

THE ADVOCATES BILL, 2015
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SCHEDULE

A Bill for

AN ACT of Parliament to provide a framework for the regulation of the legal profession; to provide for the admission, enrolment, registration and promotion of professional conduct and accountability of advocates and for connected purposes;

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Advocates Act, 2015.

Interpretation.

2. In this Act, unless the context otherwise requires—

“advocate” means any person whose name is duly entered upon the Roll of advocates and, for the purposes of Part IX, includes any person mentioned in section 13;

“client” includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs, or is about to retain or employ an advocate and any person who is or may be liable to pay to an advocate any costs;

“code of conduct” means a written code setting out rules and standards relating to ethics, conduct and practice for advocates;

“Commission” means the Advocates Complaints Commission established under section 71;

“contentious business” means any business done by an advocate in a civil or military court or relating to proceedings instituted or intended to be instituted in a court, or a statutory tribunal or before an alternative dispute resolution mechanism;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“Court” means the High Court;

“corporation” means—

- (a) a company within the meaning of the Companies Act;
- (b) a limited liability partnership within the meaning of the Limited Liability Partnership Act; or
- (c) any other body corporate, lawfully constituted;

“fiduciary or professional default” in relation to an advocate means—

- (a) any defalcation, misappropriation or misapplication of trust money received in the course of legal practice by the advocate or an

incorporated legal practice or firm of which the advocate is a member;
or

- (b) a fraudulent dealing with trust property that was received in the course of legal practice, if the fraudulent dealing arises from or is constituted by an act or omission of an advocate or an incorporated legal practice or firm of which an advocate is a member that involves dishonesty.

whether committed by the advocate, an employee of the advocate or any other person;

“pecuniary loss” in relation to a default means—

- (a) the amount of trust money, or the value of trust property, that is not paid or delivered; or
- (b) the amount of money that a person loses or is deprived of, or the loss of value of trust property, as a result of fraudulent dealings.

“law practice” means—

- (a) an advocate who is a sole practitioner;
- (b) a firm of advocates; or
- (c) an incorporated legal practice;

“non-contentious business” means any business done by an advocate other than contentious business;

“partner State” means a member of the East African Community established by Article 2 of the Treaty for Establishment of the East African Community;

“practising certificate” means a certificate issued under section 26;

“Registrar” means the Chief Registrar of the Judiciary;

“Roll” means, as the case may require, the Roll of advocates kept under section 14 or the Roll of advocates having the rank of Senior Counsel;

“Senior Counsel” means an advocate upon whom the President has conferred the rank of Senior Counsel;

“the Council of Legal Education” means the Council of Legal Education established by section 3 of the of Legal Education Act;

“the Council of the Society” means the Council of the Society elected under section 13 of the Law Society of Kenya Act;

“the Society” means the Law Society of Kenya established under the Law Society of Kenya Act;

“Tribunal” means the Advocates Disciplinary Tribunal established under section 81; and

“unqualified person” means a person not qualified under section 9 to act as an advocate.

Object
purpose.

and

3. The purpose of this Act is to—

- (a) provide framework for the regulation of the legal profession that embraces the values underpinning the Constitution;
- (b) broaden access to justice;
- (c) protect and promote public interest and consumer rights;
- (d) provide a fair, effective, efficient and transparent procedure for the resolution of complaints against advocates; and
- (e) create a framework for the—
 - (i) development and maintenance of appropriate professional and ethical norms and standards for rendering of legal services by advocates;
 - (ii) regulation of admission and enrolment of advocates; and
 - (iii) development of training programmes for advocates.

Style of law
practice.

4. (1) The practice of law in Kenya may be carried out by—

- (a) a sole practitioner registered as such;
- (b) a partnership registered as such; or
- (c) an incorporated legal practice.

(2) A principal of a law practice is a member of the practice who is an advocate and may include—

- (a) a sole practitioner, in the case of a law practice constituted by the practitioner;
- (b) a partner in the law practice, in the case of a firm of advocates; or
- (c) an advocate director in the law practice, in the case of an incorporated legal practice.

(3) A law practice may have associates and assistants who may include—

- (a) a consultant to the law practice;
- (b) an agent of the law practice;
- (c) an employee of the law practice who is an advocate; or

(d) an employee of the law practice who is not an advocate.

(4) A law practice shall be registered in the name of an advocate and for purposes of carrying on legal practice, an advocate may, in the case of an incorporated firm, practice under the registered name of a present or past member or members of the firm.

(5) No advocate may at any one time maintain more than one firm with different names.

(6) The Council of the Society shall maintain a register of law firms in Kenya.

PART II—REGULATION OF ADMISSION AND ENROLMENT AS ADVOCATES

Admission and enrolment of Advocates

Entitlement to admission.

5. (1) A person who—

- (a) satisfies the requirements of this Part relating to the admission and enrolment of advocates;
- (b) in so far as has not complied with the requirements, has been exempted from such compliance by the Council of Legal Education; and
- (c) is a fit and proper person to practise the profession of law,

is entitled to be admitted and enrolled as an advocate of the High Court of Kenya.

(2) A person may only practise as an advocate if the person is admitted and enrolled to practise as such under this Act.

(3) The Council of Legal Education shall prescribe regulations to give effect to this Part.

Qualifications for practising as an advocate.

6. (1) A person shall be qualified to act as an advocate if.—

- (a) the person has been admitted as an advocate;
- (b) the person's name is for the time being on the Roll; and
- (c) the person has in force a practising certificate.

(2) For the purposes of this Act a practising certificate shall be deemed not to be in force at any time while the person is suspended in accordance to this Act.

Application for admission as advocate.

7. (1) Every person who is qualified in accordance with section 9 may apply for admission as an advocate.

(2) The application referred to under subsection (1) shall be made by petition in the prescribed form, verified by oath or statutory declaration addressed to the Chief Justice, and filed with the Registrar together with a notice intimating that the petition has been so filed together with such other documents as may be prescribed.

(3) The applicant shall also deliver a copy of the petition together with any other document—

- (a) to the Secretary of the Council of Legal Education; and
- (b) the Secretary of the Society.

(4) The notice referred to in subsection (2) shall be publicly exhibited by the Registrar for one month before any order shall be made on the petition.

(5) Every petition made under this section shall be heard by the Chief Justice in chambers and both the Council of Legal Education and the Council of the Law Society of Kenya shall have the right to be heard.

(6) If the Chief Justice is satisfied as to the qualifications, service and moral fitness of the petitioner, the Chief Justice shall adjourn the hearing into open court and shall order that the petitioner be admitted as an advocate.

(7) On an order being made under subsection (5), and after payment by the petitioner to the Registrar of the prescribed fee, the petitioner shall take an oath or make an affirmation as an officer of the Court before the Chief Justice in such form as the Chief Justice shall require, and shall thereafter sign the Roll in the presence of the Registrar or a Deputy Registrar who shall add his or her signature as witness.

(8) All reports, records and communications made under or in connection with this section shall be absolutely privileged.

Admission and
enrolment.

8. (1) Subject to Part III, a person may only be admitted to practice as an advocate if the person is—

- (a) a citizen of Kenya or a citizen of a partner State;
- (b) a permanent resident of Kenya;
- (c) duly qualified in accordance with section 9; and
- (d) has petitioned the Chief Justice for admission as an advocate in accordance with section 7.

(2) The Chief Justice shall admit to practise and authorise to be enrolled as an advocate every person who satisfies subsection (1).

Qualification as
an advocate

9. (1) A person qualifies to be admitted and enrolled as an advocate, if that person has—

- (a) satisfied all the requirements for—
 - (i) the degree of *baccalaureus legum* (*LLB*) of a university in Kenya after pursuing for that degree a course of study of not less than four academic years; or

(ii) a law degree obtained in a foreign country, which is equivalent to the *baccalaureus legum* and recognized in Kenya;

(b) undergone or attended—

(i) instruction in the proper business, practice and employment of an advocate; and

(ii) tuition as may be prescribed for a period to be determined by the Council of Legal Education; and

(c) passed a competency based examination or assessment for candidate advocates as may be determined by the Council of Legal Education.

Attorney-General and the Director of Public Prosecutions may take pupils.

10. For purposes of section 9, the Attorney-General, the Director of Public Prosecutions and any other public office authorized by the Council of Legal Education, may take pupils for training and any reference in this Act to “advocate”, in the context of pupillage, includes such office.

Right to practice as an Advocate

Right of appearance.

11. (1) Any person who having been admitted to practice as an advocate pursuant to this Act is entitled to practise throughout Kenya, unless the person’s name has been ordered to be struck off the Roll or the person is subject to an order of suspension from practice.

(2) Subject to section 12, an advocate has the right to appear on behalf of any person in any court in the Republic or before any Tribunal, Board or similar institution.

Restriction of right of appearance.

12. (1) Despite section 11, an advocate who has been issued with a practising certificate under this Act, may only engage in practice pursuant to this section.

(2) An advocate shall not engage in practice on their own behalf either on full-time or part-time basis unless the advocate has served for a period of not less than two years, on the aggregate—

(a) in a salaried post as an employee in the office of the Attorney-General, the office of the Director of Public Prosecutions or an organization approved by the Council of the Law Society of Kenya; or

(b) under an advocate who has been engaged in continuous practise in Kenya, for a period of not less than five years.

(3) The person employing an advocate under this section shall, in the prescribed form, notify the Secretary to the Society and the Registrar of the commencement and the termination of such employment.

(4) The Society may make Regulations on welfare of the advocates including remuneration of advocates employed by other advocates.

Certain officers entitled to act as advocates.

13. (1) Each of the following persons shall, if the person holds one of the qualifications specified in paragraphs (a), (b) and (c) of section 9(1) at the time of appointment to that office, be entitled in connection with the duties of office to act as an advocate, and shall not to that extent be deemed to be an unqualified person, that is to say—

(a) an officer in the office of the Attorney-General;

(b) an officer in the office of the Director of Public Prosecutions;
or

(c) any other public officer.

(2) The officers referred to in this section shall not be entitled to charge fees for so acting.

Custody of Roll.

14. (1) The Registrar shall keep the Roll of advocates in accordance with this Act and any directions as to its form and the information to be recorded as the Chief Justice may give, and shall allow any person to inspect the Roll during office hours without payment.

(2) The Roll of advocates kept under subsection (1) may include the names of eligible advocates from Partner States.

Removal of name from Roll on application of advocate.

15. (1) Any advocate against whom no disciplinary or criminal proceedings are pending or taking place may apply to the registrar for the advocate's name to be removed from the Roll, and the registrar shall thereupon remove the advocate's name from the Roll.

(2) Despite subsection (1), the Registrar, with the approval of the Chief Justice, may remove the name of an advocate from the Roll on that advocate's application although criminal proceedings are pending or taking place against that advocate, if the Registrar is satisfied that the proceedings are of such a nature that if the advocate is convicted, the conviction will not involve professional misconduct.

PART III—FOREIGN LEGAL PRACTITIONERS AND CROSS-BORDER LEGAL PRACTICE

Foreign legal practitioners

Reciprocal admission.

