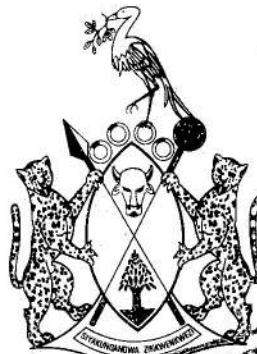


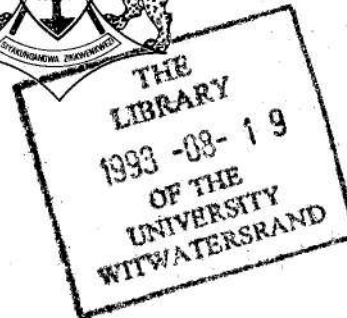
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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 56 OF 1993

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

ATTORNEYS AMENDMENT DECREE, 1993  
(Decree No. 10 of 1993)

# COUNCIL OF STATE — REPUBLIC OF CISKEI

## ATTORNEYS AMENDMENT DECREE, 1993

### DECREE

To amend the Attorneys Act, 1979.

*[English text signed by the Chairman of the Council of State. Assented to on 19 July 1993.]*

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Amendment of section 1 of Act 53 of 1979. - Section 1 of the Attorneys Act, 1979 (hereinafter in this decree referred to as the principal Act) is hereby amended -

- (a) by the substitution for the definition of "advocate" of the following definition:  
" 'advocate' means any person admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act 74 of 1964);";
- (b) by the substitution for the definition of "articled clerk" of the following definition:  
" 'articled clerk' means any person bound to serve under articles of clerkship and includes any such person who is described as a candidate attorney;";
- (c) by the substitution for the definition of "board of control" of the following definition:  
" 'board of control' means the Attorneys Fidelity Fund Board of Control referred to in section 27;";
- (d) by the insertion after the definition of "building society" of the following definitions:  
" 'Chief Justice' means the Chief Justice of the Supreme Court;  
'Ciskei' means the Republic of Ciskei;";
- (e) by the substitution for the definition of "court" of the following definition:  
" 'court' means a court of the general division of the Supreme Court;";
- (f) by the substitution for the definition of "fund" of the following definition:  
" 'fund' means the Attorneys Fidelity Fund referred to in section 25;";
- (g) by the insertion after the definition of "fund" of the following definition:  
" 'local university' means the University of Fort Hare established by section 2 of the University of Fort Hare Act, 1969 (Act 40 of 1969) and includes any university in the Republic of South Africa;";
- (h) by the substitution for the definition of "principal" of the following definition:  
" 'principal', in relation to an articled clerk, means the attorney who is being served by such clerk under articles of clerkship and, in relation to a former articled clerk referred to in section 8(4), means the attorney concerned so referred to;";
- (i) by the substitution in the definition of "profession" for the word "province" of the words "area of competency";
- (j) by the deletion of the definition of "province";
- (k) by the deletion of the definition of "provincial division";
- (l) by the substitution for the definition of "Republic" of the following definition:  
" 'Republic' means the Republic of Ciskei;";
- (m) by the substitution for the definition of "society" of the following definition:  
" 'society' means the Law Society of the Cape of Good Hope referred to in section 56(a) and which for the time being has jurisdiction over practitioners practising or entitled to practise in Ciskei by virtue of the provisions of section 77;";
- (n) by the substitution for the definition of "Supreme Court" of the following definition:  
" 'Supreme Court' means the Supreme Court of Ciskei;"; and

- (o) by the insertion after the definition of "Supreme Court" of the following definition:  
 " 'trust account', in relation to a practising attorney, 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 section 78(2) or (2A) opened by that practitioner;"

