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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1200.

14 June 1989

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

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

No. 1200.

14 Junie 1989

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

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;"

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WET

Tot wysiging van die Wet op Prokureurs, 1979, ten einde die benaming "klerk onder leerkontrak" deur "kandidaat-prokureur" te vervang; "bouvereniging" te heromskryf; "trustrekening" te omskryf; ander voorsiening te maak aangaande die indienseeming en diens van kandidaat-prokureurs; die toelating en hertoelating van prokureurs en die verwydering van prokureurs van die rol verder te reël; die naam van die Getrouheidswaarborgfonds vir Prokureurs, Notarisse en Transportbesorgers te verander; verdere voorsiening te maak aangaande die belê van vergaderings van die beheerraad van genoemde fonds; genoemde beheerraad te magtig om komitees aan te stel; betalings uit genoemde fonds verder te reël; die bevoegdhede van die rade van prokureursordes uit te brei; die hou van 'n trustrekening deur 'n praktiserende praktisyn verder te reël; verskeie maksimum boetestrawwe te verhoog; en sekere foutiewe of verouderde verwysings reg te stel; tot wysiging van die Wet op Landdroshoue, 1944, ten einde ander voorsiening te maak met betrekking tot die verskyning van kandidaat-prokureurs in landdroshoue; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 1 Junie 1989.)

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

Wysiging van artikel 1 van Wet 53 van 1979

1. Artikel 1 van die Wet op Prokureurs, 1979 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur die omskrywing van "beheerraad" deur die volgende omskrywing te vervang:

"beheerraad" die Raad van Beheer oor die **[Getrouheidswaarborgfonds]** Getrouheidsfonds vir Prokureurs **[Notarisse en Transportbesorgers]** in artikel 27 vermeld;";

(b) deur die omskrywing van "bouvereniging" deur die volgende omskrywing te vervang:

"bouvereniging"—

(a) 'n onderlinge bouvereniging soos omskryf in artikel 1 van die **[Bouverenigingswet]** Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965), en finaal geregistreer of geag geregistreer te wees as 'n permanente bouvereniging ingevolge artikel 5 van daardie Wet; of

(b) 'n bouvereniging soos omskryf in artikel 1 van die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986), en finaal geregistreer as 'n bouvereniging ingevolge artikel 18 van daardie Wet;";

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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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- (c) deur die omskrywing van "fonds" deur die volgende omskrywing te vervang:
 "‘fonds’ die **[Getrouheidswaarborgfonds]** Getrouheidsfonds vir Prokureurs **[Notarisse en Transportbesorgers]** in artikel 25 vermeld;";
- 5 (d) deur die omskrywing van "getrouheidswaarborgsertifikaat" deur die volgende omskrywing te vervang:
 "**[getrouheidswaarborgsertifikaat]** ‘getrouheidsfondssertifikaat’ ’n sertifikaat ingevolge artikel 42 uitgereik;";
- (e) deur die omskrywing van "klerk onder leerkontrak" te skrap;
- 10 (f) deur na die omskrywing van "Hooggeregshof" die volgende omskrywing in te voeg:
 "‘kandidaat-prokureur’ iemand wat gebonde is om kragtens ’n leerkontrak te dien;";
- 15 (g) deur die omskrywing van "prinsipaal" deur die volgende omskrywing te vervang:
 "‘prinsipaal’, met betrekking tot ’n **[klerk onder leerkontrak]** kandidaat-prokureur, die prokureur wat deur **[so ’n klerk]** daardie kandidaat-prokureur kragtens ’n leerkontrak gedien word, en, met betrekking tot ’n voormalige kandidaat-prokureur in artikel 8 (4) vermeld, die betrokke praktisyn aldus vermeld;"; en
- 20 (h) deur na die omskrywing van "transportbesorger" die volgende omskrywing in te voeg:
 "‘trustrekening’, met betrekking tot ’n praktiserende praktisyn, ’n rekening wat bestaan uit—
- 25 (a) daardie praktisyn se trustbankrekening in artikel 78 (1) vermeld; en
 (b) enige trustspaar- of ander rentegewende rekening in artikel 78 (2) of (2A) vermeld wat deur daardie praktisyn geopen is;".

Vervanging van artikel 3 van Wet 53 van 1979, soos gewysig deur artikel 2 van Wet 108 van 1984

2. Artikel 3 van die Hoofwet word hierby deur die volgende artikel vervang:

“Wie kandidaat-prokureurs in diens kan neem

3. (1) ’n **[Klerk]** Kandidaat-prokureur word onder leerkontrak in diens geneem of gehou slegs deur iemand wat die beroep van prokureur beoefen—
- 35 (a) vir eie rekening; of
 (b) as vennoot in ’n prokureursfirma; of
 (c) as lid van ’n professionele maatskappy; of
 (d) as Staatsprokureur; of
- 40 (e) as **[een van die vier mees senior professionele assistente]** Adjunk-staatsprokureur, Senior Assistent-staatsprokureur of Assistent-staatsprokureur in die kantoor van die Staatsprokureur **[te Pretoria]** of ’n tak daarvan; **[of]** en—
- 45 **[(f) as professionele assistent wat oor ’n tak van genoemde kantoor toesig het; of**
 (g) as een van die twee mees senior professionele assistente van sodanige professionele assistent wat oor so ’n tak toesig het; of
- (h) in die geval van die Johannesburgse tak van genoemde kantoor, as een van die vier mees senior professionele assistente van die professionele assistent wat oor bedoelde tak toesig het; en—]
- 50 (i) (i) wat, 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 of vir tydperke wat in totaal drie jaar beloop tydens die voorafgaande vier jaar aldus gepraktiseer het;
- 55 (ii) wat, indien hy die Staatsprokureur of ’n **[professionele assistent]** Adjunk-staatsprokureur, Senior Assistent-staatsprokureur of Assistent-staatsprokureur soos voormeld is, in die kantoor van die Staatsprokureur of ’n tak daarvan vir ’n tydperk van **[drie]** vier jaar onmiddellik voordat **[’n klerk]** daardie kandidaat-prokureur onder leerkontrak geneem word, onafgebroke die beroep beoefen het.
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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 articulated 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 articulated 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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(2) Diens deur 'n **[klerk onder leerkontrak]** kandidaat-prokureur by 'n prokureur terwyl daardie prokureur nie die beroep soos in subartikel (1) bedoel, beoefen nie, word nie geag geldige of voldoende diens vir die doeleindes van hierdie Wet te wees nie.

5 (3) 'n Prokureur mag nie meer as drie **[klerke]** kandidaat-prokureurs gelyktydig onder leerkontrak in diens hê nie: Met dien verstande dat—

(a) by die dood of staking van praktyk van 'n prokureur, enige van sy oorblywende of oorlewende vennote of enige lid van die professionele maatskappy waarvan hy lid was;

10 (b) waar 'n prokureur kragtens artikel 72 (1) (a) (iii) verbied is om 'n leerkontrak voort te sit, enige van sy vennote of enige ander lid van die professionele maatskappy waarvan hy lid is,

15 die sessie kan aanvaar van die leerkontrak van 'n **[klerk]** kandidaat-prokureur wat daardie prokureur kragtens 'n leerkontrak gedien het, alhoewel die sessionaris dan meer as drie **[klerke]** kandidaat-prokureurs in diens sal hê.”.

