

Swaziland

THE LEGAL PRACTITIONERS ACT, 1964

*Date of commencement: 14th January, 1966.*

*Arrangement of sections*

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#### PART I

#### PRELIMINARY

*Short title.*

1. This Act may be cited as the Legal Practitioners Act, 1964.

*Interpretation.*

2. In this Act, unless the context otherwise requires —

“advocate” means person duly admitted to practise as an advocate in the courts;

“articled clerk” means person duly bound to serve under articles of clerkship;

“articles” or “articles of clerkship” means contract in writing whereby a person is duly bound to serve an attorney for a specified period in terms of this Act;

“attorney” means person duly admitted to practise as an attorney-at-law in the courts;

“contract of pupilage” means a contract in writing whereby a pupil crown counsel is bound to serve the Attorney-General as a pupil for a period specified in relation to articles of clerkship in terms of this Act;

“conveyancer” means person duly admitted to practise as a conveyancer in Swaziland;

“Council” means the Council of the Law Society established under this Act; (Added A.13/1988.)

“courts” means the Swaziland Court of Appeal, the High Court of Swaziland, the Swaziland Water Court, the Judicial Commissioner’s Court, the Magistrates’ Courts established under the Subordinate Courts Proclamation, Coroner’s inquests held in terms of the Inquests Act, No. 59/1954, liquor licensing boards constituted under a law relating to liquor licensing and all other tribunals in which practitioners have the right of audience but, subject to the provisions of any other law, does not include any Swazi Court or Swazi Court of Appeal established under any law relating to such Courts;

“Law Society” means the Law Society of Swaziland established under this Act; (Added A.13/1988.)

“legal practitioner” means person duly admitted to practise as an advocate, attorney, notary or conveyancer in terms of this Act or the law repealed by this Act and for the purposes of sections 24*bis*, *ter*, *quat*, *quin* and *sext*, includes a firm of practising attorneys, notaries and conveyancers; (Amended A.7/1973.)

“Master” means the Master of the High Court or an acting master or an assistant master;

“Minister” means the Minister responsible for Justice; (Added A.13/1988.)

“notary” means person duly admitted to practise as a notary public;

“Registrar” means the Registrar of the High Court or an Acting Registrar or an Assistant Registrar;

“Pupil Crown Counsel” means a public officer appointed as such by the Public Service Commission who possesses the qualifications which would enable him to enter into articles of clerkship. (Added A.23/1969.)

*Application of Act.*

3. No person shall be admitted and enrolled as a legal practitioner unless and until he has complied with the provisions of this Act. (Amended L.22/1965.)

*Saving of rights and non-application to law officers.*

4. (1) No person whose name is at the commencement of this Act enrolled, in terms of a previous law or rule governing the admission of legal practitioners, as an advocate, attorney, notary public or conveyancer shall be required to be re-admitted or re-enrolled as such unless that person thereafter withdraws his name from the roll at his own request or has been struck off the roll in terms of this Act.

(2) Except as otherwise expressly provided in this Act or any other Law, nothing in this Act shall apply to a Crown Counsel as defined under the Law Officers Act, 1966 or to any person delegated to perform any function of the Attorney-General or the Director of Public Prosecutions. (Amended L.22/1965; A.13/1988.)

PART II

ADMISSION OF ADVOCATES

*Admission of advocates.*

5. (1) Every person who applies to be admitted and enrolled as an advocate shall produce proof to the satisfaction of the High Court that —

- (a) he is a citizen of Swaziland or is ordinarily resident in Swaziland, and is a fit and proper person to be admitted as an advocate; and (Amended A.7/1973.)
- (b) he is of or above the age of twenty-one years; and
- (c) he holds the degree of—
  - (i) Bachelor of Laws of the former University of Botswana, Lesotho and Swaziland; or the former university of Botswana and Swaziland; or the University of Swaziland; or
  - (ii) Bachelor of Laws of any University in Botswana, Lesotho, Zimbabwe, South Africa or Namibia; or (Amended K.O-I-C. 20/1993.)
  - (iii) Bachelor's degree in Law, not being a honorary degree, from any University in England, Ireland or Scotland; (Added K.O-I-C. 20/1993.)

or

- (d) he holds a Bachelor of Laws degree of a University in a country referred to in this paragraph and has been admitted and enrolled to practise as an advocate in South Africa, Namibia, Botswana or Lesotho or as a legal practitioner in Zimbabwe and has so practised for at least two years and at the date of such

application remains so enrolled and no proceedings to remove or suspend him from practice are pending or contemplated; and

- (e) in the case of a person to whom paragraph (d) applies, having at any time prior to his application for admission as an advocate practised as an attorney he has not practised as such attorney in South Africa, Namibia, Botswana, Lesotho or Swaziland for a period of three months immediately preceding such application or while admitted and enrolled as an advocate in any of those countries;

or

- (f) has been admitted as a barrister or solicitor in England, Scotland or Ireland and remains so enrolled and no proceedings to remove or suspend him from the roll are pending or contemplated. (Amended O.20/1993.)

and thereupon the High Court shall, unless cause to the contrary is shown to its satisfaction, admit and enrol that person as an advocate.

(Amended L.22/1965; A.13/1988.)

(2) Notwithstanding subsection (1), the Chief Justice may for the purpose of any particular case or matter grant a right of audience in the Courts of Swaziland or before any quasi-judicial tribunal in Swaziland to any person who, being otherwise eligible for admission, is not a citizen of Swaziland or ordinarily resident or practising as an advocate therein, in order to enable such person to appear as Counsel in any such case or matter. (Amended A.7/1973.)

### PART III

#### ADMISSION OF ATTORNEYS

##### *Admission of attorneys.*

6. (1) Every person who applies to be admitted and enrolled as an attorney shall produce to the satisfaction of the High Court proof that —

- (a) he is a citizen of Swaziland or is ordinarily resident in Swaziland and is a fit and proper person to be admitted and enrolled as an attorney; and
- (b) he is of or above the age of twenty-one years; and
- (c) he holds —
  - (i) a Bachelor of Laws degree of the former University of Botswana, Lesotho and Swaziland; or the former University of Botswana and Swaziland; or any university in Botswana, Lesotho, Swaziland, Zimbabwe, South Africa or Namibia; or
  - (ii) a Bachelor's degree in law from a University in a country referred to in sub-paragraph (i); or
  - (iii) a Bachelor's degree in Law, not being a honorary degree, from any University in England, Ireland or Scotland; (Added O.20/1993.)

and has served a period of articles and passed examinations prescribed under this Act which may be written after having completed not less than one half (½) of service of such articles; (Amended O.20/1993.)

or

- (d) he holds a Bachelor's degree in law from a university in a country referred to in this paragraph and is admitted and enrolled as an attorney in South Africa, Namibia, Botswana or Lesotho or a legal practitioner in Zimbabwe and has practised as such for at least two years and at the date of such application he remains so enrolled and no proceedings to remove or suspend him from practice are pending or contemplated; or
- (e) has been admitted as a barrister or solicitor in England, Scotland or Ireland and no proceedings to remove or suspend him from the roll are pending or contemplated; (Amended O.20/1993.) or
- (f) having at any time prior to his application for admission as an attorney practised as an advocate in Swaziland he has not practised as such advocate for a period of three months immediately preceding such application and that he has not at any time been struck off the roll or suspended from practice and has successfully served articles of clerkship and passed any examinations prescribed under this Act;

and thereupon the High Court shall, unless cause to the contrary is shown to its satisfaction, admit and enrol such person as an attorney.

(Amended L.22/1965; A.13/1988.)

