

THE NATAL LAW SOCIETY
REGULATIONS UNDER ACTS
PERTAINING TO ATTORNEYS

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**SCALE OF FEES PAYABLE IN RESPECT OF
MATTERS REFERRED TO IN SECTION 80
OF THE ATTORNEYS ACT, 1979 (ACT 53 OF 1979)**

As published in Govt Notice No. R1402 on 1/8/1993

Govt Notice No. R.1580 of 13/12/2002

The acting Minister for Justice and Constitutional Development, hereby under Section 80 of the Attorneys Act, 1979 (Act No. 53 of 1979), and after consultation with the various Law Societies, prescribe the following scale of fees which shall come into operation on 13 December 2002:

The following scale of fees has been prescribed:

	R
(a) Examination of articles of clerkship or a contract of service in terms of section 5	100
(b) Registration of articles of clerkship or a contract of service.....	10
(c) Issuing of a certificate in terms of section 8(3)	50
(d) Examination of documents in terms of section 10(5)	200
(e) Registration of a cession of articles of clerkship in terms of section 10(5).....	10
(f) Admission as an attorney	150
(g) Re-admission as an attorney	250
(h) Admission as a notary	150
(i) Re-admission as a notary.....	250
(j) Admission as a conveyancer	150
(k) Re-admission as a conveyancer	250
(l) Enrolment as a practitioner under section 20	100

**DESIGNATIONS IN TERMS OF SECTION 2(1)(aA)
OF THE ATTORNEYS ACT, 1979**

The following countries have been designated under Section 2(1)(aA) of the Attorneys Act as a country for the purposes of the said Section.

<u>Country</u>	<u>Regulation</u>	<u>Date of Regulation</u>
Bophuthatswana	R1303	14/6/1985
Transkei	R2012	18/9/1987
	R2166	25/9/1987
Ciskei	R1653	19/8/1988
Zimbabwe	R457	18/3/1988
Venda	R1740	2/9/1988

**DESIGNATIONS IN TERMS OF SECTION 2(1)(aB)
OF THE ATTORNEYS ACT, 1979**

The following countries have been designated under Section 2(1)(aB) of the Attorneys Act as a country for the purposes of the said Section.

<u>Country</u>	<u>Regulation</u>	<u>Date of Regulation</u>
Nigeria	GN 1410 of GG 21927	22/12/2000
Kingdom of Swaziland	R.334 of GG 24991	28/02/2003

**DESIGNATION IN TERMS OF SECTION 46(a)(ii)
OF THE ATTORNEYS ACT, 1979**

Namibia has been designated as a country in terms of Section 46(a)(ii).

**RULES OF COURT GOVERNING THE PRACTICAL EXAMINATIONS AND
THE ADMISSION OF ATTORNEYS, NOTARIES AND CONVEYANCERS
UNDER SECTION 82 OF THE ATTORNEYS ACT**

**as published in GN 23 of 8 January 1988
and subsequently amended by**

R1189 dated 8/7/1994

R78 dated 26/1/96

R679 dated 26/4/96

R924 dated 17/7/98

The Chief Justice of South Africa has, after consultation with the judges-president of the various provincial divisions of the High Court of South Africa and the presidents of the various Law Societies, under Section 82 of the Attorneys Act, 1979 (Act 53 of 1979), made the rules of court contained in the Schedule.

[As amended up to GG No. 19432 dated 6/11/1998.]

SCHEDULE

Rule

1 - Definitions.

2 - Appointment of examiners.

3 - Examinations.

4 - Examination fees.

5 - Application for admission.

6 - Withdrawal of Government Notice.

1. In these rules, unless the context otherwise indicates -

"**Act**" means the Attorneys Act, 1979 (Act 53 of 1979); and

"**examiners**" means examiners appointed in terms of section 14 of the Act.

2. Every examiner appointed for the purpose of arranging, controlling and conducting examinations in respect of the subjects referred to in -

(a) section 14(1)(a), (b) and (c) of the Act, shall be an attorney of not less than five years' standing;

- (b) section 14(1)(d) of the Act, shall be a notary of not less than five years' standing; and
 - (c) section 14(1)(e) of the Act, shall be a conveyancer of not less than five years' standing or a registrar of deeds.
[amended by R229 of GG 20968 dated 17/3/2000.]
3. (1) The examiners shall put written and, where the candidate has obtained the prescribed minimum standards, as from time to time determined by the examiners, in the written examination, oral questions to the candidate when conducting examinations in respect of the subjects referred to in -
- (a) section 14(1)(a), (b) and (c) of the Act, which examinations may, subject to subrule (2), be taken separately and may require him to draft such process, accounts and documents to show whether he possesses sufficient practical knowledge of such subjects;
 - (b) section 14(1)(d) of the Act and may require him to draft such documents to show whether he possesses sufficient practical knowledge of such subjects;
 - (c) section 14(1)(e) of the Act and may require him to draft such deeds and other documents to show whether he possesses sufficient practical knowledge of the requirements of deeds registries and the Mining Titles Office.
- (2) The examination in respect of the subjects referred to in section 14(1)(a), (b) and (c) of the Act may be taken in any sequence.
[amended by GN R.1189 of 1994]
- (3) The examiners shall, if in their opinion the candidate has satisfactorily answered the questions put to him and has shown that he possesses sufficient practical knowledge of the subjects concerned, issue to him a certificate of proficiency in such subjects.
- (4) The examiners shall, in respect of a written examination paper of any of the subjects referred to in Section 14(1)(a), (b), (c), (d) and (e) of the Act or any part of such paper of the subjects referred to in Section 14(1)(a), grant a re-mark to any candidate who applies in writing for a re-mark to the Secretary of the Law Society of the province where he or she has written such examination within one week after the results of the examination have been published.
[Inserted by GN R924 of 17/07/1998 and amended by R1420 dated 6/11/1998]
4. (1) (a) (i) Every candidate entering an examination in respect of the subjects referred to in section 14(1)(a), (b) and (c) of the Act for which four papers are set, shall in respect of each paper pay the following fees to the secretary of the law society of the province where he or she is to sit for such examination:
- Paper 1 : (MVA, Supreme Court, Magistrate's Court, Criminal Procedure) : R100,00 plus VAT.
 - Paper 2 : (Administration of Estates) : R50,00 plus VAT.
 - Paper 3 : (Attorney's Practice) : R50,00 plus VAT.
 - Paper 4 : (Bookkeeping) : R50,00 plus VAT.