Wysiging van artikel 5 van Wet 53 van 1979

3. Artikel 5 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

20 “(2) Die sekretaris van die betrokke orde moet, teen betaling van die gelde kragtens artikel 80 voorgeskryf, 'n leerkontrak wat by hom ingelewer is, ondersoek en moet, indien hy oortuig is dat die kontrak in orde is en dat die raad geen beswaar teen die registrasie daarvan het nie, daardie leerkontrak teen betaling van die gelde aldus voorgeskryf, registreer, en die betrokke prokureur
25 en **[klerk]** kandidaat-prokureur skriftelik per gesertifiseerde pos van die registrasie in kennis stel.”.

Vervanging van artikel 6 van Wet 53 van 1979

4. Artikel 6 van die Hoofwet word hierby deur die volgende artikel vervang:

“Toesig oor kandidaat-prokureur

30 6. (1) Sonder om afbreuk te doen aan die bepalinge van artikel 10, moet 'n **[klerk onder leerkontrak]** kandidaat-prokureur, gedurende die hele tydperk **[daarin]** in die betrokke leerkontrak bepaal, dien—

(a) in die kantoor van sy prinsipaal onder die direkte persoonlike toesig van sy prinsipaal of van 'n prokureur wat 'n vennoot of bestuurder
35 van sy prinsipaal is; of

(b) in die geval van 'n **[klerk]** kandidaat-prokureur wat kragtens 'n leerkontrak by die Staatsprokureur of 'n lid van sy professionele personeel in diens is, in die kantoor van die Staatsprokureur of 'n tak van daardie kantoor en onder die direkte persoonlike toesig van
40 die Staatsprokureur of 'n lid van sy professionele personeel.

(2) By die toepassing van subartikel (1) beteken 'kantoor' nie ook 'n takkantoor wat onder die beheer van 'n prokureur is wat nie geregtig is om 'n **[klerk]** kandidaat-prokureur onder leerkontrak te hê nie.”.

45 Vervanging van artikel 7 van Wet 53 van 1979, soos gewysig deur artikel 1 van Wet 76 van 1980

5. Artikel 7 van die Hoofwet word hierby deur die volgende artikel vervang:

“Afwesigheid van kandidaat-prokureur

7. (1) Behoudens die bepalinge van subartikel (2), mag 'n **[klerk onder leerkontrak]** kandidaat-prokureur met die toestemming van sy prinsipaal

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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 articulated clerk]** a candidate attorney in any case—

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

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

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.

(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 **[articled clerk]** candidate attorney is bound to serve under articles.

(4) Notwithstanding the provisions of section 6, one half of any period of absence from the office of his principal by **[an articulated 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.

(5) Notwithstanding the provisions of section 6, any period of absence not exceeding 6 months of **[an articulated 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 **[articled clerk]** candidate attorney has completed that course to the satisfaction of that society, be deemed to have been served under articles of clerkship.

(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."

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

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 **[articled 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

(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]**,

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**

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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.

(2) (a) 'n Hof kan op aansoek van 'n **[klerk onder leerkontrak]** kandidaat-prokureur in 'n geval—

(i) waar sy prinsipaal weier om aan hom toestemming te verleen om van diens afwesig te wees;

(ii) waar die tydperk van afwesigheid van diens of tydperke van afwesigheid van diens in totaal dertig werksdae in enige jaar van die leerkontrak te bowe gaan,

'n bevel verleen wat die afwesigheid van diens vir die betrokke tydperk magtig, indien die hof oortuig is dat die betrokke prinsipaal en orde behoorlik kennis van die aansoek ontvang het en dat gegronde rede vir die afwesigheid van diens bestaan of bestaan het, na gelang van die geval.

(b) 'n Bevel in paragraaf (a) vermeld, kan voor, gedurende of na die tydperk van afwesigheid toegestaan word.

(3) 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 waartydens die **[klerk onder leerkontrak]** kandidaat-prokureur moet dien.

(4) Ondanks die bepalings van artikel 6 word die helfte van 'n tydperk van afwesigheid van die kantoor van sy prinsipaal van 'n **[klerk onder leerkontrak]** kandidaat-prokureur as gevolg van opleiding deur hom in die Suid-Afrikaanse Weermag ondergaan ingevolge artikel 3 van die Verdedigingswet, 1957 (Wet No. 44 van 1957), maar hoogstens drie maande, geag kragtens daardie leerkontrak gedien te gewees het.

(5) Ondanks die bepalings van artikel 6 word 'n tydperk van afwesigheid van hoogstens 6 maande van die kantoor van sy prinsipaal van 'n **[klerk onder leerkontrak]** kandidaat-prokureur vir die bywoning van 'n opleidingskursus wat deur die betrokke orde goedgekeur is, geag, indien **[hy]** daardie kandidaat-prokureur daardie kursus ten genoë van daardie orde voltooi het, kragtens leerkontrak gedien te gewees het.

(6) Ondanks die bepalings van artikel 6 word 'n tydperk van afwesigheid van hoogstens 12 maande van die kantoor van sy prinsipaal van 'n kandidaat-prokureur vir die doeleindes van diens ingevolge 'n kontrak met bepalings en voorwaardes soortgelyk aan dié van sy leerkontrak, onder die direkte toesig van 'n ander prokureur wat ingevolge artikel 3 geregtig is om 'n kandidaat-prokureur in diens te neem, geag, mits die sekretaris van die orde waar die betrokke leerkontrak geregistreer is die diens vooraf skriftelik goedgekeur het, deur die betrokke kandidaat-prokureur kragtens leerkontrak onder sy prinsipaal gedien te gewees het."

Vervanging van artikel 8 van Wet 53 van 1979, soos gewysig deur artikel 1 van Wet 56 van 1983 en artikel 4 van Wet 108 van 1984

6. Artikel 8 van die Hoofwet word hierby deur die volgende artikel vervang:

"Optrede van kandidaat-prokureur in hof en voor ander instellings

8. (1) 'n **[Klerk onder leerkontrak]** Kandidaat-prokureur wat—

(a) deur 'n afdeling van die Hooggeregshof as advokaat toegelaat is of geregtig is om aldus toegelaat te word; of

(b) aan al die vereistes vir die in paragraaf (a) van artikel 2 (1) bedoelde graad, of vir 'n in paragraaf (aA) van daardie artikel bedoelde graad of grade ten opsigte waarvan 'n sertifisering ooreenkomstig daardie paragraaf gedoen is, voldoen het **[en minstens een jaar kragtens sy leerkontrak gedien het]**,

is geregtig om in plaas van en ten behoeve van sy prinsipaal te verskyn in enige hof, behalwe 'n afdeling van die Hooggeregshof **[of die hof van 'n streekafdeling ingestel kragtens artikel 2 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), of 'n Appèlhof vir Kommissaris-howe ingestel by artikel 13 van die Swartes Administrasie Wet, 1927**

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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 an advocate or is entitled to be so admitted and—

- (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 articulated 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 [articled clerk] candidate attorney.

