



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 135

1991

#### PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 17 of 1991: Attorneys Amendment Act, 1991.

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**EXPLANATORY NOTE:**

- \_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.
- [ ] Words in bold type in square brackets indicate omissions from existing enactments.

**ACT**

To amend the Attorneys Act, 1979, so as to make other provision in relation to the requirements for the admission of attorneys; to make other provision for exemptions in respect of service under articles and examinations; to establish a Board for Legal Education and its powers, duties and functions; to delete or replace certain obsolete definitions and expressions; to re-enact subsection (3) of section 81 of the Act which was erroneously repealed by Act 22 of 1990; to amend Act 22 of 1990 to replace a certain definition; to amend Act 32 of 1944 to provide further for the appearance of candidate attorneys in court proceedings; and to provide for incidental matters.

*(Signed by the President on 28 November 1991)*

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 53 of 1979, as amended by section 1 of Act 87 of 1989 and section 11 of Act 22 of 1990.

1. Section 1 of the Attorneys Act, 1979 (hereinafter referred to as the principal Act), is hereby amended -

- (a) by the substitution for the definition of "advocate" of the following definition:

" 'advocate' means [**an advocate of the Supreme Court**] any person admitted to practise and enrolled as an advocate in terms of the Admission of Advocates Act, 1964 (Act 74 of 1964);";

- (b) by the insertion after the definition of "banking institution" of the following definition:

" 'board' means the Board for Legal Education established under section 24A;";

- (c) by the substitution for the definition of "building society" of the following definition:

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“ ‘building society’ means a building society as defined in section 1 of the Building Societies Act, 1986 (Act 2 of 1986), and finally registered or deemed to be registered as a building society in terms of section 4 of that Act;”;

- (d) by the substitution for the definition of “court” of the following definition:

“ ‘court’ means [any court of a provincial division] the High Court;”;

- (e) by the substitution for the definition of “profession” of the following definition:

“ ‘profession’ means the profession of attorney, notary or conveyancer and, in relation to [a society, means such profession within the province of that society] the board, includes the profession of advocate;”;

- (f) by the insertion after the definition of “fund” of the following definition:

“ ‘law clinic’ means a centre for clinical legal education of a faculty of law at a university, and includes a law centre controlled by a non-profit-making organisation which provides legal services to the public without charge;”;

- (g) by the deletion of the definition of “province”;
- (h) by the deletion of the definition of “provincial division”;
- (i) by the deletion of the definition of “Republic”;
- (j) by the substitution for the definition of “roll” of the following definition:

“ ‘roll’ [in relation to a court] means the roll of attorneys or of notaries or of conveyancers [of that court] referred to in section 21;”;

- (k) by the substitution for the definition of “society” of the following definition:

“society” means [any society] The Law Society of Namibia referred to in section 56;”;

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(l) by the deletion of the definition of "Supreme Court"; and

(m) by the deletion of the definition of "Territory".

Insertion of section 1A in Act 53 of 1979.

**2.** The following section is hereby inserted in Chapter I of the principal Act before section 2:

"Requirements to be admitted as an attorney.

**1A. (1)** Subject to the provisions of section 15, any person shall be entitled to be admitted as an attorney if he or she -

(a) is duly qualified;

(b) has completed his or her service under articles of clerkship, or is exempted from such service by or under this Act; and

(c) has passed the practical examinations referred to in section 14(1)(a), (b), (c) and (d), or is exempted from the requirement to pass any of those examinations or any part thereof by or under this Act.

(2) A person shall be duly qualified for the purposes of subsection (1) if he or she holds a degree, diploma or certificate in law which has been prescribed under subsection (3), or which in terms of subsection (5) is deemed to have been so prescribed.

(3) Subject to the provisions of subsection (4), the Minister may from time to time, on recommendation of the board, by notice in the *Gazette* prescribe the degrees, diplomas or certificates granted after examinations by a university or other educational institution, which shall entitle the holders thereof, irrespective of whether any additional practical examination or practical experience is required to be passed or undergone, to be admitted in terms of this Act as attorneys.

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(4) No degree, diploma or certificate granted after examinations by a university or other educational institution situated outside Namibia shall be prescribed under subsection (3), unless -

(a) such degree, diploma or certificate entitles the holder thereof, irrespective of whether any additional practical examination or practical experience is required to be passed or undergone, to practise as an attorney or in a capacity equivalent to that of an attorney in the country where such university or other educational institution is situated; and

(b) the Minister is satisfied that possession of such degree, diploma or certificate indicates a standard of professional training which provides the holder thereof with sufficient knowledge to practise as an attorney in Namibia.

(5) Any degree, diploma or certificate which immediately before the date of commencement of the Attorneys Amendment Act, 1991, entitled a candidate attorney referred to in section 2(3) to admission as an attorney in terms of the provisions of this Act, as it applied in Namibia before the commencement of the said Attorneys Amendment Act, 1991, shall be deemed to have been prescribed under subsection (3) in respect of such candidate attorney."

Substitution of section 2 of Act 53 of 1979, as amended by section 1 of Act 108 of 1984.

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

"Duration of service under articles.

2. (1) Any person intending to be admitted as an attorney shall serve under articles of clerkship for a period of two years.

(2) Subject to the provisions of this Act, any period of service performed before the obtaining of any degree, diploma or certificate referred to in section 1A(2) shall not be regarded as good or sufficient service for the purposes of this Act.

