

OFFICE OF THE PRESIDENT

No. 1634.

5 December 1997

NO. 78 OF 1997: QUALIFICATION OF LEGAL PRACTITIONERS AMENDMENT ACT, 1997.

It is hereby notified that the President has assented to the following Act which is hereby published for general information: -

No. 78 of 1997: Qualification of Legal Practitioners Amendment Act, 1997.

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Admission of Advocates Act, 1964, the Attorneys Act, 1979, and the Recognition of Foreign Legal Qualifications and Practice Act, 1993, so as to provide for the requirement of a universal legal qualification in order to be admitted and enrolled to practice as an advocate or an attorney; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)

(Assented to 26 November 1997.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 3 of Act 74 of 1964, as amended by section 1 of Act 73 of 1965, section 16 of Act 29 of 1974, section 1 of Act 39 of 1977, section 1 of Act 60 of 1984, section 1 of Act 17 of 1987, section 2 of Act 106 of 1991, section 2 of Act 55 of 1994 and section 1 of Act 33 of 1995

1. Section 3 of the Admission of Advocates Act, 1964 (Act No.74 of 1964), is hereby amended by the substitution for item (aa) of subparagraph (i) of paragraph (a) of subsection (2) of the following item:

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

Amendment of section 2 of Act 53 of 1979, as amended by section 1 of Act 108 of 1984 and section 2 of Act 115 of 1993

2. Section 2 of the Attorneys Act, 1979 (Act No. 53 of 1979) (hereinafter

referred to as the principal Act), is hereby amended-

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

"(a) two years after he *or she* has satisfied all the requirements for the degree of baccalaureus **procuratoris legum** of any university in the Republic after pursuing for that degree a course of study of not less than four years **which is recognized by the Board for the Recognition of Examinations in Law established by section 16 of the Universities Act, 1955 (Act No. 61 of 1955);**";

- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

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

- (c) by the re-numbering of paragraph (aA) of subsection (1) to (aB);

- (d) by the deletion of paragraph (b) of subsection (1);

- (e) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) three years after he *or she* has satisfied all the requirements for any degree, other than an honorary degree, of any university in the Republic **or has passed an examination conducted by such a university and certified by the Board referred to in paragraph (a) to be equivalent or superior to the examination for such a degree,** but has not satisfied the requirements of paragraph (a), (aA) or **(b) (aB);**";

- (f) by the substitution for paragraph (cA) of subsection (1) of the following paragraph:

"(cA) three years after he *or she* has satisfied all the requirements for any degree other than an honorary degree, or for other such degrees, of a university in a country designated under paragraph **(aA) (aB)**, and in respect of which degree or degrees a university in the Republic has certified that the syllabus of instruction and the standard of training thereof are equivalent or superior to those required for a corresponding degree of such university in the Republic, **or after he has passed an examination or examinations conducted by a university in a country so designated and certified by the Board referred to in paragraph (a) to be equivalent or superior to the examination for a degree referred to**

**in paragraph (c)** but has not satisfied the requirements of paragraph (a), (aA), **(b) (aB)** or (c);"; and

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

"Any person intending to be admitted as an attorney and who has not served articles of clerkship in terms of subsection (1), and has satisfied all the requirements for a degree referred to in paragraph (a) or **(aA) (aB)** of subsection (1) **or has become entitled to be admitted as an advocate of the Supreme Court, or the degrees referred to in paragraph (aA) of that subsection**, shall serve under articles of clerkship for a period of one year and shall in addition thereto-".

Amendment of section 2A of Act 53 of 1979, as inserted by section 3 of Act 115 of 1993

3. Section 2A of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"Any person intending to be admitted as an attorney and who has satisfied all of the requirements for a degree referred to in paragraph (a) or **(aA) (aB)** of section 2(1) **or who has become entitled to be admitted as an advocate of the Supreme Court, or the degrees referred to in paragraph (aA) of that section**, and who - ".

Amendment of section 4 of Act 53 of 1979, as amended by section 3 of Act 108 of 1984

4. Section 4 of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph:

"(ii) satisfied all the requirements for a degree, other than an honorary degree, at any university in the Republic, or for a degree or degrees referred to in paragraph **(aA) (aB)** or (cA) of section 2(1), in respect of which a certification in accordance with those respective paragraphs has been done."