**2. Amendment of section 2 of Act 53 of 1979. -** Section 2 of the principal Act is hereby amended -

- (a) by the substitution in paragraph (a) of subsection (1) for the words "university in the Republic" of the words "local university";
- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:  
 "(aA) two years after he has satisfied all the requirements for a degree or degrees of a university in a country which may be designated by the Minister after consultation with the president of the society by notice in the *Gazette* and in respect of which a local university with a faculty of law has certified that the syllabus of instruction and the standard of training thereof, together with a supplementary examination (if any) required by such local university, the requirements of which have been satisfied by that person, are equivalent or superior to those required for the degree referred to in paragraph (a);";
- (c) by the substitution for paragraph (b) of subsection (1) of the following paragraph:  
 "(b) two years after he has become entitled to be admitted as an advocate in terms of the Admission of Advocates Act, 1964;";
- (d) by the substitution for paragraph (c) of subsection (1) of the following paragraph:  
 "(c) three years after he has satisfied all the requirements for any degree, other than an honorary degree, of any local university and certified by the Board referred to in paragraph (a) to be equivalent or superior to the examination for such a degree, but has not satisfied the requirements of paragraph (a), (aA) or (b);"; and
- (e) by the insertion in subsection (1) after paragraph (c) of the following paragraph:  
 "(cA) three years after he has satisfied all the requirements for any degree other than an honorary degree or for any degree of a university in a country designated under paragraph (aA) and in respect of which degree or degrees a local university has certified that the syllabus of instruction and the standard of training thereof are equivalent or superior to those required for a corresponding degree of such local university or after he has passed an examination or examinations conducted by a university in a country so designated and certified by the Board referred to in paragraph (a) to be equivalent or superior to the examination for a degree referred to in paragraph (c) but has not satisfied the requirements of paragraph (a), (aA), (b) or (c);"; and
- (f) by the substitution in paragraph (d) of subsection (1) for the words "an examination certified by that matriculation board" of the words "the examination for the tenth standard or other examination certified by competent authority".

**3. Amendment of section 3 of Act 53 of 1979. -** Section 3 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:  
 "(d) as State Attorney or Deputy State Attorney; and";
- (b) by the deletion of paragraphs (e), (f), (g) and (h) of subsection (1);
- (c) by the substitution for subparagraph (ii) of paragraph (i) of subsection (1) of the following subparagraph:  
 "(ii) if he is the State Attorney or a Deputy State Attorney, practised the profession in the office of the State Attorney continuously for a period of four years immediately prior to taking such clerk under articles."; and
- (d) by the substitution for subsection (3) of the following subsection:

"(3) An attorney shall at no time have more than three articulated clerks: 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, or
  - (b) where any 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 make cession of the articles of any clerk articulated to such attorney although the cessionary will then have more than three articulated clerks in his employment."

**4. Amendment of section 4 of Act 53 of 1979.** - Section 4 of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph:

"(ii) satisfied all the requirements for a degree other than an honorary degree at any local university or for a degree or degrees referred to in paragraph (aA) or (cA) of section 2(1), in respect of which a certification in accordance with those respective paragraphs has been done."

**5. Amendment of section 7 of Act 53 of 1979, as amended by section 1 of Act 76 of 1980.** - Section 7 of the principal Act is hereby amended by the addition thereto of the following subsection:

- (6) Notwithstanding the provisions of section 6, any period of absence not exceeding 12 months of an articulated clerk 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 an articulated clerk in terms of section 3 shall, provided the secretary of the society has approved such service in advance in writing, be deemed to have been served by the articulated clerk concerned under articles of clerkship with his principal."

**6. Amendment of section 8 of Act 53 of 1979.** - Section 8 of the principal Act is hereby amended -

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

"(1) Any articulated clerk -

- (a) who was admitted as an advocate or is entitled to be so admitted, or
- (b) who has satisfied all the requirements for the degree referred to in section 2(1)(a) or (aA),

shall be entitled to appear in any court other than the Supreme Court 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 appearance as if he himself had appeared: Provided that such an articulated clerk shall not be entitled to appear in a court of a regional division established under section 2 of the Magistrates' Courts Act, 1944 (Act 32 of 1944) 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, prosecutor or magistrate."

- (b) by the deletion of subsection (2);

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

"(3) The secretary of the society shall, upon the written application of the principal of any clerk referred to in subsection (1) and upon payment of the prescribed fee issue to such clerk a certificate that he complies with the relevant provisions of that subsection."; and

(d) by the addition thereto of the following subsections:

"(4)(a) Any articulated clerk who is entitled to appear as contemplated in subsection (1) shall, at the expiry of his articles and if 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 for not longer than six months.

(b) The provisions of section 6 shall apply *mutatis mutandis* in respect of the articulated clerk referred to in paragraph (a).

(5) In the event of the death, mental illness, insolvency, conviction for crime, imprisonment, suspension, striking off the roll or discontinuance of practice of the attorney who was the principal of an articulated clerk referred to in subsection (4) immediately before the expiry of his articles, such articulated clerk shall, with the prior permission in writing of the secretary of the society, be entitled to take service with any other attorney and to appear as contemplated in subsection (4) under the supervision of that attorney."