- (ii) Every candidate who applies for the re-mark of any of the papers or any part of a paper referred to in subparagraph (i), shall pay a fee which is twice the amount determined in the said subparagraph for the paper concerned: Provided that in the event of the candidate receiving a pass mark as a result of such a re-mark, the fee shall be refunded to him or her.

[amended by R1189 of 1994 and substituted by R924 of 17/07/1998]

- (b) (i) Every candidate entering an examination in respect of the subjects referred to in Section 14(1)(d) or (e) of the Act shall pay a fee of R150,00 in respect of any such examination to the Secretary of the Law Society of the province where he or she is to sit for such examination.

- (ii) Every candidate who applies for the re-mark of any of the examinations referred to in subparagraph (i), shall pay a fee which is twice the amount determined in the said subparagraph for the paper concerned: Provided that in the event of the candidate receiving a pass mark as a result of such a re-mark, the fee shall be refunded to him or her.

[amended by R924 of 17/07/1998 and substituted by R1420 dated 6/11/1998]

- (2) Any fee paid in terms of subrule (1) shall be distributed by the secretary of the law society in equal proportions among the examiners who conducted the examination.

5. Any person applying to the court to be admitted and enrolled -

- (a) as an attorney, shall produce the following documents with his notice of motion:

- (i) Supporting affidavits;
- (ii) his birth certificate or proof to the satisfaction of the court of his date of birth;
- (iii) a certificate that he has complied with the academic qualifications prescribed in the Act;
- (iv) a certificate of proficiency issued in terms of rule 3(3), or proof that he has under section 13(1)(c) of the Act been exempted from passing any practical examination referred to in section 14(1)(a), (b) or (c) of the Act, or any part thereof;
- (v) a certificate that he has passed the examinations referred to in section 15(1)(b)(v) of the Act;
- (vi) an affidavit by his principal that he has served under articles of clerkship in accordance with the provisions of the Act;
- (vii) ...
[deleted by R78 of 1996]
- (viii) ...
[deleted by R78 of 1996]
- (ix) proof to the satisfaction of the court that he is a fit and proper person to be so admitted;

- (x) proof to the satisfaction of the court that has complied with the provisions of section 15(1)(b)(ii) of the Act; and
 - (xi) such other proof as may be necessary to show that he is entitled to be admitted as an attorney;
- (b) as a notary, shall produce the following documents with his notice of motion:
- (i) Supporting affidavits;
 - (ii) proof that he has been admitted to practice as an attorney in terms of the Act;
 - (iii) proof that no order of court striking his name off the roll of attorneys or suspending him from practice as an attorney is in operation in respect of him;
 - (iv) proof that no proceedings are pending to strike his name off the roll of attorneys or to suspend him from practice as an attorney;
 - (v) a certificate of proficiency issued in terms of rule 3(3);
 - (vi) ...
[deleted by R78 of 1996]
 - (vii) ...
[deleted by R78 of 1996]
 - (viii) such proof as may be necessary to show that he is entitled to be admitted as a notary;
- (c) as a conveyancer, shall produce the following documents with his notice of motion:
- (i) Supporting affidavits;
 - (ii) proof that he has been admitted to practise as an attorney in terms of the Act;
 - (iii) proof that no order of court striking his name off the roll of attorneys or suspending him from practice as an attorney is in operation in respect of him;
 - (iv) proof that no proceedings are pending to strike his name off the roll of attorneys or to suspend him from practice as an attorney;
 - (v) a certificate of proficiency issued in terms of rule 3(3);
 - (vi) ...
[deleted by R78 of 1996]
 - (vii) ...
[deleted by R78 of 1996]
 - (viii) such other proof as may be necessary to show that he is entitled to be admitted as a conveyancer.