(2) If any [articled 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:

(Wet No. 38 van 1927), of 'n Egskeidingshof ingestel by artikel 10 van die Swartes Administrasiewet, 1927, Wysigingswet, 1929 (Wet No. 9 van 1929)], en voor enige raad, regbank of soortgelyke instelling waarin of voor wie sy prinsipaal geregtig is om te verskyn, en die prinsipaal van so 'n **[klerk]** kandidaat-prokureur is geregtig om die gelde vir so 'n verskyning te bereken asof hy self verskyn het: Met dien verstande dat so 'n kandidaat-prokureur nie geregtig is om in 'n hof van 'n streekafdeling ingestel kragtens artikel 2 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), of 'n Egskeidingshof ingestel by artikel 10 van die Swart Administrasiewet, 1927, Wysigingswet, 1929 (Wet No. 9 van 1929), te verskyn nie tensy hy aldus as advokaat toegelaat is of geregtig is om aldus toegelaat te word en—

- (i) voorheen minstens een jaar lank as advokaat gepraktiseer het; of
- (ii) minstens een jaar lank kragtens sy leerkontrak gedien het; of
- (iii) minstens een jaar lank ondervinding as staatsadvokaat, staatsaanklaer of landdros het.

[(2) Die prinsipaal van 'n in subartikel (1) bedoelde klerk onder leerkontrak betaal aan die klerk 'n salaris van minstens R50 per maand vanaf die datum waarop die klerk geregtig word om in die hof te verskyn.]

(3) Die sekretaris van die betrokke orde reik aan 'n in subartikel (1) bedoelde **[klerk]** kandidaat-prokureur op die skriftelike aansoek van sy prinsipaal en teen betaling van die gelde kragtens artikel 80 (bA) voorgeskryf 'n sertifikaat uit dat hy aan die betrokke bepalinge van subartikel (1) voldoen.

(4) (a) 'n Kandidaat-prokureur wat geregtig is om te verskyn soos in subartikel (1) beoog, bly by die verstryking van sy leerkontrak, en mits hy aanbly in die diens van die prokureur wat sy prinsipaal onmiddellik voor daardie verstryking was, aldus geregtig totdat hy as prokureur toegelaat word, maar nie vir langer as ses maande nie.

(b) Die bepalinge van artikel 6 is *mutatis mutandis* ten opsigte van 'n voormalige kandidaat-prokureur bedoel in paragraaf (a) van toepassing.

(5) In die geval van die dood, geestesongesteldheid, insolvensie, veroordeling weens misdaad, gyseling, skorsing, skraping van die rol of staking van praktyk van die prokureur wat die prinsipaal van 'n voormalige kandidaat-prokureur in subartikel (4) vermeld, was onmiddellik voor die verstryking van sy leerkontrak, is daardie voormalige kandidaat-prokureur geregtig om, met die skriftelike toestemming van die sekretaris van die orde van die provinsie waarin die kandidaat-prokureur kragtens leerkontrak gedien het, by enige ander prokureur in diens te tree en onder die toesig van daardie prokureur te verskyn soos in subartikel (4) beoog.”.

Vervanging van artikel 9 van Wet 53 van 1979

7. Artikel 9 van die Hoofwet word hierby deur die volgende artikel vervang:

45 “Beperking van geldelike belange van kandidaat-prokureurs

9. (1) 'n **[Klerk onder leerkontrak]** Kandidaat-prokureur mag nie 'n geldelike belang in die praktyk en diens van 'n prokureur hê nie en mag nie, sonder die voorafverkreë skriftelike toestemming van die raad van die orde van die provinsie waarin hy kragtens die leerkontrak dien, enige ander amp beklee of besigheid dryf behalwe dié van **[klerk onder leerkontrak]** kandidaat-prokureur nie.

(2) Indien 'n **[klerk onder leerkontrak]** kandidaat-prokureur die bepalinge van subartikel (1) oortree, is die leerkontrak van die aanvang af nietig en is enige diens daaronder verrig ongeldig tensy die hof om gegronde redes anders gelas.”.

Wysiging van artikel 10 van Wet 53 van 1979

8. Artikel 10 van die Hoofwet word hierby gewysig—

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

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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, 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 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 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 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 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
- (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 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 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

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 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:

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- “(1) ’n Leerkontrak kan met die toestemming van ’n prinsipaal en die betrokke **[klerk]** kandidaat-prokureur aan ’n ander prinsipaal wat gewillig is om die oordrag te aanvaar, oorgedra word.”;
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Die betrokke orde kan in geval van die dood, geestesongesteldheid, insolvensie, veroordeling weens misdaad, gyseling, skorsing, skrapping van die rol of staking van praktyk van die prinsipaal onder wie ’n **[klerk onder leerkontrak]** kandidaat-prokureur dien, of die verbod op daardie prinsipaal om ’n kandidaat-prokureur in diens te neem of verder in diens aan te hou, of enige ander rede, gelas dat **[’n]** die betrokke leerkontrak oorgedra word aan ’n ander prinsipaal wat gewillig is om die oordrag te aanvaar, en alle diens wat kragtens die oorgedraagde leerkontrak voltooi word, is vir die doeleindes van hierdie Wet geldig.”;
- (c) deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) ’n Leerkontrak kan ingevolge subartikel (2) oorgedra word ongeag die feit dat die prinsipaal wat die oordrag aanvaar as gevolg van dié aanvaarding meer as drie **[klerke onder leerkontrak]** kandidaat-prokureurs in diens sal hê.”;
- (d) deur subartikel (4) deur die volgende subartikel te vervang:
- “(4) ’n Ooreenkoms waarby ’n leerkontrak oorgedra word, word binne twee maande na die datum waarop die dienste van die betrokke **[klerk]** kandidaat-prokureur by die oordraggewer beëindig is, of binne die verdere tydperk wat die hof om gegronde rede toelaat, by die orde van die provinsie waarin onder die leerkontrak, soos oorgedra, gedien moet word, deur die oordragnemer ingelewer tesame met beëindigde verklarings—
- (a) deur die oordraggewer waarin verklaar word of aan die bepalings van hierdie Wet betreffende diens onder leerkontrak voldoen is gedurende die hele dienstermyn waartydens die betrokke **[klerk]** kandidaat-prokureur in sy diens was en die datum waarop die **[klerk]** kandidaat-prokureur sy dienste by hom beëindig het; en
- (b) deur die oordragnemer waarin die datum waarop daardie **[klerk]** kandidaat-prokureur by hom diens aanvaar het, vermeld word.”; en
- (e) deur in subartikel (5) die woorde wat op paragraaf (b) volg deur die volgende woorde te vervang:
- “en moet die betrokke prokureur en die **[klerk onder leerkontrak]** kandidaat-prokureur skriftelik en per gesertifiseerde pos van die registrasie in kennis stel.”.