(2) Notwithstanding subsection (1), the Chief Justice may for the purpose of any particular case or matter grant a right of audience in the Courts of Swaziland or before any quasi-judicial tribunal in Swaziland to any person who, being otherwise eligible for admission, is not a citizen of Swaziland or ordinarily resident or practising as an attorney therein, in order to enable such person to appear as attorney in any such case or matter. (Amended A.7/1973.)

#### *Articles. (Schedule)*

7. (1) A person who is desirous of being admitted as an attorney, and who is not exempted from service under articles by virtue of subsection (2) and (3), shall be bound by, and duly serve under, articles for a period determined in accordance with the provisions of the Schedule. (Amended K.O-I-C. 3/1977.)

(2) No person who has at any time been admitted to practice as an attorney or solicitor of any of the courts of record in London, Belfast or Dublin, or as a writer to the signet or a solicitor or law agent in the Court of Session of Scotland or an attorney in any division of the Supreme Court of South Africa or of South-West Africa or in the High Court of Rhodesia shall be required to serve articles in Swaziland.

(3) A person who has served as a Magistrate in Swaziland or in the office of the Master of the High Court as Master or Deputy Master for a continuous period of five years or more and has passed any of the examinations prescribed by the Chief Justice under section 33(2)(b) shall not be required to serve articles in Swaziland. (Added K.O-I-C. 3/1977.)

(Repealed A.13/1988; Reinstated A.6/1990.)

#### *Examinations in law.*

8. No person shall be admitted as an attorney under section 6(1)(c)(iv) unless he has passed the examination or examinations prescribed by the Chief Justice under section 33(2)(b)

and no person shall be admitted as an attorney under any paragraph of section 6 unless he has passed the practical examination referred to in section 33(4)(c) or has been exempted from passing such practical examination by Regulations made under section 33(2)(c).

PART IV  
ARTICLES OF CLERKSHIP

*Information to be placed before Attorney-General by persons intending to become articulated.*

9. Every person intending to serve an attorney under articles shall produce to the Attorney-General —

- (a) his birth certificate or, if no birth certificate is available, satisfactory evidence of the date and place of his birth and of his parentage; and
- (b) a certificate to the satisfaction of the Attorney-General that he is a fit and proper person and proof of the academic qualifications referred to in section 6(1)(c). (Amended A.13/1988.)

*Articles to be lodged with Attorney-General.*

10. (1) A duplicate original of all articles of clerkship shall be lodged with the Attorney-General within one month of the date of the articles, together with a duplicate original affidavit testifying to the signatures and date thereof.

(2) On production of a certificate from the Registrar that the fee prescribed under the provisions of section 33(1)(f) has been paid and on production of the original articles of clerkship and affidavit attesting signature and dates, the Attorney-General, upon being satisfied that the articles are in order and that no objection exists to registering them, shall endorse upon the original articles a certificate to the effect that the provisions of this section have been complied with. (Amended L.22/1965.)

*Articles to be lodged with Registrar.*

11. (1) The original articles of clerkship shall within two months of the date of the articles be lodged together with an affidavit, testifying to the signatures and date thereof and where they were executed, and the necessary fees prescribed under section 33(1)(a), with the Registrar who shall thereupon register the articles:

Provided that no such articles shall be accepted by the Registrar for registration unless the articles have been duly endorsed by the Attorney-General as required under the provisions of section 10.

(2) If those articles are not registered within that period of two months, the service shall, subject to any relief which the High Court may grant under section 17, be deemed to have commenced only on the date of the registration.

(3) Within one month from the date on which the clerk commences service under him, the attorney shall file an affidavit with the Registrar as to the date upon which the clerk commenced service.



*Cession to be lodged with Attorney-General.*

12. (1) The original and a duplicate original of each cession of articles shall, within one month of the date thereof, be lodged with the Attorney-General.

(2) Every such cession shall be accompanied by an original affidavit and a duplicate original affidavit by the cedent as to the due and proper service and as to the date on which the articulated clerk left his service, and by an original affidavit and duplicate original affidavit by the cessionary as to the date on which the articulated clerk entered his service.

(3) Upon production of the original and duplicate original cession and affidavits and upon production of a certificate from the Registrar that the fee prescribed under section 33(1)(f) has been paid, the Attorney-General shall, if satisfied that the cession is in order and that no objection exists to the cession, endorse upon the original cession a certificate to the effect that the provisions of this section have been complied with, and that the cession has been approved.

(4) If the attorney, under whom an articulated clerk has served, has died, or for any other reason discontinued practice, cession of the articles of the articulated clerk shall be deemed to have been validly executed if it is signed on behalf of the attorney by his legal representative or the Attorney-General, and a certificate under the hand of the legal representative or the Attorney-General, containing the particulars set forth in subsection (2), shall be deemed to be an affidavit referred to in that subsection and subsection (3). (Amended L.22/1965.)

*Cession to be lodged with Registrar.*

13. (1) Every cession of articles duly endorsed by the Attorney-General in terms of section 12(3) shall, within two months of the date of the articles, be lodged with the Registrar, together with an affidavit in like form as in section 12(2) prescribed, and the fees prescribed under section 33(1)(a), and the Registrar shall thereupon register the cession.

(2) No such cession shall be registered after that period of two months without an order of the High Court.

*Cession of articles registered outside Swaziland.*

14. Articles registered in Rhodesia, the Republic of South Africa or South-West Africa under the law for the time being in force in those countries for the registration of articles may, by leave of the High Court after lodging documents with the Attorney-General in like manner as is provided in section 12, be ceded to an attorney practising in Swaziland if the articulated clerk has served not less than one year of such articles in such other country, and any period so served in such a country shall then be accepted as a portion of the term required to be served under the provisions of section 7:

Provided that such a clerk shall serve not less than one year of the term in Swaziland. (Amended L.22/1965.)

*Amendment of articles and cessions.*

15. The terms of deeds of articles of clerkship and deeds of cession of articles of clerkship may be amended by the parties thereto with the prior written consent of the Attorney-General.

*Only practising attorneys to have articulated clerks: restrictions on number of articulated clerks.*

16. (1) No attorney shall have or retain any clerk under articles unless the attorney is actually practising the profession of attorney either on his own account or as a partner in a firm of attorneys and has practised as such continuously for a period of three years.

(2) Service by any clerk under articles to an attorney for and during the whole or any part of the time that the attorney is not practising his profession either on his own account or as a partner in a firm of attorneys shall not be deemed to be good or sufficient service for the purposes of this Act.

(3) No attorney, other than the Attorney-General, shall at any time have more than three articulated clerks: (Amended A.13/1988.)

Provided that on the death or retirement from practice of a member of a firm his surviving or remaining partner may take cession of the articles of any clerk who has been articulated to his partner so deceased or retiring, although that surviving or remaining partner may at the time have as many clerks articulated to him as are by law allowed.

*Powers of High Court.*

17. (1) Where any person articulated to an attorney has not served under the articles strictly in accordance with the provisions of this Act, the High Court, upon being satisfied that the irregular service was occasioned by sufficient cause, and that the service, though irregular, is substantially equivalent to regular service, and that the Attorney-General has had due notice of the application, may, subject to the provisions of the Schedule, at any time during the currency of the articles or, subject to subsection (3), within two years of the completion of the articles, condone the irregular service upon such conditions as it may deem fit and treat it as though the service in question had been regular and in conformity with the provisions of the Act.

(2) When any articulated clerk wishes to absent himself from the office of the attorney to whom he is articulated for any period exceeding six weeks in any one year, the High Court upon being satisfied that the contemplated absence is occasioned by sufficient cause, and that the Attorney-General and that attorney have had due notice of the application, may permit the articulated clerk to absent himself from that office:

Provided that any time during which the articulated clerk is so absent shall be added to the period for which the articulated clerk is bound to serve under articles.

