

(29 May 2015 – to date)

[This is the **current** version and applies as from **29 May 2015**, i.e. the date of commencement of the Attorneys Amendment Act 40 of 2014 – to date]

## **ADMISSION OF ADVOCATES ACT 74 OF 1964**

*(Government Notice 968 in Government Gazette 839 dated 1 July 1964. Commencement date: 18 February 1966 [Proc. No. R55, Gazette No. 1375])*

### **as amended by:**

*Admission of Advocates Amendment Act 73 of 1965 – Government Notice 932 in Government Gazette 1154 dated 23 June 1965.*

*General Law Amendment Act 29 of 1974 – Government Notice 378 in Government Gazette 4220 dated 15 March 1974. Commencement date: 15 March 1974.*

*Admission of Advocates Amendment Act 39 of 1977 – Government Notice 591 in Government Gazette 5503 dated 13 April 1977. Commencement date: 13 April 1977.*

*Admission of Advocates Amendment Act 25 of 1979 – Government Notice 655 in Government Gazette 6376 dated 29 March 1979. Commencement date: 29 March 1979.*

*Admission of Advocates Amendment Act 60 of 1984 – Government Notice 899 in Government Gazette 9208 dated 2 May 1984. Commencement date: 2 May 1984.*

*Admission of Advocates Amendment Act 17 of 1987 – Government Notice 522 in Government Gazette 10649 dated 6 March 1987. Commencement date: 6 March 1987. (Repealed – see note below)*

**(Take Note:** Section 3 of Act 106 of 1991 states the following:

**“3. Repeal of law, and savings**

- (1) The Admission of Advocates Amendment Act, 1987 (Act No. 17 of 1987), is hereby repealed.**
- (2) Notwithstanding the provisions of subsection (1), any person who at the commencement of this Act was admitted to practise as an advocate under the provisions of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), shall be deemed to be lawfully admitted so to practise.**
- (3) Any application, under section 2 (2) of the Admission of Advocates Act, 1964, for admission to practise as an advocate, made at the commencement of this Act, shall be dealt with as if this Act had not been passed.”)**

*Admission of Advocates Amendment Act 106 of 1991 – Government Notice 1502 in Government Gazette 13353 dated 5 July 1991. Commencement date: 16 August 1991 [Proc. No. R79, Gazette No. 13478].*

*Admission of Advocates Amendment Act 55 of 1994 – Government Notice 2084 in Government Gazette 16132 dated 2 December 1994. Commencement date: 2 December 1994.*

*Admission of Legal Practitioners Amendment Act 33 of 1995 – Government Notice 1050 in Government Gazette 16544 dated 19 July 1995. Commencement date: 19 July 1995.*

*Qualifications of Legal Practitioners Amendment Act 78 of 1997 – Government Notice 1634 in Government Gazette 18494 dated 5 December 1997. Commencement date: 5 December 1997.*

*Attorneys Amendment Act 40 of 2014 – Government Notice 1014 in Government Gazette 38316 dated 9 December 2014. Commencement date: 29 May 2015 [Proc. No. R24, Gazette No. 38821 dated 27 May 2015].*

## ACT

**To provide for the admission of persons to practise as advocates of the Supreme Court of South Africa and for matters incidental thereto.**

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*(Afrikaans text signed by the State President.)*

*(Assented to 18<sup>th</sup> June, 1964.)*

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**BE IT ENACTED** by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:

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## Schedule

### 1. Definitions

In this Act, unless the context otherwise indicates -

**"advocate"** means an advocate of the High Court of South Africa;

*(Definition of "advocate" substituted by section 35 (Schedule) of Act 40 of 2014)*

**"division"** means a division of the Supreme Court;

**"enrolled"** means enrolled on the roll of advocates;

**"matriculation examination"** ...

*(Definition of "matriculation examination" inserted by section 1(a) of Act 106 of 1991)*

*(Definition of "matriculation examination" deleted by section 1(a) of Act 55 of 1994)*

**"Minister"** means the Minister of Justice;

**"Republic"** ...

*(Definition of "Republic" deleted by section 1(b) of Act 55 of 1994)*

**"roll of advocates"** means the roll of advocates referred to in section eight;

**"rules"** means rules made or remaining in force in terms of section forty-three of the Supreme Court Act, 1959 (Act No. 59 of 1959);

**"special course"** ...

*(Definition of "special course" inserted by section 1(b) of Act 106 of 1991)*

*(Definition of "special course" deleted by section 1(c) of Act 55 of 1994)*

**"Supreme Court"** means the Supreme Court of South Africa as constituted by section two of the Supreme Court Act, 1959 (Act No. 59 of 1959);

**"the territory"** ...

*(Definition of "the territory" deleted by section 1(d) of Act 55 of 1994)*

## 2. Persons to be admitted to practise as advocates only under this Act, and manner of making applications

- (1) After the commencement of this Act no person shall be admitted to practise as an advocate save in accordance with the provisions of this Act.
- (2) Any application pursuant to the provisions of this Act shall be made in the manner prescribed in the rules.