Wysiging van artikel 11 van Wet 53 van 1979, soos gewysig deur artikel 5 van Wet 108 van 1984

9. Artikel 11 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) Indien ’n leerkontrak om enige rede ingetrek, laat vaar of oorgedra word, stel die prokureur by wie die **[klerk onder leerkontrak]** betrokke kandidaat-prokureur op daardie tydstip in diens is, onverwyld die sekretaris van die orde skriftelik van die intrekking, laatvaarding of oordrag in kennis.”.

Wysiging van artikel 13 van Wet 53 van 1979, soos gewysig deur artikel 2 van Wet 76 van 1980, artikel 1 van Wet 60 van 1982, artikel 2 van Wet 56 van 1983 en artikel 6 van Wet 108 van 1984

10. Artikel 13 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Indien iemand nie gereeld diens as **[klerk onder leerkontrak]** kandidaat-prokureur verrig het nie, kan die hof, indien hy oortuig is dat daar gegronde rede vir die ongereelde diens was, dat daardie diens in hoofsaak gelykstaande met gereelde diens is, en dat die betrokke orde behoorlik in kennis gestel is van die aansoek, so iemand toelaat om, op die voorwaardes wat die hof goedvind, aansoek om toelating as prokureur te doen asof hy gereeld diens kragtens die leerkontrak verrig het.”; en
- (b) deur subartikel (3) deur die volgende subartikel te vervang:

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"(3) The court may, on the application of **[an articulated 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: 15
 "(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;" 20

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): 25
 "(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: 35
 "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." 40

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 50

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“(3) Die hof kan, op aansoek van ’n **[klerk onder leerkontrak]** kandidaat-prokureur wat aan al die vereistes van ’n in paragraaf (a) of (c) van artikel 2 (1) bedoelde graad, of van ’n in paragraaf (aA) of (cA) van daardie artikel bedoelde graad of grade ten opsigte waarvan ’n sertifisering ooreenkomstig daardie onderskeie paragrawe gedoen is, voldoen het, of geregtig is om as ’n advokaat toegelaat te word, beveel dat onderworpe aan die voorwaardes wat die hof oplaê die hele of enige gedeelte van die tydperk wat daardie **[klerk]** kandidaat-prokureur kragtens die leerkontrak gedien het voordat hy aan daardie vereistes voldoen het of aldus geregtig geword het, vir die doeleindes van sy toelating en inskrywing as prokureur beskou word as gedien te wees nadat, en kragtens ’n leerkontrak aangegaan nadat, hy aan daardie vereiste voldoen het of aldus geregtig geword het.”

Wysiging van artikel 15 van Wet 53 van 1979, soos vervang deur artikel 7 van Wet 108 van 1984

11. Artikel 15 van die Hoofwet word hierby gewysig deur na subparagraaf (iv) van paragraaf (b) van subartikel (1) die volgende subparagraaf in te voeg:
 (ivA) gedurende sy tydperk van diens kragtens leerkontrak of na die verstryking van sy leerkontrak, ’n opleidingskursus goedgekeur deur die orde van die provinsie waarin hy sy diens onder leerkontrak voltooi het, bygewoon en ten genoeg van daardie orde voltooi het;”

Wysiging van artikel 22 van Wet 53 van 1979, soos gewysig deur artikel 4 van Wet 76 van 1980 en artikel 9 van Wet 108 van 1984

12. Artikel 22 van die Hoofwet word hierby gewysig deur die volgende paragrawe by subartikel (2) te voeg, terwyl die bestaande subartikel paragraaf (a) word:
 “(b) So ’n prosesstuk kan, indien die hof aldus gelas, aldus gepubliseer word in ’n vorm so na moontlik aan Vorm 1 (Ediktale Dagvaarding) van die Eerste Bylae by die Hooggeregshofreëls.
 (c) ’n Prosesstuk in paragraaf (b) vermeld, moet voor die publikasie daarvan deur die betrokke griffier goedgekeur en onderteken word.”

30 Vervanging van opskrif by Hoofstuk II van Wet 53 van 1979

13. Die opskrif by Hoofstuk II van die Hoofwet word hierby deur die volgende opskrif vervang:
“[GETROUHEIDSWAARBORGFONDS] GETROUHEIDSFONDS”.

Vervanging van artikel 25 van Wet 53 van 1979

14. Artikel 25 van die Hoofwet word hierby deur die volgende artikel vervang:

“Voortbestaan van Getrouheidsfonds

25. Die fonds wat gestig is by artikel 8 van die Toelating van Prokureurs Wysigings- en Regspraktisynsgetrouheidsfonds-wet, 1941 (Wet No. 19 van 1941), bly ondanks die bepalings van artikel 86 voortbestaan met die naam die **[GetrouheidswaARBORGFONDS] Getrouheidsfonds** vir Prokureurs **[Notarisse en Transportbesorgers]**.”

Vervanging van artikel 26 van Wet 53 van 1979, soos vervang deur artikel 3 van Wet 60 van 1982

15. Artikel 26 van die Hoofwet word hierby deur die volgende artikel vervang:

“Doel van fonds

26. Behoudens die bepalings van hierdie Wet, word die fonds aangewend ten einde persone te vergoed wat geldelike verlies ly weens—
 (a) diefstal gepleeg deur ’n praktiserende praktisyn, sy [klerk] kandidaat-prokureur of sy werknemer, van geld of ander goedere deur of namens sodanige persone toevertrou aan hom of aan sy [klerk] kandidaat-prokureur of werknemer in die loop van sy praktyk of

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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

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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."

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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.
- (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.
- (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.
- (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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terwyl hy optree as eksekuteur of administrateur in die boedel van 'n oorlede persoon of as 'n kurator in 'n insolvente boedel of in 'n ander soortgelyke hoedanigheid; en

5 (b) diefstal van geld of ander goedere wat toevertrou is aan 'n werknemer bedoel in paragraaf (cA) van die omskrywing van 'eiendomsagent' in artikel 1 van die Wet op Eiendomsagente, 1976 (Wet No. 112 van 1976), of 'n prokureur of **[klerk]** kandidaat-prokureur bedoel in paragraaf (d) van genoemde omskrywing, en wat deur enige sodanige persoon gepleeg word onder die omstandighede in daardie onderskeie paragrawe beoog, en in die loop van die verrigting—

10 (i) in die geval van so 'n werknemer, van 'n handeling in genoemde paragraaf (cA) beoog; en
 15 (ii) in die geval van so 'n prokureur of **[klerk]** kandidaat-prokureur, van 'n handeling in genoemde paragraaf (d), behoudens die voorbehoudsbepaling daarvan, beoog.
[bedoel].”

Wysiging van artikel 27 van Wet 53 van 1979

16. Artikel 27 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die fonds berus by en word beheer deur 'n beheerraad met die naam 'Die Raad van Beheer oor die **[Getrouheidswaarborgfonds]** Getrouheidsfonds vir Prokureurs [Notarisse en Transportbesorgers]’.”.

