

CHAPTER 27:07

LEGAL PRACTITIONERS ACT

Acts 15/1981, 32/1981, 14/1982, 15/1983, 31/1983, 10/1986, 29/1989, 23/1991, 22/1992 (s. 15), 11/1996, 18/1996 (s. 26), 14/1999 (s. 23), 10/2000, 22/2001 (s. 4), 6/2005 (s. 32), 9/2006 (s. 32).

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AN ACT to consolidate and amend the laws relating to the legal profession and to make new provision in regard thereto; and to provide for matters incidental to or connected with the foregoing.

[Date of commencement: 22nd May, 1981.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Legal Practitioners Act [*Chapter 27:07*].

2 Interpretation

(1) In this Act—

“bank” means a bank which is registered as a commercial bank in terms of the Banking Act [*Chapter 24:01*];

“Board of Trustees” means the Law Society Compensation Fund Trustees referred to in section *sixty-eight*;

“building society” means a building society which is registered in terms of the Building Societies Act [*Chapter 24:02*];

“by-laws” means by-laws made by the Society in terms of section *sixty-three*;

“Compensation Fund” means the Law Society Compensation Fund referred to in section *sixty-four*;

“Council for Legal Education” means the Council for Legal Education established in terms of section *thirty-four*;

“Council of the Society” means the Council of the Society constituted in terms of section *fifty-four*;

“Disciplinary Tribunal” means the Disciplinary Tribunal established in terms of section *twenty-four*;

“fixed date” means the 22nd May, 1981;

“limited practising certificate” means a practising certificate issued in terms of subsection (4) of section *seventy-five*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“practising certificate” means a practising certificate issued in terms of section *seventy-five*, and includes a limited practising certificate;

“reciprocating country” means a country declared to be a reciprocating country in terms of subsection (2);

“Register” means the Register of Legal Practitioners, Notaries Public and Conveyancers referred to in section *three*;

“registered” means registered in the Register;

“Registrar” means the Registrar of the High Court;

“regulations” means regulations made by the Minister in terms of section *eighty-seven*;

“residential exemption certificate” means a residential exemption certificate issued in terms of section *seven*;

“Society” means the Law Society of Zimbabwe referred to in section *fifty-one*.

(2) Where the Minister is satisfied that the law of any country other than Zimbabwe permits the admission to the practice of law in that country, whether generally or in particular cases or for particular purposes, of legal practitioners normally resident in Zimbabwe he may, after consultation with the Chief Justice and the Council for Legal Education, declare such country by statutory instrument to be a reciprocating country.

PART II

REGISTER AND REGISTRATION

3 Register of Legal Practitioners

(1) The Registrar shall keep a register of legal practitioners to be known as the Register of Legal Practitioners, Notaries Public and Conveyancers.

(2) It shall be the duty of the Registrar to—

(a) enter in the Register—

(i) the name of every person which he has been directed to enter in the Register by or in terms of this Act, whether as a legal practitioner, notary public or conveyancer and the date of his registration as such;

(ii) such other particulars relating to registered persons as may be prescribed in regulations;

(b) make such alterations in the Register as may from time to time be necessary by reason of any change in the name or other particulars of a registered person;

(c) delete from the Register the name of any registered person on the death of that person or when required to do so by or in terms of this Act.

(3) The Registrar shall issue to every person whose name is entered in the Register a separate certificate in the form prescribed in regulations specifying that the person concerned is registered as a legal practitioner, notary public or conveyancer, as the case may be.

4 Application for registration

(1) Any person who wishes to be registered, whether as a legal practitioner, a notary public or a conveyancer shall make application therefor to the High Court in the form and manner prescribed in regulations.

(2) An application for registration as—

(a) a legal practitioner may be combined with an application for registration as a notary public and additionally, or alternatively, as a conveyancer; and

(b) a notary public may be combined with an application for registration as a conveyancer, and *vice versa*.

5 Registration

(1) Upon application being made to it in terms of section *four* for registration as a legal practitioner, the High Court may grant the application and direct the Registrar to register the applicant as a legal practitioner, if the High Court is satisfied that the applicant—

(a) has complied with the formalities prescribed in regulations in relation to the application; and

(b) possesses the qualifications prescribed in rules made by the Council for Legal Education in terms of section *forty-nine* and has had such practical experience, if any, as may be prescribed in such rules; and

(c) is normally resident in Zimbabwe or a reciprocating country or has been granted a residential exemption certificate; and

(d) is of or above the age of twenty-one years; and

(e) is not an unrehabilitated insolvent or has not assigned his estate for the benefit of or made a composition or other arrangement with his creditors, which composition or arrangement has not been rescinded or set aside; and

(f) is a fit and proper person to be so registered;

and if the High Court is not so satisfied the High Court shall, subject to subsection (3), refuse the application.

(2) Upon application being made to it in terms of section *four* for registration as a notary public and additionally, or alternatively, as a conveyancer, the High Court may grant the application and direct the Registrar to register the applicant as a notary public and additionally, or alternatively, as a conveyancer, if the High Court is satisfied that the applicant—

(a) has complied with the formalities prescribed in regulations in relation to the application; and

(b) is registered as a legal practitioner or will be so registered at the same time as he is registered as a notary public or a conveyancer; and

(c) possesses the qualifications prescribed in rules made by the Council for Legal Education in terms of section *forty-nine* and has had such practical experience, if any, as may be prescribed in such rules; and

(d) is a fit and proper person to be so registered;

and if the High Court is not so satisfied the High Court shall, subject to subsection (3), refuse the application.

(3) Upon good cause shown, the High Court may condone non-compliance with any technical formality in relation to an application in terms of section *four*.

6 Application for deletion from Register

(1) A registered legal practitioner may apply to the High Court for his name to be deleted from the Register and the High Court may, if satisfied that the application has not been made in order to avoid any disciplinary action being taken in terms of this Act, grant the application and direct the Registrar to make the appropriate deletion from the Register.

(2) The Council of the Society may, where there is reason to believe that a registered legal practitioner has ceased to be normally resident in Zimbabwe or a reciprocating country and that such legal practitioner has not been granted a residential exemption certificate, apply to the High Court for an order calling upon the registered legal practitioner concerned to show cause why his name should not be deleted from the Register.

(3) Upon the return day of an order granted in terms of subsection (2), the High Court may, if satisfied that the registered legal practitioner concerned has ceased to be normally resident in Zimbabwe or a reciprocating country and has not been granted a residential exemption certificate, direct the Registrar to make the appropriate deletion from the Register.

7 Exemption certificate

(1) Where the Minister, after consultation with the Council for Legal Education, is satisfied that, having regard to the importance, complexity or special circumstances of the matter, it is just and reasonable for a person to obtain the services of a legal practitioner who has special or particular experience relating to such matter and that such legal practitioner is not normally resident in Zimbabwe but is from a reciprocating country, he may grant a certificate exempting the legal practitioner concerned from satisfying the requirement of subparagraph (iii) of paragraph (a) of subsection (1) of section *five* of being normally resident in Zimbabwe or a reciprocating country.

[Subsection amended by s. 32 of Act 6 of 2005.]

(2) Where a residential exemption certificate has been granted—

- (a) the legal practitioners concerned shall not engage in the practice of the profession of law in Zimbabwe except in relation to the matter for which the residential exemption certificate was granted; and
- (b) it shall automatically lapse within seven days of the completion of the matter for which it was granted.

[Subsection substituted by s. 2 of Act 10/2000.]

(3) A copy of every residential exemption certificate shall be submitted to the Council of the Society.

(4) Where a registered legal practitioner fails to make an application pursuant to paragraph (b) of subsection (2) the Council of the Society may do so.

PART III

PRIVILEGES, RESTRICTIONS AND OFFENCES IN CONNECTION WITH PRACTICE

8 Privileges of registered legal practitioners

(1) Subject to this Act, a registered legal practitioner who is in possession of a valid practising certificate issued to him may practise the profession of law.

(2) Without derogation from the generality of subsection (1), but subject to this Act—

- (a) a registered legal practitioner who is in possession of a valid practising certificate issued to him shall have the right of audience in any court in which persons are entitled by law to legal representation;
- (b) a registered notary public who is in possession of a valid practising certificate issued to him may execute, attest and authenticate anything which is required to be executed, attested or authenticated by a notary public;
- (c) a registered conveyancer who is in possession of a valid practising certificate issued to him may prepare any document for registration in a Deeds Registry or for attestation or execution by a registrar of deeds.

9 Offences by unqualified persons

(1) No person other than a registered legal practitioner, registered notary public or registered conveyancer shall practise as such or in any manner hold himself out as or pretend to be or make use of any words or any name, title, designation or description implying or tending to the belief that he is a legal practitioner, notary public or conveyancer, as the case may be, or is recognized by law as such.

(2) Subject to any other law, no person other than a registered legal practitioner who is in possession of a valid practising certificate issued to him shall—

- (a) sue out any summons or process or commence, carry on or defend any action, suit or other proceeding in any court of civil or criminal jurisdiction in the name of any other person; or
- (b) for or in expectation of any fee, commission, gain or reward in any way instruct or assist any other person to sue out or threaten to sue out any summons or process or to commence, carry on or defend any action, suit or other proceeding in any court of civil or criminal jurisdiction; or

- (c) appear, plead or act in the capacity of a legal practitioner for or on behalf of any other person in any action, suit or other proceeding in any court of civil or criminal jurisdiction:

Provided that, nothing in this subsection contained shall prevent any director or officer in the sole employment of a corporation or any member of a partnership doing any such act as is mentioned in paragraph (a) in the name of such corporation or partnership.

(3) Subject to any other law, no person other than a registered notary public who is in possession of a valid practising certificate issued to him shall execute, attest or authenticate anything which is required to be executed, attested or authenticated by a notary public.

(4) Subject to any other law, no person other than a registered conveyancer who is in possession of a valid practising certificate issued to him shall, for or in expectation of any fee, commission, gain or reward, prepare any document for registration in a Deeds Registry or for attestation or execution by a registrar of deeds.

(5) If any person contravenes this section, he shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by s. 4 of Act 22 of 2001.]

10 Prohibition against unqualified persons preparing certain instruments

(1) Save as provided in subsections (4) and (5), any person, not being a registered legal practitioner who is in possession of a valid practising certificate issued to him, who in return for or in expectation of any fee, commission, gain or reward, direct or indirect, to himself or to any other person, draws or prepares any of the following instruments or documents—

- (a) a will or other testamentary instrument;
- (b) any legal process in any action, suit or other proceeding in a court of civil or criminal jurisdiction;
- (c) any contract, deed or instrument relating to the creation or dissolution of any partnership or any variation of the terms thereof;
- (d) the memorandum or articles of association of a company;
- (e) a contract, deed or instrument for the acquisition, disposal, exchange or lease of immovable property or any real right relating thereto, other than a contract, deed or instrument for the lease of immovable property for a period of less than five years;

shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by s. 4 of Act 22 of 2001.]