(3) Any person who on the date of commencement of the Attorneys Amendment Act, 1991, is serving as a candidate attorney, shall, subject to the provisions of subsection (4), serve the period which such person is bound to serve in that capacity in terms of his or her articles of clerkship as if the said Attorneys Amendment Act, 1991, had not been passed;

(4) Any candidate attorney, including a candidate attorney referred to in subsection (3), shall for the purposes of section 15 be deemed to have completed his or her service under articles of clerkship if he or she has passed, subject to the other provisions of this Act, the examinations referred to in section 14(1)(a), (b), (c) and (d) and has served under such articles of clerkship for a continuous period of not less than one year: Provided that the provisions of this subsection shall not apply to a person who, immediately before the commencement of the Attorneys Amendment Act, 1991, was a candidate attorney in terms of the provisions of section 2(1)(e) of this Act as it applied in Namibia before such commencement.

Amendment of section 3 of Act 53 of 1979, as amended by section 11 of Proclamation R.161 of 1982, section 2 of Act 108 of 1984, section 1 of Act 20 of 1986 and section 2 of Act 87 of 1989.

4. Section 3 of the principal Act is hereby amended -

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

“(1) A candidate attorney shall only be engaged or retained by a person practising the profession of attorney -

(a) on his or her own account; or

- (b) as a partner in a firm of attorneys; or
  - (c) as a member of a professional company;  
or
  - (d) as Government-Attorney; or
  - (e) as professional assistant in the Government-Attorney's office; or
  - (f) in the full-time employment of a law clinic, provided that such law clinic has been approved by the council for that purpose; and
  - (g) who has so practised for a period of not less than two years."; and
- (b) by the substitution for subsection (3) of the following subsection:

"(3) An attorney shall at no time have more than three candidate attorneys under articles: Provided that -

- (a) on the death or retirement from practice of any attorney, any of his or her surviving or remaining partners, or any member of the professional company of which he or she was a member, or any attorney in the full-time employment of a law clinic;
- (b) where an attorney has been debarred under section 72(1)(a)(iii) from continuing with a contract of articles, any of his or her partners or any other member of the professional company of which he or she is a member or any other attorney in the full-time employment of a law clinic,

may take cession of the articles of any candidate attorney articulated to such attorney, although the cessionary will then have more than three candidate attorneys in his or her employment: Provided further that the provisions of this subsection shall not apply to the Government Attorney or any professional assistant in the Government Attorney's office."

Substitution of section 4 of Act 53 of 1979, as amended by section 3 of Act 108 of 1984.

5. The following section is hereby substituted for section 4 of the principal Act:

"Information to be submitted to society before articles are entered into.

4. Any person intending to serve any attorney under articles of clerkship shall submit to the secretary of the society proof, to the satisfaction of the society, that he or she is a fit and proper person and that he or she has satisfied all the requirements for a degree, diploma or certificate which entitles him or her to be admitted as an attorney in terms of this Act."

Amendment of section 5 of Act 53 of 1979, as amended by section 3 of Act 87 of 1989.

6. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The original of any articles of clerkship shall within two months of the date thereof be lodged by the principal concerned with the secretary of the society **[of the province in which the service under such articles is to be performed]**."

Amendment of section 6 of Act 53 of 1979, as amended by section 11 of Proclamation R.161 of 1982, section 2 of Act 20 of 1986 and substituted by section 4 of Act 87 of 1989.

7. Section 6 of the principal Act is hereby amended -

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

"(b) in the case of a candidate attorney articulated to the Government-Attorney or to a member of the professional staff in the Government-Attorney's office, under the direct personal supervision of the Government-Attorney or a member of the professional staff in the Government-Attorney's office; or"; and

(b) by the addition of the following paragraph:

"(c) in the case of a candidate attorney articulated to an attorney in the full-time employment of a law clinic, under the direct personal supervision of that attorney or any other attorney in the full-time employment of such law clinic."



Amendment of section 7 of Act 53 of 1979, as amended by section 1 of Act 76 of 1980 and substituted by section 5 of Act 87 of 1989.

8. Section 7 of the principal Act is hereby amended by the deletion of subsection (4).

Amendment of section 8 of Act 53 of 1979 as amended by section 1 of Act 56 of 1983, section 4 of Act 108 of 1984 and substituted by section 6 of Act 87 of 1989.

9. Section 8 of the principal Act is hereby amended -

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

“(1) Any candidate attorney may appear in any court other than the High Court or Supreme Court, and before any board, tribunal or similar institution in which his or her principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge such fees for such appearance as if such principal had appeared personally.”;

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

“(5) In the event of the death, mental illness, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the roll or discontinuance of practice of the attorney who was the principal of a former candidate attorney referred to in subsection (4) immediately before the expiry of his or her articles, such former candidate attorney shall with the written permission of the secretary of the society **[of the province in which the candidate attorney served under articles]** be entitled to take service with any other attorney and to appear as contemplated in subsection (4) under the supervision of that attorney.”; and

(c) by the addition of the following subsection:

“(6) Notwithstanding the provisions of subsection (1), any candidate attorney serving under articles of clerkship in terms of section 2(1)(e) of this Act, as it applied in Namibia before the commencement of the Attorneys Amendment Act, 1991, may appear as contemplated in that subsection in any court other than the High Court or Supreme Court, and before any board, tribunal or similar institution referred to in that

subsection, after he or she has completed four years of the period referred to in the said section 2(1)(e), as it so applied before such commencement.”.

