REPUBLIC OF SOUTH AFRICA

ATTORNEYS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 37825 of 10 July 2014)
(The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 9—2014]

ISBN 978-1-4850-0172-0

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
▬▬▬▬	Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Attorneys Act, 1979, as an interim measure, pending the enactment of legislation aimed at rationalising the legal profession, so as to address disparities in relation to attorneys and candidate attorneys in the territories comprising the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, and, for that purpose, repeal the laws of the former territories in so far as they are still applicable to attorneys and candidate attorneys in these territories; to further regulate the engagement of candidate attorneys and their right of appearance in courts; to give effect to a Constitutional Court judgment; to further regulate juristic persons conducting a legal practice; to enable actions against the Attorneys Fidelity Fund to be instituted in other courts than the High Court; to restructure the areas of jurisdiction of law societies; to amend or delete certain obsolete provisions and expressions; to provide for transitional arrangements; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts, as follows:—

Amendment of section 1 of Act 53 of 1979, as amended by section 1 of Act 87 of 1989, section 1 of Act 102 of 1991, section 1 of Act 115 of 1993 and section 17 of Act 62 of 2000 5

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

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

" **'advocate'** means an advocate of the **[Supreme Court]** High Court of South Africa;"; 10

(b) by the substitution for the definition of "attorney" of the following definition:

" **'attorney'** means any person **[duly]** admitted to practise as an attorney in any part of the Republic, whether in terms of this Act or any other law listed in the Schedule to the Attorneys Amendment Act, 2014;"; 15

(c) by the deletion of the definition of "building society";

(d) by the substitution in the definition of "community service" for paragraph *(a)* of the following paragraph:

"*(a)* at a law clinic in respect of which the council **[of the province]** having jurisdiction in the area in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic; or;"; 5

(e) by the substitution for the definition of "court" of the following definition:

" **'court' [means any court of a provincial division]**, in relation to the area of jurisdiction of the law societies referred to in section 56(3), means—

(a) in the case of The Law Society of the Transvaal, the Gauteng Division of the High Court of South Africa, Pretoria; 10

(b) in the case of The Law Society of the Cape of Good Hope, the Western Cape Division of the High Court of South Africa, Cape Town;

(c) in the case of The Law Society of the Orange Free State, the Free State Division of the High Court of South Africa, Bloemfontein; and 15

(d) in the case of The Natal Law Society, the KwaZulu-Natal Division of the High Court of South Africa, Pietermaritzburg;";

(f) by the insertion after the definition of "fund" of the following definition: 20

" **'High Court'** means any Division of the High Court referred to in section 6(1) of the Superior Courts Act, 2013 (Act No. 10 of 2013);";

(g) by the substitution for the definition of "practitioner" of the following definition:

" **'practitioner'** means any attorney, notary or conveyancer and includes a juristic person referred to in section 23;"; 25

(h) by the substitution for the definition of "profession" of the following definition:

" **'profession'** means the profession of attorney, notary or conveyancer and, in relation to a society, means such profession within the **[province]** area of jurisdiction of that society;"; 30

(i) by the substitution for the definition of "secretary" of the following definition:

" **'secretary'**, in relation to a society, includes an assistant secretary, a director or an assistant director of that society;"; 35

(j) by the deletion of the definition of "Supreme Court";

(k) by the insertion before the definition of "trust account" of the following definition:

" **'this Act'** includes the regulations made in terms of section 81;"; and

(l) by the substitution for the definition of "unprofessional or dishonourable or unworthy" of the following definition: 40

" **'unprofessional or dishonourable or unworthy'**, in relation to conduct, includes any conduct **[prescribed]** determined as such.".

Amendment of section 2 of Act 53 of 1979, as amended by section 1 of Act 108 of 1984, section 2 of Act 115 of 1993, section 2 of Act 78 of 1997 and section 17 of Act 42 of 2013 45

2. Section 2 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(d)* of the following paragraph:

"*(d)* three years after he or she has passed **[the matriculation examination conducted and controlled by the joint matriculation board referred to in section 15 of the Universities Act, 1955, or an examination certified by that matriculation board]**— 50

(i) the grade 12 external assessment referred to in section 17A of the General and Further Education and Training Quality Assurance Act, 2001 (Act No. 58 of 2001), of the National Senior Certificate as registered on the National Qualifications Framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and complies with the requirements for an endorsement by the Matriculation Board referred to in section 74 of the Higher Education Act, 1997 (Act No. 101 of 1997); or 55 60

(ii) a qualification advised by the South African Qualifications Authority, in terms of section 13(1)*(a)* and *(h)* or *(m)* of the National Qualifications Framework Act, 2008, as a qualification to be equivalent or superior thereto,

and thereafter has served continuously for a period of at least two years as a clerk to any judge of **[the Supreme]** a Superior Court **[,provided]**: Provided that he or she enters into articles of clerkship within a period of one year after he or she has ceased to serve in such manner; or''.

Amendment of section 3 of Act 53 of 1979, as substituted by section 2 of Act 87 of 1989 and amended by section 2 of Act 102 of 1991, section 18 of Act 66 of 2008 and section 17 of Act 42 of 2013

3. Section 3 of the principal Act is hereby amended—

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

''*(f)* in the full-time employment of a law clinic, and if the council **[of the province]** having jurisdiction in the area in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by the council for the operation of the clinic;'';

(b) by the deletion in subsection (1)*(i)*(ii) after the word ''articles'' of the full-stop and the insertion of the expression ''; and''; and

(c) by the addition in subsection (1) of the following paragraph:

''*(j)* if he or she is an attorney who has practised as a professional assistant in a firm of attorneys or at a professional company for a period of five years within the preceding six years.''.

