



GOVERNMENT GAZETTE
OF THE
REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 137

1991

**PROMULGATION OF ACT OF
THE NATIONAL ASSEMBLY**

The following Act which has been passed by the National Assembly and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 19 of 1991: Admission of Advocates Amendment Act, 1991.

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AMENDMENT ACT, 1991**

EXPLANATORY NOTE:

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

ACT

To amend the Admission of Advocates Act, 1964, so as to make other provision in relation to the requirements for the admission of advocates; to make it obligatory for persons who have not previously practised as advocates to serve a period of pupillage and to pass a practical examination before such person may commence so practising; to delete or replace certain obsolete definitions and expressions; and to provide for incidental matters.

(Signed by the President on 28 November 1991)

BE IT ENACTED by the National Assembly of the Republic of Namibia, as follows:-

Amendment of section 1
of Act 74 of 1964.

1. Section 1 of the Admission of Advocates Act, 1964 (hereinafter referred to as the principal Act), is hereby amended -

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

" 'advocate' means [an advocate of the Supreme Court] any person admitted to practise and enrolled as an advocate in terms of this Act;

- (b) by the insertion after the definition of "advocate" of the following definition:

" 'board' means the Board for Legal Education established under section 24A of the Attorneys Act, 1979 (Act 53 of 1979);

- (c) by the deletion of the definition of "division";
- (d) by the deletion of the definition of "Republic";
- (e) by the deletion of the definition of "rules";
- (f) by the deletion of the definition of "Supreme Court"; and

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(g) by the deletion of the definition of "territory".

Amendment of section 2
of Act 74 of 1964.

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any application pursuant to the provisions of this Act shall be made in the manner prescribed in the rules made under the High Court Act, 1990 (Act 27 of 1990).”

Substitution 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 and
section 1 of Act 17 of 1987.

3. The following section is hereby substituted for section 3 of the principal Act:

“Admission of
persons to
practise as
advocates.

3. (1) Subject to the provisions of any other law, **[any division] the High Court** shall admit to practise and authorize to be enrolled as an advocate any person who upon application made by him or her satisfies the court -

- (a) that he or she is a fit and proper person to be so admitted and authorized;
- (b) that he or she is duly qualified;
- (c) that he or she is a **[South African] Namibian** citizen or that he or she has been lawfully admitted to **[the Republic] Namibia** for permanent residence therein and is ordinarily resident in **[the Republic] Namibia**; and
- (d) in the case of any person who has at any time been admitted to practise as an attorney in **[any court in the Republic] Namibia** or elsewhere, that his or her name has been removed from the roll of attorneys on his or her own application.
[and]

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(2) A person shall be duly qualified for the purposes of subsection (1) if he or she holds a degree, diploma or certificate in law which has been prescribed under subsection (3).

(3) Subject to the provisions of subsection (4), the Minister may from time to time, on recommendation of the board, by notice in the *Gazette* prescribe the degrees, diplomas or certificates granted after examinations by a university or other educational institution, which shall entitle the holder thereof to be admitted in terms of this Act as an advocate.

(4) No degree, diploma or certificate granted after examinations by a university or other educational institution situated outside Namibia shall be prescribed under subsection (3), unless -

- (a) such degree, diploma or certificate entitles the holder thereof to practise as an advocate or in a capacity equivalent to that of an advocate in the country where such university or other educational institution is situated; and
- (b) the Minister is satisfied that possession of such degree, diploma or certificate indicates a standard of professional training which provides the holder thereof with sufficient knowledge to practise as an advocate in Namibia.

(5) Any person who is admitted and authorized to practise and to be enrolled as an advocate in terms of subsection (1), shall be enrolled as an advocate on the roll of advocates."

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Insertion of section 3A in
Act 74 of 1964.

4. The following section is hereby inserted after section 3 of the principal Act:

"Terms of
pupillage and
practical
examinations.

