
Wet 14 van 1976.

Wysiging van
artikel 19 van
Wet 23 van 1934,
soos gewysig deur
artikel 8 van
Wet 18 van 1956,
artikel 10 van
Wet 63 van 1964,
artikel 8 van
Wet 26 van 1965
en artikel 5 van
Wet 57 van 1975.

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3. Section 15 of the principal Act is hereby repealed.

Repeal of
section 15 of
Act 23 of 1934.

4. Section 16 of the principal Act is hereby amended—

Amendment of
section 16 of
Act 23 of 1934,
as amended by
section 7 of
Act 18 of 1956,
section 1 of
Act 81 of 1962,
section 6 of
Act 26 of 1965
and section 4 of
Act 57 of 1975.

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

5 “(1) **[A duplicate original of]** Each cession of
articles shall within **[one month]** two months of the
date on which the services of the articted clerk
concerned have been terminated with the cedent, or
10 within such further period as the court may for good
cause allow, be lodged by the cessionary with the law
society of the province wherein service under the said
articles so ceded is to be performed.”;

(b) by the substitution in subsection (2) for the words
preceding paragraph (a) of the following words:

15 “(2) Such cession shall be accompanied by an
affidavit—”; and

(c) by the substitution for subsection (3) of the following
subsection:

20 “(3) **[Upon production of the original cession and
affidavits and]** On payment of such fee as is
prescribed under the provisions of section 29, the
secretary of the law society aforesaid shall examine
25 **[the said documents]** the cession and affidavits and,
upon being satisfied that the cession is in order and that
no objection is made by the council of the said society,
**[endorse upon such original cession a certificate to
the effect that the provisions of this section have been
30 complied with, and that the cession has been
approved of]** register the cession and advise the
attorney and articted clerk concerned of such cession in
writing by certified post.”

5. Section 17 of the principal Act is hereby repealed.

Repeal of
section 17 of
Act 23 of 1934.

6. Section 18 of the principal Act is hereby amended—

Amendment of
section 18 of
Act 23 of 1934,
as substituted by
section 2 of
Act 14 of 1976.(a) by the substitution for paragraph (i) of subsection (1) of
the following paragraph:

35 “(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
40 **[continuously]** for a period of three years
**[immediately prior to taking such clerk under
articles]** or periods of three years in the aggregate
during the preceding four years;”; and

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

45 “(4) Whenever articles of clerkship are for any reason
cancelled, abandoned or ceded the attorney to whom
such clerk is articted at the time of such cancellation,
abandonment or cession shall forthwith notify **[the
50 registrar of the provincial division and]** the secretary
of the law society **[with whom such articles have
been registered or lodged,]** in writing of such
cancellation, abandonment or cession, as the case may
be.”

7. Section 19 of the principal Act is hereby amended—

Amendment of
section 19 of
Act 23 of 1934,
as amended by
section 8 of
Act 18 of 1956,
section 10 of
Act 63 of 1964,
section 8 of
Act 26 of 1965
and section 5 of
Act 57 of 1975.(a) by the substitution for subsection (2) of the following
subsections:

55 “(2) Any articted clerk may—
(a) with the permission of the attorney to whom he is
articted absent himself from office for a period
60 which does not, or periods which in the aggregate
do not, exceed thirty working days in any one year
of articles of clerkship;

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WYSIGINGSWET OP PROKUREURS, 1978.

Wysiging van
artikel 28^{quat} van
Wet 23 van 1934,
soos ingevoeg deur
artikel 4 van
Wet 14 van 1976.