(3) The High Court may, on the application of any person made within two years from the date of the completion of his articles of clerkship referred to in section 7, allow such further period as it may deem fit after the expiration of two years from the completion of his articles of clerkship, within which the applicant may apply for admission as an attorney under section 6(c)(iv) and, if that further period is allowed, the High Court may, in its discretion, impose such conditions as it may deem fit including a condition relating to the service of further articles.

(4) Where articles of clerkship are or have at any time been cancelled or abandoned before completion thereof, the High Court may, in its discretion, on the application of the person who served under those articles and subject to such conditions as the High Court may impose, order that, for the purposes of this Act, the whole or such part of the period served under those articles, as the High Court deems fit, be added to any period served by that person under articles entered into after the first mentioned articles were cancelled or abandoned, and

any period so added shall, for the purposes of this Act, be deemed to have been served under the last-mentioned articles and continuously with any period served thereunder.

*Continuous service under articles.*

18. Subject to section 17, a clerk articulated to an attorney shall, during the whole term of service specified in the articles of clerkship, be and continue to be in the actual service of that attorney and in the office and under the direct personal supervision of that attorney or his partner or partners or manager being an attorney:

Provided that —

- (a) that clerk shall receive a salary of not less than thirty emalangeni a month from the date on which he has passed any of the examinations referred to in the Regulations made under section 23(2)(f) or from the expiration of the first three years of his articles of clerkship, whichever happens last, until the expiry of the period of articles;
- (b) those articles may, with the mutual consent of that attorney and clerk, be ceded as hereinbefore provided to any other attorney who may be willing and competent to accept cession;
- (c) in the event of death, insanity, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the rolls or discontinuance of practice of the attorney under whom the clerk is serving, or other similar and sufficient cause, the High Court may, notwithstanding section 16(3), direct that the articles be ceded to any other attorney who may be competent and willing to receive the articulated clerk under cession as aforesaid; and all service completed under this proviso shall be good and effectual for the purpose of this Act.

*Articled clerk not to engage in other business: rights of articulated clerk.*

19. (1) No person who may become bound under articles of clerkship to any attorney shall, during his term of service, without the written consent of the Attorney-General previously had and obtained, hold any office for remuneration or engage in any business whatsoever other than that of clerk to that attorney and his partner or partners, if any, in the practice and employment of an attorney, nor shall such a person, during the term of that service, have any pecuniary interest in the practice and employment of an attorney.

(2) In the event of any contravention of subsection (1), the articles shall be null and void *ab initio*, and service thereunder shall be ineffectual, unless the High Court, for good cause shown, condones the contravention.

(3) Any articulated clerk who —

- (a) has, in terms of section 18, become entitled to payment of the salary referred to in that section; or,
- (b) being bound in terms of the Schedule to serve articles for a period of three years, has served at least two years of his articles; or
- (c) has satisfied all the requirements for the examinations prescribed by Regulations made under section 33(2)(b) and has served at least one year of his articles; or

(d) is entitled to be admitted as an advocate in the Courts of Swaziland; (Added K.O-1-C. 36/1975.)

shall be entitled to appear in any Magistrates' Court of Swaziland and before any board, tribunal or similar body in or before which his principal is entitled to appear instead of and on behalf of that principal who shall be entitled to charge the fees for the appearance as if he himself had appeared.

*When advocate may enter into articles.*

20. No person admitted to practise as an advocate in the courts shall be qualified to enter into articles of clerkship under the provisions of this Act unless and until his name has been removed upon his own application from the roll of advocates.

*Period of service of Crown Counsel to count as articles.*

21. Any period served by a Crown Counsel under the Attorney-General or, with the approval of the Attorney-General, partly under the Attorney-General and partly under the Director of Public Prosecutions shall, whether such period relates to any time before or after the commencement of this Act, be deemed, for the purpose of this Act, to be a period of articles of clerkship under an attorney and such articles shall, upon being lodged with the Registrar and with effect from the commencement of that period, have the same force and effect as any other articles lodged with the Registrar under this Act. (Amended A.23/1969; K.O-I-C. 2/1974; A.13/1988.)

## PART V

### ADMISSION OF NOTARIES

*Admission of notaries.*

22. The High Court may, upon application made in the manner prescribed by this Act, admit and enrol as a notary any attorney who produces proof that —

- (a) he is admitted and enrolled to practise as an attorney in Swaziland; (Amended A.13/1988.)
- (b) he has not at any time been struck off the roll or suspended from practice, and that no proceedings are pending to strike his name off the roll or to suspend him from practice; and
- (c) either —
  - (i) he has been admitted or is entitled to practise as a notary public in South Africa, Namibia, Botswana, Lesotho or Zimbabwe and on the date of the application remains so enrolled and is not under any order of suspension;
  - (ii) he has passed the examinations for notaries public prescribed under this Act.

(Amended A.13/1988.)

## PART VI

## ADMISSION OF CONVEYANCERS

### *Admission of conveyancers.*

23. The High Court may, upon application made in the manner prescribed by this Act, admit and enrol as a conveyancer any attorney who produces proof that —

- (a) he is admitted and enrolled to practise as an attorney in Swaziland; (Amended A.13/1988.)
- (b) he has not at any time been struck off the roll or suspended from practice and that no proceedings are pending to strike his name off the roll or suspend him from practice; and
- (c) either —
  - (i) he is enrolled as a conveyancer in South Africa, Namibia, Botswana, Lesotho or Zimbabwe and on the date of the application remains so enrolled and is not under any order of suspension; or
  - (ii) he has passed the examinations for conveyancers prescribed under this Act.

(Amended A. 13/1988)

## PART VII

### TRUST ACCOUNTS, CONDUCT OF PRACTITIONERS AND DISCIPLINARY PROCEEDINGS

#### *Trust account.*

24. (1) Every practising attorney, notary or conveyancer having an office within Swaziland shall open and keep a separate trust account, at a bank lawfully established within Swaziland, in which he shall deposit all moneys held or held or received by him in connexion with his practice within Swaziland, on account of any person; and he shall further keep proper books of account containing particulars and information as to moneys received, held or paid by him for or on account of any person.

(2) The Attorney-General may himself or through his nominee at public expense inspect the books of account of any such attorney, notary or conveyancer to satisfy himself that subsection (1) is being observed:

Provided that, if it is found upon such an inspection that the attorney, notary or conveyancer has not complied with subsection (1), the reasonable cost of the inspection shall be paid by the attorney, notary or conveyancer.

(3) No amount standing to the credit of such a trust account in the bank shall form part of the assets of the attorney, notary or conveyancer concerned and no such amount is liable to attachment at the instance of any creditor of the attorney, notary or conveyancer:

Provided that any excess remaining after payment of the claims of all persons whose moneys have, or should have, been deposited in the trust account, shall be deemed to form part of the assets of that attorney, notary or conveyancer.

(4) (a) Upon application made by the Attorney-General, and upon good cause shown, the High Court may prohibit any such attorney, notary or conveyancer from operating

in any way his trust account and may appoint a *curator bonis* to control and administer the trust account with such rights, duties and powers, in relation thereto, as the court may deem fit.

(b) Upon the death or insolvency or the assignment of his estate by an attorney, notary or conveyancer having an office within Swaziland or in the event of an attorney, notary or conveyancer who has an office within Swaziland being struck off the roll or being suspended from practice or being declared by a court of competent jurisdiction to be incapable of managing his own affairs, or abandoning his practice, the Master may, upon application made by the Attorney-General or by any person having an interest in the trust account of the attorney, notary or conveyancer, appoint a *curator bonis* to control and administer the trust account with such of the rights, duties and powers prescribed by Regulations made under section 33(2)(g) as the Master may deem fit.