Amendment of section 4A of Act 53 of 1979, as inserted by section 4 of Act 115 of 1993

5. Section 4A of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph:

"(ii) has satisfied all the requirements for a degree referred to in paragraphs (a) or **(aA) (aB)** of section 2(1) **or has become entitled to be admitted as an advocate of the Supreme Court, or the degrees referred to in paragraph (aA) of that section**; and"

Amendment of section 8 of Act 53 of 1979, as substituted by section 6 of Act 87 of 1989 and amended by section 8 of Act 115 of 1993

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

"(1) Any candidate attorney who-

(a) **was admitted as an advocate by any division of the Supreme Court or is entitled to be so admitted; or**

(b) has satisfied all the requirements for the degree referred to in paragraph (a) of section 2(1), *or for the degrees referred to in paragraph (aA) of that section*, or for a degree or degrees referred to in paragraph (aA) (aB) of that section in respect of which a certification in accordance with that paragraph has been done,

shall be entitled to appear in any court, other than any division of the Supreme Court, and before any board, tribunal or similar institution in or before which his *or her* principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearances as if he *or she* himself *or herself* had appeared: Provided that such a candidate attorney shall not be entitled to appear in a court of a regional division established under section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), or a Divorce Court established under section 10 of the **Black Administration Act, 1927, Amendment Act, 1929 Administration Amendment Act, 1929** (Act No. 9 of 1929), unless he **was so admitted as an advocate or is entitled to be so admitted and** *or she-*

(i) has previously practiced as an advocate for at least one year; or

(ii) has served for at least one year under his *or her* articles or contract of service; or

(iii) has at least one year's experience as a state advocate, state prosecutor or magistrate. " .

Amendment of section 11 of Act 53 of 1979, as substituted by section 10 of Act 115 of 1993

7. Section 11 of the principal Act is hereby amended-

(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"If a person who has served any period under articles of clerkship which were cancelled or abandoned before completion thereof, has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1), *or the degrees referred to in paragraph (aA) of that section*, or a degree or degrees referred to in paragraph (aA) (aB) or (cA) of that section in respect of which a certification in accordance with those respective paragraphs has been done, **or is entitled to be admitted as an advocate**, the

court may, on the application of such person and subject to such conditions as the court may impose, order-";

- (b) by the substitution for subparagraph (i) of paragraph (a) of subsection (3) of the following subparagraph:

"(i) after he *or she* satisfied such requirements **or became so entitled**; and"; and

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

"(b) if the period served by such person under the first-mentioned articles of clerkship is equal to or exceeds the period which he *or she* would, at the time of the making of the application, be required to serve under articles of clerkship in terms of this Act, that the period so served be considered as adequate service under articles for the purposes of this Act, and thereafter any period so served by such person shall be deemed to have been served after and under articles entered into after he *or she* satisfied such requirements **or became so entitled**".

Amendment of section 13 of Act 53 of 1979, as amended by section 2 of Act 76 of 1980, section 1 of Act 60 of 1982, section 2 of Act 56 of 1983, section 6 of Act 108 of 1984, section 10 of Act 87 of 1989 and section 12 of Act 115 of 1993

8. Section 13 of the principal Act is hereby amended-

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

"(b) shall, if a university in South Africa which has a law faculty has certified that an examination which he *or she* has passed in any country or territory is, in so far as it relates to the syllabus of instruction and the standard of training, together with a supplementary examination (if any) required by that university, the requirements of which have been satisfied by that person, equivalent or superior to the examination which is required for the degree mentioned in section 2(1)(a) **and which has been recognized by the Board for the Recognition of Examinations in Law established by section 16 of the Universities Act, 1955 (Act No. 61 of 1955)**, be exempted from satisfying the requirements for the degree mentioned in the said section 2(1)(a);"; and

- (b) by the substitution for subsection (3) of the following subsection:

"(3) The court may, on the application of a candidate attorney who has satisfied all the requirements for a degree referred to in paragraph (a) or (c) of section 2(1), *or for the degrees referred to in paragraph (aA) of that section*, or for a degree or degrees referred to in paragraph **(aA)** (aB) or (cA) of that section in respect of which a certification in accordance with those respective

paragraphs has been done, **or is entitled to be admitted as an advocate**, and subject to such conditions as the court may impose, order that the whole or any part of the period served by that candidate attorney under articles before he *or she* satisfied such requirements **or became so entitled**, shall, for the purpose of his *or her* admission and enrolment as an attorney, be regarded as having been served after and under articles entered into after he *or she* satisfied such requirements **or became so entitled**."