(2) If a person draws or prepares a will or other testamentary instrument in return for the appointment of himself or a particular person as executor to whom commission or other remuneration will be payable, whether in terms of that testamentary instrument or otherwise, he shall be deemed for the purposes of subsection (1) to have done so for or in expectation of a fee, gain or reward.

(3) No document referred to in subsection (1) shall be invalid only by reason of the fact that it has been drawn in contravention of this section.

(4) Subsection (1) shall not apply to—

- (a) any member of the Public Service drawing or preparing any instrument or document in the course of his duty;
- (b) any person employed merely to copy or translate any instrument or document;
- (c) any trustee or assignee under the laws relating to insolvency, or any executor, administrator or curator, or any liquidator or judicial manager of a company drawing or preparing any instrument or document in the course of his statutory duties and receiving therefor such fees as may be allowed by law.

(5) Subsection (1), in so far as they relate to the instrument or documents referred to in—

- (a) paragraph (d) thereof, shall not apply to a person who is a fellow or associate member of the Institute of Chartered Secretaries and Administrators in Zimbabwe or a member of the Institute of Chartered Accountants of Zimbabwe;
- (b) paragraph (e) thereof, shall not apply to—
 - (i) a resolution passed or to be passed by the directors or board of management of a body corporate or unincorporate;
 - (ii) an official employed by—
 - A. a city or municipal council, town council, local board or rural district council; or
 - B. the Corporation as defined in section *two* of the Agricultural Finance Corporation Act [Chapter 18:02]; or

[Subparagraph amended by s. 23 of Act 14 of 1999.]

- C. the National Railways of Zimbabwe referred to in section *three* of the Railways Act [Chapter 13:09];

who draws or prepares a contract, deed or instrument referred to in that paragraph (e) in the course of his duty;

- (iii) an auctioneer or estate agent who prepares a contract, deed or instrument referred to in that paragraph (e) in the ordinary course of his business.

11 Prohibition against practice by or in association with unqualified persons

(1) No person who has ceased to be a registered legal practitioner as a result of the deletion of his name from the Register, or who has been suspended from practice as a legal practitioner, shall, while his name is so deleted or he is so suspended, continue to practise directly or indirectly as a legal practitioner, notary public or conveyancer, whether by himself or in partnership or association with any other person, nor shall he, except with the written consent of the Council of the Society, be employed in any capacity whatsoever connected with the legal profession.

(2) No registered legal practitioner who has ceased to be a registered notary public or conveyancer as a result of the deletion of his name from the appropriate section of the Register, or who has been suspended from practice as a notary public or conveyancer, shall, while his name is so deleted or he is so suspended, continue to practise, directly or indirectly, as a notary public or conveyancer, as the case may be, whether by himself or in partnership or association with any other person.

(3) Except with the written consent of the Council of the Society, which consent may be given for such period and subject to such conditions as the Council may think fit, no registered legal practitioner shall employ—

- (a) in any capacity whatsoever any person whose name has been deleted from the Register as a legal practitioner or who has been suspended from practice as a legal practitioner; or
- (b) as a notary public any registered legal practitioner whose name has been deleted from the Register as a notary public or who has been suspended from practice as a notary public; or
- (e) as a conveyancer any registered legal practitioner whose name has been deleted from the Register as a conveyancer or who has been suspended from practice as a conveyancer;

until the name of that person or legal practitioner is restored to the Register or his suspension is terminated, as the case may be, and he is again entitled in terms of this Act to practise as legal practitioner, notary public or conveyancer, as the case may be.

(4) No registered legal practitioner shall make over, share or divide his professional fees with any person other than a registered legal practitioner practising as a legal practitioner, notary public or conveyancer in Zimbabwe:

Provided that nothing in this subsection shall be construed as preventing a legal practitioner from paying a salary to a person in his employ who is not a registered legal practitioner.

(5) Any person who contravenes any provision of this section shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by s. 4 of Act 22 of 2001.]

12 Prohibition against practice without practising certificate

No registered legal practitioner shall practise, whether as such or as a notary public or conveyancer, directly or indirectly, by himself or in partnership or association with any other person, except in accordance with the terms and conditions of a valid practising certificate issued to him:

Provided that this section shall not apply to—

- (a) a person who is in the full-time employment of the State, in relation to things done in the course of his employment; or
- (b) a person who holds a residential exemption certificate, in relation to the matter for which the residential exemption certificate was granted, or
- (c) a person who is in the full-time employment of the Zimbabwe Revenue Authority, established by section *three* of the Revenue Authority Act [*Chapter 23:11*] (Act No. 17 of 1999), and who performs services for the Zimbabwe Revenue Authority as a legal practitioner, in relation to things done in the course of his employment.

[Paragraph inserted by section 32 of Act 6 of 2005.]

12A Pre-practice examinations and training

(1) Subject to subsection (2), no registered legal practitioner, notary public or conveyancer shall practise as such directly or indirectly, by himself or in partnership with any other person, unless he has passed examinations and undergone practical training prescribed by the Council for Legal Education in rules made under section *forty-nine*.

(2) No rules referred to in subsection (1), and no amendment of such rules, shall affect the right to practise of a registered legal practitioner, notary public or conveyancer who was entitled to practise as such before the date of commencement of the rules or amendment, as the case may be.

[Section inserted by section 2 of Act 11 of 1996.]

PART IV
TRUST ACCOUNTS

13 Opening of trust accounts

(1) Every registered legal practitioner, notary public or conveyancer who holds or receives any moneys for or on behalf of another—

- (a) in his capacity as a legal practitioner; or
- (b) in his capacity as an executor, administrator or trustee;

shall open and keep a current account at a bank as a separate trust account in which he shall deposit all such moneys:

Provided that—

- (i) where the administration or control of any such moneys is shared with any other person who is not his partner or employee, the legal practitioner may agree with that other person that the moneys administered or controlled by them shall be otherwise dealt with;
- (ii) this subsection shall not apply to a person who is in the full-time employment of the State, in relation to things done in the course of his employment.

[Subsection amended by section 3 of Act 11 of 1996.]

(2) A registered legal practitioner may, in addition to the trust account referred to in subsection (1), open and keep a trust account bearing interest at a bank or building society or with an institution approved by the Council of the Society for the purposes of this subsection in which he may, unless otherwise instructed by the person on whose account or for whom the moneys are held or received, as the case may be, deposit, subject to subsection (4) and to such limitations and conditions as may be prescribed by regulation, any such moneys as are not immediately required for any purpose.

(3) If, with the authority of the person for or on account of whom he holds or has received those moneys, a registered legal practitioner holds or receives any moneys in a separate account from those mentioned in subsections (1) and (2), such account shall—

- (a) be regarded as a trust account for the purposes of this Part; and
- (b) be in the same name as the trust account opened in terms of subsection (1) and shall indicate the name of the person for or on account of whom the money is held.

(4) In the case of an account opened in terms of subsection (2) or (3)—

- (a) deposits shall only be made from a trust account opened in terms of subsection (1);
- (b) withdrawals shall only be made in favour of a trust account opened in terms of subsection (1).

(5) Where a trust account is opened in terms of subsection (1) or (2)—

- (a) that account shall indicate that it is an account opened in terms of subsection (1) or (2), as the case may be;
- (b) any interest on the moneys deposited in that account shall be paid by the registered legal practitioner concerned to the Compensation Fund at such times and in such manner as may be prescribed by by-laws, less such portion thereof as the Council of the Society may from time to time direct, which may be retained by the legal practitioner concerned towards the costs of the operating and auditing of his trust accounts.

14 Books of account

(1) A registered legal practitioner shall keep proper books of account containing particulars and information of—

- (a) moneys received, held or paid by him for or on account of any other person; and
- (b) moneys deposited by him in his trust accounts; and
- (c) interest paid on moneys deposited in a trust account opened in terms of subsection (1) or (2) of section *thirteen*.

(2) The Council of the Society may appoint an auditor, registered as a public auditor, in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] to inspect the books of account of a legal practitioner in order to ascertain that the provisions of section *thirteen* and of any relevant regulations and by-laws are being observed.

(3) A person appointed in terms of subsection (2) shall report to the Council of the Society in such general terms as not to disclose confidential information entrusted to the legal practitioner whose books he has inspected.

(4) If it is found upon an inspection referred to in subsection (2) that a legal practitioner has not complied with the provisions of section *thirteen* or of any relevant regulations or by-laws, the Council of the Society shall be entitled to recover the cost of the inspection from that legal practitioner.

15 Trust account moneys excluded from insolvency or attachment

An amount standing to the credit of a trust account opened in terms of section *thirteen* by a registered legal practitioner shall—

- (a) not be regarded as forming part of the assets of the legal practitioner on the death or insolvency of or assignment of his estate by that legal practitioner; and
 - (b) not be liable to attachment at the instance of a creditor of that legal practitioner:
- Provided that any excess remaining after payment of—

- (a) the claims of all persons whose moneys have or should have been deposited in a trust account of his; and
- (b) any claim by the Compensation Fund in respect of interest due to it in terms of paragraph (b) of subsection (5) of section *thirteen*;

shall form part of the assets of that legal practitioner and shall be liable to attachment at the instance of a creditor of that legal practitioner.

16 Control of operation of trust account

(1)

[Subsection repealed by section 3 of Act 10 of 2000.]

(2) In the event of—

- (a) the death of a registered legal practitioner; or
- (b) the insolvency of or the assignment of his estate by a registered legal practitioner; or
- (c) ...

[Paragraph repealed by section 3 of Act 10 of 2000.]

- (d) a registered legal practitioner being declared by a court of competent jurisdiction to be incapable of managing his own affairs; or
- (e) a registered legal practitioner abandoning his practice;

the Master of the High Court may, upon application made by the Council or by a person having an interest in a trust account of that legal practitioner, on good cause shown, appoint a *curator bonis* to control and administer that trust account with such of the rights, duties and powers prescribed by regulation as the Master may deem fit.

(2a) A *curator bonis* appointed in terms of subsection (2) shall, in the discharge of his functions—

- (a) in urgent matters, notwithstanding any enactment to the contrary but subject this Act, deal with the trust account for the benefit of any client;
- (b) have due regard to the rights and interests of the clients of that practice and the interests of the legal practitioner concerned.

[Subsection inserted by section 3 of Act 10 of 2000.]