(c) Any person aggrieved by a decision of the Master under paragraph (b) may, within thirty days after the decision became known to him or such extended period as may be allowed by the High Court for good cause shown, appeal against that decision to the High Court which may confirm or vary the decision of the Master or give such other decision as in its opinion the Master ought to have given.

(d) Nothing in this subsection or in subsection (3) shall prevent any attorney, notary or conveyancer, who was practising in partnership with an attorney, notary or conveyancer referred to in paragraph (b), from continuing to operate on the trust account of the partnership in the absence of an order to the contrary issued by the High Court.

(5) Any bank at which an attorney, notary or conveyancer, having an office within Swaziland, keeps the trust account shall not, by reason only of the name or style by which the account is distinguished, be deemed to have knowledge that the attorney, notary or conveyancer is not entitled absolutely to all moneys paid or credited to the trust account:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(6) Notwithstanding anything in subsection (5), a bank at which the attorney, notary or conveyancer keeps the trust account shall not, in respect of any liability of the attorney, notary or conveyancer to the bank, not being a liability arising out of or in connexion with that account, have or obtain any recourse or right, whether by way of set-off, counter-claim, charge or otherwise, against moneys standing to the credit of the trust account.

(7) Nothing in this section shall be construed so as to —

(a) deprive a bank of any right existing at the time when this Act comes into operation;

(b) take away or affect any just claim, lien, counterclaim, right of set-off or charge of any kind which an attorney, notary or conveyancer may, at common law or under any statute, have against or upon any moneys held or received by him on account of any person.

(8) Any attorney, notary, or conveyancer who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred emalangeni or imprisonment for a period not exceeding eighteen months, and further shall be guilty of unprofessional conduct and liable to be struck off the roll or suspended from practice. (Amended L.22/1965; A.7/1973; A.13/1988.)

*Duty of legal practitioner to extract list of trust account.*

24bis. (1) Every practising legal practitioner shall extract a list of his trust account balances at intervals of not more than three months, and shall note the balance so listed in a permanent, prominent and clear manner in the ledger account from which such balance has been extracted.

(2) Every practising legal practitioner shall keep such list of balances for not less than five years from the date at which they were extracted.

(Added A.7/1973.)

*Books of account to be examined by chartered accountant.*

24ter. Every practising legal practitioner other than an advocate, shall cause his books of account to be examined at his own expense at least once a year by an Auditor registered under the Accountants Act, 1985 and for the purposes of this Act, any reference to a public accountant shall be construed as a reference to a chartered accountant registered under that Act. (Added A.7/1973; Amended A.13/1988.)

*Duty of legal practitioner to provide accountant's certificate.*

24quat. (1) Every practising legal practitioner shall, once in each year, or at such other time as the Attorney-General may require, furnish him with a certificate signed by the public accountant or other person referred to in section 24ter.

(2) The certificate mentioned in subsection (1) shall state —

- (a) whether or not such accountant has carried out an audit of the books of account of such practitioner or merely examined them in terms of section 24ter;
- (b) that, as a result of such audit or examination, as the case may be, of the books of account, bank statements and system of bookkeeping employed by such legal practitioner for the period of twelve months terminating at the date to be specified in such certificate, or for such lesser period as the legal practitioner has been practising —
  - (i) such legal practitioner has kept and is keeping proper books of account for the relevant period so as to enable him to comply with section 24;
  - (ii) all moneys received by such legal practitioner were deposited regularly and promptly in the trust account kept by such legal practitioner in terms of section 24;
- (c) the date to which such books appear to have been written up and the date to which it appears that they were last balanced and whether or not it appears that such practitioner complied with section 24 during the period specified in paragraph (b);
- (d) that he has compared the list of balances shown on trust account in the ledgers of such legal practitioner at the closing date of the period covered as specified in paragraph (b) and, at least one other date during such period as he may select with the respective ledger accounts;
- (e) that he has made an examination of the trust account bank statement of such legal practitioner for a period of a week, or such longer period as he considered necessary in any particular case, following each such date referred to

in paragraph (d), and that such examination did not reveal that any negotiable instruments deposited in such trust banking account had not been met except in circumstances which appeared to him to be satisfactory;

- (f) whether or not in his opinion the system employed by such legal practitioner when transferring amounts from his trust banking account to his business banking account appears to ensure that on such occasion such transfer is made the balance which remains to the credit of such legal practitioner's trust banking account is equal to or in excess of his trust liabilities.

(3) The certificate to be furnished in terms of this section shall be sent direct by the accountant to the Attorney-General within six months of the annual closing of the books of the legal practitioner concerned or within such other period as the Attorney-General may require, and a copy thereof and of any report made in terms of subsection (5) shall be sent by such accountant to the attorney concerned.

(4) In any case where the Attorney-General is satisfied that it is not practicable to obtain the services of a public accountant for the issuing of such certificate, he may accept such other evidence of compliance with the requirements set out in subsections (1) and (2) as he may deem sufficient.

(5) Every accountant who has made or commenced an examination in terms of this section shall without delay report direct to the Attorney-General upon the following matters —

- (i) the fact that it has come to his notice (if such be the case) that at any date the total of the balances shown on trust account in the ledgers of the attorney exceeded the amount of the funds available in the trust banking account kept by such attorney in terms of section 24, together with any trust moneys held by such attorney in cash on hand according to the books of account;
- (ii) the tenor of any material queries concerning the books of account or entries which he has raised with such attorney and which have not been dealt with to his satisfaction.

(Added A.7/1973.)

*Legal practitioner to advise Attorney-General of name of his bank, etc.*

24quin. (1) Every practising legal practitioner shall immediately notify the Attorney-General of the name and address of the bank or banks at which he keeps the trust account or accounts in terms of section 24, and shall thereafter notify the Attorney-General immediately of any change in the name and address of such bank or banks.

(2) Every such legal practitioner shall, whenever so required by the Attorney-General, furnish him within ten days with a signed statement issued by the bank or banks with which such legal practitioner keeps his trust account or accounts as required by section 24 certifying the amount standing to the credit (or debit, if such be the case) of such trust account or accounts as at such date or dates as may be specified by the Attorney-General.

(Added A.7/1973.)



*Offences and penalties for contravention of section 24bis, ter, quat and quin.*

24*sext.* Any legal practitioner who fails to comply with section 24*bis, ter, quat* or *quin* shall be guilty of an offence and liable on conviction to a fine of five hundred emalangeni or imprisonment for eighteen months or both and shall be guilty of unprofessional conduct and liable to be struck off the roll or suspended from practice. (Added A.7/1973; Amended A.13/1988.)

*Examination of protocol and registers of notaries.*

25. (1) Every notary shall keep a book to be called the protocol register, in which he shall register all deeds enacted by him in the order in which they are executed.

(2) The protocol register shall contain in columns the —

- (a) distinguishing number;
- (b) date of execution;
- (c) nature and designation of the deed;
- (d) full names of the appearers;
- (e) date of registration;
- (f) amount of stamp duty affixed to each deed.

(3) After receiving twenty-four hours' written notice, all notaries admitted and practising in Swaziland shall produce their protocols and registers to a commissioner appointed for that purpose by the Accountant-General for inspection at such time and place as he may direct.

(4) The commissioner shall not be required to examine any deed executed before the fifteenth day of October, 1904.

(5) Notaries shall cause all instruments executed after the fifteenth day of October, 1904, to be neatly and securely bound together when they amount in number to one hundred.

(6) If any notary public ceases to practice as such, he, or if he is dead, his executor, shall within a reasonable time deliver the notary's protocol and register to the Registrar who shall file them of record.

(7) The commissioner shall make his examination immediately after the first day of January and the first day of July in each year, and report the result of his investigations to the Accountant-General.

*Offences.*

26. (1) No person, other than a legal practitioner, shall practise as such within Swaziland or in any manner hold himself out as or pretend to be, or make use of any words or any name, title or addition or description implying or tending to the belief that he is an advocate, attorney, notary or conveyancer or is recognized by law as such.