Vervanging van artikel 32 van Wet 53 van 1979

25 17. Artikel 32 van die Hoofwet word hierby deur die volgende artikel vervang:

“Vergaderings van beheerraad

32. Die beheerraad vergader op die tye en plekke wat hy of sy voorsitter van tyd tot tyd bepaal.”.

Invoeging van artikel 34A in Wet 53 van 1979

30 18. Die volgende artikel word hierby in die Hoofwet na artikel 34 ingevoeg:

“Komitees van beheerraad

35 **34A. (1) (a)** Die beheerraad kan een of meer komitees aanstel om hom by te staan by die uitvoering van sy pligte, die verrigting van sy werksaamhede en die uitoefening van sy bevoegdhede, kan te eniger tyd die lidmaatskap van so 'n komitee vermeerder of verminder en kan 'n vakature in so 'n komitee vul.

(b) Die beheerraad kan een van die lede van 'n komitee deur hom ingevolge paragraaf (a) aangestel, as voorsitter van daardie komitee aanwys en, indien geen sodanige aanwysing gedoen word nie, kan die lede van daardie komitee 'n voorsitter uit hul midde kies.

40 (2) Die beheerraad kan na goeddunke van sy bevoegdhede opdra aan 'n komitee wat deur hom ingevolge subartikel (1) aangestel is, maar word nie onthef van 'n bevoegdheid wat hy aan 'n komitee opgedra het nie, en kan 'n beslissing van so 'n komitee intrek of wysig.

45 (3) Die beheerraad kan 'n komitee ingevolge subartikel (1) aangestel of in die algemeen of in 'n besondere geval gelas om ondersoek in te stel na en die beheerraad van advies te dien oor enige aangeleentheid in verband met die pligte, werksaamhede of bevoegdhede van die beheerraad.”.

Act No. 87, 1989

ATTORNEYS AMENDMENT ACT, 1989

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);”;

(b) by the substitution for paragraph (g) of subsection (1) of the following paragraph: 15

“(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]**”; and 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.”. 25 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

Vervanging van artikel 37 van Wet 53 van 1979

19. Artikel 37 van die Hoofwet word hierby deur die volgende artikel vervang:

“Bankrekening

5 37. Geld in die fonds word, in afwagting van die belegging of
aanwending daarvan ingevolge hierdie Wet, inbetaal in 'n rekening by 'n
bankinstelling of bouvereniging in die krediet van 'n rekening met die
naam ‘Die **[Getrouheidswaarborgfondstrekening]** Getrouheidsfonds-
rekening vir Prokureurs [Notarisse en Transportbesorgers]’.”

10 Wysiging van artikel 45 van Wet 53 van 1979, soos gewysig deur artikel 3 van Wet 80
van 1985

20. Artikel 45 van die Hoofwet word hierby gewysig—

- (a) deur na paragraaf (b) van subartikel (1) die volgende paragraaf in te voeg:
 “(bA) na goedvinde van die beheerraad, die koste of 'n gedeelte daarvan
 deur 'n eiser aangegaan by die aanwending van die regsmiddels beoog
 in artikel 49 (1);”;
- 15 (b) deur paragraaf (g) van subartikel (1) deur die volgende paragraaf te
vervang:
 “(g) na goedvinde van die beheerraad, die bankkoste of 'n gedeelte
 daarvan deur 'n praktisyn betaal in verband met die hou van **[die in**
 artikel 78 bedoelde] sy trustrekening;”;
- 20 (c) deur paragraaf (a) van die voorbehoudsbepaling by subartikel (2) te skrap.

Wysiging van artikel 49 van Wet 53 van 1979

21. Artikel 49 van die Hoofwet word hierby gewysig deur subartikel (2) deur die
volgende subartikel te vervang:

- 25 “(2) 'n Aksie teen die fonds vir 'n verlies deur iemand gely weens diefstal deur
'n praktisyn, sy **[klerk]** kandidaat-prokureur of sy werknemer, word ingestel
binne een jaar na die datum van 'n kennisgewing aan so iemand of sy
regsvertegenwoordiger deur die beheerraad gerig waarin hy meegedeel word dat
die beheerraad die eis waarop daardie aksie betrekking het, verwerp.”.

30 Wysiging van artikel 55 van Wet 53 van 1979, soos vervang deur artikel 1 van Wet 116
van 1981

22. Artikel 55 van die Hoofwet word hierby gewysig deur paragraaf (a) deur die
volgende paragraaf te vervang:

- 35 “(a) beteken ‘praktiserende praktisyn’ ook 'n persoon wat in Transkei of Ciskei
'n regsberoep uitoefen, vir sy eie rekening of in vennootskap, wat soort-
gelyk is aan dié van 'n praktisyn, en—
- (i) van wie daar by 'n wet van Transkei of Ciskei, na gelang van die geval,
vereis word om, as voorvereiste om so 'n beroep uit te oefen, in besit
te wees van 'n geldige **[getrouheidswaarborgsertifikaat]** getrouheids-
fondssertifikaat wat ingevolge artikel 42 (3) aan hom uitgereik is;
- 40 (ii) wat in besit is van so 'n sertifikaat,
en is die bepalings van hierdie Hoofstuk *mutatis mutandis* van toepassing
ten opsigte van 'n diefstal gepleeg in Transkei of Ciskei, na gelang van die
geval, deur so 'n persoon, sy **[klerk]** kandidaat-prokureur of sy werknemer,
van geld of ander goedere bedoel in artikel 26: Met dien verstande dat elke
45 aksie teen die beheerraad ten opsigte van die fonds en wat voortspruit uit
sodanige diefstal, in enige hof wat deur 'n wet van Transkei of Ciskei, na
gelang van die geval, voorgeskryf word, ingestel kan word;”.

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 10
performance of that work and, at the request of such person or practitioner, assess such fees in the prescribed manner;”.

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 20 society, or of any former candidate attorney referred to in section 8 (4).”.

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 25 person concerned guilty of unprofessional or dishonourable or unworthy conduct and may—
- (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)—
 - (i) debar him from remaining in the employ of the attorney referred to in 40
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;”.

Wysiging van artikel 69 van Wet 53 van 1979

23. Artikel 69 van die Hoofwet word hierby gewysig—

(a) deur paragraaf (f) deur die volgende paragraaf te vervang:

5 “(f) [onderworpe aan die bepalings van artikel 8 (2)] die minimum besoldiging wat betaalbaar is aan [klerke onder leerkontrak] kandidaat-prokureurs, voorskryf;” en

(b) deur paragraaf (h) deur die volgende paragraaf te vervang:

10 “(h) die wyse van berekening voorskryf van die geld wat deur ’n persoon aan ’n praktisyn betaalbaar is ten opsigte van die verrigting ten behoeve van daardie persoon van ander werk as hofwerk en ten opsigte van uitgawes redelikerwyse deur daardie praktisyn aangegaan in verband met die verrigting van daardie werk en, op versoek van daardie persoon of praktisyn, daardie geld op die voorgeskrewe wyse bereken;”.