- (b) in 'n geval waar 'n tydperk van afwesigheid van diens of die tydperke van afwesigheid van diens in totaal dertig werksdae in enige jaar van die leerkontrak te bowe gaan, of waar die betrokke prokureur toestemming weier dat die klerk onder leerkontrak ingevolge paragraaf (a) van diens afwesig kan wees, by die hof aansoek doen om 'n bevel wat hom magtig om vir die betrokke tydperk van diens afwesig te wees, en die hof kan so 'n bevel gee, hetsy voor, gedurende of na die tydperk van afwesigheid, indien die hof oortuig is dat die betrokke prokureur en wetsgenootskap behoorlik kennis van die aansoek ontvang het en dat voldoende grond vir die afwesigheid van diens bestaan of bestaan het, na gelang van die geval.
- (2A) Indien 'n tydperk van afwesigheid van diens of die tydperke van afwesigheid van diens in totaal dertig werksdae in enige jaar van die leerkontrak te bowe gaan, word die tydperk wat dertig werksdae te bowe gaan by die tydperk gevoeg waarvoor die klerk onder leerkontrak moet dien." en
- (b) deur subartikel (5) deur die volgende subartikel te vervang:
- „(5) Waar iemand wat enige tydperk gedien het onder 'n leerkontrak wat ingetrek of laat vaar is voordat dit voltooi is, aan al die vereistes van 'n in die Eerste Bylae bedoelde graad voldoen het of geregtig is om deur enige provinsiale afdeling as advokaat toegelaat te word, kan die hof, op aansoek van sodanige persoon en onderworpe aan die voorwaardes wat die hof oplê, bevel—
- (a) dat, by die toepassing van hierdie Wet, die hele tydperk aldus gedien of dié deel daarvan wat die hof goedvind, bygevoeg moet word by enige tydperk deur sodanige persoon gedien, nadat hy aan sodanige vereistes voldoen het of aldus geregtig geword het, onder 'n leerkontrak wat aangegaan is nadat eersgenoemde leerkontrak ingetrek of laat vaar is en daarna word enige tydperk aldus bygevoeg, **[vir die doeleindes van sy toelating en inskrywing as prokureur,]** geag gedien te gewees het—
- (i) nadat hy aan sodanige vereistes voldoen het of aldus geregtig geword het; en
- (ii) onder die leerkontrak wat aangegaan is nadat eersgenoemde leerkontrak ingetrek of laat vaar is en aaneenlopend met enige tydperk daaronder gedien;
- (b) indien die tydperk wat deur sodanige persoon onder eersgenoemde leerkontrak gedien is, gelyk is aan die tydperk of die tydperk oorskry wat hy, wanneer die aansoek gedoen word, ingevolge hierdie Wet onder leerkontrak sou moet dien, dat die tydperk aldus gedien, by die toepassing van hierdie Wet, as voldoende diens onder leerkontrak beskou moet word en daarna word enige tydperk aldus deur sodanige persoon gedien **[vir die doeleindes van sy toelating en inskrywing as prokureur]** geag gedien te gewees het na en onder 'n leerkontrak aangegaan nadat hy aan sodanige vereistes voldoen het of aldus geregtig geword het.”.

8. Artikel 28^{quat} van die Hoofwet word hierby gewysig—

- (a) deur subartikel (5) deur die volgende subartikel te vervang:

„(5) Indien die statute van die maatskappy daarvoor voorsiening maak, kan die maatskappy, sonder bekragtiging deur 'n hof, **[die]** enige aandeel wat **[ingevolge subartikel (3)]** in hom gehou word, koop op die voorwaardes wat hy goedvind, en die gemagtigde aandeelkapitaal van die maatskappy word nie daardeur verminder nie.”; en

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(b) in any case in which a 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 in which the attorney concerned refuses permission that the articulated clerk may absent himself from office under paragraph (a), apply to the court for an order authorizing leave of absence from office for himself for the period in question, and the court may grant such order, whether before, during or after the period of absence, if it is satisfied that the attorney and the law society concerned had due notice of the application to the court and that sufficient cause for the absence from office exists or existed, as the case may be.