3A. (1) Subject to the provisions of subsection (2), any person who has been admitted to practise and authorized to be enrolled as an advocate in terms of section 3, shall not commence practising as an advocate unless he or she -

(a) has completed the period of pupillage prescribed under subsection (2) with an advocate who has practised in such capacity for a period of not less than two years; and

(b) has passed the examinations referred to in subsection (3).

(2) (a) The Minister may, on recommendation of the board, by notice in the *Gazette* -

(i) prescribe the periods of pupillage to be served by the holders of the various degrees, diplomas and certificates prescribed under section 3;

(ii) prescribe the conditions subject to which a period of pupillage shall be served; and

(iii) exempt any person or category of persons from all or any of the provisions of subsection (1).

(b) Different periods may be prescribed under paragraph (a)(i) of this subsection in respect of the various degrees, diplomas and certificates prescribed under section 3.

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- (3) (a) The Judge-President may, after consultation with the Minister and the Council of the Bar of Namibia, appoint 3 examiners for the purpose of arranging, controlling and conducting examinations in respect of -
- (i) the practice and procedure in the Supreme Court and High Court and in magistrates courts established under the Magistrates' Courts Act, 1944 (Act 32 of 1944);
 - (ii) proficiency in the English language; and
 - (iii) the practice, functions and duties of an advocate.
- (b) An examination referred to in paragraph (a) of this subsection shall be conducted by not less than 2 examiners so appointed;
- (c) Any person referred to in subsection (1) shall sit for the examinations referred to in paragraph (a) of this subsection on a date not earlier than the date on which he or she has served one half of the term of his or her pupillage.

Substitution of section 4
of Act 74 of 1964.

5. The following section is hereby substituted for section 4 of the principal Act:

"Existing
advocates.

4. (1) Any person -

- (a) whose name appears on the roll of advocates kept for Namibia;
- or

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- (b) whose name appears on the roll of advocates kept in respect of any country which has been approved for the purposes of this paragraph in the Schedule to this Act, and who is a Namibian citizen or who has been lawfully admitted to Namibia for permanent residence therein and was ordinarily resident in Namibia,

at the date of commencement of the Admission of Advocates Amendment Act, 1991, shall be deemed to have been unconditionally admitted to practise and authorized to be enrolled as an advocate in terms of subsection (1) of section 3 as amended by the said Admission of Advocates Amendment Act, 1991, subject to the terms of any order of court whereby any such person has been suspended from practice as an advocate.

(2) Every person who in terms of subsection (1) is deemed to have been admitted and authorized to practise and to be enrolled as an advocate, shall, be enrolled as an advocate on the roll of advocates, and for that purpose the registrar of [every division] the High Court shall as soon as possible after such commencement or after the requirements of subsection (3) have been complied with, as the case may be, furnish the [Secretary for Justice] Permanent Secretary: Justice with the name of every person whose name appears on the roll of advocates [of such division], and with particulars of the order of court whereby every such person was admitted to practise as an advocate and of any order of court, if any, whereby any such person has been suspended from practice as an advocate.

(3) No person referred to in subsection (1)(b) shall be so enrolled as an advocate unless there is lodged with the registrar of the High Court -

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(a) the order of court whereby the person concerned was admitted and authorized to be enrolled as an advocate; and

(b) proof, to the satisfaction of the said registrar, that the person concerned is a Namibian citizen or that he or she has been lawfully admitted to Namibia for permanent residence therein and is ordinarily resident in Namibia.

(4) The Minister may from time to time by notice in the *Gazette* amend the Schedule referred to in subsection (1) by adding any country as an approved country.

Repeal of section 6 of Act 74 of 1964.

6. Section 6 of the principal Act is hereby repealed.

Amendment of section 7 of Act 74 of 1964, as amended by section 2 of Act 73 of 1965 and section 2 of Act 60 of 1984.