Amendment of section 9 of Act 53 of 1979, as substituted by section 7 of Act 87 of 1989.

**10.** Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A candidate attorney shall not have any pecuniary interest in the practice and service of an attorney and shall not, without the prior written consent of the council **[of the society of the province in which he performs service under the articles]**, hold or occupy any office or engage in any other business other than that of candidate attorney.”.

Amendment of section 10 of Act 53 of 1979, as amended by section 8 of Act 87 of 1989.

**11.** Section 10 of the principal Act is hereby amended -

(a) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words:

“An agreement whereby articles are ceded shall within two months of the date on which the services of the candidate attorney concerned have been terminated with the cedent, or within such further period as the court may for good cause allow, be lodged with the society **[of the province wherein service under the said articles so ceded is to be performed,]** by the cessionary together with affidavits -”; and

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

“(5) The secretary of the **[law]** society **[referred to in subsection (4)]** shall on payment of such fee as is prescribed under section 80 -

(a) examine the agreement and affidavits referred to in **[that]** subsection (4); and

(b) if he or she is satisfied that the cession is in order and that the council of the society has no objection, register the cession.

and shall advise the attorney and the candidate attorney concerned of such registration in writing by certified post.”

Amendment of section 11 of Act 53 of 1979, as amended by section 5 of Act 108 of 1984 and section 9 of Act 87 of 1989.

**12.** Section 11 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

“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 that section in respect of which a certification in accordance with those respective paragraphs has been done]** which entitles him or her to be admitted as an attorney in terms of this Act, 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-”

Amendment of section 13 of Act 53 of 1979, as amended by section 2 of Act 76 of 1980, section 1 of Act 60 of 1982, section 2 of Act 56 of 1983, section 6 of Act 108 of 1984 and section 10 of Act 87 of 1989.

**13.** Section 13 of the principal Act is hereby amended -

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

“(1) (a) The Minister may, on recommendation of the board, by notice in the *Gazette*, exempt, either generally or in particular, any Namibian citizen or any person lawfully admitted to Namibia for permanent residence therein and ordinarily resident in Namibia, who is duly qualified in terms of section 1A(2) and who has been admitted as an attorney or in a capacity equivalent thereto in any country other than Namibia -

(i) from service under articles of clerkship under this Act, or any part thereof;

(ii) from the practical examinations referred to in section 14, or any part thereof.

(b) Any exemption referred to in paragraph (a) may be given on such conditions as the Minister may deem fit.”

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

“(3) The court may, on the application of a candidate attorney who has satisfied all the requirements for a degree [referred to in paragraph (a) or (c) of section 2(1), or for a degree or degrees referred to in paragraph (aA) or (cA) of that section in respect of which a certification in accordance with those respective paragraphs has been done] which entitles him or her to be admitted as an attorney in terms of this Act, or is entitled to be admitted as an advocate, and subject to such conditions as the court may impose, order that the whole or any part of the period served by that candidate attorney under articles before he or she satisfied such requirements or became so entitled, shall, for the purpose of his or her admission and enrolment as an attorney, be regarded as having been served after and under articles entered into after he or she satisfied such requirements or became so entitled.”.

Substitution of section 13A of Act 53 of 1979, as inserted by section 3 of Act 76 of 1980.

14. The following section is hereby substituted for section 13A of the principal Act:

“Exemption from articles and examinations of Namibian citizens admitted as attorneys in designated countries.

13A. Notwithstanding the provisions of section 13, but subject to the other provisions of this Act, any person who -

- (a) is a Namibian citizen and is ordinarily resident in Namibia at the date of commencement of the Attorneys Amendment Act, 1991; and
- (b) is duly qualified in terms of section 1A(2); and
- (c) has been admitted as an attorney or in a capacity equivalent to that of an attorney prior to the date of commencement of the said Attorneys Amendment Act, 1991, in any country other than Namibia which has been designated by the Minister, on recommendation of the board, by notice in the *Gazette*,

shall be exempted from service under articles of clerkship under this Act and the practical examinations referred to in section 14(1)(a), (b), (c) and (d).

Substitution of section 14 of Act 53 of 1979, as amended by section 1 of Act 80 of 1985.

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

"Practical  
examinations.

**14. (1)** There is hereby established a board of examiners for the purpose of arranging, controlling and conducting examinations in respect of -

- (a) the practice and procedure in the Supreme Court and High Court and in magistrates' courts established under the Magistrates' Courts Act, 1944 (Act 32 of 1944);
- (b) the practical bookkeeping necessary for the keeping of the accounting records referred to in section 78(4);
- (c) proficiency in the English language;
- (d) the practice, functions and duties of an attorney;
- (e) the practice, functions and duties of a notary;
- (f) the law, practice and procedure of conveyancing.

(2) The board of examiners shall consist of not less than three members appointed by the Judge-President after consultation with the Minister and the society.

(3) An examination referred to in subsection (1) shall not be conducted in respect of any person unless he or she satisfies the board of examiners that he or she has complied with the provisions of this Act in regard to service under

articles or that he or she is serving under articles and has so served for a continuous period of not less than 6 months or that he or she is, by or under the provisions of this Act, exempted from service under articles.”.

Substitution of section 15 of Act 53 of 1979, as substituted by section 7 of Act 108 of 1984.