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

9. Section 15 of the principal Act is hereby amended by the substitution for items (aa), (bb) and (cc) of subparagraph (iii) of paragraph (b) of subsection (1) of the following items, respectively:

"(aa) has satisfied all the requirements for **a** *the* degree referred to in **section 2(1)(a)** *paragraph (a) of section 2(1), or for the degrees referred to in paragraph (aA) of that section*, after pursuing for that degree *or degrees* a course of study referred to in *paragraph (a) or (aA) of that section, as the case may be*; or

(bb) has satisfied all the requirements for a degree or degrees referred to in paragraph **(aA)** *(aB)* of section 2(1) in respect of which a certification in accordance with that paragraph has been done; or

(cc) has previously been admitted as an advocate **or is entitled to be so admitted**;"

Amendment of section 6 of Act 114 of 1993

10. Section 6 of the Recognition of Foreign Legal Qualifications and Practice Act 1993 (Act No. 114 of 1993), is hereby amended by the substitution in subsection (2) for the words following upon item (bb) of subparagraph (i) of paragraph (a) of the following words:

"correspond with the syllabus and standard of training which are normally required by a university in the Republic for the completion of a degree referred to in section 3(2)(a)(i) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), **or and** section 2(1)(a) of the Attorneys Act, 1979 (Act No. 53 of 1979), **as the case may be**; and".

Transitional provisions

11. (1) Any person who at the commencement of this Act-

(a) has satisfied the requirements for the degree of baccalaureus procuratoris; or

(b) was registered as a student at any university in the Republic with a

view to obtaining the degree of baccalaureus procurationis and has satisfied the requirements for the said degree on or before 31 December 2004,

shall for the purposes of sections 2(1)(a), 2A, 4A(b)(ii), 11(3), 13(3) and 15(1)(b)(iii)(aa) of the Attorneys Act, 1979 (Act No. 53 of 1979), as amended by this Act, be deemed to have satisfied the requirements of the degree referred to in paragraph (a) of section 2(1) of that Act.

(2) Any candidate attorney who at the commencement of this Act-

(a) has satisfied the requirements for the degree of baccalaureus procurationis; or

(b) was registered as a student at any university in the Republic with a view to obtaining the degree of baccalaureus procurationis and provided that he or she has satisfied the requirements for the said degree on or before 31 December 2004,

shall be entitled to appear in any court, other than any division of the High Court, a court of the regional division established under section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), or a Divorce Court established under section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), and before any board, tribunal or similar institution in which his or her principal is entitled to appear, instead of or on behalf of such principal, who shall be entitled to charge the fees for such appearances as if he or she himself or herself had appeared.

(3) Nothing in this Act contained shall prejudice any right or privilege, including the right to appear in or before any court of law, tribunal or other body, vested in any person who at the commencement of this Act-

(a) was duly admitted and enrolled-

(i) as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979); or

(ii) as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or

(b) enjoyed such right or privilege on account of being in possession of any qualification in law, whether prescribed by law or not.

(4) Any provision contained in any other law which is inconsistent with the provisions of section 3 of the Admission of Advocates Act, 1964, or sections 2, 2A, 4, 4A, 8, 11, 13 and 15 of the Attorneys Act, 1979, as amended by this Act, shall be deemed to be amended to the extent of the inconsistency thereof.

(5) Every university in the Republic with a faculty of law, shall take all reasonable steps so as to ensure that students are able to register for the degree referred to in section 3(2)(a)(i) of the Admission of Advocates Act, 1964, and section 2(1)(a) of the Attorneys Act, 1979, at that university on or

before 31 December 1998.

Short title.

12. This Act shall be called the Qualification of Legal Practitioners Amendment Act, 1997.