16. (1) Where the Council of Legal Education is satisfied that—

(a) the law relating to the admission of legal practitioners of a country other than Kenya is such as to ensure that they possess proper qualifications and competence; and

(b) by the law of that country, advocates of the High Court of Kenya shall be entitled to admission on non-discriminatory terms,

the Council may, after consultation with the Council of the Society, by notice in the *Gazette*, prescribe Regulations for admission to practice law in Kenya by legal practitioners of that country, upon fulfilment of conditions as may be prescribed.

(2) A citizen of Kenya who is admitted to practice law in a foreign country shall be eligible for admission to practice in Kenya if they meet the requirements of this Act.

(3) The Council of Legal Education shall make Regulations to give effect to this provision.

Foreign legal
practitioners.

17. (1) A legal practitioner from a foreign country, hereinafter referred to as a “foreign advocate”, may only practice law in Kenya upon compliance with—

- (a) any requirements in relation to the practitioner's entitlement to practise the profession of law that apply under the law of the foreign country in which the practitioner is admitted to practice as a legal practitioner; and
- (b) any condition imposed by the Council of the Society including—
 - (i) getting the approval of the Council of the Society;
 - (ii) limitations on the type and nature of legal services;
 - (iii) requirements to partner with Kenyan advocates and apportionment of fees; and
 - (iv) compliance with the relevant laws relating non-citizens working in Kenya.

(2) A foreign advocate may not establish law practice in Kenya whether alone or in partnership with a Kenyan advocate.

(3) A foreign advocate intending to provide any legal service in Kenya shall, before engaging in such service, apply to the Chief Justice in the prescribed form for approval to provide such service.

(4) If the Council of the Society is satisfied that it is expedient to permit a foreign advocate to practice in Kenya, the Council may, subject to section 17, approve, in writing, that such foreign advocate shall provide the legal services specified in that warrant for purposes of the particular proceedings for which the application was made.

(5) Except for certification services which are a preserve of advocates who are either citizens of Kenya or from a member of a Partner State, a foreign advocate admitted under this Part may only offer representation or advisory services.

Principle of
reciprocity.

18. (1) A foreign advocate from a country that prevents citizens of Kenya from practising the profession of law or subjects them to unfair discrimination in that country shall not be allowed to practice the profession of law in Kenya.

(2) The Chief Justice may, in consultation with the Society and the Council of Legal Education, make rules prescribing the regulation of foreign legal practitioners including the conditions which foreign legal practitioners must meet before their admission to practice in Kenya, under this Act.

Free movement of legal services.

19. (1) Pursuant to Articles 76 and 126 of the Treaty for the Establishment of the East African Community, the Council of the Society, the Council of Legal Education and the Chief Justice shall put in place measures for—

- (a) ensuring free movement of legal services between Kenya and the other Partner States;
- (b) promoting cross-border practice within the Community;
- (c) harmonizing legal training and certification; and
- (d) encouraging standardization of judgments of courts within the Community.

(2) The Chief Justice may, in consultation with the Council of the Society and the Council of Legal Education, prescribe rules to give effect to this section.

Register of eligible advocates.

20. (1) The Council of the Society may require a regulating body in a Partner State, on a regular basis, to submit a list of advocates who are eligible for cross border legal practice to the Secretary to the Council.

(2) Upon receipt of the list of advocates under subsection (1), the Secretary shall submit a copy thereof to the Registrar who shall forthwith update the Roll.

Reciprocal enforcement of suspensions and striking off.

21. (1) If any advocate is suspended from practice in a Partner State or struck off the Roll of advocates by order of a competent court or other competent authority in the Partner State, that advocate shall be deemed ineligible to practice in Kenya.

(2) The Secretary to the Society shall cause a notice of the suspension or strike off of an advocate to be entered against the name of the advocate in the register of eligible advocates.

(3) Where an advocate is reinstated on the Roll of advocates in the Partner State, that advocate shall be eligible for reinstatement on the register of eligible advocates under this Act.

PART IV—SENIOR COUNSEL

Senior Counsel.

22. (1) The President may grant a letter of conferment to any person of irreproachable professional conduct who has rendered exemplary service to the legal and public service in Kenya conferring upon the person the rank and dignity of Senior Counsel.

(2) A person shall not be eligible to be a Senior Counsel unless the person—

- (a) is a duly enrolled advocate of the High Court of not less than fifteen years' standing; or
- (b) being a person to whom section 13 applies, holds, and has held for a continuous period of not less than fifteen years, one or other

of the qualifications specified in section 6 (1).

(3) The grant shall be made not later than sixty days upon receipt of a list of names submitted by the Committee on Senior Counsel through the Chief Justice.

Roll of Senior Counsel.

23. (1) Upon the commencement of this Act, the Registrar shall cause to be prepared, and shall thereafter maintain, a Roll of Advocates having the rank of the Senior Counsel, hereinafter called “the Roll of Senior Counsel”, in accordance with this Part and any directions as to its form and the information to be recorded as the Chief Justice may give, and shall allow any person to inspect the Roll during office hours without payment.

(2) There shall be entered in the Roll of Senior Counsel the names of all persons having the rank thereof in accordance with this Part.

(3) Every person upon whom the rank of Senior Counsel has been conferred shall sign the Roll of Senior Counsel in the presence of the Registrar, and the Registrar shall add their signature as a witness.

(4) The Chief Justice shall cause to be published in the *Gazette* the names of the advocates upon whom the rank of Senior Counsel is conferred.

Application of Part XI.

24. In the application of Part IX to Senior Counsel—

(a) all references therein to the Tribunal shall be construed as references to a Committee of three, to be appointed in each case by the Chief Justice, consisting of the Attorney-General or the Solicitor-General as the chairperson of the Committee and two Senior Counsel; and

(b) the Secretary to the Society shall perform the duties of secretary to the Committee on Senior Council.

Precedence.

25. (1) Precedence among advocates in Kenya shall be in the following order of priority—

(a) the Attorney-General;

(b) the Director of Public Prosecutions;

(c) the Solicitor-General;

(d) the President and the Vice-President of the Society, in that order;

(e) Senior Counsel according to the date of their appointment as such; and

(f) advocates according to the date upon which they signed their names on the Roll.

(2) The Council of the Society may make regulations to give effect to this section.

PART V—PRACTISING CERTIFICATE

Registrar to issue

26. The Registrar shall issue in accordance with this Part and subject to any

practising
certificate.

rules made under this Act, practicing certificates authorizing the advocates named therein to practice as advocates.

Application for
and issue of
practising
certificate.

27. An application for a practising certificate shall be made to the Registrar—

- (a) by delivering to the Registrar an application in duplicate, signed by the applicant specifying the applicant's name, place of business, and the date of admission as an advocate;
- (b) by producing evidence satisfactory to the Registrar that the applicant has paid to the Society the fee prescribed for a practising certificate and the annual subscriptions payable for the time being to the Society and to the Advocates Benevolent Association; and
- (c) by producing a written approval signed by the President of the Society stating that there is no objection to the grant of the certificate.

(2) Subject to section 36, the Registrar, if satisfied that the name of the applicant is on the Roll and that the applicant is not for the time being suspended from practice, shall within fourteen days of the receipt of the application issue to the applicant a practising certificate.

(3) The Registrar shall cause one copy of each declaration delivered under this section to be filed in a register kept for that purpose, and any person may inspect the register during office hours without payment.

Issue of practising
certificate to
confer
membership of
Society.

28. (1) Every advocate to whom a practising certificate is issued under this Part shall thereupon and without payment of any further fee, subscription, election, admission or appointment, and despite anything contained in the Law Society of Kenya Act or in any Regulations made thereunder, become a member of the Society and the Advocates Benevolent Association and shall be subject to any provision of law or rules of the Society and the Advocates Benevolent Association for the time being affecting members.

(2) Every advocate who has become a member of the Society under this section shall remain a member until the end of one month after expiration of the practising certificate, unless the person's name, whether at the person's own request or otherwise, is removed from or struck off the Roll, whereupon the person shall cease to be a member of the Society.

(3) An advocate who has become a member of the Society under this section and who is suspended from practice shall not be entitled during the period of the suspension to any of the rights or privileges of such membership.

Date and validity
of practising
certificate.

29. (1) Every practising certificate shall bear the date of the day on which it is issued and shall have effect from the beginning of that day.

(2) Despite subsection (1), a practising certificate which is issued during the first month of any practising year shall have effect for all purposes from the beginning of that month.

(3) The practising year shall be from the 1st January to 31st December but the Council of the Society may, with the approval of the Chief Justice, alter

the practising year, and the order may make such transitional provision in regard to incidental matters as may be expedient.

(4) Every practising certificate shall expire at the end of the practising year in which it was issued, except where the name of an advocate is removed from or struck off the Roll, the practising certificate of that advocate shall expire forthwith.

(5) The Registrar shall enter upon the Roll a note of the date of the issue of every practising certificate.

Discretion of Registrar to issue practising certificate in special cases.

30. (1) Subject to subsection (3) and section 33 (5), subsection (2) shall have effect where an advocate applies for a practising certificate—

- (a) when for twelve months or more the advocate has ceased to hold a practising certificate in force; or
- (b) whilst the advocate is an undischarged bankrupt or there is a receiving order in bankruptcy in force against the advocate; or
- (c) when, having been suspended from practice or having had the name removed from or struck off the Roll, the period of suspension has expired or the name has been restored to the Roll, as the case may be; or
- (d) not having held a practising certificate in force within twelve months next following the date of the advocate's admission as an advocate; or
- (e) whilst the advocate is a person to whom the powers and provisions of the Mental Health Act relating to management and administration apply; or
- (f) without having paid a penalty or costs ordered pursuant to this Act; or
- (g) after having been adjudicated a bankrupt and obtained discharge or after having entered into a composition with creditors or a deed of arrangement for the benefit of creditors; or
- (h) after having had given against him any judgment which involves the payment of money, not being a judgment—
 - (i) limited to the payment of costs; or
 - (ii) as to the whole effect of which upon them they are entitled to indemnity or relief from some other person; or
 - (iii) evidence of the satisfaction of which, within seven days of the giving of such judgment, has been produced to the Registrar.

(2) The applicant shall give to the Registrar and to the Secretary of the Society not less than six weeks' notice of the advocate's intention to apply before the application for a practising certificate.

(3) The Council of the Society shall make representations or submit a

recommendation to the Registrar with respect to any application made under this section, and any such representations shall be taken into account by the Registrar and shall be absolutely privileged.

(4) The Registrar shall have the discretion—

- (a) to grant or refuse any application made under this section; or
- (b) to issue a practising certificate to the applicant upon such terms and conditions as the Registrar may think fit;

(5) Where the Registrar issues a certificate subject to any condition, the Registrar may postpone the issue of the certificate pending the hearing and determination of any appeal under section 31 (2):

(6) Despite subsection (5), in a case such as is mentioned in paragraph (b) or paragraph (h) of subsection (1), where an appeal has been made to the appropriate court against the order or judgment in question, the Registrar shall not refuse the application before the determination of that appeal.