**16.** The following section is hereby substituted for section 15 of the principal Act:

“Admission and re-admission of attorneys.

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

- (a) is a Namibian citizen or has been lawfully admitted to Namibia for permanent residence therein and is ordinarily resident in Namibia;
- (b) holds a degree, diploma or certificate which entitles him or her to be admitted as an attorney in terms of this Act;
- (c) has passed the practical examinations referred to in section 14(1)(a), (b), (c) and (d) or is by virtue of the provisions of section 13(1) or 13A exempted from the requirement to pass any such examination or any part thereof;
- (d) has completed his or her service under articles within the period of 2 years preceding his or her application to the court or within the further period allowed by the court in terms of subsection (2) or is by virtue of the provisions of section 13(1) or 13A exempted from service under articles; and
- (e) is a fit and proper person to be so admitted and enrolled.

(2) The court may in its discretion, on the application of any person and on good cause shown, allow a further period in addition to the period of [3] 2 years referred to in subsection [(1)(b)(vi)] (1)(d), 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] The court may, on application made in accordance with this Act, readmit and re-enroll any person who was previously admitted and enrolled as an attorney and has been removed from or struck off the roll as an attorney, if -

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

(b) the court is satisfied that he or she **[has complied]** complies with the provisions of subsection (1)(a)[(ii)].”.

Amendment of section 16  
of Act 53 of 1979.

17. Section 16 of the principal Act is hereby amended -

(a) by the substitution for the words preceding paragraph (a) of the following words:

“Any person who applies to the court to be admitted or readmitted and enrolled as an attorney, shall satisfy the society **[of the province wherein he so applies]** -”; and

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) if he or she is a person exempted from service under articles in terms of section 13(1) or 13A, as the case may be, that he or she is still entitled to practise **[and that his name is still on the roll of solicitors or attorneys of the country or territory referred to in that**

section], and that no proceedings to have him or her struck off the roll or suspended from practice are pending.”

Amendment of section 18 of Act 53 of 1979, as substituted by section 8 of Act 108 of 1984.

18. Section 18 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) he or she has passed the practical examination prescribed by section 14(1)[**(d) or**] (e) or (f), as the case may be, or is exempted therefrom by or under the provisions of this Act.”

Amendment of section 19 of Act 53 of 1979.

19. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who applies to [**a**] the court to be admitted or readmitted as a practitioner shall at least one month before the date of his or her application deliver to the secretary of the society [**of the province in which the court to which such application is made, is situated**], together with his or her notice of application, a copy of his or her application for admission or readmission and copies of all affidavits, certificates and other documents or papers which are referred to therein or connected therewith.”

Repeal of section 20 of Act 53 of 1979.

20. Section 20 of the principal Act is hereby repealed.

Substitution of section 21 of Act 53 of 1979.

21. The following section is hereby substituted for section 21 of the principal Act:

“Roll of practitioners.

21. (1) The registrar of [**every**] the court shall keep separate alphabetical registers in which he or she shall record the names of all attorneys, notaries and conveyancers admitted [**by such court and all names enrolled in terms of section 20,**] in terms of this Act, as well as the dates of admission [**or enrolment**].

(2) If [**a**] the court orders the striking off the roll or suspension from practice of any practitioner, the registrar shall forthwith enter a reference to such order opposite the name of the practitioner in the registers kept by him



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or her in terms of subsection (1), and shall forward copies of such order to **[the registrars of the other courts, the registrars]** the registrar of deeds appointed in terms of section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), and the **[secretaries of the various societies]** secretary of the society.

(3) The entry of a reference to the court order by the registrar in terms of subsection (2) shall have the effect of removing the practitioner concerned from the roll or suspending him or her from practice, as the case may be."

Amendment of section 22 of Act 53 of 1979, as amended by section 4 of Act 76 of 1980, section 9 of Act 108 of 1984 and section 12 of Act 87 of 1989.

22. Section 22 of the principal Act is hereby amended -

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

"Any person who has been admitted and enrolled as an attorney may on application by the society **[concerned]** be struck off the roll or suspended from practice by the court **[within the jurisdiction of which he practises]** -";

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

"(a) if he or she has ceased to be a Namibian citizen or in the case of a person who is not a Namibian citizen, has ceased to be ordinarily resident in Namibia."; and

- (c) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

"(a) If it appears to the court that a person in respect of whom **[a]** the society intends making an application under subsection (1), has left **[the Republic]** Namibia and that he or she probably does not intend to return to **[the Republic]** Namibia and that his or her whereabouts are unknown, the court may order that service on that person of any process in connection with such application

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may be affected by the publication of such process in [**an Afrikaans and an English**] a newspaper circulating in the district in which the said person's last known business address, as entered in the records of the society [**concerned**], is situated.

- (b) Any such process may, if the court so orders, be so published in a form as near as may be in accordance with Form 1 (Edictal Citation) of the First Schedule to the [**Supreme Court**] Rules of the High Court.”.

Substitution of section 24 of Act 53 of 1979.

23. The following section is hereby substituted for section 24 of the principal Act:

“Application to be delivered to secretary of the society.

24. Subject to provisions to the contrary in this Chapter contained, any person who makes an application to [**a**] the court in terms of this Chapter shall at least one month before the date of his or her application, deliver to the secretary of the society [of the province in which the court to which such application is made is situated], a copy of the application, together with copies of the other documents and papers referred to therein or connected therewith.”.