*(Take note – Section 7 of Act 55 of 1994 states the following:*

### **“7. Saving**

*Any application under section 2(2) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or any application under a similar provision of the laws of the former Transkei, Bophuthatswana or Venda, for admission to practise as an advocate, made prior to the commencement of this Act, shall be dealt with as if this Act had not been passed.”)*

## 3. Admission of persons to practise as advocates

- (1) Subject to the provisions of any other law, any division shall admit to practise and authorize to be enrolled as an advocate any person who upon application made by him satisfies the court –
  - (a) that he is over the age of twenty-one years and is a fit and proper person to be so admitted and authorized;
  - (b) that he is duly qualified;
  - (c) that he is a South African citizen or that he has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;
  - (d) in the case of any person who has at any time been admitted to practise as an attorney in any court in the Republic or elsewhere, that his name has been removed from the roll of attorneys on his own application; and

*(Section 3(1)(d) substituted by section 16(a) of Act 29 of 1974)*
  - (e) ... *(Section 3(1)(e) deleted by section 16(b) of Act 29 of 1974)*
- (2) The following persons shall for the purposes of paragraph (b) of sub-section (1) be deemed to be duly qualified, namely:
  - (a) Any person who-
    - (i)

- (aa) has satisfied all the requirements for the degree of *baccalaureus legum* of any university in the Republic after completing a period of study of not less than four years for that degree; or

*(Section 3(2)(a)(i)(aa) substituted by section 1 of Act 78 of 1997)*

- (bb) after he or she has satisfied all the requirements for the degree of bachelor other than the degree of *baccalaureus legum*, of any university in the Republic or after he or she has been admitted to the status of any such degree by any such university, has satisfied all the requirements for the degree of *baccalaureus legum* of any such university after completing a period of study for such degrees of not less than five years in the aggregate, or

- (ii) has satisfied all the requirements for a degree or degrees of a university in a country which has been designated by the Minister, after consultation with the General Council of the Bar of South Africa, by notice in the *Gazette*, and in respect of which a university in the Republic with a faculty of law has certified that the syllabus and standard of instruction are equal or superior to those required for the degree of *baccalaureus legum* of a university in the Republic.

*(Section 3(2)(a) amended by section 1 of Act 73 of 1965)*

*(Section 3(2)(a) substituted by section 1 of Act 39 of 1977)*

*(Section 3(2)(a)(iii) inserted by section 1 of Act 60 of 1984)*

*(Provisos to section 3(2)(a) added by section 1 of Act 17 of 1987)*

*(Section 3(2)(a) substituted by section 2 of Act 106 of 1991)*

*(Section 3(2)(a) substituted by section 2(a) of Act 55 of 1994)*

*(Section 3(2)(a) substituted by section 1 of Act 33 of 1995)*

**(Take note - Section 2 of Act 17 of 1987 states the following:**

**“2. Validation of application of certain provisions of section 3(2)(a) of Act 74 of 1964**

*The application by parties to any articles of clerkship as referred to in the Attorneys Act, 1979 (Act No. 53 of 1979), or any other person or any court of law before the commencement of this Act of the provisions of paragraph (a)(i) or (ii) of section 3(2) of the principal Act and of paragraph (a)(iii)(bb) of the said section 3(2), respectively, in respect of such a party or any particular person, as the case may be, who-*

- (a) *in the case of such an application of the said paragraph (a)(i) or (ii), on any date with effect from 13 April 1977; and*
- (b) *in the case of such an application of the said paragraph (a)(iii)(bb), on any date with effect from 2 May 1984,*

*passed any language course mentioned in any such paragraph which did not comply with the standard for the course contemplated in the paragraph concerned, shall, as far as such language course is concerned, and notwithstanding the fact that the application took place on the basis that the person concerned passed a course that complied with the standard concerned, be deemed to be an application according to law.”)*