15 Wysiging van artikel 71 van Wet 53 van 1979

24. Artikel 71 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

20 “(1) ’n Raad kan op die voorgeskrewe wyse ondersoek instel na beweerde gevalle van onprofessionele of oneerbare of onbetaamlike gedrag van die kant van enige prokureur, notaris of transportbesorger wie se naam geplaas is op die rol van enige hof in die provinsie van sy orde, of hy ’n lid van so ’n orde is al dan nie, of van enigiemand wat ’n lid van sy orde kragtens ’n leerkontrak dien, of van enige voormalige kandidaat-prokureur in artikel 8 (4) vermeld;”.

25 Wysiging van artikel 72 van Wet 53 van 1979, soos gewysig deur artikel 5 van Wet 80 van 1985

25. Artikel 72 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

30 “(1) ’n Raad wat ’n ondersoek ingevolge artikel 71 instel, kan die betrokke persoon skuldig bevind aan onprofessionele of oneerbare of onbetaamlike gedrag en kan—

(a) in die geval van ’n praktisyn—

(i) hom ’n boete van hoogstens **[R2 000]** R5 000 oplê; of

(ii) hom berispe; **[en]** of

35 (iii) hom vir ’n bepaalde tydperk of tot andersins deur die raad besluit, verbied om ’n kandidaat-prokureur in diens te neem of verder in diens aan te hou; en

(iv) die koste deur die raad in verband met daardie ondersoek opgeloopt, op hom verhaal;

(b) in die geval van ’n **[klerk onder leerkontrak]** kandidaat-prokureur—

(i) sy leerkontrak opskort of intrek; of

(ii) hom ’n boete van hoogstens **[R400]** R1 000 oplê; of

(iii) hom berispe;

(c) in die geval van ’n voormalige kandidaat-prokureur in artikel 8 (4) vermeld—

45 (i) hom verbied om aan te bly in die diens van die prokureur vermeld in artikel 8 (4) of 8 (5), na gelang van die geval; of

(ii) hom ’n boete van hoogstens R1 000 oplê; of

(iii) hom berispe.”.

Wysiging van artikel 74 van Wet 53 van 1979

50 26. Artikel 74 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

55 “(a) gedrag van die kant van ’n praktisyn of **[klerk onder leerkontrak]** kandidaat-prokureur, of voormalige kandidaat-prokureur in artikel 8 (4) vermeld, wat onprofessionele of oneerbare of onbetaamlike gedrag uitmaak;”.

Act No. 87, 1989

ATTORNEYS AMENDMENT ACT, 1989

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—

Wysiging van artikel 77 van Wet 53 van 1979, soos vervang deur artikel 2 van Wet 116 van 1981

27. Artikel 77 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

- 5 “(2) Die orde in subartikel (1) genoem, kan ten opsigte van iemand wat in Transkei of Ciskei ’n regsberoep in daardie subartikel vermeld, uitoefen, of wat in Transkei of Ciskei opleiding ondergaan ten einde homself vir so ’n beroep te bekwaam, die werksaamhede uitoefen wat ingevolge hierdie Hoofstuk aan die orde ten opsigte van praktisyns of **[klerke onder leerkontrak]** kandidaat-
10 prokureurs, of voormalige kandidaat-prokureurs in artikel 8 (4) vermeld, opgedra word, indien ’n wet van Transkei of Ciskei, na gelang van die geval, hom veroorloof om dit te doen.”

Vervanging van artikel 78 van Wet 53 van 1979, soos gewysig deur artikel 1 van Wet 103 van 1983 en artikel 6 van Wet 80 van 1985

15 28. Artikel 78 van die Hoofwet word hierby deur die volgende artikel vervang:

“Trustrekenings

78. (1) ’n Praktiserende praktisyn open en hou ’n afsonderlike **[trustrekening]** trustbankrekening by ’n bankinstelling in die Republiek en deponeer daarin die geld wat hy op rekening van enigiemand hou of
20 ontvang.

(2) (a) ’n Praktisyn kan enige gelde wat in sy **[trustrekening]** trustbankrekening gedeponeer is en wat nie onmiddellik vir die een of ander bepaalde doel nodig is nie, in ’n afsonderlike **[spaar]** trustspaar- of ander rentegewende rekening by ’n bankinstelling of
25 bouvereniging belê.

(b) ’n In paragraaf (a) bedoelde **[spaar]** trustspaar- of ander rentegewende rekening moet ’n verwysing na hierdie subartikel bevat.

(2A) ’n Afsonderlike trustspaar- of ander rentegewende rekening—
30 (a) wat deur ’n praktisyn geopen word met die doel om daarin geld wat in sy trustbankrekening gedeponeer is, in opdrag van enige persoon te belê; en

(b) waaroor die praktisyn uitsluitlike beheer uitoefen as trustee, agent of inethouer of in enige ander fidusiêre hoedanigheid,
moet ’n verwysing na hierdie subartikel bevat.

35 (3) Die rente, indien daar is, op gelde wat ingevolge subartikel (1) gedeponeer is, en die rente op gelde wat ingevolge subartikel (2) belê is, word deur die betrokke praktisyn op die voorgeskrewe tyd en op die voorgeskrewe wyse aan die fonds betaal.

40 (4) ’n Praktiserende praktisyn hou behoorlike rekeningkundige aantekeninge wat besonderhede en inligting bevat betreffende enige gelde deur hom ontvang, gehou of betaal vir of op rekening van enigiemand, enige gelde deur hom **[ingevolge]** in ’n trustspaar- of ander rentegewende rekening bedoel in subartikel (2) of (2A) belê en enige rente **[in subartikel (3) bedoel]** op geld aldus belê wat aan hom betaal word of waarmee hy gekrediteer word.

45 (5) Die raad van die orde van die provinsie waarin ’n praktisyn praktiseer, kan self of deur sy benoemde, en op sy eie koste, die rekeningkundige aantekeninge van ’n praktisyn ondersoek ten einde homself te oortuig dat aan die bepalings van subartikels (1), (2), (2A),
50 (3) en (4) voldoen word, en, indien daar by so ’n ondersoek bevind word dat so ’n praktisyn nie aan daardie bepalings voldoen het nie, kan die raad die rekeningkundige aantekeninge van so ’n praktisyn bywerk en die koste van die ondersoek of van sodanige bywerking, na gelang van die geval, op daardie praktisyn verhaal.

55 (6) By die toepassing van subartikels (4) en (5) beteken ‘rekeningkundige aantekeninge’ ook enige aantekening of dokument gehou deur of in die bewaring of onder die beheer van ’n praktisyn en wat betrekking het op—

- (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.

WYSIGINGSWET OP PROKUREURS, 1989

Wet No. 87, 1989

- (a) geld **[ingevolge]** in 'n trustspaar- of ander rentegewende rekening bedoel in subartikel (2) of (2A) belê;
- (b) rente **[in subartikel (3) bedoel]** op geld aldus belê;
- (c) 'n boedel van 'n oorledene of 'n insolvente boedel of 'n boedel onder kuratorskap geplaas, ten opsigte waarvan daardie praktisyn die eksekuteur of kurator is of wat hy namens die eksekuteur of kurator administreer; of
- (d) sy praktyk.