**7. Amendment of section 10 of Act 53 of 1979.** - Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The society 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 articulated clerk is serving or the debarring of such principal from engaging or continuing to engage an articulated clerk 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."

**8. Amendment of section 11 of Act 53 of 1979.** - Section 11 of the principal Act is hereby amended by the substitution for that part of subsection (3) preceding paragraph (a) of the following:-

"If a person, who has served any period under articles of clerkship which were cancelled or abandoned before completion thereof, has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1) or a degree or degrees referred to in paragraph (aA) or (cA) of section 2(1) in respect of which certification in accordance with the relative provision has been done, or is entitled to be admitted as an advocate, the court may, on the application of such person and subject to such conditions as the court may impose, order -".

**9. Substitution of section 12 of Act 53 of 1979.** - The following section is hereby substituted for section 12 of the principal Act:

"12. **Registration of articles entered into by advocate.** - Any person admitted to practise as an advocate shall not be allowed to register articles in terms of this Act unless his name has on his own application been removed from the roll of advocates."

**10. Amendment of section 13 of Act 53 of 1979, as amended by section 2 of Act 76 of 1980.** - Section 13 of the principal Act is hereby amended -

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:  
"(b) shall, if a local university which has a law faculty has certified that an examination which he has passed in any country or territory is, in so far as it relates to the syllabus of instruction and the standard of training, together with a supplementary examination (if any) required by that university, the requirements of which have been satisfied by that person, equivalent or superior to the examination which is required for the degree mentioned in section 2(1)(a) and which has been recognized by the Board for the Recognition of Examinations in Law established by section 16 of the Universities Act, 1955 or other competent authority be exempted from satisfying the requirements for the degree mentioned in the said section 2(1)(a);" and

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



“(3) The court may, on the application of an articulated clerk 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 conditions as the court may impose, order that the whole or any part of the period served by that clerk 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.”

**11. Substitution of section 15 of Act 53 of 1979.** - The following section is hereby substituted for section 15 of the principal Act:

**“15. Admission of attorney.** - (1) Unless cause to the contrary to its satisfaction is shown, the court shall on application in accordance with the provisions of this Act admit and enrol any person as an attorney -

- (a) if such person is, in the opinion of the court, a fit and proper person to be so admitted and enrolled; and
- (b) if the court is satisfied that such person complies with the following requirements or, where applicable, has been exempted therefrom in terms of any provision of this Act, namely that such person -
  - (i) is 21 years of age or older;
  - (ii)(aa) is a citizen of Ciskei or of the Republic of South Africa or has been lawfully admitted for permanent residence therein and is ordinarily resident in Ciskei or such other republic; or
  - (bb) is a citizen of a state the territory of which formerly formed part of the Republic of South Africa and belongs to such category of persons, and complies with such conditions, as may be determined by the Minister after consultation with the president of the society by notice in the *Gazette*;
  - (iii)(aa) has satisfied all the requirements for a degree referred to in section 2(1)(a) after pursuing for that degree a course of study referred to in that section; or
  - (bb) has satisfied all the requirements for a degree or degrees referred to in paragraph (aA) of section 2(1) in respect of which a certification in accordance with that paragraph has been done; or
  - (cc) has previously been admitted as an advocate or is entitled to be so admitted;
  - (iv) has passed the practical examinations referred to in section 14(1)(a), (b) and (c);
  - (v) has passed an examination in the English language which the joint matriculation board referred to in section 15 of the Universities Act, 1955 or other competent authority has certified to be of equivalent or superior standard to the examination in the said language conducted at the examination referred to in section 2(1)(d), or is by regulation made under section 81(1)(i) exempted from passing such examination; and
  - (vi) completed his service under articles within the period of 3 years preceding his application to the court or within the further period allowed by the court in terms of subsection (2).

(2) The court may at its discretion, on the application of any person and on good cause shown, allow a further period in addition to the period of 3 years referred to in subsection (1)(b)(vi), within which the applicant may apply for admission as an attorney, subject to such conditions, if any, as it may deem fit, including a condition relating to further service under articles.

(3) A court may on application made in accordance with this Act readmit and re-enrol any person who was previously admitted and enrolled as an attorney and has been removed from or struck off the roll, as an attorney -

(a) if such person is in the opinion of the court a fit and proper person to be so readmitted and re-enrolled; and

(b) if the court is satisfied that he has complied with the provisions of subsection (1)(b)(ii) or (iii)."