6. Government Notice R. 1127 of 4 July 1969 as amended, is hereby withdrawn.

**RULES FRAMED UNDER SECTIONS 29 AND 30
OF THE ATTORNEYS, NOTARIES AND CONVEYANCERS
ADMISSION ACT, 1934 (23 OF 1934)**

as published in GN 638 of 23 April 1937

**R830 of 23 May 1940
R1206 of 21 July 1944
R1613 of 30 July 1948
R1048 of 10 July 1959
R833 of 13 October 1961
R2113 of 28 December 1962
R2022 of 11 December 1964
R1726 of 5 November 1965
R1065 of 4 June 1982
R872 of 24 April 1987
R1708 of 7 August 1987
R1936 of 23 September 1988
R1350 of 30 June 1989
R346 of 22 February 1991
R588 of 2 April 1993
R1813 of 1 October 1993
R2273 of 30 December 1994
R675 of 5 May 1995**

SECTION 29

The fees prescribed under this section was subsequently withdrawn and the latest scale of fees will be found under Regulations published in terms of section 80 of the Attorneys Act, 1979.

SECTION 30

It is hereby notified that, acting under the powers conferred by section *thirty* of the Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934), the Minister of Justice has made the following regulations in connection with the matters referred to therein:-

[As amended up to R675 of GG No. 16401 of 5/05/1995.]

British Dominions, etc., Approved for the Purposes of section nine of Act No. 23 of 1934.

1. The following British dominions, colonies and territories are approved of for the purposes of section *nine* of the Act -
 - (a) Southern Rhodesia;
 - (b) any British dominion, colony or territory (other than those mentioned in section *eight* of the Act and Southern Rhodesia), in respect of which the Minister is satisfied -

- (i) that the laws relating to the admission of attorneys or solicitors to practise are such as to ensure a standard of education and of knowledge of the law and its practice not lower than that required of persons admitted to practise as attorneys in South Africa; and
 - (ii) that by the law of that dominion, colony or territory, attorneys of the Supreme Court of South Africa will be admitted to practise as attorneys or solicitors, and in respect of which he has, by notice in the *Gazette*, signified his approval in terms of section *nine* of the Act.
- 1A. (1) Zimbabwe and, subject to the provisions of subregulation (2), the Republic of Namibia are approved and designated for the purposes of section 13(1) and section 13(1)(a)(ii) of the Attorneys Act, 1979 (Act No. 53 of 1979), respectively.
- (2) The following class of persons is designated for the purposes of section 13(1)(a)(i) and (ii) of the said Act, insofar as it relates to the Republic of Namibia:
- (a) Any person who entered into articles of clerkship which were registered by the Law Society of South West Africa before 21 March 1990 in terms of the provisions of section 5(2) of the said Act and who passed the practical examinations prescribed by section 14 of the said Act on account of service performed under such articles of clerkship,
 - (b) Any person who -
 - (i) entered into articles of clerkship in Walvis Bay which were registered by the Law Society of the Cape of Good Hope before 1 March 1994 in terms of the provisions of section 5(2) of the said Act;
 - (ii) passed the practical examinations prescribed by section 14(1)(a), (b) and (c) of the said Act on account of service performed under such articles of clerkship before 1 March 1994; and
 - (iii) was admitted as an attorney in Namibia after 28 February 1994,

shall be exempted from service under articles of clerkship as well as from a training course referred to in section 15(1)(b)(ivA) of the said Act.
 [inserted by R1065 dated 4/6/1982 and substituted by R588 dated 2/4/1993 and R2273 dated 30/12/1994.]
- 1B. The following countries are approved for the purposes of Section 17 of the Attorneys Act, 1979:
- (a) The Republic of Transkei.
 - (b) The Republic of Bophuthatswana.
 - (c) The Republic of Ciskei.
 - (d) The Republic of Venda.

- (e) The Kingdom of Lesotho.
[substituted by R1350 dated 30/6/1989 and by R1813 of 1/10/93.]

Degrees Approved for the Purposes of Clause 3 of the First Schedule to Act No. 23 of 1934.

2. The following degrees are approved for the purposes of clause *three* of the First Schedule to the Act:-
- (a) Any bachelor's, master's or doctor's degree in arts, literature, science, medicine, commerce, economics or law of any university in the United Kingdom of Great Britain and Northern Ireland or of any of the Dominions;
- (b) any degree of a university outside the United Kingdom and the British Dominions, which is recognised by the University of South Africa as being of at least as high a standard as a bachelor's degree in a South African university.

Examination in Roman-Dutch Law and Statute Law to be Passed by Attorneys, etc., referred to in sections eight, nine and twelve of Act No. 23 of 1934.

3. The examination in the principles of Roman-Dutch Law and Statute Law of the Union, which any person (other than a person who has been admitted and enrolled as an attorney of the High Court of the Mandated Territory of South West Africa) referred to in section *eight* or *nine* of the Act shall be required to pass before being admitted and enrolled as an attorney under the Act, shall be conducted by the Board for the Recognition of Examinations in Law established by section *sixteen* of the Universities Act, 1955 (Act No. 61 of 1955).
[amended by R833 dated 13/10/1961.]
4. The said examination shall be conducted at such times and places, under such conditions and regulations not inconsistent with these rules, and subject to the payment of such fees as the Board for the Recognition of Examinations in Law may from time to time prescribe.
[amended by R833 dated 13/10/1961.]
5. (1) The syllabus for the said examination shall be as follows:-
- (a) *Roman-Dutch Law (two papers)*. - The Private Law of the Republic of South Africa and the historical background and development thereof; the Law of Persons and Family Law; the Law of Things and the Law of Succession; the Law of Obligations, including the Law of Contract generally, Special Contracts and Delicts. (Generally on the basis of current handbooks, authoritative works of writers on Roman-Dutch Law, the Statute Law and Supreme Court decisions.)
- (b) *Statute Law (two papers)*.
- (i) The Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961);
- (ii) The State Liability Act, 1957 (Act No. 20 of 1957);