(7) Where a practising certificate free of conditions is issued by the Registrar under subsection (2) to an advocate in relation to whom that subsection has effect by virtue of any of the particular circumstances mentioned in paragraphs (a), (c), (d), (g) and (h) of subsection (1), subsections (2), (3) and (4) shall not thereafter have effect in relation to that advocate by virtue of those circumstances.

Appeals in connection with issue of practising certificates.

31. (1) If in any case, not being a case to which section 30 applies, the Registrar on an application duly made refuses or neglects to issue a practising certificate the applicant may apply to the Chief Justice who may make such order in the matter as is just.

(2) Where under section 30 the Registrar either refuses to grant a practising certificate or decides to issue that certificate subject to terms and conditions, the applicant may by petition presented within one month after being notified of the decision of the Registrar, and in such manner and subject to such regulations as the Chief Justice may from time to time direct, appeal against that decision to the Chief Justice, who may—

- (a) affirm the decision of the Registrar;
- (b) direct the Registrar to issue a practising certificate to the applicant free from terms and conditions or upon such terms and conditions as the Chief Justice may think fit;
- (c) direct the Registrar not to issue a practising certificate;
- (d) if a practising certificate has been issued, by order suspend that certificate; or
- (e) make such other order as the Chief Justice may think fit.

Suspension of practising certificate in certain

32. The making by the Tribunal or the Court of an order suspending an advocate from practice and the adjudication in bankruptcy of an advocate shall operate immediately, to suspend any practising certificate of that

circumstances.

advocate for the time being in force.

Duration
suspension
practising
certificate.
of
of

33. (1) Subject to this section, where a practising certificate has become suspended by an order under section 31 (2) or by virtue of section 32, that suspension shall continue until the certificate expires.

(2) The suspension of a practising certificate by virtue of section 32 by reason of adjudication in bankruptcy shall terminate if the adjudication is annulled and a certified copy of the order annulling the adjudication has been served on the Registrar.

(3) Where an advocate's practising certificate has become suspended—

(a) by an order under section 31 (2); or

(b) by virtue of section 32 by reason of adjudication in bankruptcy, the advocate may at any time before the certificate expires (and, in the case of adjudication in bankruptcy, while the adjudication remains un-annulled) apply to the Registrar to terminate the suspension of the practising certificate, giving at the same time notice to the secretary of the Society that the application has been made.

(4) The Council of the Society may make representations or submit recommendations to the Registrar with respect to any application made under this section, and the representations or recommendations shall be absolutely privileged.

(5) The Registrar shall have the discretion to—

(a) order the termination of the suspension either unconditionally or upon such terms and conditions as may be specified; or

(b) refuse the application.

(6) If, on an application by an advocate under subsection (3), the Registrar refuses the application or terminates the suspension subject to terms or conditions, the advocate may, by petition presented in such manner and subject to such regulations as the Chief Justice may from time to time direct, appeal against the decision of the Registrar to the Chief Justice, who may—

(a) affirm the decision of the Registrar; or

(b) terminate the suspension either unconditionally or upon such terms and conditions as the Chief Justice may think fit.

(7) Where an advocate's practising certificate has become suspended by virtue of section 32 by reason of the advocate's suspension from practice and the suspension of the practising certificate is terminated unconditionally under subsection (5) or subsection (6), then, despite section 30 (1) (c), subsections (2), (3) and (4) thereof shall not thereafter have effect in relation to that advocate by virtue of that suspension from practice and the expiry of the period thereof.

Publication
suspension
termination
of
or
of

34. Where an advocate's practising certificate has become suspended—

suspension of
practising
certificate in
certain cases.

(a) by an order under section 31 (2); or

(b) by virtue of section 32 by reason of adjudication in
bankruptcy,

the Registrar shall forthwith cause notice of that suspension to be published in the *Gazette* and a note thereof to be entered against the name of the advocate in the Roll, and where that suspension is terminated under section 33 (2), (3) or (4) the Registrar shall forthwith cause a note of that termination to be entered against the name of the advocate in the Roll and, if so requested in writing by the advocate, a note thereof to be published in the *Gazette*.

Evidence as to
holding of
practising
certificate.

35. (1) Any list purporting to be published by authority of the Registrar containing the names of advocates who have obtained practising certificates for the current year before the 1st February in that year, shall, until the contrary is proved, be evidence that the persons named therein as advocates holding such certificates as aforesaid for the current year are advocates holding such certificates.

(2) The absence from any such list of the name of any person shall, until the contrary is proved, be evidence that that person is not qualified to practise as an advocate under a certificate for the current year, but in the case of any such person an extract from the Roll certified as correct by the Registrar shall be evidence of the facts appearing in the extract.

PART VI—PROVISIONS WITH RESPECT TO UNQUALIFIED PERSONS ACTING AS ADVOCATES AND OFFENCES BY ADVOCATES

Unqualified
person not to act
as advocate.

36. (1) An unqualified person shall not—

(a) cause summons or other process to issue;

(b) institute, carry on or defend any suit or other proceedings in the name of any other person in any court of civil or criminal jurisdiction; or

(c) in any way act as an advocate.

(2) Pursuant to Article 50 (7) of the Constitution, an intermediary may, subject to approval by a court, assist a complainant or an accused person to communicate with the court.

(3) For purposes of subsection (2) “an intermediary” means a person authorized by the court, on account of expertise or experience, to give evidence on behalf of a person declared by the court as a vulnerable witness on the grounds of age, sickness or other incapacity and may include a parent, relative, psychologist, counsellor, guardian, children’s officer or social worker.

(4) An intermediary shall not charge any fees.

(5) Any person who contravenes subsection (1) shall—

(a) be deemed to be in contempt of the court in which they so act or in which the suit or matter in relation to which they so act is brought

or taken, and may be punished accordingly;

(b) be incapable of maintaining any suit for any costs in respect of anything done in the course of so acting; and

(c) in addition, commits an offence.

Penalty for pretending to be advocate.

37. A unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that the person is qualified or recognized by law as qualified to act as an advocate shall be guilty of an offence.

Unqualified person not to prepare certain documents or instruments..

38. (1) An unqualified person shall not, either directly or indirectly, take instructions or draw or prepare any document or instrument—

- (a) relating to the conveyancing of property;
- (b) for, or in relation to, the formation of any limited liability company, whether private or public;
- (c) for, or in relation to, an agreement of partnership or the dissolution thereof;
- (d) for the purpose of filing or opposing a grant of probate or letters of administration;
- (e) for which a fee is prescribed by any order made by the Chief Justice under section 67; or
- (f) relating to any other legal proceedings;

nor shall any such person accept or receive, directly or indirectly, any fee, gain or reward for the taking of any such instruction or for the drawing or preparation of any such document or instrument:

(2) Despite subsection (1), this subsection shall not apply to—

- (i) any public officer drawing or preparing documents or instruments in the course of duty;
- (ii) any person employed by an advocate and acting within the scope of that employment; or
- (iii) any person employed merely to engross any document or instrument.

(3) Any money received by an unqualified person in contravention of this section may be recovered by the person by whom the same was paid as a civil debt recoverable summarily.

(4) Any person who contravenes subsection (1) commits an offence.

(4) This section shall not apply to—

- (a) a will or other testamentary instrument; or
- (b) a transfer of stock or shares containing no trust or limitation

thereof.

Instruments to be endorsed with name and address of drawer.

39. (1) Every person who draws or prepares, or causes to be drawn or prepared, any document or instrument referred to in section 38 (1) shall at the same time endorse or cause to be endorsed thereon their name and address, or the name and address of the firm of which the person is a partner and any person omitting to do so shall be commits an offence and liable to a fine not exceeding fifty thousand shillings in the case of an unqualified person or a fine not exceeding five thousand shillings in the case of an advocate.

(2) Despite subsection (1), in the case of any document or instrument drawn, prepared or engrossed by a person employed, and whilst acting within the scope of employment, by an advocate or by a firm of advocates, the name and address to be endorsed thereon shall be the name and address of such advocate or firm.

(2) The Registrar, the Land Registrar, the Registrar-General, the Registrar of Companies and any other registering authority shall refuse to accept or recognize any document or instrument referred to in section 38 (1) unless such document or instrument is endorsed in accordance with this section.

Undercutting.

40. (1) Any advocate who holds themselves out or allows themselves to be held out, directly or indirectly and whether or not by name, as being prepared to do professional business at less than the remuneration prescribed, by order, under this Act commits an offence.

(2) No advocate shall charge or accept, otherwise than in part payment, any fee or other consideration in respect of professional business which is less than the remuneration prescribed, by order, under this Act.

Sharing profits.

41. (1) Any advocate who agrees to share profits in respect of any professional business, whether contentious or non-contentious, with any person not being an advocate or other duly qualified advocate, by whatever name called, shall be guilty of an offence.

(2) This section shall not apply to the payment of any bonus to any of the advocate's employees by an advocate, being a bonus based or calculated on the advocate's total earnings or profits in respect of any period.

Violation of marketing advertisement regulations.

42. An advocate who violates the Regulations on marketing advertisement commits a disciplinary offence.

Advocate not to act as agent for unqualified person.

43. Any advocate who—

- (a) acts as an agent in any suit, or in any matter in bankruptcy, for any unqualified person;
- (b) permits their name, or that of any firm of which the advocate is a partner, to be made use of in any such suit or matter, upon the account or for the profit of any unqualified person;
- (c) does any other act enabling an unqualified person to appear, act or practise

in any respect as an advocate in such suit or matter, or

- (d) in any way assists any unqualified person in any cause or matter in which the advocate knows that such person is contravening or intends to contravene this Act,

commits an offence.

No costs recoverable where unqualified person acts as an advocate.

- 44.** No costs in respect of anything done by an unqualified person in contravention of this Part shall be recoverable in any suit or matter by any person.

Employment by advocate of persons struck-off the Roll or suspended.

- 45.** (1) No advocate shall, in connection with their practice as an advocate, without the written permission of the Council of the Society, which may be given for such period and subject to such conditions as the Council thinks fit, employ or remunerate any person who to the advocate's knowledge is disqualified from practising as an advocate by reason that—

(a) the person's name has been struck off the Roll, otherwise than at their own request, or

(b) the person is suspended from practising as an advocate.

(2) An advocate aggrieved by the refusal of the Council of the Society to grant any permission referred to in subsection (1), or by conditions attached by the Council to the grant thereof, may appeal to the Chief Justice, who may—

(a) confirm the refusal or the conditions, as the case may be, or

(b) in lieu of the Council, grant such permission for such period and subject to such conditions as the Chief Justice thinks fit.

(3) If any advocate acts in contravention of this section or of the conditions subject to which any permission has been given thereunder the advocate shall be liable to proceedings under section 87.

Penalty for failure to disclose fact of having been struck off, etc.

- 46.** Any person who, whilst disqualified from practising as an advocate by reason of the fact that the person has been struck off the Roll, otherwise than at their own request, or is suspended from practising as an advocate, seeks or accepts employment by an advocate in connection with the advocate's practice without previously informing the advocate that they are so disqualified commits an offence and is liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

Offences by bodies corporate.