(3) A person aggrieved by a decision of the Master in terms of subsection (2) may, within thirty days after the decision becomes known to him, appeal against that decision to a judge of the High Court who may refer the matter to the court for argument.

(4) On any appeal in terms of subsection (3) the judge or court, as the case may be, may—

- (a) confirm or vary the decision of the Master; or
- (b) give such other decision as in his or its opinion the Master ought to have given.

(5) Nothing in this section contained shall be construed as preventing a registered legal practitioner who was practising in partnership with a legal practitioner referred to in subsection (2) from continuing to operate on a trust account of the partnership.

17 Orders as to costs

The High Court shall have power to order that—

- (a) any costs incurred by the Council of the Society in respect of an application or appeal made in terms of section *sixteen*; or
- (b) the cost of an inspection made in terms of subsection (2) of section *fourteen* which is due by the legal practitioner concerned to the Council of the Society in terms of subsection (4) of that section;

shall be a preferent charge upon the moneys standing to the credit of the trust account concerned, ranking next after the remuneration of the *curator bonis* and the expenses of administering that trust account.

18 Saving of liability of bank, etc., in relation to trust account

A bank, building society or other institution at which a registered legal practitioner keeps a 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 registered legal practitioner is not entitled absolutely to all moneys paid or credited to that account:

Provided that nothing in this section contained shall relieve the bank, building society or other institution from any liability or obligation under which it would be apart from this Act.

19 Limitation of set-off, etc., against trust account

Notwithstanding anything in section *eighteen* contained, a bank, building society or other institution at which a registered legal practitioner keeps a trust account shall not, in respect of any liability of the registered legal practitioner to that bank, building society or other institution which is not a liability arising out of or in connection with that account, have or obtain any recourse or right by way of set-off, counterclaim, charge or otherwise against moneys standing to the credit of that account.

20 Saving of set-off, etc., against trust account

Nothing in this Part contained shall be construed so as to take away or affect a just claim, lien, counterclaim, right of set-off or charge of any kind which a registered legal practitioner may at common law or in terms of an enactment have against or upon moneys held or received by him on account of another person.

21 Council of the Society may require certified balance of trust account

A bank, building society or other institution at which a registered legal practitioner keeps a trust account shall, whenever so required by the Council of the Society, furnish to the Council of the Society a signed certificate of balance certifying the amount, if any, standing to the credit or debit of that trust account in that bank, building society or other institution as at such date or dates as may be specified by the Council of the Society.

22 Offences in relation to trust accounts

A registered legal practitioner who contravenes any provision of this Part shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

PART IVA

CONTINGENCY FEE ARRANGEMENT

22A Interpretation in Part IVA

In this Part—

“contingency fee arrangement” means an agreement entered into between a registered legal practitioner and his client in terms of which no fee, other than court fees or disbursements, are payable by the client for the legal practitioner’s services in connection with any legal proceedings unless the proceedings result in a decision or settlement in the client’s favour;

“normal fee”, in relation to a legal practitioner, means the fee, excluding disbursements, that he would have charged his client had there been no contingency fee arrangement.

22B Legal practitioners may enter into contingency fee arrangements

Subject to this Part and to regulations, a registered legal practitioner may enter into a contingency fee arrangement with a client regarding the services he provides the client in connection with such legal proceedings as may be prescribed in regulations.

22C Form of contingency fee arrangement

(1) A contingency fee arrangement shall be in writing and shall be signed by the client and the legal practitioner concerned.

(2) A contingency fee arrangement shall specify such particulars as may be prescribed in regulations.

22D Non-disclosure of contingency fee arrangement

The fact that a contingency fee arrangement has been concluded shall not be revealed to the court that hears the legal proceedings concerned.

22E Maximum fees payable under contingency fee arrangement

No fees payable in terms of a contingency fee arrangement shall exceed—

(a) the normal fee of the legal practitioner concerned, plus such percentage of that fee as may be prescribed in regulations; or

(b) such percentage of the total amount awarded to the client in respect of the proceedings concerned as may be prescribed in regulations;

whichever is the lesser amount.

22F Review of contingency fee arrangement or fee payable

(1) A client may refer a contingency fee arrangement or the fee claimed thereunder for review to the Society.

(2) On review the Society may set aside or modify, in whole or in part, any provision of the contingency fee arrangement or any fee claimed thereunder which, in its opinion, is unconscionable or unreasonable or does not comply with the provisions of this Act.

[Part inserted by section 4 of Act 10 of 2000.]

PART V

DISCIPLINE

23 Unprofessional, dishonourable or unworthy conduct

(1) Unprofessional, dishonourable or unworthy conduct on the part of a registered legal practitioner, whether in the course of his practice as such or as a notary public or conveyancer shall include the commission of any of the following acts—

(a) touting;

- (b) advertising;
 - (c) contravening or failing to comply with any provision of this Act or any regulations, rules or by-laws made thereunder;
 - (d) withholding the payment of trust money without lawful cause;
 - (e) subject to Part IVA, champerty;
- [Paragraph substituted by section 5 of Act 10 of 2000.]
- (f) in any way assisting, allowing or enabling an unregistered person to charge, recover or receive any fee or derive any remuneration in respect of or in connection with the preparation or execution of any document or the performance of any professional work which only a registered legal practitioner, notary public or conveyancer is qualified by law to prepare, execute or perform, or in any way conniving at any arrangement, agreement or understanding whatsoever whereby any such fee or remuneration shall be charged, recovered or received by any such unregistered person;
 - (g) opening or maintaining any office or branch which is not under the continuous personal supervision of a registered legal practitioner;
 - (h) keeping the accounts of his practice as a legal practitioner in the books of accounts utilized in connection with any other business in which he may be interested jointly with an unregistered person;
 - (i) remunerating an employee who is an unregistered person by way of a share in the profits of his practice as a legal practitioner, notary public or conveyancer;
 - (j) in the case of a legal practitioner, notary public or conveyancer who also carries on the business of an auctioneer, referring to or mentioning any of his professional qualifications as legal practitioner on his sale advertisements;
 - (k) tendering or offering in response to advertisement, circulars or similar invitations, either directly or indirectly, for the performance of any work or business proper to the calling of a legal practitioner, notary public or conveyancer or commonly associated therewith;
 - (l) assisting any unregistered person to recover charges for services, rendered by including such charges in any bill of costs or memorandum of charges rendered by him as a legal practitioner, notary public or conveyancer without disclosing the facts in such bill or memorandum;
 - (m) allowing his name with any of his qualifications as legal practitioner, notary public or conveyancer to appear by way of advertisement or notification or by way of information upon any business letterheads, accounts or other documents whatsoever in conjunction with the name of an unregistered person so as to convey, or be likely to convey, the impression that he is associated in the legal profession with that unregistered person;
 - (n) entering into or continuing to be a party to any contract or arrangement with an unregistered person, the effect of which is to place the legal practitioner under such control on the part of the unregistered person as may interfere with his professional independence;
 - (o) entering into or continuing to be a party to any contract or partnership with or of employment by an unregistered person, the direct or indirect result of which is to enable the unregistered person to enjoy or participate in fees reserved solely to a legal practitioner, notary public or conveyancer or to secure for the registered legal practitioner the benefit of professional business solicited by the unregistered person;
 - (p) levying any charges or accepting any fee which is less than the minimum charge or fee prescribed in by-laws in a tariff of minimum charges.
- (2) Subsection (1) shall not in any way—
- (a) preclude the Society from prescribing in by-laws further acts which shall constitute unprofessional, dishonourable or unworthy conduct on the part of a registered legal practitioner, notary public or conveyancer; or
 - (b) limit the discretion of the Council of the Society, the Disciplinary Tribunal or a court in determining whether or not any act or omission, which is not specified in subsection (1) or in by-laws, constitutes unprofessional, dishonourable or unworthy conduct on the part of a registered legal practitioner, notary public or conveyancer.

24 Disciplinary Tribunal

(1) For the purpose of exercising disciplinary control and other powers conferred by this Act, there is hereby established a Disciplinary Tribunal.

(2) The Disciplinary Tribunal shall consist of—

- (a) a chairman and a deputy chairman who shall be judges of the High Court or the Supreme Court or are retired judges of the High Court or the Supreme Court, and shall be appointed by the Chief Justice;

[Paragraph substituted by section 6 of Act 10 of 2000.]

- (b) two other members selected, from time to time as the occasion arises, by the chairman of the Disciplinary Tribunal from a panel of names of ten registered legal practitioners submitted by the Council of the Society.

(3) If the Council of the Society for any reason fails or refuses to submit a panel of names as required by paragraph (b) of subsection (2), the chairman of the Disciplinary Tribunal shall appoint two registered legal practitioners whom he considers fit.

(4) If at any time a member of the Disciplinary Tribunal is unable for any reason to act as such, he shall be replaced in accordance with the provisions of paragraph (a) or (b) of subsection (2) or subsection (3), as the case may be:

Provided that before the replacement of any member in terms of this subsection, any decision made or action taken by the chairman or deputy chairman and one other member shall be valid.

[Proviso inserted by section 6 of Act 10 of 2000.]

(5) The procedure to be followed by the Disciplinary Tribunal shall be as prescribed in regulations.

25 Evidence of unprofessional, dishonourable or unworthy conduct from courts

Subject to the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*], if after the termination of any proceedings before a court—

- (a) it appears to the court that there is *prima facie* evidence of unprofessional, dishonourable or unworthy conduct on the part of a registered legal practitioner, the court shall direct that a copy of the record of the proceedings, or a copy of such part of the record as is material to the issue, be transmitted, free of charge, to the Council of the Society;
- (b) the Council of the Society requests that a copy of the record of the proceedings or a copy of any part of the record be supplied to it on the ground that it is of direct interest to the Council of the Society in the exercise of its functions in terms of this Act, the registrar or clerk of the court shall comply with such request and shall transmit, free of charge, such copy of the record or such part thereof to the Council of the Society.

25A Prohibition of operation of trust accounts

Upon application made by the Council of the Society and upon good cause shown, the Disciplinary Tribunal may—

- (a) prohibit a registered legal practitioner from operating in any way any trust account or business account of his; and
- (b) appoint a *curator bonis* to control and administer such trust accounts or business accounts with such rights, duties and powers in relation thereto as the Disciplinary Tribunal may consider fit, and subsection (2a) of section *sixteen* shall apply, *mutatis mutandis*.

[Section inserted by section 7 of Act 10 of 2000.]

26 Council of the Society to refer cases to Disciplinary Tribunal

(1) Whenever there is brought to the notice of the Council of the Society an allegation which might be the subject of an inquiry by the Disciplinary Tribunal, the Council of the Society shall have the power to call for such information and to cause such investigation to be made as it thinks necessary.