- (iii) The Administration of Estates Act, 1913 (Act No. 24 of 1913);
 - (iv) The Insolvency Act, 1936 (Act No. 24 of 1936);
 - (v) The Interpretation Act, 1957 (Act No. 33 of 1957);
 - (vi) The Vexatious Proceedings Act, 1956 (Act No. 3 of 1956);
 - (vii) The Supreme Court Act, 1959 (Act No. 59 of 1959);
 - (viii) The Magistrates' Courts Act, 1944 (Act No. 32 of 1944) including the rules promulgated thereunder;
 - (ix) The Criminal Procedure Act, 1955 (Act No. 56 of 1955);
 - (x) The Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934);
 - (xi) The Attorneys, Admission Amendment and Legal Practitioners' Fidelity Act, 1941 (Act No. 19 of 1941).
- (2) The syllabus in Statute Law includes all amendments to and substitutions of the statutes which have been promulgated at least six months before the date of the examination.
- (3) Candidates are required -
- (a) to have a thorough knowledge of the application and interpretation of the said statutes as expounded in the decisions of the Supreme Court; and
 - (b) to have a thorough knowledge of both Roman-Dutch Law and Statute Law which is at least equal to that generally required of candidates for the examination referred to in sub-paragraph (i) of paragraph (a) of section *ten* of the Act.
[substitute paragraph 5 by R2113 dated 28/12/1962.]
6. Persons who have passed the following examinations shall be deemed to have passed the examination in the subjects mentioned:-
- (a) *Both Roman-Dutch Law and Statute Law.*
Any person who has passed the Law Certificate Examination (or Attorney's Admission Examination) of Southern Rhodesia.
 - (b) *Roman-Dutch Law.*
 1. "'Het Doctoral Examen in het Hedendaags Romeins-Hollands recht' or 'Het Doctoral Examen in het Zuid-Afrikaans recht' of the Universities of Leiden, Amsterdam, Utrecht or Groningen."
[substituted by R1613 dated 30/7/1948.]
 2. The examination in Roman-Dutch Law in connection with the degree of B.C.L. of the University of Oxford.
[renumbered by R1613 dated 30/7/1948.]

3. The examination in Roman-Dutch Law in connection with the degree of Bachelor of Arts with Honours in Jurisprudence of the University of Oxford.
[renumbered by R1613 dated 30/7/1948.]
4. The examination in Roman-Dutch Law in connection with the degree of LL.B. of the University of Cambridge.
[renumbered by R1613 dated 30/7/1948.]
5. The examination in Roman-Dutch Law in connection with the degree of LL.B. of the University of London.
[renumbered by R1613 dated 30/7/1948.]
6. The examination in Roman-Dutch Law prescribed by the Council of Legal Education in England.
[renumbered by R1613 dated 30/7/1948.]
7. The examination in Roman-Dutch Law in connection with the degree of B.A., with honours in Law, of the University of Cambridge.
[inserted by R1613 dated 30/7/1948.]

Exemptions from the Practical Examination referred to in sections twelve and twenty-seven of Act No. 23 of 1934.

7. Any person referred to in sub-section (2) of section *eight* of the Act shall, for the purposes of his admission and enrolment as an attorney under the Act, be exempted from passing the practical examination referred to in paragraph (a), (b) or (c) of section *twenty-seven* of the Act.
[substituted by R2022 dated 11/12/1964.]
- 7.bis Any attorney shall, for the purposes of his admission and enrolment as a notary or conveyancer under section *twenty-three* or *twenty-four* of the Act, as the case may be, be exempted from passing the practical examination referred to in paragraph (d) or (e) of section *twenty-seven* of the Act, as the case may be, if he has, whether before or after the commencement of this paragraph, been admitted as a notary or conveyancer, as the case may be, by the South West Africa Division of the Supreme Court of South Africa.
[substituted by R2022 dated 11/12/1964.]
- 7A. Any person referred to in section 13(1) of the Attorneys Act, 1979, who wishes to be admitted and enrolled under the Act as an attorney and who has passed the Attorney's Admission Examination of Zimbabwe before 22 May 1981 shall be exempted from the practical examination referred to in section 14(1)(a), (b) and (c) of the said Act.
[inserted by R1065 dated 4/6/1982.]
- 7B. Any person who has been admitted by the supreme court or high court of Zimbabwe as a notary or conveyancer, as the case may be, before 22 May 1981 shall in terms of section 18 of the Attorneys Act, 1979, for the purposes of admission as a notary or conveyancer, as the case may be, be exempted from the practical examination referred to in section 14(1)(d) or (e).
[inserted by R1065 dated 4/6/1982.]