(7) Geen bedrag op krediet van **[so 'n trust-, spaar- of ander rentegewende rekening]** die trustrekening van 'n praktisyn word as deel van die bates van die **[betrokke]** praktisyn beskou, of kan ten behoeve van 'n skuldeiser van **[so 'n]** die praktisyn in beslag geneem word nie: Met dien verstande dat enige oorskot wat oorbly na betaling van alle eise van persone wie se gelde in sodanige trustrekening gedeponeer of belê is, of gedeponeer of belê moes gewees het, **[of ingevolge subartikel (2) belê is]** en **[enige eis van die fonds]** alle eise ten opsigte van rente **[in subartikel (3) bedoel]** op geld aldus belê, geag word deel van die bates van sodanige praktisyn te wees.

(8) Die hof kan op aansoek van die orde van die betrokke provinsie, indien goeie redes aangevoer word, 'n praktisyn verbied om op enige wyse op sy **[trust-, spaar- of ander rentegewende rekening in hierdie artikel bedoel]** trustrekening te werk, en kan 'n *curator bonis* aanstel om **[so 'n trust-, spaar- of ander rentegewende rekening]** daardie trustrekening te beheer en te administreer, met die regte, pligte en bevoegdhede met betrekking daartoe wat die hof goedvind.

(9) (a) Indien 'n praktisyn—

- (i) sterf;
- (ii) insolvent raak;
- (iii) in die geval van 'n professionele maatskappy, gelikwieder word of onder geregtelike bestuur, hetsy voorlopig of finaal, geplaas word;
- (iv) van die rol geskrap of in sy praktyk geskors word;
- (v) deur 'n bevoegde hof onbevoeg verklaar word om sy eie sake te beheer; of

(vi) sy praktyk laat vaar of staak,

kan die Meester van die Hooggeregshof, op aansoek van die orde van die betrokke provinsie of van iemand wat 'n belang by die **[trust-, spaar- of ander rentegewende rekening]** trustrekening van daardie praktisyn het, 'n *curator bonis* aanstel om **[so 'n]** daardie rekening te beheer en te administreer, met soveel van die voorgeskrewe regte, pligte en bevoegdhede as wat die Meester goedvind.

(b) Iemand wat van mening is dat hy benadeel is deur 'n beslissing van 'n Meester ingevolge paragraaf (a) kan, binne 30 dae na die beslissing aan hom bekend geword het, teen daardie beslissing na die hof appelleer, en die hof kan daardie beslissing bekragtig of wysig of die ander beslissing gee wat die Meester na sy oordeel behoort te gegee het.

(c) Geen bepaling van hierdie subartikel of van subartikel (7) of (8) word so uitgelê dat dit 'n praktisyn wat met 'n in paragraaf (a) van hierdie subartikel bedoelde praktisyn in vennootskap gepraktiseer het, belet om op die **[trust-, spaar- of ander rentegewende rekening]** trustrekening van die vennootskap te werk nie.

(10) 'n Bankinstelling of bouvereniging waar 'n praktisyn **[in hierdie artikel bedoelde trust-, spaar- of ander rentegewende rekening]** sy trustrekening of enige afsonderlike rekening wat deel van sy trustrekening uitmaak, hou, word nie bloot weens die naam of beskrywing waaronder die betrokke rekening bekend staan, geag te weet dat die praktisyn nie op alle geld daarop inbetaal of waarmee dit gekrediteer is, geregtig is nie: Met dien verstande dat die bepalings van hierdie subartikel nie so 'n bankinstelling of bouvereniging onthef van enige aanspreeklikheid of verpligting wat regtens bestaan en waaraan hy afgesien van die bepalings van hierdie Wet onderworpe sou wees nie.

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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:
 - “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
- (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.”.

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

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- (11) Ondanks die bepalings van subartikel (10), het of verkry 'n bankinstelling of bouvereniging waar 'n praktisyn **['n in hierdie artikel bedoelde trust-, spaar- of ander rentegewende rekening]** sy trustrekening of enige afsonderlike rekening wat deel van sy trustrekening uitmaak, hou, ten opsigte van enige aanspreeklikheid van die praktisyn teenoor so 'n bankinstelling of bouvereniging wat nie 'n aanspreeklikheid is wat ontstaan het uit of in verband met so 'n rekening nie, geen verhaal of reg, hetsy by wyse van skuldvergelyking, teeneis, koste of andersins, op gelde wat op krediet van so 'n rekening staan nie.
- (12) Die bepalings van hierdie artikel word nie so uitgelê nie dat—
- (a) 'n bankinstelling of bouvereniging enige bestaande reg ontnem word;
- (b) enige eis, retensiereg, teeneis, reg op skuldvergelyking of vordering van enige aard wat 'n praktisyn het teen of op enige gelde deur hom op rekening van iemand gehou of ontvang, ontnem of geraak word;
- (c) 'n praktisyn wat gelde in subartikel (1) bedoel **[ingevolge]** in 'n trustspaar- of ander rentegewende rekening bedoel in subartikel (2) of (2A) belê het, van enige aanspreeklikheid ten opsigte daarvan onthef word.
- (13) 'n Bankinstelling of bouvereniging waar 'n praktisyn **['n in hierdie artikel bedoelde trust-, spaar- of ander rentegewende rekening]** sy trustrekening of enige afsonderlike rekening wat deel van sy trustrekening uitmaak, hou, verstrek wanneer daartoe gelas deur die raad van die orde van die provinsie waarin so 'n praktisyn praktiseer, aan die raad 'n ondertekende sertifikaat wat aandui wat die balans is van so 'n rekening op die datum of datums deur die raad vermeld.
- (14) Hierdie artikel is nie van toepassing op die Staatsprokureur of 'n **[professionele assistent in sy kantoor]** lid van sy professionele personeel nie.”

30 Wysiging van artikel 81 van Wet 53 van 1979, soos gewysig deur artikel 5 van Wet 76 van 1980, artikel 4 van Wet 60 van 1982, artikel 4 van Wet 56 van 1983 en artikel 7 van Wet 80 van 1985

29. Artikel 81 van die Hoofwet word hierby gewysig—

- (a) deur paragraaf (i) van subartikel (1) deur die volgende paragraaf te vervang:
- “(i) die vrystelling al dan nie van iemand wat kragtens artikel 13 (1) van diens kragtens leerkontrak vrygestel is of enige kategorie van persone wat aldus vrygestel is, tydelik of permanent, van enige van of albei dié in artikel 15 (1) **[(f)] (b) (v)** bedoelde eksamens en, in die geval van 'n persoon of 'n kategorie van persone wat tydelik aldus vrygestel is, die tydperk van sodanige vrystelling;”;
- (b) deur die voorbehoudsbepaling by subartikel (3) deur die volgende voorbehoudsbepaling te vervang:
- “Met dien verstande dat geen vrystelling wat permanent toegestaan is, gekanselleer of ingetrek word nie tensy sodanige kansellasië of intrekking by besluit van die **[Senaat en die Volksraad]** Parlement goedgekeur is.”; en
- (c) deur subartikel (4) deur die volgende subartikel te vervang:
- “(4) 'n Kragtens subartikel (1) (h) uitgevaardigde regulasie kan voorsiening maak vir strawwe by wyse van 'n boete van hoogstens **[R50]** R1 000 of gevangenisstraf vir 'n tydperk van hoogstens drie maande vir 'n oortreding daarvan of versuim om dit na te kom.”.