Amendment of section 4 of Act 53 of 1979, as amended by section 3 of Act 108 of 1984, section 4 of Act 78 of 1997 and section 17 of Act 42 of 2013

4. Section 4 of the principal Act is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

''Any person intending to serve any attorney under articles of clerkship shall submit to the secretary of the society **[of the province]** having jurisdiction in the area in which the service under such articles is to be performed, the following, namely—''.

Amendment of section 4A of Act 53 of 1979, as inserted by section 4 of Act 115 of 1993, and amended by section 5 of Act 78 of 1997 and section 17 of Act 42 of 2013

5. Section 4A of the principal Act is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

''A candidate attorney intending to perform community service shall submit to the secretary of the society **[of the province]** having jurisdiction in the area in which the community service is to be performed, the following, namely—''.

Amendment of section 5 of Act 53 of 1979, as substituted by section 5 of Act 115 of 1993 and amended by section 17 of Act 42 of 2013

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

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

Amendment of section 8 of Act 53 of 1979, as substituted by section 6 of Act 87 of 1989 and amended by section 8 of Act 115 of 1993, section 6 of Act 78 of 1997, section 10 of Act 31 of 2008 and section 17 of Act 42 of 2013

7. Section 8 of the principal Act is hereby amended—

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

"Any candidate attorney who has satisfied all the requirements for the degree referred to in paragraph *(a)* of section 2(1), or for the degrees referred to in paragraph *(a*A*)* of that section, or for a degree or degrees referred to in paragraph *(a*B*)* of that section in respect of which a certification in accordance with that paragraph has been done, shall be entitled to appear in any court, other than any **[High]** Superior Court, and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearance as if he or she himself or herself had appeared";

(b) by the insertion before subsection (3) of the following subsections:

"(2A) Any candidate attorney who—

(a) is entitled to appear under any law repealed by section 35 of the Attorneys Amendment Act, 2014, may, notwithstanding that repeal, continue to so appear, subject to subsection (2B); and

(b) may so continue to appear, may apply to the society having jurisdiction for a certificate referred to in subsection (3), which the society may or may not issue.

(2B) The right referred to in subsection (2A) lapses after five years from the date of commencement of section 7*(b)* of the Attorneys Amendment Act, 2014, or after such period as an Act of Parliament, which in future rationalises the legal profession, may determine.";

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

"(3) The secretary of the society concerned shall, upon the written application of the principal of any candidate attorney referred to in subsection (1) or (2A) and upon the payment of the fees prescribed under section 80(*b*A), issue to such candidate attorney a certificate that he or she complies with the relevant provisions of subsection (1).";

(d) by the substitution in subsection (4) for paragraph *(a)* of the following paragraph:

"*(a)* Any candidate attorney who is entitled to appear as contemplated in subsection (1) or (2A), shall at the expiry of his or her articles or contract of service, and provided he or she remains in the employ of the attorney who was his or her principal immediately before such expiry, or provided he or she remains in the service of the law clinic or the Legal Aid Board concerned, as the case may be, remain so entitled until he or she is admitted as an attorney, but not for longer than six months." ; and

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

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

Amendment of section 9 of Act 53 of 1979, as substituted by section 9 of Act 115 of 1993 and amended by section 17 of Act 42 of 2013

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

"(1) A candidate attorney shall not have any pecuniary interest in the practice and service of an attorney, or in the organisation or institution where he or she

performs community service, and shall not, without the prior written consent of the council of the society **[of the province]** having jurisdiction in the area in which he or she performs service under the articles or contract of service, hold or occupy any office or engage in any other business other than that of candidate attorney.''.

Amendment of section 10 of Act 53 of 1979, as substituted by section 11 of Act 104 of 1996

9. Section 10 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

''An agreement whereby articles or a contract of service is ceded shall within two months of the date on which the services of the candidate attorney concerned have been terminated with the cedent, or within such further period as the court may for good cause allow, be lodged with the society **[of the province wherein]** having jurisdiction in the area where service under the said articles or the said contract of service so ceded is to be performed, by the cessionary together with the affidavits—''.

Amendment of section 13B of Act 53 of 1979, as inserted by section 8 of Act 55 of 2003 and substituted by section 6 of Act 22 of 2005

10. Section 13B of the principal Act is hereby amended by the substitution in subsection (1) for the words following paragraph *(b)* of the following words:

''complete a legal practice management course approved by the council **[of the province]** having jurisdiction in the area in which he or she practises.''.

Amendment of section 14 of Act 53 of 1979, as amended by section 1 of Act 80 of 1985, section 13 of Act 115 of 1993 and section 17 of Act 42 of 2013

11. Section 14 of the principal Act is hereby amended—

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

''The judge president of a **[provincial division]** Division of the High Court may after consultation with the president of the society concerned appoint two or more examiners for the purpose of arranging, controlling and conducting examinations in respect of—''; and

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

''*(a)* the practice and procedure in the **[Supreme]** High Court and in magistrates' courts established under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);''.

Amendment of section 15 of Act 53 of 1979, as substituted by section 7 of Act 108 of 1984 and amended by section 11 of Act 87 of 1989, section 14 of Act 115 of 1993, section 3 of Act 33 of 1995, section 9 of Act 78 of 1997 and section 17 of Act 42 of 2013

12. Section 15 of the principal Act is hereby amended by the substitution in subsection (1)*(b)*(ivA) for the words following item *(bb)* of the following words:

''has attended a training course approved by the society **[of the province]** having jurisdiction in the area in which he or she completed his or her service under articles or contract of service, or, in the case of section 2A*(c)*, has attended a training course approved by the society **[of the province]** having jurisdiction in the area in which the candidate attorney intends to practise, and has completed such training course to the satisfaction of that society: Provided that this subparagraph shall not apply to a person who attended a training course referred to in section 2(1A)*(a)* or 2A*(a)*(i) and who has completed such course to the satisfaction of the society concerned; and''.