- 7C. Any person referred to in section 13(1)(a)(ii) of the Attorneys Act, 1979, who has been admitted and enrolled as an attorney under the Act shall for the period referred to in section 13A of the said Act practise as a professional assistant of an attorney who is entitled under the Act to have a candidate attorney, in the office of and under the personal supervision in the office referred to of the attorney referred to, before he shall be entitled to practise the profession of an attorney for his own account.
[inserted by R1065 dated 4/6/1982 and amended by R346 dated 22/2/1991.]
- 7D. Any person referred to in section 13(1) of the Attorneys Act, 1979, who passed the Attorneys Admission Examination of the Republic of Namibia before 1 July 1992 shall be exempted from any practical examination referred to in section 14(1)(a), (b) or (c) of the said Act or a part thereof before he shall be admitted and enrolled under the said Act as an attorney in the Republic.
[inserted by R588 dated 2/4/1993.]
8. (1) Any interest referred to in subsection (3) of section 78 of the Attorneys Act, 1979 (Act No. 53 of 1979), received by or credited to a practising practitioner in respect of any period ending on the last day of February in each year shall, on or before the last day of May in that year, be paid to the Attorneys Fidelity Fund or its nominee.
[substituted by R346 dated 22/2/1991.]
- (2) Such payment shall be accompanied by a statement, in writing, by every banking institution, building society or every institution designated in terms of sub-section (2) of the said section who has paid or credited such interest or any part thereof to the practising practitioner, showing the amount of any such interest so paid or credited by the banking institution, building society or designated institution, concerned.
[inserted by R1726 dated 5/11/1965 and amended by R346 dated 22/2/1991.]
- 8A. (1) The following service, separately or jointly, shall be recognised as appropriate legal experience for the purpose of section 2A(c) of the Attorneys Act, 1979 (Act No. 53 of 1979) -
- (a) Service as a practising advocate or advocate contemplated in section 6 of the Attorney-General Act, 1992 (Act No. 92 of 1992), by any person who has been admitted to practise as an advocate of the Supreme Court of South Africa under section 3 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964).
- (b) Service as a magistrate by any person who has been appointed as a magistrate under section 9 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act No. 90 of 1993).
- (c) Service as a public prosecutor by any person who has been appointed as a public prosecutor under section 6 of the Attorney-General Act, 1992 (Act No. 92 of 1992), in a court of a regional division established under section 2(1)(b) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).
- (d) Service as a Director-General or Deputy Director-General in the Department of Justice.

- (2) A period of not more than ten years may elapse between the date on which such service has been completed and the date on which exemption from articles of clerkship may be granted.

[Inserted by R.675 dated 5/5/1995.]

Interpretation.

9. In these rules "the Act" means "The Attorneys, Notaries and Conveyancers Admission Act, 1934".

[renumbered by R1726 dated 5/11/1965.]

**REGULATIONS PROHIBITING THE LIQUIDATION OR
DISTRIBUTION OF THE ESTATES OF DECEASED PERSONS
BY ANY PERSON OTHER THAN AN ATTORNEY, NOTARY,
CONVEYANCER OR LAW AGENT**

**as published in GN R910 of 22 May 1968
and subsequently amended by**

**R1013 in GG 2439 of 20 June 1969
R1376 in GG 3227 of 13 August 1971**

SCHEDULE

REGULATIONS

1. (1) In these regulations, unless the content otherwise indicates -
[renumbered by R1013 dated 20/6/1969.]
 - (i) "banking institution" means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965), and registered or provisionally registered as a banking institution of a class referred to in that section but does not include a board of executors or trust company which was, on the twenty-seventh day of October, 1967, registered or provisionally registered as such a banking institution;
 - (ii) "board of executors" means a board of executors which was, on the twenty-seventh day of October, 1967, licensed as such under the Licences Act, 1962 (Act No. 44 of 1962), and carrying on a business of which a substantial part consisted of the liquidation or distribution of the estates of deceased persons but does not include such a board of executors in which a banking institution acquired or acquires, after that date, a financial interest otherwise than in exchange or substitution for any such interest held by such banking institution on, that date;
 - (iii) "financial interest" means any interest in the shares, share capital or assets of a board of executors or trust company by virtue of which any person having such interest is likely, directly or indirectly, to share in any pecuniary benefit obtained by such board of executors or trust company from the liquidation or distribution of the estates of deceased persons by such board of executors or trust company or by any person in the service of such board of executors or trust company, but does not include any such interest held by any banking institution except where that institution is by reason of the fact that it holds such interest entitled either alone or together with one or more other banking institutions holding such interest, to exercise directly or indirectly more than 25 per cent of the voting rights in the board of executors or trust company concerned or to receive directly or indirectly more than 25 per cent of the distributable profits of such board or company;
[addition by R1013 dated 20/6/1969.]

- (iv) "liquidate or distribute", in relation to the estate of a deceased person, includes the performance of any act relating to the liquidation or distribution of such estate other than the realisation, transfer or valuation of any of the assets of such estate or of any right in or to such assets;
 - (v) "Master" means a Master as defined in section 1 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);
 - (vi) "trust company" means a trust company which was, on the twenty-seventh day of October, 1967, licensed as such under the Licences Act, 1962 (Act No. 44 of 1962), and carrying on a business of which a substantial part consisted of the liquidation or distribution of the estates of deceased persons but does not include such a trust company in which a banking institution acquired or acquires, after that date, a financial interest otherwise than in exchange or substitution for any such interest held by such banking institution on that date.
- (2) For the purposes of the definition of "financial interest" in subparagraph (1), a banking institution shall be deemed to be entitled to exercise directly or indirectly any voting rights in a board of executors or a trust company or to receive directly or indirectly any share of the distributable profits of such board or company also where that institution is entitled to exercise such rights or to receive such share through any other person or body.
- [inserted by R1013 dated 20/6/1969.]
2. Subject to the provisions of paragraphs 3 and 4, no person other than an attorney, notary or conveyancer as defined in section 1 of the Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934), (hereinafter in these regulations referred to as an attorney, notary or conveyancer, as the case may be) or an agent referred to in section 22 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), (hereinafter in these regulations referred to as a law agent) shall liquidate or distribute the estate of a deceased person.
3. The following persons shall be permanently exempt from the provisions of paragraph 2, namely -
- (1) any board of executors;
 - (2) any trust company;
 - (3) any public accountant as defined in section 1 of the Public Accountants' and Auditor's Act, 1951 (Act No. 51 of 1951), and registered as an accountant and auditor under that Act;
 - (4) any person, other than a banking institution, who was, on the twenty-seventh day of October, 1967, licensed as a broker or agent under the Licences Act, 1962 (Act No. 44 of 1962), and carrying on a business predominantly consisting in the liquidation or distribution of the estates of deceased persons.
4. The following persons shall, to the extent specified in each case, be exempt from the provisions of paragraph 2 -