- 47.** (1) If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognized by law as qualified to act as an advocate, the body corporate commits an offence and liable, upon conviction, to a fine not exceeding one million shillings for each such offence, and, in the case of an act done by any director, officer or servant of the corporation, the director, officer or servant, without prejudice to the liability of the corporation, commits an offence and is

liable, upon conviction, to a fine not exceeding five hundred thousand shillings for each such offence.

(2) In this Part, references to unqualified persons and to persons include references to bodies corporate.

PART VII—ADVOCATES FIDELITY FUND

Establishment of Fund and founding provisions

Establishment of
the Advocates'
Fidelity Fund.

48. (1) There is established the Advocates' Fidelity Fund which shall be administered by a Board of Trustees appointed by the Council of the Society.

(2) The purpose of the Fund is to promote the integrity of the profession and create public confidence in the administration of justice by reimbursing pecuniary losses occasioned to clients through misappropriation or wrongful conversion of claimants' money or property by an advocate.

(3) The Fund consists of—

- (a) annual contributions paid by Advocates;
- (b) income obtained from investments of the Fund;
- (c) monies earned by the Fund from any other source;
- (d) monies from any other lawful source provided or donated or lent to the Fund;
- (e) monies obtained as restitution from advocates for reimbursement paid to claimants; and
- (f) interest from trust accounts.

(4) There shall be paid to the Society on behalf of the Fund by every advocate in respect of each year during which, or part of which, the advocate is practising, along with the advocate's application for a practicing certificate, an annual contribution to be determined by regulations issued by the Chief Justice in consultation with the Council of the Society.

(5) The regulations under subsection (4)—

- (a) shall determine the specific annual contributions to be made by advocates; and
- (b) may establish or designate a trust corporation to administer the Fund on behalf of the Society.

(6) A practising certificate shall not be issued to an advocate except on production of evidence of payment of the contributions, if any, due by the advocate to the Fund on or before the issue of the certificate.

Assets of the
Fund to constitute

49. (1) The assets of the Fund shall constitute a trust and shall be held in the

a trust.

name of the Fund, subject to the direction of the Board of Trustees.

(2) The property of the Fund—

- (a) is the property of the society;
- (b) must be accounted for separately from other funds of the society;
- (c) is not subject to any process of seizure or attachment by a creditor of the Society; and
- (d) is not subject to a trust in favour of a person who claims to have sustained a loss.

Composition and officers of the Board.

50. (1) The Board of Trustees shall consist of—

- (a) two advocates representing Nairobi branch;
- (b) one advocate representing each of the other branches of the Society; and
- (c) one non-advocate nominated by the body representing consumers and appointed by the President of the Society.

(2) Members of the Board shall serve for a single term of four years and shall be paid such allowances as the Council may determine.

(3) The Board shall, at its first meeting, elect a chairperson and vice chairperson from among its members.

(4) The Council shall provide secretariat services to the Board.

(5) The Board shall meet as frequently as necessary to conduct the business of the Fund and to process claims in a timely manner.

(6) Subject to this section, the Board may regulate its own procedure.

Duties and responsibilities of the Board.

51. (1) The mandate of the Board shall be to receive, evaluate, determine and authorize the payment of claims from the Fund.

(2) The Board shall—

- (a) promulgate rules of procedure not inconsistent with this Act;
- (b) invest such portions of the funds as may not be needed currently to pay losses, and to maintain sufficient reserves as appropriate;
- (c) report on an annual basis to the Society and the Attorney-General and to make other reports as required from time to time;
- (d) publicize its activities to potential claimants, the public and the bar;
- (e) retain and compensate consultants, administrative staff, investigators, actuaries, agents, legal counsel and other persons as necessary;
- (f) prosecute claims for restitution to which the Fund is entitled;

- (g) engage in studies and programs for client protection and prevention of dishonest conduct by advocates; and
- (h) promote effective communication between advocates’ disciplinary authorities and the Fund; and
- (i) perform all other acts necessary or proper for the fulfilment of the purposes and effective administration of the Fund.

Liability of Fund.

52. (1) The Fund is liable to compensate persons who, in the opinion of the Board of Trustees, suffer pecuniary loss by reason of dishonesty on the part of an advocate, or an employee of such advocate in connection with the practice of the advocate.

(2) The amount of compensation shall not exceed—

- (a) the maximum limit prescribed under the Regulations; or
- (b) the actual pecuniary loss suffered by the claimant in consequence of the fiduciary or professional default, including the reasonable costs of making the claim; less
- (c) any amount that the claimant has received, or may reasonably be expected to recover, otherwise than under this Part, in reduction of that loss.

(3) The establishment of the Fund does not exonerate an advocate from professional responsibility and an advocate who is guilty of dishonesty shall be subject to disciplinary proceedings despite the payment of compensation from the Fund.

(4) The Board of Trustees may apply legal or equitable means to recover any monies paid on behalf of such an advocate.

Limitation of liability of Fund.

53. (1) No compensation may be made under this section—

- (a) in respect of a loss made good otherwise;
- (b) if the claim is made two years after learning of the loss;
- (c) to an advocate or the advocate’s representatives in respect of a loss suffered by the advocate in connection with the advocate’s practice by reason of dishonesty on the part of a partner or the partner’s employee; or
- (d) unless an application for a grant is made to the Society in such manner, and within such period after the date on which the loss first came to the knowledge of the applicant, as may be prescribed by rules made under this Part.

Instances when the Council may refuse compensation.

54. The Board of Trustees may refuse to compensate, or may compensate only to a limited extent, if it is of the opinion that there has been negligence on the part of the applicant or of any person for whom the applicant is responsible which has contributed to the loss in question.

Administering of

55. The Board of Trustees or any committee it appoints may administer oaths

oaths for the purpose of inquiry into any matters which affect the making or refusal of a grant from the Fund.

Claims.

56. (1) Subject to this Part, where—

- (a) a person suffers loss as a result of a fiduciary or professional default; and
- (b) there is no reasonable prospect of recovering the full amount of that loss, otherwise than under this Part,

the person may apply to the Society in the prescribed form, to claim compensation under this Part.

(2) If a valid claim has not been satisfied at the expiration of twelve months from the day on which it was lodged with the Society, interest at a prescribed rate shall be calculated from the expiration of that period.

(3) No claim may be made under this Part—

- (a) in respect of a fiduciary or professional default occurring before the commencement of this Act; or
- (b) in respect of a fiduciary or professional default occurring outside Kenya unless it occurs in the course of, or is incidental to—
 - (i) legal work arising from instructions taken in Kenya; or
 - (ii) legal work substantially carried out in Kenya; or
- (c) in respect of a liability for which indemnity is provided under a scheme of professional indemnity insurance under this Act.

Establishment of validity of claims.

57. (1) Where a claim is made under this Part, the Board of Trustees shall determine—

- (a) whether the claim is a valid claim; and
- (b) the amount payable towards satisfaction of the claim.

(2) The Board of Trustees shall, by notice in writing, inform the claimant of any determination made by it under subsection (1).

(3) A notice under subsection (2) shall be served—

- (a) on the claimant or the claimant's personal representative; or
- (b) where the claimant is dead and has not left a personal representative known to the Society, or where the whereabouts of the claimant is unknown, by publication in the *Gazette*.

(4) A claimant who is aggrieved by a determination of the Society under this section may appeal to the High Court against the determination.

(5) On an appeal under subsection (4), the High Court may reverse or vary the determination of the Society and may make such further orders as it

considers just in the circumstances.

(6) An appeal against a determination of the Society under this section shall be instituted within three months after the day on which notice of the determination is served under this section but the Court may, if satisfied that proper cause does exist, dispense with the requirement that the appeal be so instituted.

(7) In any proceedings under this section, evidence of an admission or confession is admissible to prove a fiduciary or professional default, notwithstanding that the person by whom the admission or confession was made is not a party to the proceedings.

(8) If in any proceedings under this section the Society is satisfied, on the balance of probabilities, that a fiduciary or professional default has been committed, it may determine the claim accordingly despite the fiduciary or professional default constituting a criminal offence and the evidence would not be sufficient to establish the guilt of a person charged with that offence.

Claims by
advocates and
incorporated legal
practices.

58. (1) An advocate who or incorporated legal practice which has paid compensation to any person for pecuniary loss suffered in consequence of a fiduciary or professional default by a partner, associate, clerk, officer or employee of the advocate or legal practice may make a claim under this Part in respect of the payment.

(2) Despite subsection (1), in case of a fiduciary or professional default by a partner or an advocate, the default consisted of embezzlement, misappropriation or misapplication of trust money or dishonest conduct.

(3) A claim of a kind referred to in subsection (1) is not a valid claim for the purposes of this Part unless the Society is satisfied that—

(a) all legal or equitable claims in respect of the fiduciary or professional default, other than the claim against the Fidelity Fund, have been fully satisfied; and

(b) the advocate or incorporated legal practice acted honestly and without negligence.

(4) The Council of the Society may make regulations to give effect to this Part.

Restitution and
subrogation.

59. (1) An advocate whose dishonest conduct results in compensation to a claimant shall make restitution to the Fund of a similar amount and interest at such rate as the Board may determine.

(2) An advocate who fails to make restitution under subsection (1) may be suspended or struck off the Roll.

(3) Upon compensation under this section, the claimant shall surrender to the Fund the claimant's rights against the advocate and against any third party or entity who may be liable for the claimant's loss.

(4) Upon commencement of an action by the Board as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such

action to recover the claimant's unreimbursed losses.

(5) In the event that the claimant commences an action to recover unreimbursed losses against the Advocate or another entity that may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action;

(6) A claimant shall cooperate with the Board and upon compensation, shall be required to repay to the Fund any excess money which is subsequently paid from any other source in relation to the same claim.

Insurance in respect of claims against Fidelity Fund.

60. (1) The Board shall, insure the Fund against losses.

(2) The premium on the insurance policy shall be paid out of the Fidelity Fund.

Annual report.

61. (1) The Society shall, within a period of three months after the end of the financial year, prepare and publicize to the members a report on the administration of the Fund for the preceding financial year.

(2) The report shall—

(a) state the amount of the payments from the Fidelity Fund during the financial year and the nature of the claims in respect of which payments were made; and

(b) contain the audited statement of accounts of the Fidelity Fund for the period to which the report relates.

PART VIII—REMUNERATION AND COSTS OF ADVOCATES

Disclosure by advocates

Requirement for disclosure.

62. (1) A law practice shall, as soon as practicable, disclose to a client—

(a) the basis on which legal costs shall be calculated, indicating whether a scale of costs applies to any of the legal costs; and

(b) the client's right to—

(i) negotiate a remuneration agreement with the law practice;

(ii) receive a bill from the law practice;

(iii) request an itemized bill after receipt of a lump sum bill;

(iv) progress reports of the matter and to be notified of any substantial change to the matters disclosed under this section;

(c) an estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total legal costs and an explanation of the major variables that may affect the calculation of the costs;

- (d) details of the intervals, if any, at which the client shall be billed;
- (e) the rate of interest, if any, that the law practice charges on overdue legal costs, whether that rate is a stated rate of interest or is a benchmark rate of interest as mentioned in subsection (2);
- (f) if the matter is contentious , an estimate of—
 - (i) the range of costs that may be recovered if the client is successful in the litigation; and
 - (ii) the range of costs the client may be ordered to pay if the client is unsuccessful;
- (g) details of the person whom the client may contact to discuss the legal costs; and
- (h) the following avenues that are open under this Act to the client in the event of a dispute in relation to legal costs—
 - (i) taxation of costs pursuant to the provisions of this Act or other law;
 - (ii) the setting aside of a remuneration agreement; and
- (i) any time limits that apply to the taking of any action mentioned in this subsection.