Amendment of section 16 of Act 53 of 1979, as amended by section 52 of Act 129 of 1993 and section 17 of Act 42 of 2013

13. Section 16 of the principal Act is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

"Any person who applies to **[the]** a court to be admitted or readmitted and enrolled as an attorney, shall satisfy the society **[of the province]** having jurisdiction wherein he or she so applies—".

Amendment of section 19 of Act 53 of 1979, as amended by section 17 of Act 42 of 2013

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

"(1) Any person who applies to a court to be—

(a) admitted **[or readmitted]** as a practitioner, shall at least one month; or

(b) readmitted as a practitioner, shall at least three months,

before the date of his or her application deliver to the secretary of the society **[of the province]** having jurisdiction in the area in which the court to which such application is made, is situated, together with his or her notice of application, a copy of his or her application for admission or readmission and copies of all affidavits, certificates and other documents or papers which are referred to therein or connected therewith.".

Amendment of section 20 of Act 53 of 1979, as amended by section 17 of Act 42 of 2013

15. Section 20 of the principal Act is hereby amended—

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

"(1) Any person admitted and enrolled as an attorney, or a notary or conveyancer **[under this Act]** by any court in the Republic or in the former Republics of Transkei, Bophuthatswana, Venda and Ciskei may in the manner prescribed by subsection (2), apply to the registrar of any court other than the court by which he or she was so admitted and enrolled to have his or her name placed on the roll of attorneys or of notaries or of conveyancers, as the case may be, of the court for which such registrar has been appointed."; and

(b) by the substitution in subsection (2) for paragraphs *(c)* and *(d)* of the following paragraphs:

"*(c)* a certificate signed by the secretary of **[the]** every society **[of each province]** in which the applicant is so enrolled that no proceedings are pending or contemplated to strike his or her name off the roll or to suspend him or her from practice;

(d) proof to the satisfaction of the registrar that a copy of the application and copies of the documents referred to in paragraphs *(a)*, *(b)* and *(c)* have been served on the secretary of the society **[of the province]** in which such other court is situated; and".

Amendment of section 23 of Act 53 of 1979, as amended by section 17 of Act 42 of 2013

16. Section 23 of the principal Act is hereby amended—

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

"A **[private]** company may, notwithstanding anything to the contrary contained in this Act, conduct a practice if—";

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

"*(a)* such company is **[incorporated and registered as a private company under the Companies Act, 1973 (Act No. 61 of 1973), with a share capital, and its memorandum of association provides that all present and past directors of the company shall be liable jointly and severally with the company for the debts**

and liabilities of the company contracted during their period of office] a personal liability company contemplated in the Companies Act, 2008 (Act No. 71 of 2008);";

(c) by the substitution in subsection (1)*(c)* for the words preceding the proviso of the following words:

"the name of the company, other than the expression 'Incorporated' or 'Inc.', consists solely of the name or names of any of the present or past members of the company or of persons who conducted, either **[of]** on their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the company, unless the council of the law society having jurisdiction has approved any other name in writing";

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

"(3) If a shareholder of the company or a person having any interest in the shares of the company, dies or ceases to conform to any requirement of subsection (1)(*b*), he or she or his or her estate, as the case may be, may, as from the date on which he or she dies or ceases so to conform, continue to hold the relevant shares or interest in the shares in the company for a period of six months or for such longer period as the council **[of the society of the province]** having jurisdiction in the area in which the company's registered office is situate, may approve.";

(e) by the deletion of subsections (5) and (6);

(f) by the substitution for subsection (7) of the following subsection:

"(7) Notwithstanding anything to the contrary contained in any other law, the articles of association of the company may provide that a **[member]** shareholder of the company may not appoint a person who is not a **[member]** shareholder of the company, to attend, speak or vote in his or her stead at any meeting of the company."; and

(g) by the substitution for subsection (9) of the following subsection:

"(9) Any reference in this Act or in any other law to a practitioner or to a partner or partnership in relation to practitioners, shall be deemed to include a reference to a company under this section or to a **[member]** shareholder of such a company, as the case may be, unless the context otherwise indicates.".

Substitution of section 24 of Act 53 of 1979

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

"**Applications in terms of this Chapter to be delivered to secretary of society concerned**

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

Amendment of section 43 of Act 53 of 1979, as substituted by section 15 of Act 55 of 2002

18. Section 43 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) *(a)* A practitioner who is not in possession of a fidelity fund certificate and who intends to commence to practise on his or her own account or in partnership, shall, before commencing so to practise, give notice of such intention to the secretary of the society **[of the province]** having jurisdiction in the area in which he or she intends to practise, and he or she shall thereupon become liable to pay to the fund the amount of the contribution referred to in subsections (1) and (4).

(b) Any practitioner who is in possession of a fidelity fund certificate but who intends to commence to practise **[for]** on his or her own account or in partnership

in the area of jurisdiction of any **[provincial division]** law society other than that in which he or she usually practises **[for]** on his or her own account or in partnership, shall give notice of such intention to the secretary of the other society concerned.''.

Amendment of section 49 of Act 53 of 1979, as amended by section 21 of Act 87 of 1989 and section 17 of Act 42 of 2013

19. Section 49 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

''(4) Any action against the fund may, subject to the provisions of this Act **[and the regulations made thereunder]**, be brought in **[any provincial or local division of the Supreme]** the High Court or magistrates' court having jurisdiction within the area of jurisdiction of which the cause of action arose.''.

Repeal of section 55 of Act 53 of 1979

20. Section 55 of the principal Act is hereby repealed.

Amendment of section 56 of Act 53 of 1979, as amended by section 15 of Act 115 of 1993

21. Section 56 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"Continued existence of certain law societies"; and

(b) by the addition of the following subsections, the existing provisions becoming subsection (1):

''(2) Any society referred to in subsection (1) may, by resolution of its members as determined in its rules, change the name of the society, which change must be referred to the Minister for publication in the *Gazette*.