- (1) any natural person nominated as executor by any deceased person by a will registered and accepted in the office of the Master, in so far as he is personally liquidating or distributing the estate of such deceased person;
- (2) the spouse of or any person related by consanguinity or affinity up to and including the second degree to such natural person, in so far as he is assisting such natural person with the liquidation or distribution of such estate;
- (3) the surviving spouse of or any person related by consanguinity or affinity up to and including the second degree to a deceased person, in so far as he is liquidating or distributing the estate of such deceased person;
- (4) (a) any banking institution registered or provisionally registered as such on the twenty-seventh day of October, 1967, in so far as such banking institution is liquidating or distributing the estate of a deceased person by whom such banking institution or an officer or director of such banking institution has been nominated as executor by a will registered and accepted in the office of the Master;
[renumbered by R1376 dated 13/8/1971.]
(b) any banking institution registered or provisionally registered as such after the 27th day of October 1967, if such banking institution came into existence by the taking over of all the assets and liabilities which a banking institution referred to in subparagraph (a), incorporated in a foreign country, had in the Republic, in so far as such first-mentioned banking institution is liquidating or distributing the estate of a deceased person by whom that banking institution or the banking institution from whom it took over the assets and liabilities in the Republic, or an officer or director of either of such banking institutions has been nominated as executor by a will registered and accepted in the office of the Master;
[inserted by R1376 dated 13/8/1971.]
- (5) any person in the full-time service of any other person who is lawfully liquidating or distributing the estate of a deceased person, in so far as he is assisting such other person with or is acting on his behalf in any matter relating to the liquidation or distribution of such estate;
- (6) any person in the full-time service of a trade union as defined in section 1 of the Industrial Conciliation Act, 1956 (Act No. 28 of 1956), and registered under that Act, in so far as he is liquidating or distributing, otherwise than for or in expectation of any direct or indirect reward to himself or any other person, the estate of a deceased person who was, at the time of his death, a member of such trade union or the spouse of such member;
- (7) any person liquidating or distributing the estate of a deceased person on the instructions of an attorney, notary, conveyancer or law agent, in so far as he is liquidating or distributing such estate in pursuance of such instructions;

- (8) any person liquidating or distributing the estate of a deceased person in pursuance of directions given by the Master under section 18(3) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), in so far as he is liquidating or distributing such estate in pursuance of such directions.
5. Nothing in these regulations contained shall affect the right of any person to continue, after the commencement of these regulations, to liquidate or distribute the estate of a deceased person which he has commenced to liquidate or distribute before such commencement.

**REGULATIONS FRAMED UNDER SECTION 40 OF THE
ATTORNEYS' ADMISSION AMENDMENT AND LEGAL
PRACTITIONERS' FIDELITY FUND ACT, NO. 19 OF 1941**

**as published in GN 1581 of 7 November 1941
and subsequently amended by**

R2691 of 31 December 1942

R2144 of 26 November 1943

R1476 of 16 July 1948

R1264 of 25 May 1951

R354 of 25 February 1955

R1785 of 9 September 1955

R731 of 24 May 1957

R508 of 30 March 1972

R1458 of 13 July 1985

R47 of 2 January 1987

R347 of 22 February 1991

R1708 of 18 November 1994

R1746 of 31 December 1997

R23 of 8 January 1988

SCHEDULE

1. In these regulations -

"the Act" means the Attorneys' Admission Amendment and Legal Practitioners' Fidelity Fund Act, 1941 (Act No. 19 of 1941); and unless inconsistent with the context any term to which a meaning has been assigned in the Act shall have the same meaning;

"application" means an application referred to in section *twenty-three* of the Act;

"Board" means the Board of Control established in terms of Part II of the Act;

"practitioner" means any person who practises either on his own account or in partnership one or more of the professions of an attorney, notary or conveyancer;

"secretary" means the secretary of a society or a person for the time being duly appointed to act in that capacity.

2. Each secretary shall not later than the fifteenth day of November in every year post to the address of every practitioner practising in his province, or deliver or cause to be delivered to him at such address an application form for a fidelity fund certificate in respect of the year following and every practitioner shall return to the secretary such form duly completed not later than the first day of December of the same year in which it was so posted or delivered. The secretary shall enclose with such application form a statement setting forth the liability, if any, of the practitioner concerned in respect of his subscription for membership of the society. The failure to give or receive an application form and such statement shall not relieve any practitioner of his obligation to make an application as required by section *twenty-three* of the Act.