- (b) any person who before the commencement of this Act passed any examination or satisfied all the requirements for any degree which in terms of any law repealed by section thirteen would immediately before such commencement have entitled him to be admitted to practise as an advocate of any division on compliance with any other requirement of the said law with regard to matters other than such examination or degree;
- (c) any person who
  - (i) at the commencement of this Act was registered as a student at a university referred to in section one of the Admission of Advocates Act, 1921 (Act No. 19 of 1921), and was engaged in a course of study with a view to obtaining a certificate, diploma or degree referred to in the said section; and
  - (ii) has satisfied all the requirements for the said certificate, diploma or degree and has on or before the thirty-first day of December, 1974, passed the examination in Roman-Dutch law and the statute law of the Republic referred to in section two of the said Act or is in terms of the said section not required to pass the examination in both or either of the said subjects;
- (d) any person who
  - (i) at the commencement of this Act was registered as a student at any university or university college in the Republic for the degree of *baccalaureus legum*; and
  - (ii) has satisfied all the requirements for the said degree;
- (e) any person who
  - (i) at the commencement of this Act was registered as a student at any university or university college in the Republic for a degree in any faculty and was engaged in a course of study for such degree, the successful completion of which would in accordance with the regulations of such university or university college then in force, entitle him to be exempted from a portion of the examination for the degree of *baccalaureus legum*; and
  - (ii) has satisfied all the requirements for the said degree and the said degree of *baccalaureus legum*.

- (3) The provisions of paragraph (d) of sub-section (1) shall not apply to –
- (a) any person referred to in section one of the Natal Advocates and Attorneys Preservation of Rights Act, 1939 (Act No. 27 of 1939), who applies to the Natal Provincial Division or the Durban and Coast Local Division of the Supreme Court to be admitted to practice as an advocate; or
  - (b) any person employed in the office of the State Attorney, or in any branch thereof, established under the State Attorney Act, 1957 (Act No. 56 of 1957)

*(The expression "paragraphs (d) and (e)" substituted for the expression "paragraph (d)" in section 3(3) by section 16(c) of Act 29 of 1974)*

*(Section 3(3)(b) substituted by section 2(b) of Act 55 of 1994)*

- (4) Any person who is admitted and authorized to practise and to be enrolled as an advocate in terms of sub-section (1), shall be enrolled as an advocate on the roll of advocates.

#### **4. Existing advocates**

- (1) Any person whose name appears on the roll of advocates of any division at the commencement of this Act, whether or not the admission or enrolment of any such person as an advocate has been or is subject to any conditions, shall be deemed to have been unconditionally admitted to practise and authorized to be enrolled as an advocate in terms of subsection (1) of section three, subject to the terms of any order of court whereby any such person has been suspended from practice as an advocate.
- (2) Every person who in terms of sub-section (1) is deemed to have been admitted and authorized to practise and to be enrolled as an advocate, shall be enrolled as an advocate on the roll of advocates, and for that purpose the registrar of every division shall as soon as possible after such commencement furnish the Director-general: Justice with the name of every person whose name appears on the roll of advocates of such division and with particulars of the order of court whereby every such person was admitted to practise as an advocate and of any order of court, if any, whereby any such person has been suspended from practice as an advocate.

*(Section 4(2) substituted by section 4(a) of Act 55 of 1994)*

#### **5. Admission to practise in the Republic of advocates practising elsewhere**

- (1) Notwithstanding anything to the contrary in this Act contained but subject to the provisions of any other law, any division may admit to practise and authorize to be enrolled as an advocate any person who upon application made by him practising satisfies the court -

- (a) that he has been admitted as an advocate of the Supreme or High Court of any country or territory outside the Republic which the Minister has for the purposes of this section designated by notice in the *Gazette* (in this Act referred to as a designated country or territory);
  - (b) that he resides and practises as an advocate in the designated country or territory in which he has been so admitted;
  - (c) that he is a fit and proper person to be so admitted; and
  - (d) that no proceedings are pending or contemplated to have him suspended from practice or to have him struck off the roll of advocates of the said Supreme or High Court.
- (2) Any person who is admitted and authorized to practise and to be enrolled as an advocate in terms of sub-section (1), shall be enrolled as an advocate on the roll of advocates.
- (3) Any notice published in the *Gazette* under sub-section (1) whereby any country or territory has been designated for the purposes of this section, may at any time be withdrawn by the Minister by a subsequent notice in the *Gazette*, and thereupon any country or territory referred to in such first-mentioned notice shall cease to be a designated country or territory.

## **6. Advocates entitled to practise throughout the Republic**

Any person who has been or is deemed to have been admitted to practise as an advocate in terms of any provision of this Act, shall be entitled to practise as an advocate throughout the Republic unless his name has been ordered to be struck off the roll of advocates or unless he is subject to an order suspending him from practice as an advocate.