(3) The societies referred to in subsection (1) have jurisdiction over all attorneys practising in their areas of jurisdiction as follows:

(a) The Law Society of the Cape of Good Hope has jurisdiction over all attorneys practising in the provinces of the Western Cape, the Eastern Cape and the Northern Cape;

(b) The Law Society of the Orange Free State has jurisdiction over all attorneys practising in the province of the Free State;

(c) The Law Society of the Transvaal has jurisdiction over all attorneys practising in the provinces of Gauteng, Mpumalanga, the North West and Limpopo; and

(d) The Natal Law Society has jurisdiction over all attorneys practising in the province of KwaZulu-Natal.

(4) Any law society not mentioned in subsection (3) and which still exists or operates in terms of any other law immediately before section 21*(b)* of the Attorneys Amendment Act, 2014, comes into operation, shall dissolve on the date on which that subsection comes into operation: Provided that the Minister may, by notice in the *Gazette*, after consultation with the Law Society of South Africa, the law society into which the dissolving law society is to be amalgamated and the law society which is to be dissolved, determine any necessary arrangements in relation to the dissolution, including, subject to subsection (5), the transfer or disposal of assets and liabilities, the payment of costs and the manner in which surplus staff members of such society are to be dealt with.

(5) All the rights and obligations of any society which dissolves in terms of subsection (4) shall, on dissolution, transfer as follows:

(a) The rights and obligations of any society in the former Republic of Bophuthatswana or Venda transfer to the Law Society of the Transvaal referred to in subsection (3)*(c)*; and

(b) the rights and obligations of any society in the former Republic of Transkei or Ciskei transfer to the Law Society of the Cape of Good Hope referred to in subsection (3)*(a)*.

(6) *(a)* Any pending actions by or against a law society referred to in subsection (4) shall, after its dissolution, be continued by or against the society to which the rights and obligations have been transferred in terms of subsection (5).

(b) Any pending disciplinary enquiries or steps taken or those enquiries or steps which may have been taken by a law society referred to in subsection (4) before its dissolution, shall be continued or taken by the society to which those rights and obligations have been transferred in terms of subsection (5), as if the former society had not been dissolved.''.

Amendment of section 57 of Act 53 of 1979, as amended by section 17 of Act 42 of 2013

22. Section 57 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

''(1) Every practitioner who practises **[in any province]**, whether **[for]** on his or her own account or otherwise, shall be a member of the society **[of that province]** referred to in section 56(3) that applies to him or her.

(2) A society may by notice in writing addressed to any person who has been admitted and enrolled as an attorney or a notary or conveyancer in any court **[in the province of its]** within the area of jurisdiction of that society, or whose name has been placed on the roll of such court, but who does not practise in that **[province]** area of jurisdiction, declare such person to be a member of such society with effect from a date fixed in that notice.''; and

(b) by the addition of the following subsection:

''(6) Every practitioner who becomes a member of any society for the first time must, after the practitioner becomes a member and within the period determined by that society, provide the society with such information as may be determined by the rules of the society in question.''.

Amendment of section 69 of Act 53 of 1979, as amended by section 23 of Act 87 of 1989, section 5 of Act 102 of 1991, section 54 of Act 129 of 1993 and section 17 of Act 42 of 2013

23. Section 69 of the principal Act is hereby amended—

(a) by the substitution in paragraph *(e)* for subparagraphs (i) to (iv) of the following subparagraphs:

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

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

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

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

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

''*(j)* subject to such conditions as it may deem fit to impose, permit members of its society to form associations of such members, to be known as circles, in respect of such areas **[of the province]** within the area of jurisdiction of the society concerned as the council may determine from time to time; determine the duties, functions and powers of such circles; designate places as the headquarters of such circles; and determine the constitution of bodies responsible for the management of the affairs of such circles;''.

Amendment of section 71 of Act 53 of 1979, as amended by section 24 of Act 87 of 1989, section 16 of Act 115 of 1993 and section 17 of Act 42 of 2013

24. Section 71 of the principal Act is hereby amended—

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

"(1) A council may in the prescribed manner inquire into cases of alleged unprofessional or dishonourable or unworthy conduct or contravention of any law repealed by section 35 of the Attorneys Amendment Act, 2014, on the part of or by any attorney, notary or conveyancer whose name has been placed on the roll of any court within the **[province]** area of jurisdiction of its society, whether or not he or she is a member of such society, or of any person serving articles of clerkship or a contract of service with a member of its society, or of any former candidate attorney referred to in section 8(4)."; and

(b) by the addition of the following subsection:

"(5) A council may take any of the steps provided for in this section and section 72, irrespective of when or where the alleged conduct or contravention took place or whether the alleged conduct or contravention occurred before or after a person became a member of its society or not.".

Amendment of section 74 of Act 53 of 1979, as amended by section 26 of Act 87 of 1989, section 18 of Act 115 of 1993 and section 9 of Act 55 of 2003

25. Section 74 of the principal Act is hereby amended—

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

"A council may subject to the provisions of subsections (2) and (3) make rules, which shall be binding within the **[province]** area of jurisdiction of its society, as to—";

(b) by the deletion in subsection (3)*(a)* at the end of paragraph (ii) of the word "or";

(c) by the deletion in subsection (3)*(a)* at the end of paragraph (iii) of the comma and the insertion after the word "Society" of the expression "; or";

(d) by the insertion in subsection (3)*(a)* after paragraph (iv) of the following paragraph:

"(v) the Law Society of the Transvaal,";

(e) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* the council has consulted with the judge president of **[every provincial division in the province]** the court in the area of jurisdiction of its society **[and with the chief justice of every high court in such province]**.";

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

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

(g) by the deletion of subsection (6).