Insertion of sections 24A, 24B, 24C, 24D, 24E, 24F, 24G, 24H, 24I and 24J in Act 53 of 1979.

24. The following sections are hereby inserted in Chapter I of the principal Act after section 24:

“Establishment of Board for Legal Education.

24A. There is hereby established a board to be known as the Board for Legal Education.

Powers, duties and functions of board.

24B. The board shall exercise and perform all powers, duties and functions conferred or imposed upon it by this Act or any other law, and -

- (a) may investigate and advise upon -

- (i) any legal education pertaining to the profession and any cognate matter -

- (aa) which any university or other educational institution may refer to it either specifically or generally;
  - (bb) which the Minister in the performance of his or her duties and functions in terms of this Act or any other law may refer to it either specifically or generally; or
  - (cc) which have been raised by the board of its own accord;
- (ii) whether syllabuses of instruction and standards of training, provided by any university in respect of examinations in law, comply with the requirements of the respective posts or professions for the appointment to which or the pursuit of which the passing of any examination in terms of any law is a qualification;
  - (iii) the periods or other requirements in respect of articles of clerkship;
  - (iv) the attorneys admission examination;
  - (v) the notaries admission examination;
  - (vi) the conveyancers admission examination; and

(vii) the periods or other requirements in respect of pupillage and the practical examinations to commence practise as an advocate referred to in the Admission of Advocates Act, 1964 (Act 79 of 1964); and

(viii) the training and qualifications of magistrates appointed in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944), or other judicial officers in the Ministry of Justice; and

(b) may take such other action and do such other things as may be required for the proper performance of its functions and duties under this Act or any other law.

Constitution of  
board.

24C. (1) The board shall consist of the following members, namely -

(a) the Chief Justice of Namibia, who shall also be the chairperson of the board;

(b) the Attorney-General;

(c) one attorney admitted and enrolled under the Attorneys Act, 1979 (Act 53 of 1979), who shall be appointed by the society;

(d) one advocate admitted to practise and enrolled under the Admission of Advocates Act, 1964 (Act 74 of 1964), who shall be appointed by the Council of the Bar of Namibia;

(e) one officer in the Ministry of Education and Culture appointed by the Minister of Education and Culture; and

(f) one officer in the Ministry of Justice appointed by the Minister.

(2) (a) The Chief-Justice may designate any other judge of the Supreme Court or the High Court to act as an alternate member of the board.

(b) The Attorney-General may designate any officer in his or her office to act as an alternate member of the board.

(c) The Minister concerned or the society or the Council of the Bar of Namibia referred to in paragraph (c), (d), (e) or (f) of subsection (1), as the case may be, may, with due regard to the provisions of subsection (4), for every member appoint an alternate member.

(d) Any alternate member so appointed or designated, as the case may be, shall act in the place of the member in respect of whom he or she has been appointed or designated, as the case may be, during such members absence or inability to act as a member.

(3) If any body referred to in paragraph (c) or (d) of subsection (1) fails or refuses to appoint any attorney or advocate as contemplated in the said paragraph (c) or (d), as the case may be, within a period of 14 days after the Minister in writing has requested such body to make the appointment in question, the Minister may appoint any

such attorney or advocate he or she may deem fit, to be a member of the board and any such appointment by the Minister shall be deemed to be an appointment in terms of the said paragraph (c) or (d), as the case may be.

(4) Subject to the provisions of section 24E, any person appointed as a member or as an alternate member of the board shall hold office as such a member for a period of five years, and may be re-appointed at the expiration of that period.

Committees of board.

24D. (1) The board may establish committees to perform any of its functions and may appoint such persons, including persons other than members or alternate members of the board, as it may deem fit to be members of any such committee.

(2) The board may designate any two members of the committee as chairperson and vice-chairperson of that committee, respectively.

(3) The provisions of section 24J shall *mutatis mutandis* apply in respect of any member of the committee who is not a member or alternate member of the board.

(4) The board may amend or set aside any decision of any such committee.

Vacation of offices by appointed members and filling of casual vacancies.

24E. (1) A person appointed as a member of the board shall vacate his or her office if -

(a) he or she, by writing under his or her hand, addressed and delivered to the secretary of the board, resigns from his or her office;

(b) his or her estate is sequestrated;

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- (c) he or she becomes of unsound mind;
- (d) he or she is convicted of an offence and sentenced to a term of imprisonment without the option of a fine;
- (e) he or she has been absent from three consecutive meetings of the board without its leave, which shall not be granted for a period exceeding one year at a time;
- (f) in the case of any attorney or advocate, he or she is struck off the roll or is suspended from practice; or
- (g) in the case of an alternate member, the member in respect of whom he or she has been appointed as an alternate member, vacates his or her office.

(2) If a member of the board dies or for any reason vacates his or her office, the vacancy, shall, with due regard to the provisions of section 24C, be filled for the unexpired portion of the period of office of the member who has died or, as the case may be, vacated his or her office.

(3) For the purposes of this section, a member of the board includes an alternate member of the board and a member of a committee who is not a member or alternate member of the board.

Chairperson  
of board.

24F. The chairperson of the board shall preside at all meetings thereof at which he or she is present, and if he or she is for any reason absent from any meeting, the members present shall elect one of their number to preside at such meeting, and for the purpose of electing

such person the Attorney-General or any member present at that meeting designated by him or her, shall act as chairperson for the said meeting.