3. An application shall be signed by the applicant and shall, as nearly as circumstances will permit, be in the form set out in Annexure A hereto, and shall truly, accurately and completely set forth the information and particulars provided for therein.
[substituted by R508 dated 30/3/1972.]
4. A secretary may accept an application made on behalf of an applicant by another person who is himself entitled to obtain a fidelity fund certificate.
5. A secretary may from time to time require an applicant to furnish him with further and additional information and particulars in respect of any application before he issues a fidelity fund certificate and neither he, the society nor the Board shall incur any liability in respect of any penalty incurred or loss sustained by the applicant due to any delay in issuing such a certificate if such delay was caused by the applicant's failure to furnish such information or particulars.
6. A fidelity fund certificate shall be in the form set forth in Annexure B hereto, and shall be signed by the secretary of the society issuing such certificate, and the production of such a certificate purporting to be so signed shall be *prima facie* evidence of its contents.
7. A secretary, on payment of a fee of twenty-five cents, may at any time and from time to time, on the application of any practitioner issue to him a duplicate of his current fidelity fund certificate on being satisfied as to the purpose for which such duplicate certificate is required.
[amended by R508 dated 30/3/1972.]

CLAIMS

8. The Board may, as a condition on which it may settle any claim under section *twenty-seven* of the Act, require affidavits sworn to by the claimant or other persons in support of such claim, and the production for inspection of all documents in the possession or power of the claimant relating to the claim.

Failure by the claimant to comply with any of the requirements of the Board under this regulation shall be ground upon which a stay of proceedings to enforce such claim in any court of law may be granted.

- 8.*bis* (a) The Board may require any person (including any person who has made a claim against the Fund), whose evidence the Board deems necessary before arriving at a decision whether to admit or reject any claim, to appear before the Board or any Committee, consisting of not less than two persons appointed by the Board, and there to be examined under oath or affirmation on any matter relevant to such claim.
[substituted by R354 dated 20/4/2001.]
- (b) The Board may under the hand of any two members of the Board issue a subpoena for the attendance of any person to be examined as provided in paragraph (a). Such subpoena shall as nearly as is applicable be in the form prescribed for the attendance of a witness in the Division of the Supreme Court of South Africa having jurisdiction in the area where the witness is required to give evidence and upon service of any such subpoena the person concerned shall be subject to all the duties and obligations and entitled to all the rights of any person who has been duly subpoenaed to give evidence in such Division of the Supreme Court. Such subpoena may be served at the expense of the Board by any person competent to serve a subpoena in such Division of the

Supreme Court. The Board shall also be liable for travelling and subsistence charges of such witnesses.

- (c) The oath to be administered to such witness shall be administered by the presiding member of the Board or Committee.
- (d) Any person subpoenaed as aforesaid may be examined by the members of the Board or Committee and/or by such advocate or attorney as the Board or Committee shall appoint for that purpose.
[inserted by R731 dated 25/5/1957]
- (e) The evidence by such witness shall be recorded in writing, typescript or shorthand or by mechanical means and the person recording such evidence shall, before doing so, make oath that he will truly and faithfully record such evidence.
[inserted by R731 dated 25/5/1957 and substituted by R508 dated 30/3/1972.]

INVESTMENT OF FUNDS

- 9. So much of the money as may be determined by the Minister in terms of section 38(2) of the Act which is not immediately required for the purposes of the fund's obligations in terms of section 45 of the Act, shall be invested by the Board in terms of section 38(4) of the Act in any one or more of the following forms of security -
 - (a) on deposit with a bank, savings bank, building society, institutions registered under the Banking Act as deposit receiving institutions, local authorities or the National Finance Corporation;
[substituted by R1785 dated 9/9/1955.]
 - (b) in bills, bonds, certificates, debentures or stock issued or guaranteed by the Government of the Republic;
 - (c) in stock of any local authority in the Republic authorised by law to levy rates upon immovable property;
 - (d) in debentures or stock of the Reserve Bank, the Rand Water, Escom or any other body constituted or established by or under any law and supported wholly or partly by public funds;
 - (e) in loans against security of a first mortgage bond on urban immovable property.
[substituted by R47 dated 2/1/1987.]
- 10. (1) Subject to the provisions of sub-regulation (2), such amount of money as may be available for investment in terms of section 38(3) of the Act may be invested by the Board as follows:
 - (a) Not more than 50% of the fund's assets, calculated on the date of investment, in quoted shares and debentures: Provided that this is restricted to 10% of the total issued share capital of any company.
 - (b) Not more than 10% of the fund's assets, calculated on the date of investment, in urban immovable property.

- (2) So much of the money as may be available for investment in terms of section 38(3) of the Act which is not invested in terms of sub-regulation (1) shall be invested in those forms of securities prescribed by regulation 9.

[substituted by R47 dated 2/1/1987 and amended by R1708 dated 18/11/1994.]