Amendment of section 75 of Act 53 of 1979

26. Section 75 of the principal Act is hereby amended by the addition of the following subsection, the existing provisions becoming subsection (1):

"(2) The provisions of subsection (1) apply with the changes required by the context in respect of any law society, council, member of a council, official or employee of any such law society or any person with whom or which such council has concluded any agreement referred to in section 59*(g)*(ii) which in terms of any law repealed by section 35 of the Attorneys Amendment Act, 2014.".

Repeal of section 77 of Act 53 of 1979

27. Section 77 of the principal Act is hereby repealed.

Amendment of section 78 of Act 53 of 1979, as substituted by section 28 of Act 87 of 1989 and amended by section 17 of Act 42 of 2013 and section 1 of Act 14 of 2014

28. Section 78 of the principal Act is hereby amended—

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

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

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

"(8) The court may on application made by the society **[of the province]** concerned or by the board of control, in consultation with the society **[of the province]** concerned, and on good cause shown, prohibit any practitioner from operating in any way on his or her trust account, and may appoint a *curator bonis* to control and administer such trust account, with such rights, duties and powers in relation thereto as the court may deem fit.";

(c) by the substitution in subsection (9) for the words following paragraph *(a)*(vi) of the following words:

"the Master of the **[Supreme]** High Court may, on application made by the society **[of the province]** concerned or by any person having an interest in the trust account of that practitioner, appoint a *curator bonis* to control and administer such account, with such of the prescribed rights, duties and powers as the Master may deem fit."; and

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

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

Amendment of section 82 of Act 53 of 1979, as amended by section 13 of Act 104 of 1996

29. Section 82 of the principal Act is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

"The Chief Justice may, after consultation with the judges president of the **[several provincial divisions]** Divisions of the High Court and with the presidents of the **[several]** societies make rules of court so as to provide for—".

Amendment of section 83 of Act 53 of 1979, as amended by section 6 of Act 76 of 1980, section 5 of Act 60 of 1982, section 30 of Act 87 of 1989, section 1 of Act 49 of 1996, section 9 of Act 122 of 1998 and section 17 of Act 42 of 2013

30. Section 83 of the principal Act is hereby amended by the substitution in subsection (11) for paragraph *(e)* of the following paragraph:

"*(e)* to any practitioner who makes known in such manner as may be approved by the society **[of the province]** having jurisdiction in the area in which he or she practises, that he or she does such work;".

Repeal of section 84 of Act 53 of 1979

31. Section 84 of the principal Act is hereby repealed.

Repeal of section 84A of Act 53 of 1979

32. Section 84A of the principal Act is hereby repealed.

Amendment of section 86 of Act 53 of 1979, as amended by section 31 of Act 87 of 1989 and section 17 of Act 42 of 2013

33. Section 86 of the principal Act is hereby amended—

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

"(1) Subject to the provisions of subsections (2) **[and]**, (3) and (4), the laws set out in the Schedule are hereby repealed to the extent set out in the third column thereof."; and

(b) by the addition of the following subsections:

"(4) Any person who, immediately before the commencement of section 33*(b)* of the Attorneys Amendment Act, 2014, was admitted and entitled to practise as a practitioner in terms of any of the laws repealed by section 35 of that Act continues to be so entitled under this Act, provided that the person complies with all the other requirements of this Act.

(5) A degree at any university in the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, which has been designated in terms of section 2(1)*(a*B*)*, will be acknowledged for purposes of articles of clerkship referred to in section 4A*(b)*(ii) and admission as attorney referred to in 15(1)*(b)*(iii): Provided that all requirements for such degree must be completed within five years after the date of coming into operation of section 33*(b)* of the Attorneys Amendment Act, 2014, or within such period as an Act of Parliament which in future rationalises the legal profession, may determine: Provided further that all other requirements of this Act for entering into articles of clerkship or admission as an attorney have been met.

(6) A person who, on the date of coming into operation of section 33*(b)* of the Attorneys Amendment Act, 2014, has obtained a degree referred to in subsection (5), must enter into articles of clerkship within three years after the date of coming into operation of the said section 33*(b)* or within such period as an Act of Parliament which in future rationalises the legal profession, may determine.".

Insertion of section 86A in Act 53 of 1979

34. The following section is hereby inserted in the principal Act after section 86:

"**Application of Act**

86A. This Act applies throughout the Republic.".

Repeal or amendment of laws

35. The Acts specified in the Schedule are hereby amended or repealed to the extent set out in the third column of that Schedule.

Short title and commencement

36. This Act is called the Attorneys Amendment Act, 2014, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

(Section 35)

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 23 of 1934 (Transkei)	Attorneys, Notaries and Conveyancers Admission Act, 1934	Repeal of the whole Act in so far as it is still applicable in the territory which comprised the former Republic of Transkei
Act No. 74 of 1964	Admission of Advocates Act, 1964	Substitution for the definition of ''advocate'' in section 1 of the following definition: " **'advocate'** means an advocate of the **[Supreme Court]** High Court of South Africa;''
Act No. 53 of 1979 (Ciskei)	Attorneys Act, 1979	Repeal of the whole Act in so far as it is still applicable in the territory which comprised the former Republic of Ciskei
Act No. 29 of 1984 (Bophuthatswana)	Attorneys, Notaries and Conveyancers Act, 1984	Repeal of the whole Act in so far as it is still applicable in the territory which comprised the former Republic of Bophuthatswana
Act No. 42 of 1987 (Venda)	Attorneys Act, 1987	Repeal of the whole Act in so far as it is still applicable in the territory which comprised the former Republic of Venda

MEMORANDUM ON OBJECTS OF THE ATTORNEYS AMENDMENT BILL, 2014

1. INTRODUCTION

1.1 The aim of the Attorneys Amendment Bill, 2014 (''the Bill''), is to amend the Attorneys Act, 1979 (Act No. 53 of 1979) (''the Act''), as an interim measure, in order to rationalise the legal profession, pending the enactment and implementation of the *Legal Practice* legislation.