(2) For subsection (1) (f), the disclosure shall include—

- (a) a statement that an order by a court for the payment of costs in favour of the client shall not necessarily cover the whole of the client’s legal costs; and
- (b) if applicable, a statement that disbursements may be payable by the client even if the client enters a remuneration agreement.

Exceptions to requirement for disclosure.

63. (1) A disclosure under section 62 shall not be required—

- (a) if the total legal costs in the matter, excluding disbursements, are not likely to exceed twenty thousand shillings or, if a higher amount is prescribed by Regulations, the prescribed amount;
- (b) if—
 - (i) the client has received a disclosure under section 62 from the law practice in the previous twelve months;
 - (ii) the client has agreed in writing to waive the right to disclosure;
 - (iii) a principal of the law practice decides on reasonable grounds that, having regard to the nature of the previous

disclosures and the relevant circumstances, further disclosure is not warranted;

- (c) if the client is—
 - (i) a law practice or an advocate;
 - (ii) a limited company, a subsidiary of a limited company, a large proprietary company, a foreign company, a subsidiary of a foreign company each within the meaning of the Companies Act or a statutory body;
 - (iii) a financial services licensee within the meaning of the Banking Act;
 - (iv) a liquidator, administrator or receiver, as mentioned in the Companies Act or the Insolvency Act;
 - (v) a partnership that carries on the business of providing professional services if the partnership consists of more than twenty members or if it is a limited partnership;
 - (vi) an unincorporated group of participants in a joint venture, if one or more members of the group are persons to whom disclosure of costs is not required;
 - (vii) a government department or other public office;
- (d) if the legal costs or the basis on which they will be calculated have or has been agreed as a result of a tender process; or
- (e) if the client will not be required to pay the legal costs or they will not otherwise be recovered by the law practice or in any other circumstance as may be prescribed by Regulations.

(2) Despite subsection (1), if a law practice becomes aware that the total legal costs are likely to exceed twenty thousand shillings or such higher amount as may be prescribed from time to time, the law practice shall disclose the matters required to be disclosed under section 62.

(3) A law practice shall ensure that a written record of principal's decision that further disclosure is not warranted as mentioned in subsection (1)(b) is made and kept with the files relating to the matter concerned.

(4) Nothing in this section affects or limits the client's right as specified under section 62.

Form
disclosure.

of **64.** (1) A disclosure to a client under this part shall be—

- (a) in writing in the prescribed form;
- (b) in English, Kiswahili or such other language understandable to the client; and
- (c) expressed in clear plain language.

(2) If the law practice is aware that the client is unable to read, the law practice must arrange for the information required to be given to a client under this part to be conveyed orally to the client in addition to providing the written disclosure.

Effect of failure to disclose.

65. (1) If a law practice does not disclose to a client anything required by this Part to be disclosed, the client shall not be under any obligation to pay the legal costs until they have been taxed.

(2) A law practice that does not disclose to a client anything required by this Part to be disclosed may not maintain proceedings against the client for the recovery of legal costs unless the costs have been taxed.

(3) If a law practice does not disclose to a client anything required by this part to be disclosed and the client has entered into a remuneration agreement with the law practice, the client may apply for the remuneration agreement to be set aside.

(4) If a law practice does not disclose to a client anything required by this part to be disclosed, then, on taxation of the legal costs, the amount of the costs may be reduced by an amount considered by the taxing officer to be proportionate to the seriousness of the failure to disclose.

(5) Failure by a law practice to comply with this Part is capable of constituting unsatisfactory professional conduct or professional misconduct on the part of any advocate involved in the failure.

Progress reports.

66. (1) A law practice shall, upon reasonable request, furnish the client with—

(a) a written report of the progress of the matter in which the law practice is retained; and

(b) a written report of the legal costs incurred by the client as at the date of the report, or since the last bill, if any, in the matter.

(2) A law practice may charge a client a reasonable amount for the report prepared under subsection (1) (a) but shall not charge a client for the report under subsection (1) (b).

Remuneration of advocates

Chief Justice may make orders prescribing remuneration.

67. (1) The Council of the Society may make recommendation to the Chief Justice on all matters relating to the remuneration of advocates, and the Chief Justice, having considered the same, may by order, prescribe and regulate in such manner as the Chief Justice thinks fit, the remuneration of advocates in respect of all professional business, whether contentious or non-contentious.

(2) An order made under this section in respect of non-contentious business may, as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode or partly in another, and may regulate the

amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

- (a) the position of the party for whom the advocate is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, and the like;
- (b) the place where, and the circumstances in which, the business or any part thereof is transacted;
- (c) the amount of the capital money or rent to which the business relates;
- (d) the skill, labour and responsibility involved therein on the part of the advocate;
- (e) the number and importance of the documents prepared or perused, without regard to length.

(3) An order made under this section may authorize and regulate—

- (a) the taking by an advocate from the client of security for payment of any remuneration to be ascertained by taxation or otherwise, which may become due to the advocate under any such order; and
- (b) the allowance of interest.

(4) So long as an order made under this section in respect of non-contentious business is in operation, taxation of bills of costs of advocates in respect of non-contentious business shall, subject to section 59, be regulated by that order.

Agreements with
respect to
remuneration.

68. (1) Subject to section 60 and whether or not an order is in force under section 58, an advocate and the advocate's client may—

- (a) before, after or in the course of any contentious business, make an agreement fixing the amount of the advocate's remuneration in respect thereof;
- (b) before, after or in the course of any contentious business in a civil court, make an agreement fixing—
 - (i) the amount of the advocate's instruction fee in respect thereof;
 - (ii) the advocate's fees for appearing in court; or
 - (iii) both;

(c) before, after or in the course of any proceedings in a criminal court or a court martial, make an agreement fixing the amount of the advocate's fee for the conduct thereof;

and such agreement shall be valid and binding on the parties provided it is in writing and signed by the client or his agent duly authorized in that behalf.

(2) A client may, apply by chamber summons to the Court to have the agreement set aside or varied on the grounds that it is harsh and unconscionable, exorbitant or unreasonable, and every such application shall heard before a judge sitting with two assessors, who shall be advocates of not less than five years' standing appointed by the Registrar after consultation with the chairman of the Society for each application and on any such application the Court, whose decision shall be final, shall have power to order—

- (a) that the agreement be upheld;
- (b) that the agreement be varied by substituting for the amount of the remuneration fixed by the agreement such amount as the Court may deem just; or
- (c) that the agreement be set aside; or
- (d) that the costs in question be taxed by the Registrar;

and that the costs of the application be paid by such party as it thinks fit.

(3) An application under subsection (2) may be made within one year after the making of the agreement, or within three months after a demand in writing by the advocate for payment under the agreement by way of rendering a fee note or otherwise, whichever is the later.

(4) An agreement made by virtue of this section, if made in respect of contentious business, shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof.

(5) Despite subsection (4) any such agreement shall be produced on demand to a taxing officer and the client shall not be entitled to recover from any other person, under any order for the payment of any costs to which the agreement relates, more than the amount payable by the client to the advocate in respect thereof under the agreement.

(6) Where any agreement made by virtue of this section is made by the client as the guardian or committee of or trustee under deed or will for any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the advocate shall, before payment thereunder is accepted or demanded and in any event within six months after its due date, apply by chamber summons to the Court for approval of such agreement, and every such application shall be dealt with in accordance with subsection (2).

(7) If, after an advocate has performed only part of the business to which any agreement made by virtue of this section relates, such advocate dies or becomes incapable of acting, or the client changes advocates as, despite the agreement, the client shall be entitled to do, any party or the legal personal representatives of any party to such agreement may apply by chamber summons to the Court to have the agreement set aside or varied, and every

such application shall be dealt with in accordance with subsection (2).

(8) In the case of a client changing advocates, the Court shall have regard to the circumstances in which the change has taken place and, unless of opinion that there has been default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing advocates, shall allow the advocate the full amount of the remuneration agreed to be paid to the advocate.

(9) Subject to this section, the costs of an advocate in any case where an agreement has been made by virtue of this section shall not be subject to taxation.

Invalid
agreements.

69. Nothing in this Act shall give validity to—

- (a) any agreement relieving any advocate from responsibility for professional negligence or any other responsibility to which the advocate would otherwise be subject as an advocate; or
- (b) any agreement by which an advocate agrees to accept, in respect of professional business, any fee or other consideration which shall be less than the remuneration prescribed by any order under section 58 in respect of that business; or
- (c) more than ten per cent of the general damages recovered or in addition to the party and party costs as taxed or agreed;
- (d) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is, under the law relating to bankruptcy, invalid against a trustee or creditor in any bankruptcy or composition.

Power of court to
order advocate to
deliver his bill
and to deliver up
deed.

70. (1) The jurisdiction of the Court to make orders for the delivery by an advocate of a bill of costs, and for the delivery up of or otherwise in relation to, any deeds, documents or papers in the advocate's possession, custody or power, is hereby declared to extend to cases in which no business has been done by the advocate in the Court.

(2) In this section and in sections 62, 63 and 64 "advocate" includes the executors, administrators and assignees of the advocate in question.

Action for
recovery of costs.

71. (1) Subject to this Act no suit shall be brought for the recovery of any costs due to an advocate or the advocate's firm until the expiry of one month after a bill for such costs, which may be in summarized form, signed by the advocate or a partner in the advocate's firm, has been delivered or sent by registered post to the client, unless there is reasonable cause, to be verified by affidavit filed with the plaint, for believing that the party chargeable therewith is about to quit Kenya or abscond from the local limits of the Court's jurisdiction, in which event action may be commenced before expiry of the period of one month.

(2) Subject to subsection (1), a suit may be brought for the recovery of costs due to an advocate in any court of competent jurisdiction.

(3) Despite any other provisions of this Act, a bill of costs between an advocate and a client may be taxed notwithstanding that no suit for

recovery of costs has been filed.

Procedure in action where quantum of costs is challenged by defence.

72. Where, in the absence of an agreement for remuneration made by virtue of section 59, a suit has been brought by an advocate for the recovery of any costs and a defence is filed disputing the reasonableness or quantum thereof—

- (a) no judgment shall be entered for the plaintiff, except by consent, until the costs have been taxed and certified by the taxing officer;
- (b) unless the bill of costs on which the suit is based is fully itemized, the plaintiff shall file a fully itemized bill of costs within fourteen days from the date of service of the defence, or such further period as may be allowed by the court, and shall serve a copy thereof on the defendant, and, if the total amount of such bill exceeds the amount sued for, the prayer of the plaintiff shall, subject to the court's pecuniary jurisdiction, be deemed to be increased accordingly and all consequential amendments to the pleadings may be made;
- (c) no court or filing fee shall be payable on filing a bill of costs required by this section, but, if thereby the amount for which judgment is prayed in the plaint is deemed to be increased under paragraph (b), the plaintiff shall pay to the court such court or filing fee as may be appropriate to the increase; and
- (d) at any time after the bill of costs has been filed, and before the suit has been set down for hearing, any party to the action may convene a Case Conference as to whether such bill should be taxed by the taxing officer before the suit is heard.