(2A) 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 articulated clerk is bound to serve under articles.”; and

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

“(5) Where 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 the First Schedule or is entitled to be admitted as an advocate by any provincial division, the court may, on the application of such person and subject to such conditions as the court may impose, order—

(a) that, for the purposes of this Act, the whole or such part of the period so served as the court deems fit be added to any period served by such person after he 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 shall **be deemed to have been served—**

(i) after he satisfied such requirements or became so entitled; and
(ii) under the articles entered into after the first-mentioned articles were cancelled or abandoned and continuously with any period served thereunder;

(b) if the period served by such person under the first-mentioned articles of clerkship is equal to or exceeds the period which he 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 shall **be deemed to have been served after and under articles entered into after he satisfied such requirements or became so entitled.”.**

8. Section 28^{quat} of the principal Act is hereby amended—

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

“(5) If the articles of association of the company so provide, the company may, without confirmation by a court, upon such conditions as it may deem expedient, purchase **the** any shares held in it **in terms of subsection (3)**, and the authorized share capital of the company shall not be reduced thereby.”; and

Amendment of section 28^{quat} of Act 23 of 1934, as inserted by section 4 of Act 14 of 1976.

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WYSIGINGSWET OP PROKUREURS, 1978.

Invoeging van
artikel 33A in
Wet 23 van 1934.

Kort titel.

(b) deur die invoeging na subartikel (6) van die volgende subartikel:

„(6A) Ondanks andersluidende wetsbepalings kan die statute van die maatskappy daarvoor voorsiening maak dat 'n lid van die maatskappy nie iemand wat nie 'n lid van die maatskappy is nie, mag aanstel om namens hom op 'n vergadering van die maatskappy teenwoordig te wees, te praat of te stem nie.”.

9. Die Hoofwet word hierby gewysig deur die invoeging na artikel 33 van die volgende artikel:

„Trustgoed
vorm nie
deel van
bates van
prokureur,
notaris of
transport-
besorger nie.

33A. Ondanks andersluidende bepalinge van 'n wet of die gemene reg maak trustgoed wat uitdruklik op naam van 'n prokureur, notaris of transportbesorger of gesamentlik op naam van 'n prokureur, notaris of transportbesorger en 'n ander persoon geregistreer is in sy of hulle hoedanigheid van administrateur, trustee, kurator of agent, na gelang van die geval, onder geen omstandighede deel van die bates van bedoelde prokureur, notaris, transportbesorger of ander persoon uit nie.”.

10. Hierdie Wet heet die Wysigingswet op Prokureurs, 1978.

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(b) by the insertion after subsection (6) of the following subsection:

5 “(6A) Notwithstanding the provisions of any other law to the contrary, the articles of association of the company may provide that a member of the company may not appoint a person who is not a member of the company, to attend, speak or vote in his stead at any meeting of the company.”.

9. The principal Act is hereby amended by the insertion after section 33 of the following section:

Insertion of section 33A in Act 23 of 1934.

15 “Trust property not to form part of assets of attorney, notary or conveyancer. **33A.** Notwithstanding anything to the contrary in any law or the common law contained, trust property which is expressly registered in the name of an attorney, notary or conveyancer, or jointly in the name of an attorney, notary or conveyancer and any other person in his or their capacity as administrator, trustee, curator or agent, as the case may be, shall not under any circumstances form part of the assets of the said attorney, notary, conveyancer or other person.”.

20 **10.** This Act shall be called the Attorneys Amendment Act, 1978. Short title.

(b) by the insertion after subsection (b) of the following subsection:
“(bA) Notwithstanding the provisions of any other law to the contrary, the articles of association of the company may provide that a member of the company may not appoint a person who is not a member of the company, to attend, speak or vote in his stead at any meeting of the company.”

9. The principal Act is hereby amended by the insertion after section 33 of the following section:
“33A. Notwithstanding anything to the contrary in

any law or the common law contained, trust property which is expressly registered in the name of an attorney, notary or conveyancer or jointly in the name of an attorney, notary or conveyancer and any other person in his or her capacity as administrator, trustee, curator or agent, as the case may be, shall not under any circumstances form part of the assets of the said attorney, notary, conveyancer or other person.”

10. 18. This Act shall be called the Attorneys Amendment Act, 1978.