1.2 In that regard, the Bill seeks to—
(a) amend or delete certain obsolete expressions and provisions;
(b) further regulate the engagement of candidate attorneys and their right of appearance in courts;
(c) give effect to a Constitutional Court judgment;
(d) further regulate juristic persons conducting legal practice;
(e) allow actions against the Attorneys Fidelity Fund (''the Fund'') to be instituted in other courts than the High Court, where applicable;
(f) restructure and rationalise the areas of jurisdiction of law societies;
(g) address disparities in relation to attorneys and candidate attorneys in the territories comprising the former Republics of Transkei, Bophuthatswana, Venda and Ciskei (''the former TBVC states'');
(h) provide for transitional arrangements;
(i) provide for the repeal and amendment of applicable legislation; and
(j) provide for matters connected therewith.

2. BACKGROUND

2.1 On independence, the former TBVC states enacted their own laws regulating the attorneys' profession in certain instances. The former Republics of Bophuthatswana and Venda enacted their own laws regulating attorneys and these laws are still in existence. In 1998, the Act was amended in order to extend insurance cover under the Fund to the areas of the former Republics of Bophuthatswana and Venda, in an effort to protect public interest in relation to trust funds and as an interim measure, pending the rationalisation of the legal profession by means of the *Legal Practice* legislation. The Law Society of the Northern Provinces (''the LSNP'') was given concurrent disciplinary jurisdiction over attorneys practising in the two areas because the issuing of the Fund certificates and the control over trust funds by way of audits had to be attended to by the LSNP.

2.2 The LSNP experiences challenges on a regular basis as a result of the continued existence of separate homeland legislation. Particularly, the Bophuthatswana Attorneys, Notaries and Conveyancers Act, 1984 (Act No. 29 of 1984), still regulates attorneys in the area of the former Republic of Bophuthatswana. Challenges in respect of the area of the former Republic of Bophuthatswana mainly relate to—
(a) the lack of proper disciplinary and regulatory control being exercised by the Law Society of Bophuthatswana; and
(b) candidate attorneys in the area of the former Republic of Bophuthatswana are not required to attend an approved practical legal training course which is considered as essential under the Act, thus resulting in the service by candidate attorneys in this area under articles of clerkship not being recognised as proper service for purposes of the Act.

2.3 Problems relating to the Law Society of Bophuthatswana were also highlighted by Judge Harms, the then Deputy President of the Supreme Court of Appeal, in the case of *Law Society of the Northern Provinces v Mogami and Others*[1], giving an indication of the escalation of the problem. The courts, and in particular the Supreme Court of Appeal, recently raised the question

1. 2010 (1) SA 186 (SCA)

whether the time has not come "for a plea to the Minister of Justice and Constitutional Development to consider whether it (the Law Society of Bophuthatswana) serves a useful purpose".

2.4 Furthermore, in terms of the Act, candidate attorneys who serve articles of clerkship and who attend the six months' practical legal training course under the auspices of the Law Society of South Africa ("the LSSA") are eligible to claim a reduction of the six months from their two years of articles of clerkship. The same benefit is not available to candidate attorneys in the area of the former Republic of Transkei where the Attorneys, Notaries and Conveyancers Admission Act, 1934 (Act No. 23 of 1934), still applies.

2.5 While the Department has been reluctant to promote amendments to the Act on an *ad hoc* basis, pending the enactment of the *Legal Practice* legislation, which will address the rationalisation of the legal profession comprehensively, including the above-mentioned challenges, it is becoming increasingly urgent to promote the amendments contained in the Bill in the interest of the public and of the legal profession, especially since the enactment and final implementation of the *Legal Practice* legislation, which adopts an incremental approach, might still take some time.

3. DISCUSSION

3.1 Most of the clauses of the Bill are similar in purport and have the same objective in mind, namely to terminate the continued existence of any law society which still operates in some of the former TBVC states and to incorporate them into the mainstream law societies. The amendments that are substantive in nature are discussed below.

3.2 Clause 3 of the Bill seeks to amend section 3 of the Act. Section 3 of the Act sets out categories of attorneys who may engage or retain candidate attorneys for the purposes of undergoing articles of clerkship. Professional Assistants are attorneys admitted to practise the profession of attorney in a private law firm. Currently, this section does not include professional assistants in the categories of attorneys who may engage candidate attorneys. Attorneys of similar status in the State Attorney's Office, Legal Aid South Africa and Law Clinics are entitled to engage candidate attorneys. The proposed amendment in clause 3 is intended to ensure that, similar to their counterparts in the State Attorney's Office, Legal Aid South Africa and Law Clinics, professional assistants are entitled to engage candidate attorneys. This will broaden the basis of persons who can take articled clerks, contributing to more persons being able to gain access to the legal profession.

3.3 Clause 14 of the Bill seeks to amend section 19 of the Act to increase the notice period in respect of applications for readmission to three months. A person who intends to apply to the High Court for admission as an attorney must give the secretary of the relevant law society notice of such intended application. Currently, the Act does not make any distinction in notice periods between new applications and applications for readmission to legal practice. There may be issues that the law society may need to investigate before it can support and process an application for readmission and one month's notice is regarded to be insufficient to finalise such investigation. The proposed amendment in clause 14 will afford the law society sufficient time to process the application for readmission.

3.4 Clause 15*(a)* of the Bill seeks to give effect to the Constitutional Court judgment in the case of *Mabaso v the Law Society of the Northern Provinces and the Minister of Justice and Constitutional Development*[2]. The clause seeks to amend section 20 of the Act which provides that a person who was admitted and enrolled as an attorney, notary or conveyancer under this Act

2. 2005 (2) SA 117(CC); 2005 (2) BCLR 129 (CC) (5 October 2004)

may apply to the registrar of any court other than where he or she was so admitted, to have his or her name placed on the roll of that court for purposes of appearing there as well. The underlined words ''under this Act'' have the effect that attorneys admitted under homeland legislation could not appear in courts other than where they had been admitted. The Constitutional Court found that this wording discriminated unfairly against attorneys admitted in the former TBVC states and ordered that the wording suggested in clause 15*(a)* should be read into section 20 of the Act.