## **7. Suspension of advocates from practise and the removal of their names from the roll of advocates**

- (1) Subject to the provisions of any other law, a court of any division may, upon application, suspend any person from practice as an advocate or order that the name of any person be struck off the roll of advocates -
- (a) in the case of a person who was admitted to practise from the roll as an advocate in terms of sub-section (1) of section *three* or is deemed to have been so admitted -
    - (i) if he has ceased to be a South African citizen; or
    - (ii) in the case of a person who is not a South African citizen, other than a person contemplated in sub-paragraph (iii), if he has failed to obtain a certificate of naturalization in terms of the South African Citizenship Act, 1949 (Act No. 44 of 1949), within a period of



six years from the date upon which before or after the commencement of this sub-paragraph he was admitted to the Republic for permanent residence therein or within such further period as the court either before or after the expiration of the said period for good cause may allow; or

*(Section 7(1)(a)(ii) substituted by section 2(a) of Act 60 of 1984)*

(iii) ...

*(Section 7(1)(a)(iii) inserted by section 2(b) of Act 60 of 1984)*

*(Section 7(1)(a)(iii) deleted by section 3(a) of Act 55 of 1994)*

(b) ...

*(Section 7(1)(b) substituted by section 2 of Act 73 of 1965)*

*(Section 7(1)(b) deleted by section 2 of Act 33 of 1995)*

(c) in the case of a person who was admitted to practise as an advocate in terms of section jive, if it appears to the court that he has ceased to reside or to practise as an advocate in the designated country or territory in which he resided and practised at the time of his admission to practise as an advocate of the Supreme Court or that that country or territory has ceased to be a designated country or territory for the purposes of the said section; or

(d) if the court is satisfied that he is not a fit and proper person to continue to practise as an advocate; or

(e) on his own application.

(2) Subject to the provisions of any other law, an application under paragraph (a), (b), (c) or (d) of sub-section (1) for the suspension of any person from practice as an advocate or for the striking off of the name of any person from the roll of advocates may be made by the General Council of the Bar of South Africa or by the Bar Council or the Society of Advocates for the division which made the order for his or her admission to practise as an advocate or where such person usually practises as an advocate or is ordinarily resident, and, in the case of an application made to a division under paragraph (c) of sub-section (1), also by the State Attorney referred to in the State Attorney Act, 1957 (Act No. 56 of 1957).

*(Section 7(2)) substituted by section 3(b) of Act 55 of 1994)*

(3) Any person having chambers in any place shall be deemed for the purposes of sub-section (2) to be a person usually practising in that place.

(4) Any person who has been suspended from practice as an advocate under this Act or any other law, whether before or after the commencement of this Act, shall for the duration of such suspension, and any person whose name has been ordered under this Act or any other law to be struck off the roll of

advocates, shall, while his name remains removed from the said roll, not be entitled to practise as an advocate.

- (5) Upon receipt of the order of a court of any division whereby the name of any person has been ordered under this Act or any other law to be struck off the roll of advocates, the Director-general: Justice shall cause the name of such person to be removed from the said roll.

*(Section 7(5) substituted by section 4(a) of Act 55 of 1994)*

## **8. Roll of advocates**

- (1) The Director-general: Justice shall keep a register, to be known as the roll of advocates, in which he shall cause to be recorded -

- (a) the names of all persons deemed in terms of section four to have been admitted and authorized to practise and to be enrolled as advocates, and particulars of the orders of court whereby they were admitted to practise as advocates;
- (b) the name of every person admitted and authorized to practise and to be enrolled as an advocate in terms of any provision of this Act, and particulars of the order of court whereby he has been so admitted and authorized;
- (c) particulars of any order of court whereby any such person has been suspended from practice as an advocate, whether such order was made before or after the commencement of this Act, or whereby the name of any such person has been ordered to be struck off the roll of advocates; and
- (d) such other particulars as the Minister may direct.

- (2) The registrar of the division which makes an order admitting and authorizing any person to practise and to be enrolled as an advocate or ordering under this Act or any other law that the name of any person be struck off the roll of advocates or suspending under this Act or any other law any person from practice as an advocate, shall immediately after the making of such order forward a certified copy thereof to the Director-general: Justice.

- (3) Any document purporting to have been issued by the Director-general: Justice whereby it is certified that any person has been admitted to practise as an advocate or that any person has been suspended from practice as an advocate or that the name of any person has been removed from the roll of advocates, shall on its mere production be *prima facie* proof of the facts stated therein.