(2) After investigation in terms of subsection (1) and allowing the person concerned to make written representations, the Council of the Society shall refer the matter to the Disciplinary Tribunal for inquiry and may appoint a registered legal practitioner to present a charge on the evidence relating thereto at the inquiry:

Provided that—

- (i) if the Council of the Society considers that—
 - (a) the conduct complained of would not, even if substantiated, constitute unprofessional, dishonourable or unworthy conduct; or
 - (b) for any other reason the allegation should not be the subject of inquiry by the Disciplinary Tribunal;

the Council of the Society shall take such other action as it considers appropriate and may, after first allowing the person concerned to make written representations, admonish that person and order him to pay a penalty not exceeding two thousand dollars which shall be payable to the Society;

- (ii) if the allegation forms or is likely to form the subject of criminal proceedings in a court of law, the Council of the Society may postpone referring the matter to the Disciplinary Tribunal until such criminal proceedings have been terminated.

[Subsection amended by section 8 of Act 10 of 2000.]

26A Suspension from practice

(1) If it appears to the Council of the Society that there is *prima facie* evidence that a registered legal practitioner—

- (a) is failing to attend reasonably to the affairs of his practice or has abandoned his practice; or
- (b) is contravening any provision of this Act or any rules or by-laws made thereunder; or
- (c) may be guilty of unprofessional, dishonourable or unworthy conduct;

and the legal practitioner concerned has failed to provide a satisfactory explanation in the prescribed manner to the Council of the Society of the conduct complained of upon written request being made to him or, despite

diligent search, he cannot be found at his business or residential address, the Council of the Society may, if it considers it necessary that the legal practitioner concerned be suspended from practice pending an investigation and inquiry in terms of section *twenty-six*, the Council of the Society may apply to the Disciplinary Tribunal for the suspension of the registered legal practitioner for such period, not exceeding six weeks, as may be necessary to enable the Council of the Society to cause an investigation to be made for the purposes of an inquiry in terms of this Part.

- (2) After considering an application referred to in subsection (1), the Disciplinary Tribunal may—
 - (a) grant the application; or
 - (b) dismiss the application.
- (3) In granting an application in terms of paragraph (a) of subsection (2), the Tribunal may—
 - (a) order that the registered legal practitioner concerned shall, subject to subsection (1), be suspended from practice from the date of the order;
 - (b) during the period of suspension, prohibit the registered legal practitioner from operating in any way any trust account or business account or from opening any trust or business account;
 - (c) appoint another legal practitioner, whether or not in partnership with the legal practitioner suspended from practice, as curator *bonis* of any trust or business account of the practice with the power to act in urgent matters on behalf of the client and with such rights, duties and other powers in relation thereto as the Disciplinary Tribunal may determine;
 - (d) subject to subsection (1), specify the date upon which the Disciplinary Tribunal will hold an inquiry in terms of this Part.
- (4) Where an order has been granted in terms of paragraph (a) of subsection (2)—
 - (a) the registered legal practitioner concerned, the Council of the Society or the *curator bonis* may apply to the Disciplinary Tribunal for the fixing of the date of the inquiry;
 - (b) the Council of the Society may apply to the Disciplinary Tribunal for the extension of the period referred to in subsection (1) whereupon the Disciplinary Tribunal may alter the date referred to in paragraph (d) of subsection (3);
 - (c) the Disciplinary Tribunal may, on application being made to it, lift the suspension or vary any order made in terms of subsection (3).

[Section inserted by section 9 of Act 10 of 2000.]

27 Taking of evidence by Disciplinary Tribunal

(1) For the purposes of an inquiry in terms of this Part, the Disciplinary Tribunal may take evidence and may—

- (a) summon any person as witness and, where it thinks fit, require him to produce any book, record, document or thing; and
- (b) through the chairman administer an oath to any person; and
- (c) examine any book, record, document or thing which has been produced before it.

(2) A person who gives evidence as a witness before the Disciplinary Tribunal shall be entitled to all the privileges to which a witness is entitled in civil proceedings in the High Court.

(3) Any person who—

- (a) has been summoned to attend before the Disciplinary Tribunal and—
 - (i) refuses or fails without sufficient cause to attend and give evidence relevant to the inquiry at the time and place stated in the summons; or
 - (ii) refuses to be sworn when the chairman wishes to administer an oath to him; or
 - (iii) refuses or fails without sufficient cause to produce any book, record, document or thing which he has been required in the summons to produce; or
- (b) attends as a witness before the Disciplinary Tribunal and refuses to answer or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(4) Any person who at an inquiry held by the Disciplinary Tribunal gives false evidence on oath, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

28 Powers of Disciplinary Tribunal

(1) If after due inquiry the Disciplinary Tribunal decides that—

- (a) a registered legal practitioner has, whether before or after his registration, been guilty of unprofessional, dishonourable or unworthy conduct or is unfit to practise as a legal practitioner, notary public or conveyancer; or
- (b) it would be contrary to the public interest to allow a registered legal practitioner to continue to practise as a legal practitioner, notary public or conveyancer because of mental or physical disability or addiction to intoxicating liquor or drugs; or
- (c) a registered practitioner is failing or has failed to comply with the requirement of any regulation made in terms of section *eighty-seven*;

the Disciplinary Tribunal shall do one or more of the following—

- (i) direct that his name be deleted from the Register, whether as a legal practitioner, notary public or conveyancer;
- (ii) order his suspension for a specified period from practising as a legal practitioner, notary public or conveyancer;
- (iii) impose such conditions as it deems fit subject to which he shall be entitled to practise as a legal practitioner, notary public or conveyancer;
- (iv) order him to pay a penalty not exceeding an amount equivalent to a fine of level six, which shall be payable to the Compensation Fund or the Society, as the Disciplinary Tribunal may determine;
- (v) censure him;
- (vi) caution him and postpone for a period not exceeding five years any further action against him on one or more conditions as to his future conduct during that period.

[Paragraph amended by section 4 of Act 22 of 2001.]

(1a) Where the Disciplinary Tribunal makes a direction or order in terms of subparagraph (i) or (ii) of subsection (1), as the case may be, the Disciplinary Tribunal may also make an order in terms of section *twenty-five A* and may, having regard to the circumstances of the case, authorise the *curator bonis* to cause the winding up of the affairs of the practice.

[Subsection inserted by section 10 of Act 10 of 2000.]

(2) If at any time the Disciplinary Tribunal decides that a person who is undergoing or has undergone any practical training prescribed as a qualification for registration or who is practising or has practised in terms of section *eighty*—

- (a) has been guilty of conduct which, had he been registered, would have amounted to unprofessional, dishonourable or unworthy conduct; or
- (b) is unfit to be registered;

the Disciplinary Tribunal shall—

- (i) prohibit, either indefinitely or for a period specified by the Disciplinary Tribunal, the registration of such person; or
- (ii) do any one or more of the things specified in paragraphs (iii), (iv), (v) and (vi) of subsection (1).

(3) Where a registered legal practitioner has been convicted within or outside Zimbabwe of an offence by a court of law and the Council of the Society or the Disciplinary Tribunal is of opinion that such offence constitutes unprofessional, dishonourable or unworthy conduct on the part of the legal practitioner, whether as a legal practitioner, notary public or conveyancer, the Council of the Society or the Disciplinary Tribunal, as the case may be, may, if it thinks fit, on proof before it of such conviction and without hearing further evidence, deal with the convicted person in accordance with this Act:

Provided that the convicted person shall be afforded an opportunity of tendering, in writing or in person or by his legal representative, as he may elect, an explanation to the Council of the Society or the Disciplinary Tribunal, as the case may be, in extenuation of his conduct.

(4) If at any time the Disciplinary Tribunal is satisfied that a registered legal practitioner or other person has not complied with any conditions imposed upon his practice or conduct in terms of subsection (1) or (2), the Disciplinary Tribunal, after giving reasonable notice to the registered legal practitioner or other person concerned, may proceed further to do one or more of the things specified in subsection (1) or (2), as the case may be.

(5) After any inquiry in terms of this Part the Disciplinary Tribunal may order the legal practitioner or other person concerned to pay the expenses incurred in connection with the inquiry, including any expenses incurred by the Society in connection with the inquiry, or any part of these expenses as it thinks fit.

(6) A person authorized by the Disciplinary Tribunal may, by action in any court of competent jurisdiction, recover from the person concerned any expenses he has been ordered to pay in terms of subsection (5).

(7) The Disciplinary Tribunal shall inform the Council of the Society and the Registrar of any action taken by it in terms of this section.

29 Appeals from decisions of Disciplinary Tribunal

(1) Any person who is aggrieved at the order or findings of, or penalty imposed by, the Disciplinary Tribunal in terms of section *twenty-eight* may, within thirty days after the date of such findings or imposition of such penalty, appeal to the Supreme Court in such manner as may be prescribed by rules of court made in terms of the Supreme Court Act [*Chapter 7:14*].

(2) On an appeal in terms of subsection (1), the Supreme Court may—

- (a) confirm, vary or set aside any finding, order or penalty of the Disciplinary Tribunal; or
- (b) remit the matter to the Disciplinary Tribunal for further consideration;

and may make such other order as to costs or otherwise as may to it seem just:

Provided that the Supreme Court shall not set aside any findings or penalty by reason of any informality in the proceedings of the Disciplinary Tribunal which did not embarrass or prejudice the appellant in answering the charge or in the conduct of his defence.

(3) The noting of an appeal in terms of this section shall not, pending the determination of the appeal, suspend the decision appealed against unless the Disciplinary Tribunal, on application being made to it, directs otherwise, and for such purposes the Disciplinary Tribunal may give such directions as to the conditions upon which the registered legal practitioner concerned may, pending the determination of the appeal, practise or operate any trust or business account of the practice.

[Subsection inserted by section 11 of Act 10 of 2000.]

30 Suspension in insolvency

(1) Whenever the estate of any legal practitioner is sequestrated, assigned or declared insolvent or bankrupt, whether under the law of Zimbabwe or of any other country, such legal practitioner shall *ipso facto* be suspended until such time as the Disciplinary Tribunal may in accordance with subsections (2), (3) and (4) order the removal of such suspension.

(2) Any legal practitioner who has been suspended under subsection (1) may at any time, after giving one month's notice in writing to the Council of the Society, move the Disciplinary Tribunal for the removal of such suspension.

(3) The Society may be represented by a legal practitioner in support of or in opposition to any application made under subsection (2).

(4) Upon the hearing of any application under subsection (2), the Disciplinary Tribunal may make any order which in the circumstances of the case seems fit.