3.5 Clause 16 of the Bill seeks to amend section 23 of the Act. Section 23(1)*(a)* of the Act permits attorneys to practise as incorporated companies. Section 8(3) of the Companies Act, 2008 (Act No. 71 of 2008) (the ''Companies Act''), prohibits any association of persons from carrying on any business that has for its objects the acquisition of gain unless it is registered under the Act. Section 8(2) of the Companies Act defines a profit company, amongst others, as a personal liability company if it meets the criteria for a private company and its memorandum of incorporation states that it is a personal liability company. A private company is defined in section 8(2)*(b)* of the Companies Act as a company that is not state-owned and its memorandum of incorporation prohibits it from offering any of its securities to the public and restricts the transferability of its securities. Therefore, an incorporated company as provided for in the Act is not recognised by the Companies Act. The proposed amendment contained in clause 16 does away with the requirement that the memorandum of incorporation of a practice registered as a company must state that all past and present directors of the company shall be jointly and severally liable for its debts and liabilities and ensures that such a practice is registered as a personal liability company.

3.6 Furthermore, section 23(1)*(c)* of the Act provides that the name of an incorporated firm of attorneys can only consist of the names of former or current directors of that firm. According to the LNSP, some of the largest firms in its jurisdiction have entered into arrangements with overseas firms, in terms of which the name of the foreign firm is used as a trade name. This arrangement is in conflict with the provisions of section 23(1)*(c)* as the overseas firms do not have past or current directors in the local firm. However, the LSNP (and the profession, nationally) is of the view that use of the name of the foreign firm as a trade name by local firms is justified since it allows their members to gain experience and compete in the global arena. This amendment, also contained in clause 16, will allow the council of a law society to approve the use of any name as a trade name, and could include the name of an overseas law firm.

3.7 In terms of the Companies Act, the word ''membership'' is only used in the context of a not for profit company or close corporation. The Act uses the term ''member'' instead of a ''shareholder''. Subsections (7) and (9) of section 23 of the Act are amended in order to reflect the correct terminology, and subsections (5) and (6) are repealed as a consequential amendments.

3.8 Clause 19 of the Bill seeks to amend section 49 of the Act. Section 49 of the Act requires any action against the Fund to be instituted in the High Court. Litigation in the High Court is expensive and if a matter can be brought in a lower court, which is less expensive than in the High Court, the question is raised why litigants should be forced to approach the High Court. Therefore, the proposed amendment in clause 19 will allow actions against the Fund to be brought in any court having jurisdiction and not necessarily in the High Court, as is currently the position.

3.9 Clause 21 seeks to amend section 56 of the Act, which deals with the existing four provincial law societies. This clause provides for the continued existence of the four societies under their present names, namely the Law Society of the Cape of Good Hope, the Law Society of the Orange Free State, the Law Society of the Transvaal and the Natal Law Society. Clause 21, however,

provides that these societies may, by resolution of their members, change the names of the societies.

3.10 Clause 21 also provides unambiguously that these societies have jurisdiction over all attorneys practising in their respective areas of jurisdiction as follows:

(a) The Law Society of the Cape of Good Hope has jurisdiction over all attorneys practising in the Western Cape, the Eastern Cape (including the areas of the former Republics of the Transkei and Ciskei) and the Northern Cape.

(b) The Law Society of the Orange Free State has jurisdiction over all attorneys practising in the Free State.

(c) The Law Society of the Transvaal has jurisdiction over all attorneys practising in Gauteng, Mpumalanga, the North West (including the area of the former Republic of Bophuthatswana) and Limpopo (including the area of the former Republic of Venda).

(d) The Natal Law Society has jurisdiction over all attorneys practising in KwaZulu-Natal.

3.11 Clause 21 goes on to provide that any law society not mentioned above will dissolve in accordance with arrangements to be made by the Minister by notice in the *Gazette*, after consultation with the Law Society of South Africa, the law society into which the dissolving law society is to be amalgamated and the law society which is to be dissolved. It is understood that the law societies to be dissolved are largely ''empty shells'' and have no or very little infrastructure or personnel.

3.12 Clause 21 also contains further transitional arrangements, for instance, by providing that any rights and obligations of any society which is dissolved will transfer to the Law Society of the Transvaal, in the case of the areas of the former Republic of Bophuthatswana and Venda, and to the Law Society of the Cape of Good Hope, in the case of the areas of the former Republics of Transkei and Ciskei. Similar transitional provisions are suggested in the case of pending actions and disciplinary inquiries.

3.13 Linked to what is stated in paragraph 3.12 is clause 35 of the Bill which repeals the homeland legislation in question. Sections 55, 77, 84 and 84A of the Act effectively become obsolete and are consequentially repealed through clauses 20, 27, 31 and 32 of the Bill.

3.14 Clause 34 of the Bill then extends the Act to the rest of the entire country. The transitional arrangements contained in clause 7 of the Bill are aimed at protecting the interests of candidate attorneys whose rights of appearance were issued by law societies which will be amalgamated as a result of the Bill. The right of appearance of these candidate attorneys will be valid for five years from the commencement of the Bill or for such period as may be determined in the *Legal Practice* legislation when it becomes law.

3.15 Clause 22 of the Bill seeks to amend section 57 of the Act to make it obligatory for practitioners who become members of a law society for the first time to provide that law society with information as may be required. The amalgamation of the law societies will result in attorneys becoming members of the different law societies to the ones in respect of which they are currently members. This will require the law societies to have proper and updated records of practitioners falling under their jurisdiction.