Meetings of  
board.

24G. The meetings of the board shall be held at such times and places as the chairperson may determine: Provided that the chairperson or, if he or she is not available or there is no chairperson, the Attorney-General shall, upon receipt of a written request signed by not less than one-third of the number of members of the board, call a meeting thereof, to be held within a period of one month from the date of the receipt of such request, at such time and place as the said chairperson or the Attorney-General (as the case may be) may determine.

Quorum, majority decision,  
chairperson's  
casting vote  
and procedure.

24H. (1) The majority of the members of the board shall form a quorum.

(2) The decision of a majority of the members of the board present at any meeting thereof shall constitute a decision of the board, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote.

(3) The board may determine the procedure at its meetings or at the meetings of any committee thereof.

Performance of  
administrative  
and clerical  
work of board.

24I. (1) The administrative and clerical work involved in the performance of the board's functions shall be performed by officers in the Ministry of Justice, made available by the Permanent Secretary: Justice.

(2) The Permanent Secretary: Justice may designate an officer referred to in subsection (1) as secretary of the board.



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Remuneration  
and allowances  
payable to  
members of  
board and  
other expenses  
of board.

24J. (1) (a) A member or an alternate member of the board, who is not in the full-time employment of the public service, shall be entitled to receive in respect of any period during which he or she is engaged on the business of the board and in respect of any journey while so engaged, such remuneration and allowances, if any, as the Minister may, after consultation with the Minister of Finance, determine.

(b) The remuneration and allowances determined under subsection (1) may differ according to the office held by the member concerned or the functions performed by him or her.

(2) The remuneration and allowances referred to in subsection (1) and all other expenses which may be incurred in connection with the performance or exercise of the powers, duties and functions of the board, shall be defrayed out of moneys appropriated by law for such purpose."

Substitution of section 56  
of Act 53 of 1979.

25. (1) The following section is hereby substituted for section 56 of the principal Act:

"Law Society  
of Namibia.

56. The society known as The Law Society of South West Africa shall with effect from the commencement of the Attorneys Amendment Act, 1991, continue to exist as a juristic person under the name The Law Society of Namibia."

(2) Subsection (1) shall be deemed to have come into operation on 1 September 1990.

Substitution of section 57  
of Act 53 of 1979.

26. The following section is hereby substituted for section 57 of the principal Act:

"Membership  
of society.

57. (1) Every practitioner who practises in Namibia, whether for his or her own account or otherwise, shall be a member of the society.

(2) The person who holds office as Government Attorney in terms of section 3 of the Government Attorney Proclamation, 1982 (Proclamation R.161 of 1982), and every attorney practising as professional assistant in the Government Attorney's office, shall be a member of the society.

(3) Any member who is suspended from practice shall not be entitled to the rights or privileges of membership of the society, and any member whose name is struck off the roll shall cease to be a member of the society."

Amendment of section 69 of Act 53 of 1979, as amended by section 23 of Act 87 of 1989.

27. Section 69 of the principal Act is hereby amended -

(a) by the substitution for paragraph (e) of the following paragraph:

"(e) prescribe the information to be furnished to the secretary of [its] the society by any person who -

(i) commences or discontinues to practise **[in the province of its society]**;

(ii) takes up employment **[in that province]** or ceases to be employed **[therein]** as a practitioner;

(iii) enters into or withdraws from a partnership with any person **[practising in that province]**;

(iv) practises **[in that province]** and who changes his or her business or residential address;" and

(b) by the substitution for paragraph (j) of the following paragraph:

"(j) subject to such conditions as it may deem fit to impose, permit members of [its] the society to form associations of such members, to be known as circles, in respect of such areas **[of the province concerned]** as the

council may determine from time to time; determine the duties, functions and powers of such circles; designate places as the headquarters of such circles; and determine the constitution of bodies responsible for the management of the affairs of such circles.”.

Amendment of section 71 of Act 53 of 1979, as amended by section 24 of Act 87 of 1989.

28. Section 71 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) [A] The council may in the prescribed manner inquire into cases of alleged unprofessional or dishonourable or unworthy conduct on the part of any attorney, notary or conveyancer [**whose name has been placed on the roll of any court within the province of its society, whether or not he is a member of such society,**] or of any person serving articles of clerkship [**with a member of its society**] or of any former candidate attorney referred to in section 8(4).”.

Amendment of section 72 of Act 53 of 1979, as amended by section 5 of Act 80 of 1985 and section 25 of Act 87 of 1989.

29. Section 72 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (6) of the following paragraph:

“(b) [**a competent**] the court, at the instance of the society [**concerned**] to suspend any practitioner from practice or to strike him or her from the roll.”.

Amendment of section 73 of Act 53 of 1979.

30. Section 73 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person who has been found guilty in terms of section 72 may within a period of thirty days of the date of the council’s decision appeal to [**a competent**] the court against the finding by lodging with the registrar of [**that**] the court a notice of appeal setting out in full his or her grounds of appeal.”.

Amendment of section 74 of Act 53 of 1979, as amended by section 26 of Act 87 of 1989.