(2) No person shall orally or by means of any written or printed matter or in any manner whatsoever, directly or indirectly, either for himself or for any other person, canvass, advertise or tout for, or make known his preparedness, or that of the other person, to undertake any work, whether for or without remuneration, in connexion with the administration or liquidation or distribution of the estate of any deceased or insolvent person, lunatic, or person under other disability.

(3) No advocate, attorney, notary or conveyancer who has been struck off the rolls or suspended from practice shall, while he is struck off or suspended, continue to practise as an advocate, attorney, notary or conveyancer directly or indirectly by himself or in partnership or association with any other person.

(4) No attorney, notary or conveyancer shall, except with the prior written consent of the Attorney-General, employ in any capacity whatsoever any person who has been struck off the rolls or suspended from practice while that person is struck off or suspended.

(5) No attorney, notary or conveyancer shall make over, share or divide with any person other than a practising attorney, notary or conveyancer in Swaziland, or an attorney, solicitor, notary public or conveyancer outside Swaziland, either by way of partnership, commission or allowance or in any other manner, any portion whatsoever of his professional fees.

(6) Except on the written instructions of an attorney or of a law officer, or except when assigned or appointed for the purpose by the court, no advocate shall represent a person in the courts, or for fee, gain or reward, direct or indirect, to himself or to any other person, perform any other work of a legal practitioner.

(7) No attorney, notary or conveyancer or firm of attorneys, notaries and conveyancers shall open or maintain any office, whether a branch or other office, which is not under the continuous control and personal supervision of a qualified and duly admitted attorney who permanently resides at or near the place or town where the branch or other office is established:

Provided that any one attorney shall, for the purposes of this subsection, be deemed to be incapable of exercising continuous control and personal supervision over more than one office at the same time where the offices are in separate towns or for more than three months in a calendar year where the offices may be situated in the same town.

(8) A person who contravenes any of the foregoing provisions shall be guilty of an offence and liable, on conviction, to a fine not exceeding two hundred emalangeni for each offence:

Provided that it shall not be deemed to be a contravention of subsection (2) if —

- (a) any board of executors, or trust company (not being a private company within the meaning of the law relating to companies) —
  - (i) has in its name or title words indicating that its objects or functions include work in connexion with the administration, liquidation or distribution of any estate mentioned in subsection (2); or
  - (ii) on signboards, nameplates, or notices exhibited on the premise in which it carries on business or on its stationery, or on its usual annual almanacs or in any advertisement in the public press, or in its annual reports or any report of the proceedings at an annual general meeting, makes known by a simple statement to that effect that its objects or functions include any such work;
- (b) any person in reply to a direct inquiry voluntarily made of him by someone else makes known the preparedness of himself or some other person to perform any such work;
- (c) any shareholder or employee of a board of executors or trust company described in paragraph (a) canvasses another shareholder or employee of the same board of executors or trust company on behalf of the board or company;

- (d) any attorney, notary or conveyancer or any commercial banking institution or any such board of executors or trust company indicates in any public notice required by law in connexion with the liquidation or administration of any estate, that he or it does any such work;
- (e) any legal practitioner indicates in such form as may have received the prior approval of the Attorney-General or any nameplate or signboard exhibited in or on the premises in which he practises or on any of his stationery or professional documents that he does any such work.

(9) A legal practitioner who contravenes subsections (2), (4), (5), (6) or (7) shall be guilty of unprofessional conduct and, in addition to the liability imposed by subsection (8), shall be liable to be struck off the roll or suspended from practice.

(10) Save as provided in subsection (11), a person, not being a legal practitioner, who for or in expectation of any fee, gain or reward, direct or indirect, to himself or to any other person, draws or prepares or causes any of the following documents to be drawn or prepared —

- (a) any contract, deed or instrument relating to land or immovable property or to any right in or to land or immovable property, other than conditions of sale or brokers' notes;
- (b) any will or other testamentary instrument;
- (c) any memorandum or articles of association or prospectus of any company;
- (d) any contract, deed or instrument relating to the creation or dissolution of any partnership or any variation of the terms thereof;
- (e) any instrument or document relating to or required or intended for use in any action, suit or other proceeding in a court of civil jurisdiction within Swaziland;

shall be guilty of an offence and liable, on conviction, in respect of each offence, to a fine not exceeding two hundred emalangeni or, in default thereof, imprisonment for a period not exceeding six months.

(11) The provision of subsection (10) shall not apply to —

- (a) any person in the employ of a practising attorney, notary or conveyancer drawing or preparing or causing to be drawn or prepared any of those documents in the course of his employment and on behalf of his employer;
- (b) any person in the service of the Government drawing or preparing or causing to be prepared any of those documents in the course of his duty;
- (c) any trustee under the laws relating to insolvency or any executor, administrator or curator or any liquidator of a company drawing or preparing any such document in the course of his statutory duties and receiving such fees as may be allowed by law;
- (d) any practising advocate in so far as he would be entitled, but for the promulgation of the Act, to draw or prepare any of those documents in the ordinary course of his profession. (Amended L.22/1965.)

(12) For the purposes of subsections (6) and (10), the expression "fee, gain or reward, direct or indirect" does not apply to —

- (a) salary or emoluments of an employee if no fee, gain or reward is sought or obtained by his employer from the person on whose behalf the document was drawn or prepared; or
- (b) commission or any other remuneration to which a person is or may be entitled, either by law or otherwise, for service in his capacity as —
  - (i) executor, administrator, trustee, curator, tutor or guardian, by virtue of his appointment as that by a court or under the provisions of a will or any other testamentary instrument, or
  - (ii) agent for a person holding such an appointment.

#### PART VIIA

#### DISCIPLINARY PROVISIONS

(Added A.13/1988.)

##### *Powers of the High Court.*

27 (1) Upon any application by the Law Society, the Chief Justice, or in his absence, a Judge, may, for any reasonable cause shown order the suspension or removal of a legal practitioner from the roll and, in the case of disciplinary proceedings for professional misconduct, he may order suspension or removal or such other lesser penalty as is provided for in section 27ter.

(2) The provision of this Act relating to discipline shall be without prejudice to the inherent powers of a court or other tribunal to deal with any misconduct or an offence by a legal practitioner in the course of or in relation to proceedings before it.

##### *Disciplinary Tribunal and its procedure.*

27bis. (1) For the purpose of exercising disciplinary control and other powers conferred by this Act, there is hereby established a Disciplinary Tribunal (herein referred to as “the Tribunal”) which shall consist of —

- (a) a Chairman, who shall be a person qualified to be appointed a Judge and who shall be appointed by the Chief Justice from time to time;
- (b) two other members selected from time to time by the Chairman of the Tribunal in consultation with the President of the Council from amongst the members of the Law Society.

(2) the procedure of the Tribunal shall be as prescribed under Regulations made by the Chief Justice in consultation with the Chairman of the Tribunal, the Council and the Attorney-General.

##### *Powers and functions of Tribunal.*

27ter. (1) If after due inquiry the Tribunal decides that —

- (a) a legal practitioner has been guilty of professional misconduct; or
- (b) it would be contrary to the public interest to allow a legal practitioner to continue to practise as such because of any mental or physical disability the Tribunal shall take any of the following steps —

- (i) direct the Law Society to make an application to the High Court for an order suspending the said legal practitioner from practising as such for a period exceeding three months or removing him from the roll and the Law Society shall comply with any such directive; but no costs shall be awarded against the Law Society unless the High Court is satisfied that the Law Society has acted *mala fide* or unreasonably in bringing the application;
- (ii) suspend the legal practitioner from practising as a legal practitioner for a period not exceeding three months;
- (iii) impose on the legal practitioner a penalty not exceeding E1000.00 which amount shall be payable to the Law Society Fidelity Fund established under this Act;
- (iv) impose such conditions as it deems fit subject to which the legal practitioner may continue to practise as such;
- (v) censure the legal practitioner; or
- (vi) caution and discharge the legal practitioner either conditionally or unconditionally.