Wysiging van artikel 83 van Wet 53 van 1979, soos gewysig deur artikel 6 van Wet 76 van 1980 en artikel 5 van Wet 60 van 1982

30. Artikel 83 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (4) deur die volgende subartikel te vervang:
- “(4) 'n Praktisyn wat van die rol geskrap of in sy praktyk geskors is, mag nie, terwyl hy aldus geskrap of geskors is, voortgaan om as praktisyn direk of indirek vir eie rekening of in vennootskap of vereniging met enige ander

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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 **[5quat (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 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 **[5quat (1) (b)]** 34 (1) (b) of the Internal Security Act, **[1950]** 1982, has been 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) 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 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 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 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:
- “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:
- “(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

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

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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- persoon te praktiseer nie, of, behalwe met die skriftelike toestemming van die betrokke orde, en indien hy iemand is wat kragtens artikel **[5quat (1) (b)]** 34 (1) (b) van die Wet op Binnelandse Veiligheid, **[1950 (Wet No. 44 van 1950)]** 1982 (Wet No. 74 van 1982), van die rol geskrap is, ook met die skriftelike toestemming van die Minister, in enige hoedanigheid in verband met die beroep van 'n praktisyn, in diens wees nie.”;
- (b) deur subartikel (5) deur die volgende subartikel te vervang:
- “(5) 'n Praktisyn mag nie, behalwe met die skriftelike toestemming van die betrokke orde, en, in die geval van 'n persoon wat kragtens artikel **[5quat (1) (b)]** 34 (1) (b) van die Wet op Binnelandse Veiligheid, **[1950]** 1982, van die rol geskrap is, ook met die skriftelike toestemming van die Minister, iemand in enige hoedanigheid in diens neem wat van die rol geskrap of in sy praktyk geskors is solank so iemand aldus geskrap of geskors is nie.”;
- (c) deur subartikel (7) deur die volgende subartikel te vervang:
- “(7) Iemand wat enige bepaling van subartikels (1) tot (6) of van artikel 13A oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens **[R500]** R2 000 ten opsigte van elke misdryf.”;
- (d) deur in paragraaf (a) van subartikel (8) die woorde wat op subparagraaf (v) volg deur die volgende woorde te vervang:
- “is aan 'n misdryf skuldig en by skuldigbevinding strafbaar ten opsigte van elke misdryf met 'n boete van hoogstens **[R500]** R2 000 en by wanbetaling daarvan met gevangenisstraf van hoogstens ses maande.”;
- (e) deur subartikel (9) deur die volgende subartikel te vervang:
- “(9) 'n Praktisyn wat nie aan die bepalings van artikel 78 (1), (2), (2A), (3) of (4) voldoen nie, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens **[R200]** R1 000.”;
- (f) deur subartikel (10) deur die volgende subartikel te vervang:
- “(10) Iemand wat voorgee om vir sy eie rekening of in vennootskap direk of indirek as praktisyn op te tree of te praktiseer terwyl hy nie in besit van 'n **[getrouheidswaarborgsertifikaat]** getrouheidsfondssertifikaat is nie, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens **[R500]** R2 000 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met daardie boete sowel as daardie gevangenisstraf.”; en
- (g) deur in paragraaf (a) van subartikel (15) die woorde wat op subparagraaf (iv) volg deur die volgende woorde te vervang:
- “is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens **[R100]** R400.”.

40 Wysiging van artikel 86 van Wet 53 van 1979

31. Artikel 86 van die Hoofwet word hierby gewysig deur subparagraaf (i) van paragraaf (c) van subartikel (2) deur die volgende subparagraaf te vervang:

- “(i) Iemand vermeld in subartikel (4) van gemelde artikel 34 is, ondanks die bepalings van artikel 15 (1) **[(d)]** (b) (iii) van hierdie Wet, geregtig om as prokureur toegelaat te word, mits hy aan al die ander vereistes van hierdie Wet voldoen.”.

Vervanging van sekere woorde in Wet 53 van 1979

32. Die Hoofwet word hierby gewysig deur die woorde “getrouheidswaarborgsertifikaat” en “getrouheidswaarborgsertifikate”, waar hulle ook al voorkom, deur onderskeidelik die woorde “getrouheidsfondssertifikaat” en “getrouheidsfondssertifikate” te vervang.

Wysiging van “Indeling van Artikels” in Wet 53 van 1979

33. Die “INDELING VAN ARTIKELS” wat artikel 1 van die Hoofwet onmiddellik voorafgaan, word hierby gewysig deur die woord “Getrouheids-
55 waarborgfonds” deur die woord “Getrouheidsfonds” te vervang.

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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, 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

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 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 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*.

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

Vervanging van lang titel van Wet 53 van 1979

34. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang:

“WET

- 5 Tot samevatting van die wetsbepalings betreffende die toelating en praktyk van
prokureurs, notaris en transportbesorgers; die **[Getrouheidswaarborgfonds]**
Getrouheidsfonds vir Prokureurs **[Notaris en Transportbesorgers]**; en
10 prokureursordes wat gestig is ten opsigte van die beroep van prokureur, notaris
of transportbesorger; en om voorsiening te maak vir aangeleenthede wat
daarmee in verband staan.”.

Vervanging van artikel 21 van Wet 32 van 1944, soos gewysig deur artikel 18 van Wet 50 van 1956

35. Artikel 21 van die Wet op Landdroshowe, 1944, word hierby deur die volgende artikel vervang:

15 “Kandidaat-prokureurs

21. ’n **[Klerk onder leerkontrak]** Kandidaat-prokureur soos in
[sub-artikel (3) van artikel een-en-twintig van die Toelating van
Prokureurs, Notaris en Transportbesorgers Wet, No. 23 van 1934,
20 **bedoel]** artikel 1 van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979),
omskryf, kan, behoudens artikel 8 van daardie Wet, in plaas van en
namens die prokureur by wie hy onder leerkontrak in diens is, in enige
proses in ’n hof **[behalwe die hof van ’n streekafdeling ingestel ingevolge**
artikel twee, binne die regsgebied van die betrokke afdeling] verskyn.”.

Kort titel en inwerkingtreding

- 25 36. (1) Hierdie Wet heet die Wysigingswet op Prokureurs, 1989, en tree in werking
op ’n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.
(2) Verskillende datums kan aldus ten opsigte van verskillende bepalings van
hierdie Wet bepaal word.