Taxation on application of third parties, beneficiaries under trust, etc.

73. (1) Where a person other than the person who is the party chargeable with a bill of costs is liable to pay the bill either to the advocate or to the party chargeable with the bill, or where a person is interested in any property in the hands or under the control of a trustee, executor or administrator, out of which property the trustee, executor or administrator has paid or is liable to pay the bill, that person or the person's administrators, executors or assignees may apply to the Court for an order for the taxation of the bill as if the person were the party chargeable therewith, and the Court, having regard to the extent and nature of the interest of the person, may make any order thereon which it would have been competent to make if the application had been made by that party.

(2) Despite subsection (1) no order for taxation of a bill shall be made under this section in any case where—

- (a) the bill has previously been taxed; or
- (b) the application is made more than six months after the date on which the bill was rendered to the party chargeable therewith or three months after the date on which the bill was paid, or the date when the party making the application became entitled to do so, whichever is the earliest.

(3) If an applicant under subsection (1) pays or has paid any money to the advocate in respect of a bill of costs payable out of property in the hands or under the control, of a trustee, executor or administrator the applicant shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate had.

(4) The Court may, if it orders taxation of the bill under this section, order the advocate to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

General provisions as to taxation.

74. (1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

Charging orders.

75. (1) Any court in which an advocate has been employed to prosecute or defend any suit or matter may, at any time, declare the advocate entitled to a charge on the property recovered or preserved through the advocate's instrumentality for the advocate's taxed costs in reference to that suit or matter, and may make orders for the taxation of the costs and for raising money to pay or for paying the costs out of the property so charged as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate.

(2) Despite subsection (1), no order shall be made if the right to recover the costs is barred by limitation.

PART IX—CONDUCT OF ADVOCATES

Discipline

Code of conduct.

76. The Council of the Society shall formulate a code of conduct setting out rules, standards relating to ethics, conduct and practice for advocates and provide for its enforcement through the structures set out in this Act

Unsatisfactory professional conduct and professional misconduct.

77. (1) In this Part, unsatisfactory professional conduct includes conduct of an advocate occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent advocate.

(2) Professional misconduct includes—

- (a) unsatisfactory professional conduct, where the conduct involves a substantial or consistent failure to reach or maintain a reasonable standard of competence and diligence; and
- (b) conduct of an advocate whether occurring in connection with the practice of law or occurring otherwise than in connection with the practice of law that would, if established, justify a finding that the advocate is not a fit and proper person to practise the profession of law.

Conduct capable of constituting professional misconduct.

78. The following conduct is capable of constituting professional misconduct—

- (a) fiduciary or professional default;
- (b) failure, without reasonable cause, to deposit any trust monies with the bank within three days after receipt;
- (c) charging fees lower than those fixed under this or any other Act;
- (d) assisting or allowing an unqualified person to do work or charge fees for work which only an advocate is qualified to do;
- (e) opening, operating or maintaining an office which is not in the normal course of business under the advocate's direct and personal supervision;
- (f) keeping accounts as an advocate jointly with other accounts not belonging to the law practice;
- (g) practising under different firm names for different offices;
- (h) failing to keep and maintain proper books of accounts to the satisfaction of the Council of Society;
- (i) neglecting or refusing to reply to correspondence in connection with matters entrusted to the advocate;
- (j) Neglecting or refusing to reply to correspondence from a disciplinary body in the course of discharging its mandate; and
- (k) violating the marketing and advertisement regulations.

(2) An advocate guilty of professional misconduct shall, in addition to any other penalty prescribed under this Act, be liable to a fine, suspension or to be struck off the Roll.

Conduct capable of constituting unsatisfactory professional conduct.

79. (1) The following conduct is capable of constituting unsatisfactory professional conduct—

- (a) contravening of the Code of conduct;
- (b) disgraceful or dishonourable conduct incompatible with the status of an advocate;
- (c) charging of excessive legal costs in connection with the practice of law;
- (d) conduct in respect of which there is a conviction for—
 - (i) a serious offence; or
 - (ii) a tax offence; or
 - (iii) an offence involving dishonesty;
- (e) becoming insolvent;
- (f) becoming disqualified from managing or being a director of any company under the Companies Act;
- (g) failing to comply with an order of the Tribunal made under this Act, including failure to pay wholly or partly a fine imposed under this Act;
- (h) failing to disclose to a client anything required to be disclosed under this Act; and
- (i) failing to comply with a compensation order made under this Act or a corresponding law.

(2) An advocate guilty of conduct capable of constituting unsatisfactory professional conduct shall, in addition to any other penalty prescribed under this Act, be liable to admonishment, fine or suspension from the Roll.

The Advocates Complaints Commission

Establishment of Complaints Commission.

80. (1) There is established the Advocates Complaints Commission which shall be a body corporate with perpetual succession and a common seal.

(2) The Commission shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property;
- (c) entering into contracts;

- (d) borrowing and lending money; and
- (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act and which may lawfully be done or performed by a body corporate.

Composition of
the Commission.

81. (1) The Commission shall consist of—

- (a) a chairperson being a person qualified to be appointed as a Judge of superior court under Article 166 of the Constitution, who shall be competitively recruited by the Attorney-General;
- (b) an advocate of the High Court with not less than ten years of experience, who shall be competitively appointed by the Attorney-General;
- (c) two advocates, being one woman and one man of not less than ten years standing, representing different branches of the Society and elected by the Society; and
- (d) one other person with a degree from recognized university, not being an advocate, who shall be competitively appointed by the Attorney-General.

(2) The Commission shall be deemed to be duly constituted despite any vacancy in the office of the chairperson or other member.

(3) The Chairperson may serve on full-time basis.

Functions of the
Commission.

82. (1) The Commission shall—

- (a) receive and investigate complaints against advocates;
- (b) where the evidence discloses a prima facie case against an advocate, prosecute such advocate before the Tribunal;
- (c) promote alternative forms of dispute resolution between advocates and complainants; and
- (d) perform such other function as may be assigned to it under this Act or any other law.

(2) In all cases which do not appear to the Commission to be of serious or aggravated nature, the Commission shall promote alternative forms of dispute resolution including—

- (a) reconciliation and amicable settlement;
- (b) negotiations;
- (c) mediation; or
- (d) arbitration.

(3) In determining the suitability of a matter for alternative dispute resolution, regard shall be had to—

- (a) the nature of the complaint;
- (b) the record of the advocate;
- (c) the status of the advocate; and
- (d) whether the complaint deals with issues pending before a court of competent jurisdiction.

(4) At the conclusion of an alternative dispute resolution session, the parties may sign an agreement which may be enforced as a decree of the court and where parties fail to reach an agreement, the Commission may deal with the complaint in the exercise of its mandate.

(5) If the Commission considers that the complainant has suffered loss or damage by reason of the advocate's conduct, the Commission may, by order, award such complainant compensation or reimbursement not exceeding one hundred thousand shillings.

(6) An order made under subsection (5) shall be registered with the Tribunal and shall thereupon be enforceable in the same manner as an order of the Tribunal.

(7) Where the matter before the Commission relates to surrender of funds or property by an advocate to a client, the Commission may order the surrender of all refunds or property which the advocate does not dispute, except where the complainant has filed a civil suit against the advocate in respect of the same funds or property.

(8) An advocate against whom an order is made under this section may apply to the Tribunal for a review of the Order.

Powers of the
Commission.

83. (1) The Commission may require any person, whom it considers necessary for the purpose of carrying out its duties under this section, to assist it in so doing.

(2) Any person who, without lawful excuse, fails or refuses to assist the Commission when required to do so under subsection (1) commits an offence.

(3) Any party aggrieved by a decision or order of the Commission under this section may appeal to the High Court and the determination of any such appeal shall be final.

(4) In the performance of its functions and exercise of its powers, the Commission shall be independent and not subject to the control or direction of any person or authority.

(5) The Commission shall publish a quarterly report as to the complaints dealt with by it in that quarter and the report shall be made in such manner and be in such form as shall be prescribed in the Regulations.

Investigations by
the Commission.

84. (1) The Commission may, in the course of inquiring into a complaint against an advocate, order such advocate to produce to the Commission a detailed fee note, within fourteen days, for purposes of taxation of the bill

of costs.

(2) Where the advocate fails to produce such fee note within fourteen days from the date of such order, the Commission may assess the advocate's fee in such sum as it deems fit.

(3) The Commission may investigate the accounts of an advocate against whom a complaint has been made and for that purpose may order such advocate to produce all relevant books and documents to the Commission or to an accountant engaged before the Commission in that behalf.

(4) The Commission may issue a warrant for the levy of the amount of any sum ordered to be paid by virtue of this section on the immovable and movable property of the person or firm by whom the compensation is ordered to be paid by distress and sale under warrant, and such warrant shall be enforced as if it was a warrant issued by the Court.

(5) A person aggrieved by the decision of the Commission may, within thirty days, appeal to the Tribunal.

Remuneration.

85. (1) There shall be paid to the chairperson, commissioners and staff of the Commission such remuneration by way of salary, allowance, pension or gratuity as the Attorney-General may, on the advice of the Salaries Remuneration Commission, determine.

(2) The remuneration referred to in subsection (1) shall be paid out of monies provided by Parliament.

Secretary and staff of Commission and rules relating thereto.

86. (1) There shall be a Secretary to the Commission who shall be competitively appointed by the Commission.

(2) The Secretary shall—

(a) be responsible to the Commission for the day-to-day management of the affairs of the secretariat;

(b) be the accounting officer;

(c) head of the secretariat; and

(d) be the custodian of all records of the Commission.

(3) The Commission may appoint such staff as are necessary for the proper and efficient exercise of the duties and functions of the Commission.

(4) The Attorney-General may make rules regulating the structure and operation of the Commission and for the carrying into effect its functions under this Part.

The Advocates Disciplinary Tribunal

Establishment of Tribunal.

87. (1) There is established a tribunal to be known as the Advocates Disciplinary Tribunal which shall consist of—

(a) a chairperson qualified to be appointed as a judge of a superior

court appointed by the Chief Justice; and

(b) four advocates, other than the President, Vice-President or Secretary of the Society, of not less than ten years standing, two of whom shall be advocates who do not ordinarily practice in Nairobi, all of whom shall be elected by the Society.

(2) The Tribunal may, if it deems it necessary, request the President or Vice-President of the Society or any other member of the Council of the Society to sit as additional members of the Tribunal.

(3) The Secretary of the Tribunal shall—

(a) be recruited by the Judicial Service Commission through a competitive process;

(b) serve for a renewable term of three years.