(2) If the subject matter of an allegation of professional misconduct also constitutes or is likely to constitute grounds for criminal proceedings, the Tribunal may postpone its consideration of or decision of the matter until such criminal proceedings have been finalised.

(3) No civil or criminal proceedings against a legal practitioner shall be construed as precluding any disciplinary proceedings under this Act.

(4) The Tribunal shall inform the Attorney-General, the Registrar and the Council within fourteen days of any decision being made by it under this section.

#### *Appeals.*

27quat. Any person who is aggrieved —

- (a) by the order or finding of, or penalty imposed by, the Tribunal under this Part other than a directive to the Law Society in terms of section 27ter (1)(i) may, within thirty days after the date of such order, finding or imposition of penalty appeal to the High Court against the decision of the Tribunal;
- (b) by a decision of the High Court may, within thirty days from the date of such decision appeal to the Court of Appeal.

#### *Manner of lodging complaints against legal practitioner.*

27quin. Where any person has a complaint regarding the professional conduct of a legal practitioner, he shall, in writing, submit the complaint to the Secretary to the Law Society who shall refer such complaint to the Chairman of the Tribunal for appropriate action as the Tribunal may determine.

#### *Other powers, immunities and privileges of Tribunal.*

27sext. In the performance of the functions of the Tribunal a member of the Tribunal and every person carrying out any such functions under the direction of the Tribunal shall have the same powers, privileges and immunities as a Judge of the High Court or, as the case may be,

an Officer of the High Court and all proceedings before the Tribunal shall be privileged in the same manner and to the same extent as proceedings before the High Court.

*Removal from and restoration to the roll and publication of orders.*

27oct. (1) A legal practitioner whose name has been removed from the roll may make application in the same manner as provided in this Act to have his name restored to the roll.

(2) The Registrar shall, as soon as practicable, publish in the Gazette any order removing or suspending the name of a legal practitioner from or restoring it to the roll and if the legal practitioner is also registered or enrolled as such in a country other than Swaziland, the Registrar shall, in addition, submit such information to any other authorities with which such practitioner is registered or enrolled in that country.

*Application of Part VIIA to law officers.*

27nov. The provisions of this Part shall apply to any person to whom the Law Officers Act, 1966 applies and who is also admitted and enrolled as a legal practitioner.

PART VIII  
MISCELLANEOUS

*Petition for admission and enrolment.*

28. Any person who wishes to be admitted and enrolled as a legal practitioner or who wishes to be granted a right of audience in any particular case or matter shall, by written petition, apply to the High Court after serving a copy of such petition upon the Attorney-General and the Secretary of the Law Society as provided by section 30. (Amended A.13/1988.)

*Applicants for admission to supply certain information.*

29. Every person who applies to the High Court to be admitted and enrolled as a legal practitioner shall, in addition to such further information as the Attorney-General may require, furnish him with the following information —

- (a) that the person is a fit and proper person to be so admitted and enrolled;
- (b) if the person was a legal practitioner in any court, that, save for the purpose of complying with section 6(1)(e) and section 20, he has not been struck off the roll of such court or suspended from practice for improper or unprofessional conduct and that no proceedings are pending to strike him off such a roll or to suspend him from practice on any such grounds. (Amended A.13/1988.)

*Petition for admission, re-admission or audience to be served on Attorney-General and Law Society.*

30. (1) Any person who applies to be admitted or re-admitted as a legal practitioner or for a right of audience shall, at least twenty one days before the date of his application, deliver to the Attorney-General and the Secretary of the Law Society together with his notice of application, a copy of his petition for admission or re-admission or right of audience and a copy of all

affidavits, certificates and other documents or papers which are referred to or connected with the application.

(2) Upon production to the Attorney-General and the Secretary of the Law Society as provided in subsection (1), of the notice of application and a copy of the petition, affidavits, certificates, other documents or papers and upon payment of such fees as may be prescribed in terms of section 33(1), the Attorney-General and the Secretary of the Law Society shall if satisfied that the applicant has complied with the provisions of subsection (1), certify on such application that the provisions of this section have been complied with.

(3) Unless certificates have been obtained from the Attorney-General and the Secretary of the Law Society as required by subsection (2), the applicant shall not be entitled to proceed with his application to court.

(4) In the case of an application for the grant of a right of audience, if the High Court is satisfied that such application is of sufficient urgency and that it is appropriate, having regard to all the circumstances, to reduce the period of notice specified in subsection (1) it may reduce such period to not less than two days but only after the applicant has given notice to the Attorney-General and the Secretary of the Law Society of his intention to present his application in terms of this subsection.

(5) The Attorney-General and the Law Society shall be entitled to be represented at the hearing of an application for admission, re-admission or right of audience.

(Amended L.22/1965; A.13/1988.)

*Records to be kept by Registrar.*

31. (1) The Registrar shall keep a roll of legal practitioners admitted to practise in terms of this Act and every person so admitted shall pay the prescribed fee for a certificate of admission and enrolment under the hand of the Registrar in the form prescribed under section 33(3)(c).

(2) Such a roll shall be in the form of separate alphabetical lists, recording the names of advocates, attorneys, notaries public and conveyancers respectively admitted to practise under the Act or any prior law, with the dates of the admission and the addresses of the legal practitioners.

(3) Whenever the High Court makes an order striking off the roll or suspending from practise any legal practitioner or, on the application of any legal practitioner, removing his name from the roll, the Registrar shall forthwith enter on the roll kept by him a note or minute of the order opposite the name of the legal practitioner concerned.

*Preservation of rights of existing legal practitioners and restrictions on non-resident or non-citizen attorneys.*

32. (1) Subject to this Act, a legal practitioner who on the commencement of this Act is entitled to practise as such shall continue to be so entitled:

Provided that the Minister may, in respect of such legal practitioners as are admitted and enrolled on or after the coming into operation of this Act, by notice in the Gazette and with effect from such date as he may determine, specify the categories of legal practitioners in relation to the courts and tribunals before which they may appear.

(2) Any attorney who is not a citizen of Swaziland, or ordinarily resident or practising as such in Swaziland shall not have a right of audience before the court. (Amended K.O-I-C. 20/1993.)

(Amended L.22/1965; A.7/1973; A.13/1988.)

*Fees, Regulations and rules of court.*

33. (1) The Chief Justice may, by notice in the Gazette, prescribe a scale of fees which shall be paid to the Registrar in respect of the following matters —

- (a) registration of articles of clerkship and cession of articles of clerkship;
- (b) admission as advocate, attorney, notary or conveyancer, respectively;
- (c) enrolment as an advocate, attorney, notary or conveyancer, respectively;
- (d) re-admission as an advocate, attorney, notary or conveyancer, respectively;
- (e) re-enrolment as an advocate, attorney, notary or conveyancer, respectively;
- (f) perusal by the Attorney-General of articles of clerkship, deeds of cession of articles of clerkship, petitions for admission as advocate, attorney, notary or conveyancer or for carrying out any of the other duties imposed upon the Attorney-General by this Act;
- (g) certificates of admission and enrolment; and
- (h) an annual practising certificate for attorneys: (Added A.7/1973.)

Provided that in respect of an advocate or attorney who is not a citizen of Swaziland and not ordinarily resident, or practising in Swaziland, higher fees may be prescribed in relation to —

- (i) the admission, enrolment, re-admission and re-enrolment; and
- (ii) the annual practising certificate for attorneys. (Amended A.7/1973.)