31 Registrar to make appropriate entry in Register and to publish order of Disciplinary Tribunal

(1) Where, by order of the Disciplinary Tribunal, a legal practitioner is suspended from practice, whether as a legal practitioner, notary public or conveyancer or his name is ordered to be deleted from the Register, the Registrar shall make the appropriate entry or alteration in the Register.

(2) Every order referred to in subsection (1) shall be published by the Registrar in the *Gazette* as soon after it has been made as is reasonably practicable.

32 Restoration to Register

(1) A legal practitioner whose name has been deleted from the Register, whether as a legal practitioner, notary public or conveyancer, may, subject to subsection (2), apply to the High Court to have his name restored to the Register.

(2) An application referred to in subsection (1) shall be accompanied by a recommendation in support thereof from the Council of the Society.

(3) An application in terms of subsection (1) shall be made in such manner as may be prescribed in rules of court.

(4) Any order restoring the name of a legal practitioner to the Register shall, as soon as practicable after the making of the order, be published by the Registrar in the *Gazette*.

PART VI

COUNCIL FOR LEGAL EDUCATION

33 Interpretation in Part VI

In this Part—

“committee” means a committee of the Council for Legal Education appointed in terms of section *forty-one*;

“member” means a member of the Council for Legal Education;

“professional examination” means an examination set by the Council for Legal Education in the exercise of its powers under paragraph (c) of subsection (1) of section *thirty-five*.

34 Council for Legal Education

There is hereby established a council, to be known as the Council for Legal Education, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

35 Functions and powers of Council for Legal Education

- (1) The functions of the Council for Legal Education shall be—
 - (a) to ensure the maintenance of appropriate standards in legal education and training in Zimbabwe;
 - (b) to determine the qualifications for registration in terms of this Act;
 - (c) to determine syllabuses for and to set, either by itself or through examiners, professional examinations to qualify persons to be registered in terms of this Act;
 - (d) to consider and grant or refuse applications from persons seeking exemption from any professional examination or any part thereof.
- (2) For the better exercise of its functions, the Council for Legal Education shall have the following powers—
 - (a) to consider the content and standard of legal qualifications granted inside and outside Zimbabwe and to determine whether, and subject to what conditions, such qualifications should entitle their holders to registration in terms of this Act;
 - (b) to provide courses of study and training for persons who wish to be registered or who are registered in terms of this Act or who are engaged in any occupation connected with the practice of law;
 - (c) to advise the Minister and any educational institutions concerned on all matters relating to legal education and training;
 - (d) to review legislation relating to legal qualifications, education and training and to advise the Minister on amendments that it considers should be made;
 - (e) to co-operate with other persons, institutions and authorities concerned with the provision of legal education or training, whether in Zimbabwe or elsewhere;
 - (f) to establish, support and maintain law libraries and reading rooms and to print, publish and circulate books and periodicals on law and legal subjects;
 - (g) to employ, on such terms and conditions as it may fix, such lecturers and other members of staff as may be necessary for conducting its affairs, and to suspend or discharge any such persons;
 - (h) to pay such remuneration and allowances and grant such leave of absence and, with the approval of the Minister, to make such gifts, bonuses and the like to its employees as it thinks fit;
 - (i) to make provision for the payment of pensions, gratuities and like benefits to its employees and their dependants on their sickness, death or termination of service;
 - (j) to acquire movable and immovable property necessary or convenient for the exercise of its functions and to maintain, alter, improve, mortgage or dispose of such property;
 - (k) to invest any of its funds which are not immediately required, upon such security as it may determine;
 - (l) to fix, levy and recover fees and charges for certificates issued, services rendered and other things done by it in terms of this Act or any other enactment;
 - (m) to do anything which it is required or permitted to do in terms of this Act or any other enactment;
 - (n) generally, to do all things that are calculated to facilitate, or are incidental or conducive to the performance of, its functions in terms of this Act or any other enactment.

36 Membership of Council for Legal Education

- (1) Subject to sections *thirty-seven* and *thirty-nine*, the Council for Legal Education shall consist of the following members—
 - (a) a chairman appointed by the Minister, who shall be a person who is nominated by the Chief Justice and who is or has been a judge of the Supreme Court or the High Court; and
 - (b) seven other members appointed by the Minister, of whom—
 - (i) one shall be nominated by the Attorney-General; and
 - (ii) two shall be appointed from a list of not fewer than four names submitted by the Faculty Board of the Faculty of Law of the University of Zimbabwe; and
 - (iii) two shall be appointed from a list of not fewer than four names submitted by the Council of the Society; and
 - (iv) the remainder shall be persons employed in the Ministry for which the Minister is responsible.

(2) If the Faculty Board of the Faculty of Law of the University of Zimbabwe or the Council of the Society fails to submit a list of names in terms of subparagraph (ii) or (iii) of paragraph (b) of subsection (1) within a reasonable time after being called upon to do so, the Minister may appoint any person to fill the vacancy.

37 Disqualifications for membership of Council for Legal Education

A person shall not be appointed as a member, and no person shall be qualified to hold office as a member, if—

- (a) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (b) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (c) the Disciplinary Tribunal, in terms of section *twenty-eight*, has—
 - (i) directed the deletion of his name from the Register; or
 - (ii) ordered his suspension from practice; or
 - (iii) prohibited his registration;
 and his name has not been restored to the Register or the period of his suspension or prohibition has not elapsed, as the case may be; or
- (d) within the period of five years immediately preceding the date of his proposed appointment, he has been sentenced in any country to a term of imprisonment imposed without the option of a fine, whether or not any portion of the sentence has been suspended, and he has not received a free pardon.

38 Terms and conditions of office of members of Council for Legal Education

(1) Subject to subsection (2) and to section *thirty-nine*, a member shall hold office for such period, not exceeding three years, as the Chief Justice or the Minister, as the case may be, may fix on his appointment.

(2) On the expiry of the period for which a member has been appointed, he shall continue to hold office until he has been reappointed or his successor has been appointed:

Provided that a member shall not hold office in terms of this subsection for a period exceeding six months.

(3) A member who resigns or retires shall be eligible for reappointment.

(4) Members shall hold office on such terms and conditions as the Minister, with the approval of the Minister responsible for finance, may fix.

(5) A member of the Council for Legal Education shall be paid—

(a) such remuneration, if any, as the Minister, with the approval of the Minister responsible for finance, may fix for members generally;

(b) such allowances, if any, as the Minister, with the approval of the Minister responsible for finance, may fix to meet any reasonable expenses incurred by the member in connection with the business of the Council.

39 Vacation of office by members of Council for Legal Education

(1) A member shall vacate his office and his office shall become vacant—

(a) after giving the Minister such period of notice of intention to resign as may be fixed in his terms and conditions of service or, if no such period has been fixed, after the expiry of one month after the date he gives such notice, or after the expiry of such other period of notice as he and the Minister may agree; or

(b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country; or

(c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of subsection (1) of section *thirty-seven* to hold office as a member; or

(d) if he is required in terms of subsection (2) to vacate his office.

(2) The Minister, after consulting the Council for Legal Education, may require a member to vacate his office if the member—

(a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or

(b) has failed to comply with any term or condition of his office fixed in terms of section *thirty-eight*; or

(c) is mentally or physically incapable of efficiently exercising his functions as a member.

(3) The Minister, on the recommendation of the Council for Legal Education, may require a member to vacate his office if the Minister is satisfied that the member has been absent without the permission of the chairman of the Council from three consecutive meetings of the Council, of which he has had notice, and that there was no just cause for the member's absence.

(4) On the death of, or the vacation of office by, a member, the Minister shall, subject to section *thirty-six*, appoint a person to fill the vacancy.

40 Meetings and procedure of Council for Legal Education

(1) The Council for Legal Education shall hold its first meeting on such date and at such place as the Minister may fix and thereafter, subject to this Part, the Council shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Council shall meet at least three times a year.

(2) The chairman of the Council for Legal Education may himself at any time and shall, at the request of not fewer than four members, convene a special meeting of the Council, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after receipt of such request.

(3) Subject to subsection (4), the chairman of the Council for Legal Education shall preside at meetings of the Council.

(4) If the chairman of the Council for Legal Education is absent from a meeting of the Council, the members present may elect one of their number to preside at the meeting as chairman.

(5) A majority of members shall form a quorum at any meeting of the Council for Legal Education.

(6) All acts, matters or things authorized or required to be done by the Council for Legal Education may be decided by a majority vote at a meeting of the Council at which a quorum is present.

(7) At all meetings of the Council for Legal Education each member present shall have one vote on each question before the Council:

Provided that, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(8) Any proposal circulated among all members and agreed to by a majority of them shall be of the same effect as a resolution passed at a duly constituted meeting of the Council for Legal Education:

Provided that, if a member requires that any such proposal be placed before the Council this subsection shall not apply to the proposal.

41 Committees of Council for Legal Education

(1) For the better exercise of its functions, the Council for Legal Education may establish committees to which it may delegate, either absolutely or subject to conditions, such of its functions as it thinks fit:

Provided that—

(i) such a delegation shall not prevent the Council from exercising the functions concerned;

(ii) the Council may amend or withdraw any decision of a committee in the exercise of its delegated functions.

(2) The Council for Legal Education may appoint persons who are not members of the Council to be members of any committee and, with the approval of the Minister, may fix the terms and conditions of office of such persons.

(3) The procedure of any committee shall be as fixed by the Council for Legal Education.

(4) Subject to this section, subsection (5) of section *thirty-eight* and subsections (4) to (8) of section *forty* shall apply, *mutatis mutandis*, to committees and members thereof as they apply to the Council for Legal Education and its members.

42 Minutes of proceedings of Council for Legal Education and committees

(1) The Council for Legal Education shall cause minutes of all proceedings of and decisions taken at all meetings of the Council and of committees to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Council for Legal Education or of the committee concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

43 Secretary and other staff of Council for Legal Education

The Minister, with the approval of the Public Service Commission, may assign as secretary and members of staff of the Council for Legal Education such persons employed in his Ministry as will enable the Council properly to carry out its functions in terms of this Act.

44 Funds of Council for Legal Education

The funds of the Council for Legal Education shall consist of—

(a) such moneys as may be payable to the Council from moneys appropriated for the purpose by Parliament; and

(b) any moneys to which the Council may be entitled from time to time, whether by way of fees, gifts or otherwise.

45 Accounts of Council for Legal Education

(1) The Council for Legal Education shall keep proper books of account and other records relating thereto in respect of all its activities, undertakings and property, including such particular accounts and records as the Minister may direct.

(2) The Council for Legal Education shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

(3) The Council for Legal Education shall—

(a) appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; and

(b) ensure that the accounts kept in terms of subsection (1) are examined once in each financial year by the auditors, in accordance with such directions as the Minister may give the Council from time to time.