(4) The Council of the Society shall prescribe rules for election of members under subsection (1) (b) including staggering the terms for purposes of ensuring that the terms of all members do not lapse at the same time.

(5) The members of the Tribunal shall—

(a) hold office for three years and be eligible for re-appointment or re-election;

(b) be paid such remuneration, fees or allowances for expenses as the Judicial Service Commission may authorise out of monies provided by Parliament for that purpose.

Jurisdiction of the
Tribunal.

88. (1) The Tribunal shall have jurisdiction to hear and determine—

(a) appeals from the Commission;

(b) matters referred to it by the Commission; and

(c) applications or complaints made to it under this Act, by or on behalf of any person.

(2) Upon hearing the complaint and the advocate to whom the complaint relates, if the advocate wishes to be heard, and upon considering the evidence adduced, the Tribunal may—

(a) order that the complaint be dismissed; or

(b) determine that a case of—

(i) unsatisfactory professional conduct; or

(ii) professional misconduct,

on the part of the advocate has been made out.

(3) Where the Tribunal determines that the advocate is guilty under subsection 2 (b), it may order—

- (a) that such advocate be admonished;
- (b) that such advocate be suspended from practice for a specified period not exceeding five years;
- (c) that the name of such advocate be struck off the Roll;
- (d) that such advocate pays a fine not exceeding five million shillings;
- (e) that such advocate pays to the aggrieved person compensation or reimbursement not exceeding ten million shillings; or
- (f) such other administrative action or combination of the above orders as the Tribunal may determine.

Hearing of
complaints.

89. (1) Where, on the hearing of any application or complaint with respect to an advocate or firm of advocates, it appears to the Tribunal that the professional services provided by such advocate or firm in connection with any matter in which such advocate or firm of advocates had been instructed by a client were, in any respect, not of the quality that could reasonably have been expected of an advocate, subject to subsection (4), the Tribunal may, if it thinks fit, do one or more of the following things, namely—

- (a) determine that the costs to which the advocate or firm of advocates shall be entitled, in respect of those services shall be limited to such amount as may be specified in its determination and by order, direct the advocate to comply, or to secure compliance, with such one or more requirements falling within subsection (3) as appear it to be necessary in order to give effect to its determination; or
- (b) by order direct the advocate or firm of advocates to the rectification at their own expense of any error, omission or other deficiency arising in connection with the matter as it may specify; or
- (c) by order direct the advocate or firm of advocates to take at their own expense, such other action in the interests of the client as it may specify.

(3) The requirements referred to in subsection (2) (a) are—

- (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in relation to the advocate's costs in respect of services rendered in connection with the matter;
- (b) a requirement to remit the whole or part of the costs; and
- (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.

(4) The Tribunal shall not exercise any of its powers under this section unless it is satisfied that it would in all circumstances, be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of

those powers, the Tribunal may have regard—

- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings; or
- (b) where proceedings seeking any such remedy have not been commenced by the client, whether it would be reasonable to expect the client to commence such proceedings.

(5) Where the Tribunal has given a direction under subsection (2) (a) in order to give effect to a determination by it under that provision—

- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified by the Tribunal; and
- (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the client shall, for the purposes of the recovery of those costs, by whatever means, and despite any statutory provision or agreement, be deemed to be liable to pay costs only to the extent of the amount specified by the Tribunal.

(6) Where a bill covering those costs has been taxed in accordance with subsection (5) (a), the Tribunal's direction under subsection (2) (a) shall, so far as relating to those costs, cease to have effect.

(7) For the purposes of this section, "client", in relation to any matter in which an advocate or firm of advocates has been instructed, includes any person on whose behalf the person who gave the instructions was acting.

Reports by
Tribunal and
action thereon.

90. (1) On the termination of the hearing of a complaint, if not earlier dismissed by the Tribunal, the Tribunal shall embody its findings and the orders made by it in the form of a report, which shall be delivered to the Registrar, together with the record of evidence taken and any documents put in evidence.

(2) At the conclusion of the hearing of a complaint, the Tribunal may, if evidence of an offence appears to have been disclosed under section 80, make a report of the proceedings and its findings.

Appeal against
order of Tribunal.

91. (1) Any advocate aggrieved by an order of the Tribunal made under section 88, may within fourteen days after the communication by the Tribunal, appeal against such order to the Court by giving notice of appeal to the Registrar, and shall file with the Registrar a memorandum setting out the grounds of appeal within thirty days after giving notice of appeal.

(2) The Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Council of the Society and to the advocate not less than twenty-one days' notice of the date of hearing.

(3) An appeal under this section shall not suspend the effect or stay the execution of the order appealed against notwithstanding that the order is not a final order.

Registrar to furnish copy of report and record.

92. When notifying the Council of the Society and the advocate to whom a complaint relates of the date fixed for the hearing of the appeal, the Registrar shall also forward to the Council and the advocate a copy of the report of the evidence, a list of any documents put in evidence and the memorandum of appeal.

Powers of Court.

93. (1) The Court may if it thinks fit, after considering the evidence taken by the Tribunal, the report of the Tribunal and the memorandum of appeal, and having heard the parties, and taking any further evidence may—

(a) refer the report back to the Tribunal with directions for its findings on any specified point; or

(b) confirm, set aside or vary any order made by the Tribunal or substitute therefor such other order as it may think fit;

(2) The Court may make such order as to the payment by any person of costs, or otherwise in relation to the appeal, as it may determine.

Registrar to draw up orders.

94. Where an order has been made by the Court under section 88, the Registrar shall, within one week from the date of the order, cause the order to be drawn up.

Right of appeal to Court of Appeal.

95. (1) Any advocate aggrieved by a decision or order of the Court made under section 88 may appeal to the Court of Appeal in the manner and within the time prescribed by the rules of the Court relating to second appeals in civil matters.

(2) An appeal under this section shall not suspend the effect or stay the execution of the decision or order appealed against notwithstanding that the order concerned is not a final order.

Orders to be noted on the Roll.

96. (1) The Registrar shall cause a note of the effect of a final order to be entered in the Roll against the name of the advocate concerned, and where the order so directs shall remove or strike off the advocate's name from the Roll.

(2) The Registrar shall send to the Secretary of the Society a certified copy of every final order made under this Part removing or striking off the name of an advocate from the Roll or suspending an advocate from practice.

(3) Where an advocate is a member of a professional body outside Kenya, or is subject to the jurisdiction for the purposes of discipline of a professional body outside Kenya, the Registrar shall send to the professional body a certified copy of every final order made under this Part suspending or striking off the name of the advocate from the Roll.

Law Society to be informed of result of disciplinary proceedings and publicity of striking-off or suspension.

97. (1) The Registrar shall inform the Secretary to the Society of the making of an entry in respect of any advocate on the Roll and of the removal from, or the striking off, the Roll of the name of any advocate in accordance with the provisions of this Part.

(2) The Registrar shall cause to be published in the *Gazette* a notice that a final order has been made in respect of any advocate whereby the advocate

has been suspended from practice or whereby the advocate's name has been struck off the Roll and the Society may publish a similar notice in at least one daily newspaper of national circulation.

Limitation of time for certain applications to strike names off the Roll.

98. (1) Unless as provided under this Act, no advocate shall be liable to have their name struck off the Roll on account of any defect in his admission and enrolment, unless the application to strike the advocate's name off the Roll is made within twelve months after the date of enrolment.

(2) Subsection (1) shall not apply to any case where fraud is proved to have been committed in connection with the advocate's admission or enrolment.

Restoration to Roll.

99. The Chief Justice shall, upon the recommendation of the Tribunal and with the written approval of the President of the Society order the Registrar to restore on the Roll the name of any advocate whose name has been removed or struck off the Roll, and the Registrar shall, upon payment by the advocate of the prescribed fee, restore such name accordingly.

Disciplinary powers as to clerks.

100. (1) An application may be made by or on behalf of the Council of the Society to the Tribunal for an order directing that, as from a date to be specified in such order, no advocate shall, in connection with their practise as an advocate, without the written permission of the Council, which may be given for such period and subject to such conditions as such Council may think fit, take into or retain in their employment or remunerate any person, who, being or having been a clerk to an advocate—

(a) has been convicted of any offence under this Act, sections 280, 281, 282, 285, 293, 294, 308, 311, 314, or 393 of the Penal Code, or the provisions of any law relating to prevention of corruption; or

(b) has been convicted of any offence involving fraud or deceit; or

(c) has been party to any act or default of an advocate in respect of which a complaint has been or might be made against such advocate to the Tribunal; or

(d) has so conducted themselves whilst employed as a clerk to an advocate that, had they themselves been an advocate, such conduct might have formed the subject of a complaint against them to the Tribunal.

(2) The provisions of section 78 shall apply, with necessary modifications, to the hearing of an application under this section.

(3) Every order made by the Tribunal under this section shall be filed in a file to be kept for that purpose, by the Secretary to the Tribunal who shall cause a certified copy of such order to be delivered to the person to whom it relates or shall forward the same by registered post to the person's last known address.

(4) The file mentioned in subsection (3) may be inspected by any advocate during office hours without payment.

Clerk's right of

101. (1) Any person against whom an order has been made by the Tribunal

appeal.

under section 78 may, within fourteen days of the date of such order, appeal against such order to the Court, by giving notice of appeal to the Registrar and shall file with the Registrar a memorandum setting out the grounds of appeal within thirty days of giving such notice of appeal.

(2) The Court shall set down for hearing any appeal filed under subsection (1) and shall give to the Council of the Society and to the appellant not less than twenty-one days' notice of the hearing.

(3) The provisions of sections 89 shall apply with necessary modifications to the hearing of an appeal under this section.

(4) The decision of the Court shall be final.

Advocates to be officers of Court.

102. (1) Subject to subsection (2), every advocate and every person otherwise entitled to act as an advocate shall be an officer of the Court and subject to the jurisdiction and subject to the jurisdiction of the Court.

(2) Despite subsection (1), the persons mentioned in section 13, other than those included in paragraph (c) of that section, shall not be subject to the jurisdiction of the Court.

Saving of disciplinary powers of Court.

103. Nothing in this Act shall supersede, lessen or interfere with the powers vested in the Chief Justice or any judge of the Court to deal with misconduct or offences by an advocate, or any person entitled to act as such, committed during, or in the course of, or relating to, proceedings before the Chief Justice or any judge.

Offences and penalties with respect to employment of clerks against whom an order is in force.

104. (1) Any person against whom an order made under section 95 is in force who seeks or accepts employment by, or remuneration from, an advocate in connection with the advocate's practice as an advocate without previously informing him of the order shall be guilty of an offence.

(2) Any advocate who knowingly acts in contravention of an order made under section 95 or in contravention of any condition subject to which the permission of the Council of the Society may have been given under subsection (1) of that section shall be commits an offence.

Right to legal representation.

105. Any advocate against whom a complaint is made or any complainant under this Act may be represented by an advocate.

Betrayal of trust.

106. (1) Any person who, being an advocate, is entrusted in their professional capacity with any money, valuable security or other property to retain it in safe custody with instructions to pay or apply it for any purpose in connection with their duty as an advocate fails to pay, apply or account for the money, valuable security or property after due completion of the purpose for which it was given, commits an offence:

Despite subsection (1), no prosecution for an offence under this section shall be instituted unless a report has been made to the Director of Public Prosecutions.