(2) The Chief Justice, after consultation with a committee consisting of a law officer, the Registrar and two legal practitioners appointed by the Council, may, by notice in the Gazette, make Regulations for the purpose of determining and prescribing —

- (a) the examinations any person is required to pass before being admitted and enrolled as a legal practitioner or any exemptions he may be granted from such examinations;
- (b) the rights, duties and powers of a *curator bonis* appointed under section 24;
- (c) except as otherwise provided in this Act, such other matters relating to service under articles (and for this purpose he may amend the Schedule hereto) and the admission of legal practitioners.

(Amended A.13/1988.)

(3) The Chief Justice may make rules of court prescribing —

- (a) the nature and form of the oath or oaths, affirmation or affirmations which shall be taken before admission and enrolment;
- (b) the fees payable on petitions, affidavits, certificates or documents used or required in connexion with any application under this Act;
- (c) the form of certificates and orders required to be given or produced under this Act; and



(d) generally, matters which carry into effect the provisions of this Act.

(4) The Chief Justice may, after consultation with the Attorney-General and the President of the Council, appoint examiners for the purpose of conducting examinations under this Act and may determine the fees to be paid by candidates taking those examinations and the remuneration to be paid to examiners. (Amended L.22/1965; A.13/1988.)

#### PART IX

#### THE LAW SOCIETY OF SWAZILAND

(Added A.13/1988.)

##### *Establishment of the Law Society of Swaziland.*

34. (1) There is hereby established a society, to be known as the Law Society of Swaziland, which shall be a body corporate with perpetual succession and a common seal and which shall be capable of suing and being sued in its corporate name and of performing such acts as bodies corporate may by law perform including the acquisition, holding and alienating movable and immovable property and other rights:

Provided that on the date of commencement of this Act the Law Society of Swaziland existing immediately before the commencement of this Act shall, unless the Minister otherwise directs, continue as the body corporate established by this section.

(2) All assets and liabilities and all rights and obligations which belonged or attached to the Law Society referred to in the proviso to subsection (1) shall, on the date of commencement of this Act and without further assurance, vest in the Law Society established by subsection (1).

##### *Membership of the Society.*

35. (1) Every person admitted and enrolled as a legal practitioner shall be a member of the Law Society.

(2) Any member whose name has been removed from the roll or the register shall cease to be a member of the Law Society and any member who has been suspended from practice shall become disentitled to the rights and privileges of membership during such suspension.

(3) The Law Society may prescribe different categories of members and may also prescribe different rights, duties and privileges in respect of each category.

##### *Objects and functions of the Law Society.*

36. The objects and functions of the Law Society shall be —

- (a) to maintain and enhance the prestige, status and dignity of the legal profession;
- (b) to regulate the profession;
- (c) to encourage and promote efficiency in and responsibility in relation to the profession;
- (d) to deal with all matters relating to the interests of the profession and to protect those interests;

- (e) to uphold the integrity of legal practitioners;
- (f) to uphold and improve the standards of professional conduct and qualifications of legal practitioners;
- (g) to provide for the effective control of the professional conduct of practitioners;
- (h) to promote uniform practice and discipline among practitioners;
- (i) to encourage the study of law;
- (j) to initiate and promote reforms and improvements in any branch of law, the administration of justice, the practice of law and in the formulation of legislation;
- (k) to represent generally the views of the profession;
- (l) in the interests of the profession, to co-operate with such other societies or bodies of persons as it may deem fit;
- (m) to do all such acts and things as are incidental or conducive to the attainment of the above-mentioned objectives.

*Council of the Law Society.*

37. (1) The Law Society shall have a Council which shall consist of —
- (a) the following persons elected annually by the general annual meeting of the Society —
    - (i) a President;
    - (ii) a Vice-President;
    - (iii) a Secretary;
    - (iv) a Treasurer; and
    - (v) not more than four other persons from among the members of the Society; and
  - (b) a law officer who is admitted and enrolled as a legal practitioner, appointed by the Minister.
- (2) Notwithstanding subsection (1), the persons holding office in the Law Society existing immediately before the commencement of this Act shall continue to hold such office until the first Council is constituted or until such time as that Society determines and the first elections of the members of the Council shall, if held at any time other than during the general annual meeting, be deemed to have been validly held.

*Management and control of the Law Society.*

38. (1) The management and control of the Law Society shall be vested in the Council which may exercise all such powers and do all such things as may be exercised or done by the Society save for those which are expressly required by this Act to be exercised or done by the Society in general meeting.
- (2) The Law Society the Council and any member of the Council officer or agent thereof shall not be liable for loss injury or damage sustained by a person as a result of the

bona fide exercise of a power or duty conferred or imposed upon the Society or the Council by this Act:

Provided that this section shall not be construed so as to prevent a person from recovering by legal proceedings compensation for any loss, injury or damage sustained by him which was caused by negligence or breach of contract.

*Annual general meetings.*

39. (1) Once in each calendar year there shall be held a general meeting of members of the Law Society to be called the annual general meeting.

(2) Subject to the Bye-laws made under section 42, the date, venue and time of the annual general meeting shall be determined by resolution of the Council:

Provided that in respect of the first annual general meeting or the first meeting for the purpose of electing members of the Council, such date, venue and time shall be determined by the Law Society existing immediately before the commencement of this Act.

(3) At least twenty-one days prior to the date appointed for the annual general meeting, written notice thereof shall be sent to each member of the Law Society.

(4) The business to be transacted at the annual general meeting shall include —

- (a) the election in respect of the ensuing year, of the members of the Council or, if the election has taken place prior to the meeting, a declaration of the result of such election; and
- (b) the election of an auditor; and
- (c) the consideration of any business of which due notice has been given in accordance with the Bye-laws.

*Special general meetings.*

40. A special general meeting of members shall be held when convoked —

- (a) by a majority of members of the Council; or
- (b) by the President; or
- (c) by the Secretary in response to a requisition for such meeting signed by not less than twelve members of the Society.

*Quorum at general meetings.*

41. Unless otherwise provided in the Bye-laws, the quorum necessary for the transaction of the business of any annual or special general meeting shall be not less than half of the members of the Law Society resident in Swaziland. (Amended A.6/1990.)

*Law Society may make Bye-laws.*

42. (1) The Law Society may make Bye-laws adopted by a majority of members present personally at a general meeting of the Society.

(2) Bye-laws made in terms of subsection (1) may provide for any or all the following purposes —

- (a) general meetings of members, the quorum necessary for the transaction of business, the conduct and place of meeting, and the method of voting;
- (b) meetings of the Council, the quorum necessary for the transaction of its business, the conduct of and voting at meetings thereof and the method of appointment of members to represent absent members;
- (c) the allocation of a defined number of seats on the Council to particular areas or towns;
- (d) the procedure to be adopted in the election of members of the Council and of an auditor or auditors;
- (e) annual subscriptions to be paid by members and the amount thereof and the date when such subscriptions shall become due;
- (f) the powers and duties of the President, Vice-president, Secretary, Treasurer and other officers of the Law Society and of the Council;
- (g) the registers and other records to be kept;
- (h) the circumstances in which payments may be made to the Secretary and other officers of the Society and to members of the Council for travelling and other expenses and for the performance of any function on behalf of the Society;
- (i) the procedure to be followed and the requirements to be satisfied by any member who wishes to obtain the recommendation of the Law Society for his appointment as Senior Counsel;
- (j) the method of the investigation of complaints against members in their capacity as members of the Law Society;
- (k) defining acts or omissions which constitute unprofessional, dishonourable or unworthy conduct on the part of members;
- (l) prescribing a tariff of charges and commissions or minimum or maximum charges and commissions for services rendered by legal practitioners in matters not provided for by the rules of the High Court or of Magistrates' Courts:  
Provided that no Bye-laws made in terms of this paragraph shall prohibit any legal practitioner from acting in any proper case or matter without making any charge therefor;
- (m) the appointment of staff;
- (n) the place where the records, books and documents of the Society shall be kept and where the office of the Society shall be situated;
- (o) the power of the Council to decide and act as it may think proper in matters not provided for by the Bye-laws and to make rules respecting the use by members and other persons of the property of the Society;
- (p) the appointment of honorary members;
- (q) the requirement by members to notify the Society or any officer thereof of particulars of their names and addresses and those of their partners and of any change in such particulars;
- (r) the imposition by the Council of a penalty recoverable by the Council which shall not exceed fifty emalangen for each week of default, for failing to

notify any particulars required in terms of Bye-laws made under paragraph (q);

(s) providing generally for the furtherance of the objects and powers of the Law Society.