**12. Amendment of section 17 of Act 53 of 1979.** - Section 17 of the principal Act is hereby amended -

(a) by the deletion at the end of paragraph (b) of the word "and";

(b) by the insertion after paragraph (b) of the following paragraph:

"(bA) belongs to a class of persons (if any) which has been designated by regulation made under section 81(1)(a); and"

**13. Substitution of section 18 of Act 53 of 1979.** - The following section is hereby substituted for section 18 of the principal Act:

**"18. Admission or readmission of notaries and conveyancers.** - (1) The court may, on application made in the prescribed manner, admit and enrol any person as a notary or conveyancer if the court is satisfied -

(a) that the applicant is an attorney admitted by the court to practise as such;

(b) that no order of court striking his name off the roll of attorneys or suspending him from practice as an attorney is in force in respect of him;

(c) that no proceedings are pending to strike his name off the roll of attorneys or to suspend him from practice; and

(d) that he has passed the practical examination prescribed by section 14(1)(d) or (e), as the case may be, or is exempted therefrom under any provision of this Act.

(2) The court may on application made in the prescribed manner readmit and re-enrol as a notary or conveyancer, as the case may be, any person who was previously admitted and enrolled as a notary or conveyancer and has been removed from or struck off the roll -

(a) if he is, in the opinion of the court, a fit and proper person to be so readmitted and re-enrolled; and

(b) if the court is satisfied that he has complied with the provisions of paragraphs (a), (b) and (c) of subsection (1)."

**14. Substitution of section 22 of Act 53 of 1979, as amended by section 4 of Act 76 of 1980.** - The following section is hereby substituted for section 22 of the principal Act:

**"22. Removal of attorney from roll.** - (1) Any person who has been admitted and enrolled as an attorney in terms of section 15 may on application by the society be struck off the roll or be suspended from practice by the court -

(a)(i) if he is no longer a citizen of Ciskei or of the Republic of South Africa; or

(ii) in the case of a person who is not such a citizen (other than a person contemplated in subparagraph (iii) or a person admitted in terms of section 17, if he has failed to obtain a certificate of naturalization in terms of the applicable law within a period of six years from the date on which he was admitted for permanent residence or within such further period as the court may for good cause allow; or

(iii) in the case of a person referred to in item (bb) of section 15(1)(b)(ii) if he is no longer a citizen of any state referred to in that subparagraph or has ceased to belong to a category of persons or to comply with any condition determined in terms of that subparagraph;

(b) in the case of a person referred to in section 13(1) who is exempted from passing any examination, if he has failed to pass any examination in respect of which he is so exempted before the expiration of the period in respect of which he is so exempted or within such further period as the court may for good cause allow;

- (c) in the case of a person admitted and enrolled in terms of section 17, if it appears to the court that he is no longer resident or practising as an attorney or a solicitor in the country or territory in which he was admitted and enrolled on his admission and enrolment in the Republic or if the country or territory in which he was so admitted and enrolled is no longer a prescribed country or territory; or
- (d) if, in the opinion of the court he is not a fit and proper person to continue to practise as an attorney.

(2)(a) If it appears to the court that a person in respect of whom the society intends making an application under subsection (1) has left the Republic and that he probably does not intend to return and that his whereabouts is unknown, the court may order that service on that person of any process in connection with such application may be effected by publication of such process in a newspaper circulating in the district in which the said person's last business address (as entered in the records of the society) is situated.

(b) The process contemplated in paragraph (a) shall, if the court has so ordered, be published in a form substantially as prescribed in Form 1 (Edictal Citation) of the First Schedule to the Supreme Court rules.

(c) The process referred to in paragraph (b) shall before the publication thereof be approved and signed by the registrar of the court."

**15. Substitution of section 24 of Act 53 of 1979.** - The following section is hereby substituted for section 24 of the principal Act:

**"24. Application in terms of this Chapter to be delivered to the secretary of the society.** - Unless otherwise provided in this Chapter, any person who makes an application to the court in terms of this Chapter shall, at least one month before the date of his application, deliver to the secretary of the society a copy of the application, together with copies of other documents and papers referred to therein or connected therewith."

**16. Substitution of heading to Chapter II of Act 53 of 1979.** - The following heading is hereby substituted for the heading of Chapter II of the principal Act:

**"FIDELITY FUND".**

**17. Amendment of section 25 of Act 53 of 1979.** - Section 25 of the principal Act is hereby amended by the substitution for the words "Attorneys, Notaries and Conveyancers Guarantee Fund" of the words "Attorneys Fidelity Fund".