31. Section 74 of the principal Act is hereby amended -

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

“[A] The council may subject to the provisions of subsections (2) and (3) make rules [**which shall be binding within the province of its society**] as to -”;

- (b) by the substitution for subsection (2) of the following subsection:

“(2) Any rule referred to in subsection (1) shall be made with the approval of the Chief Justice of [**South Africa**] Namibia and, if the Chief Justice is of the opinion that the interests of the public would be adversely affected by the provisions of any such rule, with the approval of the [**State**] President.”;

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

“(3) The council shall not submit any draft rule to the Chief Justice unless -

(a) such draft rule has been approved by the majority of the members of the society present or represented at a general meeting of the society; and

(b) the council has consulted with the Judge-President of the High Court.”;

- (d) by the substitution for subsection (5) of the following subsection:

“(5) Any assessment of fees in terms of a rule contemplated in section 69(h) shall be subject to review in all respects as if it were a determination by [**such**] an officer of [**a provincial division or**] the High Court [**as is**] charged with the taxation of fees and charges.”; and

- (e) by the deletion of subsection (6).

**32. Section 77 of the principal Act is hereby repealed.**

Repeal of section 77 of Act 53 of 1979, as substituted by section 2 of Act 116 of 1981 and amended by section 27 of Act 87 of 1989.

Amendment of section 78 of Act 53 of 1979, as amended by section 1 of Act 103 of 1983, section 6 of Act 80 of 1985 and substituted by section 28 of Act 87 of 1989.

33. Section 78 of the principal Act is hereby amended -

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

“(5) The council [**of the society of the province in which a practitioner practises**] may by itself or through its nominee, and at its own cost, inspect the accounting records of any practitioner in order to satisfy itself that the provisions of sub-sections (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.”;

- (b) by the substitution for subsection (8) of the following subsection:

“(8) The court may on application made by the society [**of the province concerned**], and on good cause shown, prohibit any practitioner from operating in any way on his or her 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.”;

- (c) by the substitution for paragraph (a) of subsection (9) of the following paragraph:

“(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 or her own affairs; or

(vi) abandons his or her practice or ceases to practise,

the Master of the [**Supreme Court**] High Court may, on application made by the society [**of the province concerned**] 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.”;

(d) by the substitution for subsection (13) of the following subsection:

“(13) Any banking institution or building society at which a practitioner keeps his or her trust account or any separate account forming part of his or her trust account, shall, if so directed by the council [**of the society of the province in which such practitioner is practising**], furnish the council with a signed certificate which indicates the balance of such account at the date or dates stated by the council.”; and

(e) by the substitution for subsection (14) of the following subsection:

“(14) This section shall not apply to the [**State Attorney**] Government-Attorney or a member of his or her professional staff.”.

Amendment of section 80 of Act 53 of 1979, as amended by section 10 of Act 108 of 1984.

34. Section 80 of the principal Act is hereby amended -

(a) by the substitution for the words preceding paragraph (a) of the following words:

“The Minister may, after consultation with the [**presidents**] president of the [**various societies**] society, by notice in the *Gazette* prescribe a scale of fees which shall be paid in respect of the -”; and

(b) by the deletion of paragraph (h).

Amendment of section 81 of Act 53 of 1979, as amended by section 5 of Act 76 of 1980, section 4 of Act 60 of 1982, section 4 of Act 56 of 1983, section 7 of Act 80 of 1985, section 29 of Act 87 of 1989 and section 31 of Act 22 of 1990.

35. (1) Section 81 of the principal Act is hereby amended -

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

“The Minister may after consultation with, except in the case of regulations made under paragraph (f) or (g), the [**Chief Justice of South Africa and after consultation with the presidents of the various societies**] board, make regulations determining the following:”;

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

“(a) the countries or territories which shall be approved of 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]** section 17;”;

- (c) by the deletion of paragraphs (c), (i) and (j) of subsection (1);

- (d) by the insertion of the following subsection as subsection (3):

“(3) Regulations made under subsection (1)(g) may provide for exemption, either temporarily or permanently or partially or wholly, from the prohibitions therein contained in respect of particular persons or categories of persons or in respect of any specified matter connected with any act mentioned in such regulations: Provided that no exemption granted permanently shall be cancelled or withdrawn unless such cancellation or withdrawal has been approved by resolution of the National Assembly.”;

- (e) by the deletion of subsection (5).

(2) Notwithstanding the repeal of subsection (3) of section 81 of the principal Act by section 31 of the Legal Practitioners Fidelity Fund Act, 1990 (Act 22 of 1990), such repeal shall be deemed not to have had any force and effect on any exemption granted in accordance with the

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provisions of that subsection prior to its repeal, and any such exemption shall be deemed to have been lawfully granted under the provisions of the said subsection (3) as re-enacted by paragraph (d) of subsection (1) of this section.

Amendment of section 82  
of Act 53 of 1979.

36. Section 82 of the principal Act is hereby amended -

- (a) by the substitution for the words preceding paragraph (a) of the following words:

“The [**Chief Justice**] Judge-President may, after consultation with the [**judges-president of the several provincial divisions and with the presidents of the several societies**] board, make rules of court so as to provide for -”; and

- (b) by the substitution for paragraph (f) of the following paragraph:

“(f) any other matter considered necessary for giving effect to the provisions of this Act, excluding [**Chapters II and**] Chapter III.”.

Amendment of section 83  
of Act 53 of 1979, as  
amended by section 6 of  
Act 76 of 1980, section 5 of  
Act 60 of 1982, section 11  
of Proclamation R.161 of  
1982 and section 30 of Act  
87 of 1989.