*(Section 8 substituted by section 4(a) of Act 55 of 1994)*

## **8A. President may withdraw an appointment as senior counsel**

The President may at the request of any person appointed as a senior counsel of the Republic while in the service of the State, withdraw such appointment, and thereupon such person shall revert to the status which he had as an advocate immediately prior to the appointment.

*(Section 8A inserted by section 1 of Act 25 of 1979)*

*(Section 8A substituted by section 4(b) of Act 55 of 1994)*

## **9. Offences**

- (1) No person who has not been or is not deemed to have been admitted to practise as an advocate in terms of any provision of this Act or whose name has been removed from the roll of advocates or who is subject to any order suspending him from practice as an advocate, shall in any manner, directly or indirectly, practise as an advocate or hold himself out as, or pretend to be, or make use of any name, title, addition or description implying or tending to induce the belief that he is, an advocate or is recognized by law as such.
- (2) No person who has been or is deemed to have been admitted to practise as an advocate in terms of any provision of this Act, shall make over to or share or divide with any person other than a person practising as an advocate any portion of his professional fees, whether by way of partnership, Commission, allowance or otherwise.
- (3) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding twelve months with or without the option of a fine, or to both such fine and such imprisonment, and any advocate who contravenes the provisions of sub-section (2) shall, in addition, be guilty of unprofessional conduct and be liable to be suspended from practice or to be struck off the roll of advocates.

## **10. Power of court to permit attorneys to discharge functions of advocates in particular proceedings**

Notwithstanding anything in this Act or in any other law contained, any court of any division may permit an attorney to discharge the functions of an advocate in any proceedings pending before it if there is no advocate available or willing to act.

## **11. Rules**

Any power to make rules under the Supreme Court Act, 1959 (Act No. 59 of 1959), shall be deemed to include the power to make rules for giving effect to the provisions of this Act.

## **12. ...**

*(Section 12 repealed by section 5 of Act 55 of 1994)*

**13. Repeal of laws and savings**

- (1) The laws specified in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule: Provided that notwithstanding the repeal of the Admission of Advocates Act, 1921 (Act No. 19 of 1921), the rules made under section two of the said Act and in force at the commencement of this Act, shall remain in force until the thirty-first day of December, 1974.
- (2) Nothing in this Act contained shall affect the right to practise as an advocate in the Natal Provincial Division or the Durban and Coast Local Division of the Supreme Court of any person referred to in section one of the Natal Advocates and Attorneys Preservation of Rights Act, 1939 (Act No. 27 of 1939).

**14. Short title and commencement**

This Act shall be called the Admission of Advocates Act, 1964, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*: Provided that different dates may be so fixed in respect of the several provisions of this Act.

**Schedule**  
**LAWS REPEALED**

Province or Republic	No. and year of Law	Title or subject matter	Extent of Repeal
Cape	1832.	Charter of Justice	So much as is unrepealed.
Cape	Act No. 12 of 1858.	An Act for regulating the admission of Barristers	So much as is unrepealed.
Cape	Act No. 30 of 1892.	The Legal Practitioners Act	So much as is unrepealed.
Natal	Act No. 39 of 1896.	The Supreme Court Act	So much as relates to admission and the right to practise before the courts.
Orange Free State.	Ordinance No.4 of 1902.	Administration of Justice Ordinance	So much as is unrepealed.
Orange Free State.	Act No. 39 of 1908.	Admission of Advocates	So much as is unrepealed.
Orange Free State.	Act No. 14 of 1909.	Advocates Admission Amendment Act	The whole.
Transvaal	Proclamation No. 14 of 1902.	Administration of Justice Proclamation	So much as relates to admission and the right to practise before the courts.
South-West	Proclamation No. 21	Administration of Justice	So much as relates to

Province or Republic	No. and year of Law	Title or subject matter	Extent of Repeal
Africa	of 1919.	Proclamation	admission and the right of advocates to practise before the courts except sub-section (10) of section <i>eleven</i> .
Republic	-	The South Africa Act	Section <i>one hundred and fifteen</i> except so much as relates to admission and the right of attorneys to practise before the courts.
Republic	Act No. 19 of 1921.	Admission of Advocates Act	The whole.
Republic	Act No. 39 of 1946.	Admission of Advocates Amendment Act	The whole.
Republic	Act No. 10 of 1949.	Admission of Advocates Amendment Act	The whole.
Republic	Act No. 62 of 1955.	General Law Amendment Act	Section <i>thirty-two</i> .
Republic	Act No. 18 of 1956.	Legal Practitioners' Amendment Act	Section <i>twenty-three</i> .