**18. Substitution of section 26 of Act 53 of 1979.** - The following section is hereby substituted for section 26 of the principal Act:

**"26. Purpose of fund.** - 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 or his clerk or employee of any money or other property entrusted by or on behalf of such persons to him or to his clerk or employee in the course of his practice or while acting 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 112 of 1976) or an attorney or clerk referred to in paragraph (d) of the said definition and which has been committed by any such person in 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 attorney or clerk, of an act contemplated, subject to the proviso thereof, in the said paragraph (d)."



**19. Amendment of section 20 of Act 53 of 1979.** - Section 20 of the principal Act is hereby amended by the substitution for the words "Notaries and Conveyancers Fidelity Guarantee" of the word "Fidelity".

**20. Amendment of section 37 of Act 53 of 1979.** - Section 37 of the principal Act is hereby amended by the substitution for the words "Notaries and Conveyancers Fidelity Guarantee" of the word "Fidelity".

**21. Amendment of section 38 of Act 53 of 1979.** - Section 38 of the principal Act is hereby amended by the deletion of the words "Government and other".

**22. Amendment of section 46 of Act 53 of 1979.** - Section 46 of the principal Act is hereby amended by the substitution for that part of the section preceding paragraph (a) of the following expression:

"The board of control may, if the amount of the fund exceeds the amount determined under any applicable law as sufficient for the discharge of its obligations, out of the excess in question -".

**23. Amendment of section 69 of Act 53 of 1979.** - Section 69 of the principal Act is hereby amended -

- (a) by the deletion in paragraph (f) of the expression "subject to the provisions of section 8(2)"; and
- (b) by the insertion in paragraph (h) after the words "litigious work and" of the words "in respect of expenses reasonably incurred by such practitioner in connection with the performance of that work and".

**24. Amendment of section 71 of Act 53 of 1959.** - Section 71 of the principal Act is hereby amended by the addition to subsection (1) of the expression "or of any former articled clerk referred to in section 8(4)".

**25. Amendment of section 72 of Act 53 of 1979.** - Section 72 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A council conducting an enquiry in terms of section 71 may find the person concerned guilty of unprofessional or dishonourable or unworthy conduct and may -

- (a) in the case of a practitioner -
  - (i) impose upon him a fine not exceeding R5 000; or
  - (ii) reprimand him; or
  - (iii) for a specified period or until otherwise decided by the council, debar him from engaging or continuing to engage an articled clerk; and
  - (iv) recover from him the costs incurred by the council in connection with such enquiry;
- (b) in the case of an articled clerk -
  - (i) cancel or suspend his articles of clerkship; or
  - (ii) impose upon him a fine not exceeding R1 000; or
  - (iii) reprimand him; or
- (c) in the case of a former articled clerk referred to in section 8(4) -
  - (i) debar him from remaining in the employ of the attorney referred to in section 8(4) or 8(5), as the case may be; or
  - (ii) impose upon him a fine not exceeding R1 000; or
  - (iii) reprimand him."

**26. Amendment of section 74 of Act 53 of 1979.** - Section 74 of the principal Act is hereby amended -

- (a) by the substitution in that portion of subsection (1) preceding paragraph (a) for the word "province" of the words "the area of competency";
- (b) by the substitution for paragraph (a) of subsection (1) of the following paragraph:  
 "(a) conduct which on the part of any practitioner, articled clerk or former articled clerk referred to in section 8(4) shall constitute unprofessional or dishonourable or unworthy conduct."; and
- (c) by the deletion of subsection (6).

**27. Substitution of section 77 of Act 53 of 1979, as substituted by section 2 of Act 116 of 1981.** - The following section is hereby substituted for section 77 of the principal Act:

**"77. Membership of Law Society of Cape of Good Hope and performance of functions by Law Society in respect of attorneys in Ciskei.** - (1) Any person who practises as a practitioner in Ciskei shall, unless otherwise in any law provided, be a member of the law Society of the Cape of Good Hope.

(2) The society referred to in subsection (1) may perform, in respect of any person practising as a practitioner or who undergoes training in Ciskei in order to qualify himself for the profession, the functions assigned to the society by this Act in respect of practitioners, articled clerks or former articled clerks referred to in section 8(4)."