37. Section 83 of the principal Act is hereby amended -

- (a) by the substitution for subsection (4) of the following subsection:

“(4) Any practitioner who has been struck off the roll or suspended from practise shall not, while he or she is so struck off or suspended, continue to practise as a practitioner directly or indirectly for his or her own account or in partnership or association with any other person, or, except with the written consent of the society, be employed in any capacity connected with the profession of a practitioner.”;

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

“(5) A practitioner shall not, except with the written consent of the society employ in any capacity any person who has been struck off the roll or suspended from practice, while such person is so struck off or suspended.”;



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- (c) by the substitution for subsection (7) of the following subsection:

“(7) A person who contravenes any of the provisions of subsections (1) to (6) [or of section 13A] shall be guilty of an offence and on conviction liable to a fine not exceeding R2 000 in respect of each offence.”;

- (d) by the substitution in paragraph (a) of subsection (11) for the words preceding subparagraph (i) of the following words:

“to any board of executors or trust company licensed as such on or before 1 May 1960 under the Licences Consolidation Ordinance, 1935 (Ordinance 13 of 1935), which -”;

- (e) by the substitution for paragraph (e) of subsection (11) of the following paragraph:

“(e) to any practitioner who makes known in such manner as may be approved by the society [of the province in which he practices] that he or she does such work.”;

- (f) by the substitution for paragraph (f) of subsection (11) of the following paragraph:

“(f) to any person (not being a board of executors or trust company mentioned in paragraph (a) or a company registered under the Companies Act, 1973 (Act 61 of 1973) ), who on 1 May 1960 held a broker's or agent's licence issued under the Licences Consolidation Ordinance, 1935 (Ordinance 13 of 1935), and who, on a signboard, nameplate or notice exhibited on the premises where such person carries on business, or on such person's stationary or in any advertisement in the public press, makes known by a simple statement to that effect that his or her business includes any such work;”;

- (g) by the substitution for paragraph (g) of subsection (11) of the following paragraph:

“(g) to any accountant who on 1 May 1960, was entitled to use any designation provided for by the Chartered Accountants Designation

(Private) Act, 1927 (Act 13 of 1927), and who still is so entitled, who on a signboard or nameplate exhibited on the premises in which such accountant carries on business, or on such accountant's stationery, makes known by a simple statement to that effect that his or her business includes any such work, provided he or she had on the date mentioned by such means made known that his or her business included such work.";

- (h) by the substitution for paragraph (c) of subsection (12) of the following paragraph:

"(c) any person in the employment of the State, Transnamib Limited referred to in section 2 of the National Transport Corporation Act, 1987 (Act 21 of 1987), or the Land and Agricultural Bank referred to in section 3 of the Land Bank Act, 1944 (Act 13 of 1944), drawing or preparing or causing to be drawn or prepared any of the documents concerned in the course of such person's duty;"

- (i) by the substitution for paragraph (e) of subsection (12) of the following paragraph:

"(e) any person who on 1 May 1960 was the manager or secretary or attorney in the employment of a board of executors or trust company or any branch thereof licensed as such under the Licences Consolidation Ordinance, 1935 (Ordinance 13 of 1935), in respect of any such document drawn or prepared by such person in such capacity in so far as immediately prior to the date aforementioned such person in his or her said capacity was entitled to draw or prepare such a document and to charge a fee therefor;" and

- (j) by the deletion of subsection (14).

Repeal of section 84 of Act 53 of 1979, as substituted by section 3 of Act 116 of 1981.

**38.** Section 84 of the principal Act is hereby repealed.

Repeal of section 85 of Act 53 of 1979.

**39.** Section 85 of the principal Act is hereby repealed.

Repeal of section 86 of Act 53 of 1979.

**40.** Section 86 of the principal Act is hereby repealed.

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Amendment of section 1  
of Act 22 of 1990.

**41.** (1) Section 1 of the Legal Practitioners' Fidelity Fund Act, 1990, is hereby amended by the substitution for the definition of "clerk" of the following definition:

" 'clerk' means [**an articulated clerk**] a candidate attorney as defined in section 1 of the Attorneys Act;".

(2) Subsection (1) shall be deemed to have come into operation on 21 March 1990.

Substitution of section 21  
of Act 32 of 1944, as  
amended by section 18 of  
Act 50 of 1956.

**42.** (1) The following section is hereby substituted for section 21 of the Magistrates' Courts Act, 1944:

"Candidate  
attorneys.

21. A candidate attorney as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979), may, subject to the provisions of that Act, appear in stead and on behalf of the attorney to whom he or she has been articulated in any proceedings in any court."

(2) Subsection (1) shall be deemed to have come into operation on 29 September 1989.

Amendment and deletion  
of certain expressions in  
Act 53 of 1979.

**43.** The principal Act is hereby amended -

- (a) by the substitution for the expression "a council", wherever it occurs, except in section 60(1), and the expression "that council", wherever it occurs, of the expression "the council";
- (b) by the substitution for the expressions "a society", "any society", "that society" and "its society", wherever they occur, of the expression "the society";
- (c) by the substitution for the expression "the Republic", wherever it occurs, of the word "Namibia"; and
- (d) by the deletion in the expressions "council concerned" and "society concerned", wherever they occur, of the word "concerned".

Short title.

**44.** This Act shall be called the Attorneys Amendment Act, 1991, and shall, subject to the provisions of sections 25(2), 41(2) and 42(2), come into operation on a date to be determined by the President by proclamation in the *Gazette*.