46 Validity of decisions and acts of Council for Legal Education and committees

No decision or act of the Council for Legal Education or any committee shall be invalid solely because, at the time the decision was taken or the act was done or authorized—

- (a) there were one or more vacancies in the membership of the Council or committee, as the case may be; or
- (b) a disqualified person acted as a member of the Council or the committee, as the case may be;

if the duly appointed members who were present when the decision was taken or the act was done or authorized by the Council or committee, as the case may be, constituted a quorum.

47 Execution of instruments by Council for Legal Education

Any agreement, certificate, notification or instrument approved by the Council for Legal Education may be entered into or executed by any person generally or specially authorized by the Council for that purpose.

48 Exemption from liability of Council for Legal Education or its members, employees or agents

Neither the Council for Legal Education nor any member, employee or agent thereof shall be liable for any loss, injury or damage sustained by a person as a result of the *bona fide* exercise or performance by or on behalf of the Council of a function conferred or imposed upon the Council by or in terms of this Act:

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

49 Rules made by Council for Legal Education

(1) Subject to subsection (3), the Council for Legal Education may make rules prescribing any matters which in terms of this Act may be prescribed in such rules or which, in the opinion of the Council, are necessary or convenient to be so prescribed for the better carrying out of its functions.

(2) Rules made in terms of subsection (1) may provide for—

- (a) the designation of legal qualifications which, by themselves or in conjunction with any other qualifications, experience or training, qualify the holders to be registered in terms of this Act;
- (b) the syllabuses for and the conduct of professional examinations;
- (c) applications for and the grant or refusal of exceptions from any professional examination or part thereof;
- (d) lectures and courses of instruction for persons who intend to sit professional examinations and for other persons;
- (e) meetings of the Council for Legal Education and the procedure to be followed thereat;
- (f) the duties and responsibilities of members of staff of the Council for Legal Education;
- (g) fees payable for anything done by the Council for Legal Education in terms of this Act or any other enactment.

(3) Rules made in terms of subsection (2) shall not have effect until they have been approved by the Minister and published in a statutory instrument.

49A Appeals against decisions of Council for Legal Education

(1) Any person who is aggrieved by any decision of the Council for Legal Education in terms of this Part may, within thirty days after being notified of the decision, appeal against it to the High Court in such manner as may be prescribed in rules of court.

(2) On an appeal in terms of subsection (1), the High Court may—

- (a) confirm, vary or set aside the decision appealed against; or
- (b) remit the matter to the Council for Legal Education for further consideration;

and may make such other order as to costs or otherwise as the Court considers just.

[Section inserted by s. 4 of Act 11 of 1996.]

PART VII

LAW SOCIETY OF ZIMBABWE

50 Interpretation in Part VII

In this Part—

“member” means a member of the Society but does not include an honorary member;

“councillor” means a member of the Council of the Society.

51 Law Society of Zimbabwe

(1) The Law Society of Zimbabwe which was incorporated in terms of the Law Society of Zimbabwe (Private) Act [Chapter 223 of 1974] shall, on and after the fixed date, continue as a corporate body under the same name and shall be capable of suing and being sued and, subject to this Act, of performing such acts as bodies corporate may by law perform, including the acquisition, holding and alienating of movable and immovable property and other rights.

(2) All assets, rights and obligations which belonged or attached to the Law Society of Zimbabwe immediately before the fixed date shall, on and after that date, continue to belong and attach to the Society.

52 Membership of Society

(1) Subject to this Act, every registered legal practitioner residing in Zimbabwe shall have the right to become a member of the Society and every member of the Society shall be entitled to cease to be a member.

(2) Unless within the period of thirty days following—

- (a) the fixed date, in the case of a registered legal practitioner residing in Zimbabwe who is deemed to be registered in terms of section *eighty*; or
 - (b) the date of his registration, in the case of any other registered legal practitioner residing in Zimbabwe;
- any such registered legal practitioner gives notice to the president of the Society that he does not wish to become a member, such legal practitioner shall be deemed, on the expiry of the said period, to have become a member of the Society.

(3) Any member whose name has been deleted from the Register shall cease to be a member of the Society, and any member who has been suspended from practice in terms of this Act shall become disentitled to the privileges of membership during such suspension.

53 Objects and powers

The objects and powers of the Society shall be—

- (a) to cause to be kept—
 - (i) registers of the names and addresses of registered legal practitioners; and
 - (ii) any other registers which may be necessary;
- (b) to represent the views of the legal profession and to maintain its integrity and status;
- (c) to define and enforce correct and uniform practice and discipline among legal practitioners;
- (d) to promote the amicable settlement or adjustment of disputes concerning professional matters;
- (e) to promote social intercourse between members;
- (f) to consider and deal with all matters affecting the professional interests of legal practitioners;
- (g) to encourage and promote the study of law and jurisprudence and to provide means of securing efficiency and responsibility on the part of those seeking registration;
- (h) to establish, support and maintain law libraries and reading rooms and to print, publish and circulate books and periodicals on law and legal subjects where deemed necessary or desirable;
- (i) to make recommendations in relation to training;
- (j) to acquire any rights or privileges which the Society may regard as necessary or convenient for the legal profession;
- (k) to establish and support or aid in the establishment and support of associations, funds, trusts, pensions or provident schemes to benefit members or former members or their dependants and to grant pensions and allowances to any member or former member or his dependants;
- (l) to make charitable donations and to make grants in aid of objects which would benefit the legal profession;
- (m) to consider and discuss and to confer with other bodies on alterations and reforms in the practice, procedure and administration of the law and to propose, promote or oppose legislation in Parliament;
- (n) to purchase, hire or otherwise acquire movable or immovable property and to erect buildings for the purpose of the Society;
- (o) to raise or borrow money in such manner as the Society may think fit;
- (p) to sell, lease, mortgage, improve or otherwise deal with all or any of the property of the Society;
- (q) to invest the funds of the Society which are not immediately required upon such security as may from time to time be determined;
- (r) to employ the funds of the Society in obtaining or assisting any person to obtain a judicial order, ruling or judgment on a doubtful or disputed point of law where the Council of the Society deems it necessary or desirable in the interests of the public or the legal profession;
- (s) to do all such acts and things as are incidental or conducive to the attainment of the above-mentioned objects.

54 Constitution of Council of the Society

(1) The Society shall have a council which shall consist of—

- (a) nine elected councillors who shall be elected by the Society from its members in the manner prescribed in by-laws;
- (b) two appointed councillors who shall be persons who are appointed by the Minister:

Provided that, with the approval of the Minister, the Council of the Society may co-opt to the Council not more than two further registered legal practitioners, who need not be members of the Society.

(2) As soon after the election of the elected councillors as it is practicable to do so, the Council shall elect from the councillors a president and vice-president who shall hold office, as such, until the close of the next annual general meeting at which an election of councillors takes place.

(3) A councillor who—

(a) is elected shall hold office until the close of the third annual general meeting after the annual general meeting at which his election was declared:

Provided that he shall cease to hold office as a councillor if—

(a) he ceases to be a member of the Society; or

(b) a resolution to that effect is passed at a general meeting of the Society;

(b) is co-opted shall hold office until the close of the first annual general meeting after his co-option;

(c) is appointed shall hold office during the pleasure of the person appointing him;

and, after the termination of his office, he shall be eligible for re-election, re-appointment or further co-option, as the case may be:

Provided that, if for any reason the successors to the existing president, vice-president and elected councillors have not been duly elected, those persons shall continue in their offices until the election of their successors.

55 Management and control of Society by Council of the Society

(1) The management and control of the Society shall be vested in the Council of the Society which may exercise all such powers and do all such things as may be exercised or done by the Society save those which are expressly directed or required by this Act or by by-laws made thereunder to be exercised or done by the Society in general meeting.

(2) The Society, the Council of the Society and any councillor, officer or agent thereof shall not be liable for any loss, injury or damage sustained by a person as a result of the *bona fide* exercise or performance by the Society, the Council of the Society or a councillor, officer or agent thereof of a power or duty conferred or imposed upon the Society or the Council of the Society by this Act:

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

56 Absence of councillor from Zimbabwe or failure to attend meetings of Council of the Society

Where without special leave of the Council of the Society any elected councillor is absent from Zimbabwe for a continuous period of six months or has failed to attend four consecutive meetings of the Council of the Society, the Council of the Society shall declare his seat to be vacant.

57 Casual vacancies

Any casual vacancy in the office of president or vice-president or councillor shall be filled at as early a date as is practicable.

58 Casual vacancy not to invalidate acts of Council of the Society

Subject to by-laws respecting a quorum at Council meetings, a casual vacancy in the Council shall not invalidate any act or deed of the Council of the Society.

59 Representative of councillor to attend meetings of council

(1) Any councillor shall be entitled to nominate in writing any member of the Society as his representative at any meeting or meetings of the Council of the Society at which such councillor cannot conveniently be present.

(2) The duly appointed representative of a councillor shall, when such councillor is absent, be entitled to attend, speak and vote as a councillor at any meeting for which he is appointed.

(3) The attendance of any such representative at any meeting of the Council of the Society shall be reckoned, for the purposes of section *fifty-six*, as the attendance of the member whom he represents.

60 Annual general meetings

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

(2) Subject to by-laws, the place, date and hour of the annual general meeting shall be fixed by resolution of the Council of the Society.

(3) At least twenty-one days prior to the date fixed for the annual general meeting, written notice thereof shall be sent to each member of the 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 elected councillors 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 by-laws.

61 Special general meetings

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

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

62 Quorum at general meetings

Subject to section *seventy-two*, unless otherwise provided by by-laws, the quorum necessary for the transaction of the business of any annual or special general meeting shall be ten members personally present.

63 Society may make by-laws

(1) By-laws may be adopted by a majority of members present personally or by proxy at a general meeting of the Society.