(3) All Bye-laws made under this section shall be subject to the approval of the Minister and shall come into force only after publication thereof in the Gazette.

#### PART X

#### LAW SOCIETY FIDELITY FUND

(Added A.13/1988.)

##### *Establishment of Fidelity Fund.*

43. (1) There is hereby established a fund to be known as the Law Society Fund (herein referred to as "the Fund").

(2) The Fund shall be administered, maintained and managed by or on behalf of the Law Society for enabling the Law Society to make such disbursements therefrom as are in the opinion of the Law Society necessary to meet expenses incurred by the Fund and to pay for loss sustained by any person in consequence of an act of dishonesty by a legal practitioner as such or his employee in the course of employment.

(3) Money in the Fund shall, pending the investment or application thereof in terms of this Act, be paid into an account at a financial institution recognised as such under the Financial Institutions Order, 1975 to the credit of an account to be known as "The Law Society Fidelity Fund".

(4) The Law Society may enter into a contact with any person carrying on the business of insurance for the purpose of ensuring that —

(a) the Fund shall be indemnified against any loss or claim arising from any act of dishonesty or prejudice committed by a member of the Law Society or of his employee in the course of employment; and

(b) if a member of the Law Society has duly paid the premium for such policy, he shall be indemnified under an insurance policy in respect of liability arising from or in the course of legal practice whether such liability arises from his own act or that of his agent or employee.

(5) A claimant against the Fund shall not have —

(a) any right of action against any person with whom a contract of indemnity has been entered into in terms of this Act in respect of such contract; or

(b) any right to any money paid by the insurer in accordance with such contract.

(6) Money paid by the insurer in accordance with a contract of indemnity with the Fund shall be paid into the Fund for the benefit of the Law Society.

(7) The Law Society may invest the moneys in the Fund in such manner as it thinks fit.

(8) Every member of the Law Society other than a member who is a full-time employee in the public service or such other service as the Law Society may specify, shall pay such contribution to the Fund as the Law Society may determine.

(9) (a) A legal practitioner practising on his own account or in partnership and any legal practitioner intending to practise shall apply in the prescribed form to the Secretary to the Law Society concerned for a Fidelity Fund certificate.

(b) Any application referred to in paragraph (a) shall be accompanied by the contribution payable in terms of this Section.

(c) (i) Upon receipt of the application referred to in paragraph (a), the Secretary of the Law Society shall, if he is satisfied that the applicant has discharged all his liabilities to the Law Society in respect of membership dues and of his contribution and that he has complied with any other lawful requirements of the Law Society, forthwith issue to the applicant a Fidelity Fund certificate in the prescribed form.

(ii) A Fidelity Fund certificate shall be valid until 31st December of the year in respect of which it is issued.

(iii) Any document purporting to be a Fidelity Fund certificate which has been issued contrary to the provisions of this Act shall be null and void and shall on demand be returned to the Law Society.

(10) (a) A legal practitioner shall not practise or act as a legal practitioner on his own account or in partnership unless he is in possession of a Fidelity Fund certificate.

(b) Any legal practitioner who practises or acts in contravention of paragraph (a) shall not be entitled to any fee, reward or disbursement in respect of anything done by him while so practising or acting.

*Compensation for loss through dishonesty.*

44. (1) Where it is proved to the satisfaction of the Council that any person has sustained loss in consequence of theft, fraud, forgery or other dishonesty committed by a legal practitioner or by an employee of a legal practitioner in connection with —

(a) the practice by that legal practitioner of his profession; or

(b) any money or property entrusted to that legal practitioner or his employee in the course of his practice as a legal practitioner or whilst he is acting as executor or administrator in the estate of a deceased person or as trustee in an insolvent estate or in a similar capacity;

the Council may, subject to the provisions of this Act, make a grant to that person out of the Fund for the purpose of relieving or mitigating that loss.

(2) Before considering an application for a grant in terms of this section the Council may require the applicant to exhaust all legal remedies available to him in respect of the loss to which the application relates.

(3) A grant may be made in terms of this section whether or not the legal practitioner concerned was in possession of a valid compensation fund certificate when the theft, fraud, forgery or other dishonesty which gave rise to the loss was committed, and notwithstanding that subsequent to the commission of the theft, fraud, forgery or other dishonesty the legal practitioner concerned has died or ceased to practise or has been suspended from practice or his name has been struck off the roll.

(4) No grant shall be made in terms of this section in respect of any loss unless notice of the loss is given by the person who sustained it in such manner and within such time after the loss first came to his knowledge as may be prescribed.

(5) In inquiring into any allegation of theft, fraud, forgery or other dishonesty that is the subject of any application for a grant in terms of this section, the Council shall have the same powers and privileges as are conferred upon commissioners by the Commissions of Inquiry Act, 1963.

*Subrogation of Law Society.*

45. (1) On the making of any grant in terms of section 45 to any person in respect of any loss —

(a) the Council shall, to the amount of that grant, be subrogated to any rights and remedies in respect of that loss which are vested in or available to —

(i) the person to whom the grant is made; or

(ii) the legal practitioner or employee whose theft, fraud, forgery or other dishonesty gave rise to the loss;

(b) the person to whom the grant is made shall have no right under insolvency, other legal proceedings or otherwise to receive any sum in respect of the loss out of the assets of the legal practitioner or employee whose theft, fraud, forgery or other dishonesty gave rise to the loss until the Council has been reimbursed the full amount of the grant.

(2) In subsection (1), any reference to the person to whom the grant is made or the legal practitioner or employee shall include, in the event of his death, insolvency or other disability, a reference to his personal representative or any other person who has authority to administer his estate.

#### PART XI

#### OTHER PROVISIONS

(Added A.13/1988.)

*Conferment of honour and dignity of King's Counsel.*

46. The King may, on the recommendation of the Chief Justice confer the honour and dignity of King's Counsel upon a legal practitioner who has rendered distinguished service in the legal profession in Swaziland.

#### SCHEDULE

(Section 7)

#### PROVISIONS WITH RESPECT TO THE LENGTH OF TERM OF ARTICLED SERVICE

1. In the case of any person who is admitted or is entitled to be admitted as an advocate under the Act, or who has satisfied all the requirements for a degree or examination in law prescribed by Regulations made under section 33(2), the term shall be one year.

2. In the case of any person who has satisfied all the requirements for a degree, not being an honorary degree, at any university in the United Kingdom of Great Britain and Northern Ireland or of such degree as is approved of in Regulations made by the Chief Justice under section 33(2)(a), the term shall be two years.

3. In the case of any person who has passed an examination (other than the practical examination) prescribed in Regulations made by the Chief Justice under section 33(2)(b) the term shall be three years.

4. In the case of any other person, the term shall be four years.

5. The period of service under articles which the clerk is required to serve shall be determined by the qualifications possessed by the clerk at the time the articles are entered into.  
(Amended L.22/1965.)