3.16 Clause 24 of the Bill seeks to amend section 71 of the Act to make provision for the councils of all law societies to enquire into any alleged misconduct of an attorney irrespective of where or when the alleged misconduct took place or whether it occurred before or after that attorney became a member of the society or not. Section 71 of the Act deals with the right of the council of a law society to enquire into alleged unprofessional or dishonest or unworthy conduct of attorneys. Section 15(1) of the Act provides for a court to admit or

enrol any person as an attorney if, amongst others, that person is fit and proper to be so admitted or enrolled.

3.17 Clause 26 of the Bill seeks to amend section 75 of the Act in order to extend the limitation to agreements which were concluded under any law repealed in terms of clause 35. Section 75 of the Act limits the liability of law societies in respect of anything done in good faith under the Act. Section 59 of the Act empowers law societies to conclude an agreement with any person for the performance of any work or to render services.

3.18 The remainder of the clauses are consequential in nature. Many of the clauses give effect to the notion that law societies are not necessarily bound to specific provinces. The relevant clauses are 1, 3 to 10, 12 to 18, 22, 23, 24, 25, 28 and 30. Clauses 1, 2, 7, 11, 19, 25, 28 and 29 propose to amend the provisions of the Act which still refer to concepts such as the ''Supreme Court'', ''provincial division and local division'' and the like, in order to bring them in line with current realities.

4. BODIES, DEPARTMENTS AND PARTIES CONSULTED

4.1 Some of the amendments were initiated by the legal profession, in particular the LSNP. Therefore, the Bill was prepared in consultation with the LSNP which has given an assurance that the Black Lawyers Association and the National Association of Democratic Lawyers support the amendments contained in the Bill.

4.2 The LSSA, which is the umbrella body for and represents the attorneys' profession nationally, also supports the proposed amendments.

4.3 The Law Society of Bophuthatswana is however opposed to the Bill.

5. FINANCIAL IMPLICATIONS

There are no financial implications for the State in the implementation of the Bill.

6. PARLIAMENTARY PROCEDURE

6.1 The Bill seeks to amend the Attorneys Act, 1979 (Act No. 53 of 1979) (''the Act''), which Act regulates the practice of the legal profession in the Republic. The Act provides for the admission and practice of attorneys, notaries and conveyancers and the respective role and functions of the Attorneys Fidelity Fund and the law societies. The provisions of the Bill are in line with section 22 of the Constitution of the Republic of South Africa, 1996 (''the Constitution''). On the one hand, section 22 of the Constitution provides that every citizen has the right to choose their trade, occupation or profession freely. On the other hand, section 22 of the Constitution empowers the State to regulate by law the practice of a trade, occupation <u>or</u> *profession*.

6.2 The word ''or'' in section 22 of the Constitution must be construed disjunctively, which means that ''trade'', ''occupation'' and ''professions'' do not belong together under the same category as one area of activity or functionality and must not be applied interchangeably.

6.3 In that regard, Schedules 4 and 5 of the Constitution which list the functional areas of concurrent national and provincial legislative competence and exclusive provincial legislative competence, respectively, do not contain any item on the *profession* or *practice of a profession*, *legal profession* or *practice of a legal profession*, *regulation by law of a profession*, *regulation by law of a legal profession* or *regulation by law of a practice of a legal profession*, as envisaged in section 22 of the Constitution, among those that are listed under the said Schedules.

6.4 This is in contrast to Schedule 5 of the Constitution which specifically lists the *regulation of the veterinary services profession* to be a functional area which is excluded from the realm of exclusive provincial legislative competence, notwithstanding *veterinary services* being listed among the functional areas of exclusive provincial legislative competence. Schedule 4 of the Constitution, on the other hand, refers to ''trade'', as opposed to a ''profession''.

6.5 Furthermore, although the legal profession renders a service to the public, the provisions of the Bill do not fall within the realm of consumer protection as listed in Part A of Schedule 4 to the Constitution. The provisions of the Bill deal with the regulation of the legal profession.

6.6 Furthermore, section 171 of the Constitution deals with court procedures and provides that *all courts function in terms of national legislation and their rules and procedures must be provided for in terms of national legislation*. Legal practitioners, including attorneys, by virtue of their roles as officers of the court, assist the courts in performing their functions in relation to court procedures.

6.7 Section 180 of the Constitution, on the other hand, provides that *national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including, among others, the participation of people other than judicial officers in court decisions*. The practice of a legal profession is intertwined with the administration of justice and, therefore, as already pointed out in paragraph 6.6, attorneys participate in court procedures.

6.8 Courts and the administration of justice are dealt with under Chapter 8 (sections 165 to 180 inclusive) of the Constitution. Chapter 8 of the Constitution makes reference, in so far as the appointment or removal of judicial officers or acting judges—the attorneys profession being one of the professions from which judicial officers or judges are selected—to the respective powers and responsibilities of the President, the Cabinet minister responsible for the administration of justice, the National Assembly and the Chief Justice. There is no reference to any power or responsibility of provinces under Chapter 8 of the Constitution, except in so far as section 178 which deals with the membership of the Judicial Service Commission is concerned.

6.9 Accordingly, the heading of Chapter 8 of the Constitution provides a strong textual indication that the provisions of the Bill, which regulates the practice of the legal profession, falls under the residual exclusive national competence of Parliament and, as such, must be dealt with in accordance with the procedure established by section 75 of the Constitution. The provisions of the Bill do not in anyway, not even in a substantial measure, affect the interest, concerns and capacities of the provinces, which would render it to fall within the ambit of the procedure prescribed under section 76 of the Constitution.

6.10 In that regard, the State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution apply.

6.11 The State Law Advisers are also of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

Printed by Creda

ISBN 978-1-4850-0172-0