11. The Board may appoint, and remove, a secretary and treasurer, who may be the same person as the secretary, and such other officers and servants of the Board as it may from time to time think necessary.
12. The Board may establish offices at such place or places as it may from time to time determine.
13. The Board may pay to the Secretary, Treasurer and other officers and servants of the Board, such salaries or wages or remuneration as it may from time to time think advisable, and fix the terms of their employment.
14. The office of the Secretary for the time being of the Board shall be the office of the Board.
15. Save as may otherwise be determined by the Board from time to time, all contracts, deeds, instruments and documents, including documents requiring signature in legal actions or proceedings by or against the Board, and all drafts, cheques or orders drawn on banks or building societies against any account of the Board in any bank or building societies against any account of the Board in any bank or building society shall be signed by the Chairman or Vice-Chairman and the Secretary or Treasurer of the Board, and all cheques, drafts or orders made payable to the Board may be endorsed by the Secretary or Treasurer of the Board for credit of a banking account of the Board.

[substituted by R508 dated 30/3/1972.]

16. The Board may repay to each Law Society such sums as the Board may deem reasonable in respect of such expenses of such Society as have been expended in the carrying out of the provisions of Part II of the Act and the requirements of these regulations.

[inserted by R2691 dated 31/12/1942.]

17. For the purpose of ascertaining or verifying whether any person is legally liable for contributions under section *twenty-two* of the Act, a Secretary may at any time call upon any Practitioner to furnish him with an affidavit recording the terms and conditions upon which any Attorney, Notary or Conveyancer is professionally employed by or associated with him, and to lodge with such secretary a true copy of any contract or agreement relating to such employment or association, and any Practitioner so called upon shall forthwith comply with such request.

[inserted by R2144 dated 26/11/1943.]

18. The Board may from time to time and at any time borrow by way of overdraft with a bank or banks or otherwise such sum or sums of money as it may consider necessary or advisable for the purpose of the Fund, upon such terms and conditions as it may deem fit, including the provision of security, the payment of interest, the rate of interest and repayment of capital; and in particular the Board may pledge and/or hypothecate as security for any such overdraft and/or borrowings any securities or assets belonging to the Fund.

[inserted by R1264 dated 25/5/1951.]

ANNEXURE A

APPLICATION FOR A FIDELITY FUND CERTIFICATE IN TERMS OF THE ATTORNEYS ACT, 1979 (ACT NO. 53 OF 1979), FOR THE YEAR ENDING 31 DECEMBER 2.....

COMPLETE IN BLOCK LETTERS IN BLUE OR BLACK INK

1. Full names of the applicant
Identity number:
2. Name under which practice will be carried on (“the firm”). If the practice is incorporated give the full name and registration number:
.....
3. Physical address at which practice will be carried on (you’re your principal place of practice):
.....
.....
.....
Province:
4. Contact details:

Postal address:

Residential address:

Docex address (if any): Telephone (business):

Telephone (home): Fax:

E-mail (if any):
5. (a) Any other physical address at which practice will be carried on [also indicate province(s)]:
.....
.....

(b) Names of persons in control at such place or places:
.....
.....
6. Full names of partners or co-directors, if any:
.....
.....
7. If no Fidelity Fund Certificate was obtained for the current year, state date on which the applicant will begin to practise for his own account or in partnership or as a member of an incorporated practice:

8. Name of Law Society of which applicant is a member (Section 57 of Act No. 53 of 1979):

9. If applicant ceased to practise for own account or in partnership or as a member of an incorporated practice and intends to resume practice, state:
- (a) name and address of former practice (indicate province):

- (b) when applicant ceased to practise:
10. (a) State the amount (as per bank statement) standing to the credit of the firm's trust banking account and the amount of trust moneys invested by the applicant's firm in terms of Section 78(2)(a) and Section 78(2A) of the said Act at the end of each of the twelve months prior to 30 September of this year:

	A Balance on Trust banking accounts	B Trust moneys Invested in terms of Section 78(2)(a)	C Trust moneys invested in terms of Section 78(2A)
31 October 2	R	R	R
30 November 2	R	R	R
31 December 2	R	R	R
31 January 2	R	R	R
28 February 2	R	R	R
31 March 2	R	R	R
30 April 2	R	R	R
31 May 2	R	R	R
30 June 2	R	R	R
31 July 2	R	R	R
31 August 2	R	R	R
30 September 2	R	R	R

NB: THE INTEREST EARNED ANNUALLY UP TO THE LAST DAY OF FEBRUARY IN EACH YEAR ON AMOUNTS MENTIONED IN COLUMNS A AND B IN 10(a) ABOVE SHOULD BE PAID TO THE LAW SOCIETY BEFORE 31 MAY OF THAT YEAR.

- (b) Trust banking account details (use annexures if there is more than one account):
- (i) Bank:
- (ii) Branch:
- (iii) Branch code:
- (iv) Account No:

- (v) Credit interest rate on trust banking account as at:
 - (aa) 31 March 2.....and
 - (bb) 30 September 2.....
- (vi) Bank service fee formula:

I hereby give authority to the above bank to update the Fidelity Fund concerning changes in the above information, from time to time, as requested by the Fund.

Signed on this day of at in the presence of the undersigned witnesses.

As witnesses:

1.
2.

.....
Signature of applicant

[substituted by R41 of GG 21983 dated 19/01/2001.]

ANNEXURE B

.....
(Insert here name of Law Society.)

Fidelity Fund Certificate
for the year ending 31 December 2.....

Pursuant to the provisions of Part II of the Attorney's Act 53 of 1979, I hereby certify that of has complied with the provisions of sections 43 and 42 of the said Act in respect of the year ending 31 December 2.....

Dated at this day of 2.....

.....
Secretary

B-