PART X—TRUST MONEY OR PROPERTY

Obligations of an

107. (1) Every advocate, other than a person listed in section 13(1) of this

advocate relating to handling of trust monies.

Act, and who practices or is deemed to practise—

(a) for their own account either alone or in partnership; or

(b) as a principal of a practice which is a juristic entity,

must be in possession of a Fidelity Fund certificate.

(2) No advocate referred to in subsection (1) or person employed or supervised by that advocate may receive or hold funds or property belonging to any person unless the advocate concerned is in possession of a Fidelity Fund certificate.

(3) The provisions of subsections (1) and (2) shall apply to a deposit taken on account of fees or disbursements in respect of legal services to be rendered.

(4) A Fidelity Fund certificate shall indicate that the advocate concerned is obliged to practise subject to the provisions of this Act, and the fact that such an advocate holds such a certificate must be endorsed against their enrolment by the Council of the Society.

(5) An advocate referred to in subsection (1) who—

(a) transfers from one practice to another; or

(b) ceases to practise,

must give notice of this fact to the Council and comply with the Council's relevant requirements in relation to the closure of that advocate's practitioner's trust account and in the case of paragraph (b) return their certificate to the Council.

(6) The Council may withdraw a Fidelity Fund certificate and, where necessary, obtain an interdict against the advocate concerned if the advocate fails to comply with the provisions of this Act or in any way acts unlawfully or unethically.

(7) The provisions of this section shall not apply to an advocate who practices in the full time employ of a legal aid organization on a permanent basis.

(8) An advocate, other than an advocate referred to in section 34(2)(b), may not receive or hold money or property belonging to any person in the course of that advocate's practice or in respect of any instruction issued to the advocate by a member of the public.

(9) No advocate in the full-time employ of the State as a state counsel or in any other professional capacity may receive or keep money or property belonging to any person, except during the course of employment of such advocate with the State.

Application and issuance of Fidelity Fund Certificates.

108. (1) An advocate who is obliged to be in possession of a Fidelity Fund certificate shall apply to the Council for such a certificate in the prescribed form.

(2) Every advocate referred to in paragraph (a) who, for the first time, practices as such, must, within the period and after payment of the fee determined by the Council in the rules, complete a legal practice management course approved by the Council determined in the rules.

(3) An application under subsection (1)(a) shall be accompanied by the contribution payable by applicants as determined in the rules.

(4) The Council shall, in consultation with the Board of Trustees, determine the amount of the contribution for the ensuing year, if any, and in the event of a contribution being charged, give notice thereof by publication in the *Gazette*.

(5) In determining the amount of the contribution, the Council and the Board shall take into account—

- (a) the value of the Fund;
- (b) the extent of the expenses and liabilities which the Fund is likely to incur in the ensuing years; and
- (c) the actuarial valuation report.

(6) The Council may, in consultation with the Board, and taking into account the performance of community service which promotes access to justice—

- (a) exempt a category of advocates referred to in subsection (1) from
- (b) paying the whole or part of the contribution; or
- (c) exempt a particular advocate referred to in subsection (1) from paying
- (d) the whole or part of the contribution after consideration of a written
- (e) application from that advocate, if the Council is satisfied that there is
- (f) good reason to do so.

(6) Upon receipt of an application under subsection (1) the Council shall, if it is satisfied that the applicant has—

- (a) complied with the provisions of this Chapter;
- (b) paid the required contribution to the Fund;
- (c) discharged all liabilities in respect of enrolment fees; and
- (d) completed the application form as determined in the rules in every respect, immediately issue to the applicant a Fidelity Fund certificate as determined in the Regulations.

(7) A Fidelity Fund certificate is valid until 31 December of the year in

respect of which it was issued.

(8) A document purporting to be a Fidelity Fund certificate which has been issued contrary to the provisions of this Act is null and void and shall be returned to the Council on demand.

Client money and property to be held in trust.

109. (1) Every advocate shall hold in trust money or property received in trust for a client or another person.

(2) Money held in trust pursuant to subsection (1) shall be deposited in an interest-bearing account at a financial institution and at an interest rate approved by the Council.

(3) A financial institution holding trust funds pursuant to subsection (2) shall remit the interest earned on those funds, less any charges or fees for the operation of the account, to the Fidelity Fund Trust semi-annually in April and October of each year.

(4) An advocate shall not be liable, by virtue of the relationship between the advocate and a client or the advocate and a beneficiary of the trust, to account for interest earned on money deposited in a financial institution pursuant to subsection (2).

(5) Every advocate who receives money from a person, which the advocate holds in trust, and who has reasonable grounds to believe that the money will not be required for more than thirty days, has a duty to advise that person that the money may be deposited in a separate interest-bearing trust account in a financial institution and the interest credited to that person.

(6) Nothing in subsection (2)—

- (a) applies to money deposited in a separate account for a person with interest that shall be and remain the property of the person; or
- (b) affects any arrangement in writing, whenever made, between an advocate and a person as to the application of the person's money or interest thereon.

Regulations on trust money.

110. The Council may make Regulations—

- (a) requiring an advocate to maintain certain books and records of accounts;
- (b) requiring an advocate to establish and maintain client or trust accounts;
- (c) regulating the investment of funds held in trust by an advocate;
- (d) prescribing the types of financial institutions in which an advocate may deposit money held in trust;
- (e) requiring advocates to keep books and records of accounts with respect to money and other property entrusted to or received by them for the benefit of clients or other persons in the course of practising law, and to produce those books and records of accounts on demand, to the Secretary or other qualified person designated by

- the Council;
- (f) requiring advocates to have their books, records of accounts and related files independently reviewed by a registered accountant or a qualified person designated by the Council;
 - (g) providing for the audit, review or examination of books, records of accounts and related files of an advocate by a person designated by the Council;
 - (h) requiring an advocate to provide the Secretary or any other person designated by the Council with a report on the review conducted under clause (f);
 - (i) requiring an advocate to answer questions about the books, records of accounts and related files that were reviewed; and
 - (j) prescribing anything that is to be prescribed pursuant to this Act.

PART XI—MISCELLANEOUS PROVISIONS

Power to make rules.

111. (1) The Council of the Society, with the approval of the Chief Justice, may make rules with regard to—

- (a) the professional practice, conduct and discipline of advocates;
- (b) the annual submission to the Council of a certificate by an accountant registered under the Accountants Act or by some other qualified person or class of qualified persons specified by such Council that they have examined the books, accounts and documents of the advocate to such extent as may be prescribed and stating—
 - (i) whether or not the accountant is satisfied that, during the period covered by the accountant's certificate, the advocate has complied with the rules for the time being in force regulating the keeping of accounts by advocates; and
 - (ii) if the person is not so satisfied, the matters in respect of which they are not satisfied;
- (c) the retention or otherwise by advocates of interest earned on monies deposited, received or held for or on account of clients;
- (d) the issue of practising certificates, the fee payable thereon and the duties of the Registrar with respect to the issuing of such certificates;
- (e) the procedure for the conferment of, and the privileges attached to, the rank of Senior Counsel;
- (f) indemnity for clients against loss or damage arising from claims in respect of any civil liability incurred by an advocate or the advocate's employee, or from breach of

trust by the advocate or the advocate's employee;

- (g) continuing professional education for all advocates practising in Kenya;
- (h) generally for the better carrying out of the provisions of this Act.

(2) If an advocate fails to comply with any rules made under this section, any person may make a complaint in respect of that failure to the Commission.

(3) No rule made under this section shall require an advocate who is a member of Parliament or the Speaker and who holds a practising certificate to undergo continuing legal education during their tenure as such member or as the Speaker.

Relief to banks.

112. (1) Subject to this section, no bank shall, in connection with any transaction on any account of any advocate kept with it or with any other bank, other than an account kept by an advocate as trustee for a specified beneficiary, incur any liability or be under any obligation to make an inquiry, or be deemed to have any knowledge of any right of any person to any money paid or credited to any such account which it would not incur or be under or be deemed to have in the case of an account kept by a person entitled absolutely to all the money paid or credited to it.

(2) Despite subsection (1), nothing in this subsection shall relieve a bank of any liability or obligation to which it would be subject apart from the requirements under this Act.

(3) Despite anything in subsection (1), a bank at which an advocate keeps an account for client's money shall not, in respect of any liability of the advocate to the bank, not being a liability in connection with that account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against monies standing to the credit of that account.

Savings of other laws.

113. Nothing in this Act or any rules made hereunder shall affect the provisions of any other written law empowering any unqualified person to conduct, defend or otherwise act in relation to any legal proceedings.

Application of certain fees, etc.

114. All admission fees received by the Registrar under section 11(2) or 15 (4), and all fees received by the Registrar in respect of replacing an advocate's name on the Roll under section 71, shall be paid by the Registrar to the Society, and those fees together with the fees for practising certificate and the Society's annual subscriptions, both of which shall be collected by the Society, shall be applied by the Society to all or any of the objects of the Society.

General penalty.

115. (1) Any person who is guilty of an offence under this Act for which no penalty is otherwise provided shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(2) Any advocate who is commits an offence under this Act shall be liable,

whether or not the advocate has been charged with, convicted or acquitted of such offence, to proceedings under section 88.

Repeal of Cap.
16.

116. (1) The Advocates Act is repealed.

(2) Despite subsection (1) the subsidiary legislation issued under the repealed Act shall, to the extent not inconsistent with this Act, continue to be in force.

Savings and
transitional
provisions.

117. Without prejudice to the generality of the application of subsection of section 23 of the Interpretation and General Provisions Act, the transitional provisions set out in the Schedule to this Act shall have effect on the repeal of the Advocates Act.

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SCHEDULE (Section 117)**SAVING AND TRANSITIONAL PROVISIONS**

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| Roll of advocates
Cap. 16. | 1. The Roll of all advocates kept by the Registrar in accordance with the provisions of section 20 of the Advocates Act (hereinafter referred to as “the repealed Act”) shall continue to be the Roll of Advocates for the purposes of this Act. |
| Practising certificates. | 2. Any practising certificate issued by the Registrar in accordance with the provisions of the repealed Act and in force at the commencement of this Act shall be deemed to have been issued in accordance with the provisions of this Act. |
| Complaints
Commission’s matters. | 3. Any complaint or matter pending before the Complaints Commission at the commencement of this Act shall continue before the Advocates Complaints Commission established under this Act |
| Advocates
Disciplinary Tribunal. | 4. Any proceeding relating to matters to which this Act applies, and which was pending before the Disciplinary Tribunal shall upon the commencement of this Act be deemed to be proceedings before the Advocates Disciplinary Tribunal established under this Act. |
| Pupilage. | 5. Despite the repeal of the Advocates Act, a person who, immediately before the commencement of this Act, was undergoing instruction as a pupil in accordance with section 9, shall continue to receive instruction as a pupil for the prescribed period until the date of expiry and shall be deemed to have duly complied with section 9(1)(b)(i) of this Act. |