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

- (a) providing for general meetings of members, the quorum necessary for the transaction of business and the conduct and place of meetings, and providing for voting by a show of hands and by ballot and by proxy;
- (b) subject to section *seventy-two*, providing for meetings of the Council of the Society, 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 councillors;
- (c) allocating a defined number of seats on the Council of the Society to particular areas or towns;
- (d) providing for and prescribing the procedure to be adopted in, the election of councillors, members of the Board of Trustees and of the president and vice-president and of an auditor or auditors;
- (e) providing for an annual subscription to be paid by members and fixing the amount thereof and the date when it shall become due;
- (f) specifying the powers and duties of the president, vice-president, secretary, treasurer and other officers of the Society and of the Council of the Society;
- (g) prescribing the registers and other records to be kept;
- (h) specifying the circumstances in which payments may be made to the secretary and other officers of the Society and to councillors and the representatives of councillors for travelling and other expenses and for the performance of special work on behalf of the Society;
- (i) prescribing the procedure to be followed and the requirements to be satisfied by any member who wishes to obtain the recommendation of the Society for his appointment as senior counsel;
- (j) making provision for, and prescribing the method of, the investigation of complaints against legal practitioners;
- (k) defining acts or omissions which constitute unprofessional, dishonourable or unworthy conduct on the part of legal practitioners;
- (l) fixing 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 Supreme Court, High Court or of magistrates courts:

Provided that no by-laws made in terms of this paragraph shall prohibit any registered legal practitioner from acting in any proper case or matter without making any charge therefor;

- (m) providing for the appointment of a secretary, librarian and other officers and to fix their remuneration;
- (n) providing 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) providing for the Council of the Society to decide and act as it may think proper in matters not provided for by the by-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 legal practitioners 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 the Society of a penalty, which shall be recoverable by the Council of the Society and which shall not exceed an amount equivalent to a fine of level one for each week of default, for failing to notify any particulars required in terms of by-laws made in terms of paragraph (q);

[Paragraph amended by section 4 of Act 22 of 2001.]

- (s) providing for the form, issue and withdrawal of practising certificates, including the contributions payable to the Society by persons applying for the issue or renewal of practising certificates;
- (t) prescribing the matters in respect of which an auditor shall be satisfied before issuing an audit certificate for the purpose of section *eighty-one*;
- (u) providing generally for the furtherance of the objects and powers of the Society as stated in section *fifty-three*, including suitable allocations of the funds of the Society for that purpose.

(3) By-laws made in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in a statutory instrument.

PART VIII

LAW SOCIETY COMPENSATION FUND

64 Law Society Compensation Fund

The Law Society Compensation Fund established in terms of section *three* of the Law Society Compensation Fund Act [*Chapter 222 of 1974*] shall, on and after the fixed date, continue in existence and shall be vested in and administered by the Board of Trustees in accordance with this Act.

65 Assets of Compensation Fund

The Compensation Fund shall consist of—

- (a) all contributions paid to the Compensation Fund in terms of section *seventy-four*;
- (b) income from the investments of the Compensation Fund; and
- (c) all moneys borrowed on behalf of the Compensation Fund in terms of section *sixty-nine*;
- (d) all moneys received by the Compensation Fund under any insurance effected on behalf of the Fund in terms of section *sixty-nine*;
- (e) any other moneys which may vest in or accrue to the Compensation Fund, whether in terms of this Act or otherwise.

66 Expenditure from Compensation Fund

(1) There shall be paid from the Compensation Fund—

- (a) any costs, charges and expenses incurred by the Board of Trustees in establishing, maintaining, administering and applying the Compensation Fund;
- (b) any grants made in terms of section *seventy*;
- (c) any costs, charges and expenses incurred by the Council of the Society in any inquiry in terms of section *seventy*;
- (d) any reimbursements made in terms of subsection (2); and
- (e) any refund of contributions made in terms of subsection (3);
- (f) any premiums on insurance effected on behalf of the Compensation Fund;
- (g) any sums required for the repayment of any moneys borrowed by the Compensation Fund and payment of any interest thereon;
- (h) such other sums as may be prescribed in rules made in terms of section *seventy-three*.

(2) Where the Society has incurred any costs, charges or expenses through the investigation or audit by the Council of the Society of the books of account of a legal practitioner, the Council of the Society may direct the Board of Trustees to make a payment out of the Compensation Fund for the purpose of reimbursing the Society either wholly or in part, and the Board of Trustees shall comply with that direction.

(3) The Council of the Society may direct the Board of Trustees to refund to any legal practitioner or his estate the whole or part of his contributions to the Compensation Fund, and the Board of Trustees shall comply with any such direction.

67 Audit of Compensation Fund

The accounts of the Compensation Fund shall be audited at least once in every year by an auditor, registered as a public auditor, in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] who shall be appointed by the Board of Trustees with the approval of the Minister.

68 Law Society Compensation Fund Trustees

(1) The Board of Trustees known as the Law Society Compensation Fund Trustees established by section *three* of the Law Society Compensation Fund Act [*Chapter 222 of 1974*] shall, on and after the fixed date, continue in existence as a body corporate under the same name, capable of suing and being sued in its corporate name and, subject to the provisions of this Act, of performing all such acts as a body corporate may by law perform.

(2) The Board of Trustees shall consist of three members who shall be elected annually by the Society in general meeting from among those members of the Society who are not members of the Council of the Society.

(3) At the conclusion of his term of office a member of the Board of Trustees shall be eligible for re-election.

(4) The office of a member of the Board of Trustees shall become vacant if—

- (a) he dies; or
- (b) he resigns by notice in writing to the president of the Society; or
- (c) his estate is sequestrated or assigned in terms of any law relating to insolvency; or
- (d) he ceases for any reason to be a registered legal practitioner; or
- (e) as a result of his being convicted of any offence the Council of the Society notifies him in writing that he has ceased to be a member of the Board of Trustees; or
- (f) he has, in the opinion of the Council of the Society, become mentally or physically incapable of efficiently performing his duties and the Council of the Society notifies him in writing that he has ceased to be a member of the Board of Trustees.

(5) If the office of a member of the Board of Trustees has become vacant in terms of subsection (4), the Council of the Society may appoint a suitable person to fill such vacancy until the expiration of the period during which such member would, but for the vacation of his office, have continued in office.

69 Functions and powers of Board of Trustees

(1) The Board of Trustees shall, subject to this Act and of any rules made in terms of section *seventy-three* or by-laws, administer the Compensation Fund.

(2) The Board of Trustees may enter into any contract with any person or company carrying on insurance business whereby the Compensation Fund will be indemnified to the extent and in the manner provided by such contract, against the making of grants in terms of this Act.

(3) The Board of Trustees may invest, in such securities as may be prescribed in rules made in terms of section *seventy-three*, any moneys in the Compensation Fund which are not immediately required for the purposes of the Compensation Fund.

(4) The Board of Trustees may borrow moneys for the purposes of the Compensation Fund and may charge any investments of the Compensation Fund by way of security for any such loan:

Provided that the aggregate sum owing at any one time in respect of such loans shall not exceed such limit as shall be prescribed in rules.

70 Compensation for loss through dishonesty of registered legal practitioner

(1) Where it is proved to the satisfaction of the Council of the Society that any person has sustained loss in consequence of theft, fraud, forgery or other dishonesty committed by a registered legal practitioner or by an employee of a registered 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 of the Society may, subject to this Act, direct the Board of Trustees to make a grant to that person out of the Compensation Fund for the purpose of relieving or mitigating that loss, and the Board of Trustees shall comply with that direction.

(2) Before considering an application for a grant in terms of this section the Council of the Society 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 practising certificate when the theft, fraud, forgery or other dishonesty which gave rise to the loss was committed, and notwithstanding that subsequently 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 deleted from the Register.

(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 in rules made in terms of section *seventy-three*.

(5) In inquiring into any allegation of theft, fraud, forgery or other dishonesty that is the subject of an application for a grant in terms of this section, the Council of the Society shall have the same powers and privileges as are conferred upon commissioners by the Commissions of Inquiry Act [*Chapter 10:07*], and sections 10 to 14 and 16 to 18 of that Act shall apply, *mutatis mutandis*, in respect of any such inquiry.

(6) Any person subpoenaed to give evidence or to produce books, plans or documents at any inquiry held by the Council of the Society for the purposes of this section shall, if the Council of the Society so allows, be entitled to witness expenses as if he had been subpoenaed to attend at a magistrates court at a criminal trial, but the Council of the Society may in its discretion disallow the whole or any part of such expenses.

(7) The Council of the Society may direct the Board of Trustees to pay out of the Compensation Fund any costs, charges and expenses incurred by the Council of the Society in an inquiry under this section, and the Board of Trustees shall comply with that direction.

71 Subrogation of Board of Trustees

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

- (a) the Board of Trustees 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 Board of Trustees 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.

72 Quorum of Council and Society in respect of business of Compensation Fund

For the transaction of any business in relation to the Compensation Fund, the quorum at a meeting of—

- (a) the Society, shall be ten members;
- (b) the Council of the Society, shall be three members.

73 Rules

(1) The Board of Trustees may, with the approval of the Society in general meeting, make rules—

- (a) prescribing the procedure of meetings of the Board of Trustees;
- (b) providing for the payment to members of the Board of Trustees of reasonable travelling and subsistence expenses incurred in attending to the business of the Board of Trustees;
- (c) providing for the employment by the Board of Trustees of such persons as may be necessary for the proper administration of the Compensation Fund, and fixing their remuneration and conditions of service;
- (d) prescribing the forms to be used and the procedure to be adopted in applications for and payments of grants under section *seventy*;
- (e) prescribing such matters as are under this Act required or permitted to be prescribed in such rules;
- (f) generally for the proper administration of the Compensation Fund and all matters incidental thereto.

(2) Rules made in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in a statutory instrument.

PART IX

PRACTISING CERTIFICATES

74 Applications for practising certificates

(1) A person who wishes to obtain or renew a practising certificate shall apply to the secretary of the Society in the form and manner prescribed in by-laws.

(2) An applicant for a practising certificate, other than a limited practising certificate, shall submit with his application—

- (a) such contribution to the Compensation Fund as may be prescribed in rules made in terms of section *seventy-three*; and
- (b) such contribution to the Society as may be prescribed in by-laws; and
- (c) such certificates, documents and information as may be prescribed in by-laws or as the Secretary of the Society may reasonably require; and
- (d) such proof as the Secretary of the Society may reasonably require that the applicant has paid any levy due from him under the Legal Aid Act, 1996 (No. 18 of 1996).

[Paragraph inserted by section 12 of Act 10 of 2000.]

(3) An applicant for a limited practising certificate shall submit with his application such contribution to the Society as may be prescribed in by-laws, together with such certificates, documents and information as the secretary of the Society may reasonably require.

75 Issue, renewal and refusal of practising certificates

(1) On receipt of an application in terms of section *seventy-four* for the issue or renewal of a practising certificate, other than a limited practising certificate, the secretary of the Society—

- (a) shall issue or, as the case may be, renew the practising certificate, if he is satisfied that—
 - (i) the applicant is a registered legal practitioner who will be entitled to practise as such if the practising certificate is issued or, as the case may be, renewed; and
 - (ii) the contributions referred to in paragraphs (a) and (b) of subsection (2) of section *seventy-four* have been submitted together with the application; and
 - (ia) the applicant has paid any levy due from him under the Legal Aid Act, 1996 (No. 18 of 1996); and
 - (iii) where appropriate, the applicant has submitted an audit certificate to the secretary of the Society in terms of section *eighty one*;

[Subparagraph inserted by section 13 of Act 10 of 2000.]