**28. Substitution of section 78 of Act 53 of 1979.** - The following section is hereby substituted for section 78 of the principal Act:

**"78. Trust accounts.** - (1) A practitioner shall open and keep a separate trust banking account at a banking institution in Ciskei or the Republic of South Africa and shall deposit therein the money held or received by him on account of any person.

(2)(a) A 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.

(2)(A) 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 prescribed manner.

(4) A 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 a trust savings or other interest-bearing account referred to in subsection (2) or (2A) and of any interest on money so invested which is paid over or credited to him.

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

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

- (a) money invested in a trust savings or other interest-bearing account referred to in subsection (2) or (2A);
- (b) interest 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 practitioner's trust account shall be regarded as forming part of the assets of the practitioner 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 and all claims in respect of interest 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 and on good cause shown, prohibit any practitioner from operating in any way on his trust account and may appoint a *curator bonis* to control and administer such trust 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 by the society or by any person having an interest in the trust 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 the Master in terms of paragraph (a) may, within 30 days after the decision became known to him, appeal against the 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 of the partnership.

(10) Any banking institution or building society at which a practitioner keeps his trust account or 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 moneys 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.

(11) Notwithstanding anything in subsection (10) contained, a banking institution or building society at which a practitioner keeps his trust account or 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.

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

- (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; or
- (c) as relieving any practitioner who has 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.

(13) Any banking institution or building society at which a practitioner keeps his trust account or any separate account forming part of his trust account, shall, if so directed by the council of the society, furnish the council with a signed certificate which indicates the balance of such account as at the date or dates stated by the council.

(14) This section shall not apply to the State Attorney or a member of his professional staff."

**29. Amendment of section 81 of Act 53 of 1979, as amended by section 5 of Act 76 of 1980. - Section 81 of the principal Act is hereby amended -**

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

"(a) the countries or territories which shall be approved for the purposes of section 13(1) or 17 and be designated for the purposes of section 13(1)(a)(ii) and the class or classes of persons which shall be designated for the purposes of sections 13(1) and 17;"

(b) by the deletion of paragraph (b) of subsection (1);

(c) 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 the examination referred to in section 15(1)(b)(v) and, in the case of any person or category of persons temporarily so exempted, the period of such exemption;"

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

"(4) Any regulation made under subsection (1)(h) may prescribe penalties by way of a fine not exceeding R1 000 or imprisonment for a period not exceeding three months for any contravention thereof or failure to comply therewith."

**30. Amendment of section 83 of Act 53 of 1979, as amended by section 6 of Act 76 of 1980. - Section 83 of the principal Act is hereby amended -**

(a) by the substitution for subsection (2) of the following subsection:

"(2) No person shall, orally or by means of any written or printed matter or in any other manner, directly or indirectly either for himself or for any other person, canvass, advertise or tout for, or make known his preparedness or that of such other person to undertake any work, whether for or without remuneration, in connection with the drawing of a will or other testamentary writing, the administration or liquidation or distribution of the estate of any deceased or insolvent person, mentally ill person or any person under any other legal disability or the judicial management or liquidation of a company;"

(b) 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 liable on conviction to a fine not exceeding R2 000 in respect of each offence;"

(c) 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 liable on conviction in respect of each offence to a fine not exceeding R2 000 and in default of payment thereof to imprisonment not exceeding six months;"

(d) 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 liable on conviction to a fine not exceeding R1 000.”;

(e) 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 liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”; and

(f) 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 liable on conviction to a fine not exceeding R400.”.

**31. Repeal of section 85 of Act 53 of 1979.** - Section 85 of the principal Act is hereby repealed.

**32. Amendment of section 86 of Act 53 of 1979.** - 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)(b)(iii) of this Act be entitled to be admitted as an attorney, provided he complies with all the other requirements of this Act.”.

**33. Amendment of “Arrangement of Sections” in Act 53 of 1979.** - 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”.

**34. Substitution of long title of Act 53 of 1979.** - 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 Attorneys Fidelity Fund and law societies established in respect of the profession of attorney, notary or conveyancer and to provide for matters connected therewith.”.

**35. Substitution of section 21 of Act 32 of 1944, as amended by section 18 of Act 50 of 1956.** - The following section is hereby substituted for section 21 of the Magistrates' Courts Act, 1944:

“21. **Articled clerks.** - An articled clerk as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979) may, subject to the provisions of section 8 of that Act, appear instead and on behalf of the attorney to whom he is articled in any proceedings in any court.”.

**36. Short title.** — This Decree shall be called the Attorneys Amendment Decree, 1993.



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