- (b) shall refer the application to the Council of the Society if he is not satisfied as to the matters referred to in paragraph (a).

(2) Where an application has been referred to it in terms of paragraph (b) of subsection (1), the Council of the Society, after making such inquiry into the matter as it considers necessary—

(a) shall direct the secretary of the Society to issue or, as the case may be, renew the practising certificate concerned, if it is satisfied as to the matters referred to in paragraph (a) of subsection (1); and

[Paragraph amended by section 13 of Act 10 of 2000.]

(b) shall refuse to issue or, as the case may be, to renew the practising certificate concerned, if it is not satisfied as to the matters referred to in paragraph (a), and shall direct the secretary of the Society to advise the applicant accordingly.

(3) On receipt of an application in terms of section *seventy-four* for the issue or renewal of a limited practising certificate, the secretary of the Society shall refer the application to the Council of the Society.

(4) Where an application for the issue or renewal of a limited practising certificate has been referred to it in terms of subsection (3), the Council of the Society, after making such inquiry into the matter as it considers necessary—

(a) may direct the secretary of the Society to issue or, as the case may, to renew the limited practising certificate concerned, if it is satisfied that—

(i) the applicant is a registered legal practitioner; and

(ii) the contribution referred to in subsection (3) of section *seventy-four* has been submitted together with the application; and

(iii) no fees will be raised or charged by the applicant or any other person in respect of the applicant's practice as a legal practitioner;

and

(b) shall refuse to issue or, as the case may be, to renew the limited practising certificate concerned, if it is not satisfied as to the matters referred to in paragraph (a), and shall direct the secretary of the Society to advise the applicant accordingly.

76 Period of validity of practising certificates

(1) Subject to subsection (2), a practising certificate shall be valid—

(a) for the period of twelve months from the 1st January next following the application therefor; or

(b) if the applicant so requires, from the date of its issue until the 31st December of the year in which it is issued.

(2) A practising certificate issued to a legal practitioner—

(a) whose name is deleted from the Register; or

(b) who is suspended from practice in terms of section *twenty-eight* or *thirty*;

shall cease to be valid from the date of such deletion or suspension, and the legal practitioner or former legal practitioner concerned shall forthwith return the practising certificate to the secretary of the Society for destruction.

77 Terms and conditions of practising certificates

(1) A limited practising certificate shall be subject to such terms and conditions as the Council of the Society may impose in each particular case, which terms and conditions the Council of the Society shall cause to be endorsed on the certificate.

(2) Where in terms of section *twenty-eight* conditions are imposed upon a legal practitioner's entitlement to practise—

(a) the legal practitioner shall forthwith return any practising certificate held by him to the secretary of the Society, who shall endorse the conditions on the certificate; and

(b) the secretary of the Society shall endorse the conditions on any further practising certificate issued to the legal practitioner in respect of any period during which the conditions are operative.

(3) Terms and conditions may be endorsed on a practising certificate in terms of this section in such abbreviated form as the Council of the Society may approve.

78 Withdrawal of practising certificate

(1) If, after due inquiry, the Council of the Society is satisfied that a legal practitioner has not complied with any term or condition of a practising certificate held by him, the Council of the Society may withdraw the practising certificate and, if it does so, shall direct the secretary of the Society to advise the legal practitioner accordingly.

(2) A legal practitioner whose practising certificate has been withdrawn in terms of subsection (1) shall, upon being advised of the withdrawal, forthwith return the practising certificate to the secretary of the Society for destruction.

79 Appeals from decisions of Council of the Society

(1) Any person who is aggrieved at any decision of the Council of the Society in terms of this Part may, within thirty days after being advised of the decision, appeal to the Supreme Court in such manner as may be prescribed by rules of court made in terms of the Supreme Court Act [*Chapter 7:14*].

(2) On an appeal in terms of subsection (1), the Supreme Court may—
(a) confirm, vary or set aside the decision appealed against; or
(b) remit the matter to the Council of the Society for further consideration,
and may make such other order as to costs or otherwise as it thinks just.

(3) The noting of an appeal in terms of subsection (1) against a decision of the Council of the Society in terms of section *seventy-eight* to withdraw a practising certificate shall not suspend the decision appealed against, unless—

(a) the Council of the Society, by written notice to the legal practitioner concerned, agrees otherwise; or
(b) the Supreme Court on application directs otherwise;
in which event the Council of the Society shall return the practising certificate to the appellant pending the outcome of the appeal.

PART X

GENERAL

80 Existing practitioners to be registered as notaries public and conveyancers

The Registrar shall enter in the Register as a notary public and conveyancer the name of every person who, immediately before the 30th December, 1991, was registered as a legal practitioner and, on and after that date, every such person shall be deemed, for so long as his name remains so entered, to have been duly registered as a notary public and conveyancer in terms of this Act.

81 Audit certificates

(1) A person who—
(a) is practising as a legal practitioner, whether on his own account or in partnership or association with any other person; and
(b) is required by section *thirteen* to keep a trust account;
shall submit to the secretary of the Society, at such time or times as may be prescribed in by-laws, an audit certificate in the form prescribed in by-laws and issued by a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*].

(2) A person who intends to practise as provided in subsection (1) shall, before commencing in such practice, submit to the secretary of the Society an audit certificate in the form prescribed in by-laws and issued by a person who is registered as a public auditor in terms of the Public Accountants and Auditors Act [*27:12*].

82 Right of State and certain parastatal employees to appear in court

(1) Notwithstanding anything to the contrary in this Act, any person who is in the employment of the State may appear in any court on behalf of the State.

(2) Notwithstanding anything to the contrary in this Act, any person who is in the employment of the Zimbabwe Revenue Authority (an authority established by section *three* of the Revenue Authority Act [*Chapter 23:11*] (Act No. 17 of 1999)), and who performs services for the Zimbabwe Revenue Authority as a legal practitioner, may appear before—

- (a) the Fiscal Appeal Court established in terms of section *three* of the Fiscal Appeal Court Act [*Chapter 23:05*]; or
- (b) the Special Court for Income Tax Appeals established in terms of section *sixty-four* of the Income Tax Act [*Chapter 23:06*];
- (c) any other court in any civil and (if authorised by the Attorney-General under section 6 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] criminal proceedings to which the Authority is a party or that involve any of the Acts specified in the First Schedule to the Revenue Authority Act [*Chapter 23:11*] (Act No. 17 of 1999));

[Paragraph inserted by section 32 of Act 9 of 2006.]

and shall have the same rights and privileges as are specified in paragraphs (a), (b) and (c) of subsection (1) of section *eighty-five* for persons performing services for the State as a legal practitioner.

[Section substituted by section 32 of Act 6 of 2005.]

83 Non-recovery of fee

No fee in respect of anything done in contravention of any provision of this Act shall be recovered in any action or proceeding by the person who has acted in contravention of such provision.

84 Evidence

(1) In any criminal proceedings against any person upon a charge of having performed any act which constitutes an offence under this Act if performed by a person who is not registered, the person charged shall be deemed to be not registered until the contrary is proved.

(2) A certificate under the hand of the Registrar—

- (a) of the entry of the name of a person in the Register shall be *prima facie* evidence on its production by any person that the person is registered in the Register as a legal practitioner, notary public or conveyancer, as may be stated in the certificate;
- (b) that the name of a person has been deleted from or does not appear in the Register, shall be *prima facie* evidence on its production by any person that the person is not registered in the Register;
- (c) that a registered person has been suspended from practice as such for a period specified in that certificate shall be *prima facie* evidence on its production by any person that the person concerned has been suspended from such practice for that period.

85 Special provisions relating to legal practitioner employed by State

- (1) Notwithstanding any law, including any practice or custom, to the contrary, a person who is employed by the State and who performs services for the State as a legal practitioner may, in respect of such employment—
 - (a) receive any salary, allowances or other benefits to which he is entitled in terms of the law relating to his appointment;
 - (b) exercise any rights and privileges which a registered legal practitioner in private practice may exercise;
 - (c) recover on behalf of the State, for the benefit of the Consolidated Revenue Fund, any costs and fees in respect of any proceedings or other legal work which a registered legal practitioner in private practice would be entitled to recover;
 - (d) exercise his functions in any court or at any place even though he does not have a fixed office or branch at the place at which such court sits or at such place, as the case may be;
 - (e) instruct or employ any other registered legal practitioner as an agent or correspondent in the same way as a registered legal practitioner in private practice may do so and may receive and recover on behalf of the State, for the benefit of the Consolidated Revenue Fund, any fees and allowances from any such agent or correspondent which a registered legal practitioner in private practice would be entitled to receive and recover.
- (2) For the purposes of subsection (1), the services referred to therein shall be deemed to include services—
 - (a) which are performed in, or in connection with, any matter in which the State, though not a party, is interested or connected; and
 - (b) which the Minister has authorized to be performed, whether before, at the time of, or after the performance thereof.

86 Oaths of loyalty and of office

A person who applies for registration as a legal practitioner shall, before being registered, take the oaths of loyalty and of office specified in Schedule I to the Constitution.

87 Regulatory power

- (1) The Minister may, after consultation with the Chief Justice and the president of the Society, make regulations prescribing anything which in terms of this Act is to be prescribed by regulation or which, in his opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations made in terms of subsection (1) may provide for—
 - (a) fees which shall be payable in connection with registration;
 - (b) ...
 - [Paragraph repealed by section 5 of Act 11 of 1996.]
 - (c) specifying the conditions subject to which legal practitioners normally resident in a reciprocating country may be registered and the conditions subject to which any such legal practitioners, once registered, may practise as such in Zimbabwe;
 - (d) the issue of duplicate or corrected certificates of registration,
 - (e) the form of the Register and the circumstances in which it may be inspected by members of the public;
 - (f) requiring notaries public to keep protocols and registers of specified transactions and documents, the inspection thereof and the disposal and custody thereof in the event of death, retirement, suspension or removal from the Register of the notary public concerned;
 - (g) removing or restricting the right of audience before any court of legal practitioners who fail or refuse to make themselves available for engagement in terms of section *twelve* of the Legal Aid Act, 1996, when required to do so by or under regulations made in terms of that Act;
 - [Paragraph substituted by section 26 of Act 18 of 1996.]
- (g1) contingency fee arrangements;
 - [Paragraph inserted by section 14 of Act 10 of 2000.]
- (h) penalties for contraventions of the regulations:
 - Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.
 - [Paragraph substituted by section 4 of Act 22 of 2001.]