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

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

“(a) in the case of a person who was admitted to practise as an advocate in terms of subsection (1) of section [~~three~~]3 or is deemed to have been so admitted -

(i) if he or she has ceased to be a [~~South African~~]Namibian citizen; or

(ii) in the case of such a person who is not a Namibian citizen, if he or she has ceased to be ordinarily resident in Namibia;”;

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

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

“(c) in the case of a person who was admitted to practise as an advocate in terms of section [~~five~~]5, if it appears to the court that he or she has ceased to reside or to practise as an

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advocate in the designated country or territory in which he or she resided and practised at the time of his or her admission to practise as an advocate **[of the Supreme Court]** in Namibia or that country or territory has ceased to be a designated country or territory for the purposes of the said section; or”;
and

(d) by the substitution for subsection (2) of the following subsection:

“(2) Subject to the provisions of any other law, an application under paragraph (a), (c) or (d) of subsection (1) for the suspension of any person from practice as an advocate or for the striking off of the name of any person from the roll of advocates may be made by the Council of the Bar of Namibia, or in the case of an application under paragraph (c), also by the Government Attorney referred to in the Government Attorney Proclamation, 1982 (Proclamation R.161 of 1982).”

Amendment of section 8 of Act 74 of 1964.

8. Section 8 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[The registrar of the division which]** Whenever the High Court makes an order admitting and authorizing any person to practise and to be enrolled as an advocate or ordering under this Act or any other law that the name of any person be struck off the roll of advocates or suspending under this Act or any other law any person from practice as an advocate, the registrar of the High Court shall immediately after the making of such order forward a certified copy thereof to the [Secretary for Justice] Permanent Secretary: Justice.”

Amendment of section 8A of Act 74 of 1964, as inserted by section 1 of Act 25 of 1979.

9. The following section is hereby substituted for section 8A of the principal Act:

“President may withdraw appointment as senior counsel.

8A. The **[State]** President may at the request of any person appointed as a senior counsel of **[the Republic]** Namibia while in the service of the State, withdraw such appointment, and thereupon such person shall revert to the

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status which he or she had as an advocate immediately prior to that appointment.”.

Amendment of section 9
of Act 74 of 1964.

10. Section 9 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Any person who -

(a) contravenes any provision of this section; or

(b) contravenes or fails to comply with any provision of subsection (1) of section 3A or with any condition prescribed under subparagraph (ii) of paragraph (a) of subsection (2) of that section, unless exempted from any such provision,

shall be guilty of an offence and liable on conviction to a fine not exceeding [**two hundred rand**] R4 000 or to imprisonment for a period not exceeding twelve months with or without the option of a fine, or to both such fine and such imprisonment, and any advocate who contravenes the provisions of subsection (2) or contravenes or fails to comply with the provisions or conditions referred to in paragraph (b) of this subsection shall, in addition, be guilty of unprofessional conduct and be liable to be suspended from practice or to be struck off the roll of advocates.”.

Amendment of section 11
of Act 74 of 1964.

11. The following section is hereby substituted for section 11 of the principal Act:

“Rules.

11. Any power to make rules under the [**Supreme Court Act, 1959 (Act No. 59 of 1959)**] High Court Act, 1990 (Act 27 of 1990), shall be deemed to include the power to make rules for giving effect to the provisions of this Act.”.

Repeal of section 12 of
Act 74 of 1964.

12. Section 12 of the principal Act is hereby repealed.

Amendment of section 13
of Act 74 of 1964.

13. Section 13 of the principal Act is hereby amended by the deletion of subsection (2).

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Substitution of certain
expressions in Act 74 of
1964.

14. The principal Act is hereby amended -

- (a) by the substitution for the expression "the Republic", wherever it occurs, of the word "Namibia";
- (b) by the substitution for the expressions "any division", "a court of any division" and "any court of any division", wherever they occur, of the expression "the High Court"; and
- (c) by the substitution for the expression "Secretary for Justice", wherever it occurs, of the expression "Permanent Secretary: Justice".

Addition of Schedule to
Act 74 of 1964.

15. The following Schedule is hereby added to the principal Act:

"Schedule
(Section 4(1)(b))

Antigua and Barbuda
Australia
Commonwealth of the Bahamas
People's Republic of Bangladesh
Barbados
Belize
Brunei Darussalam
Canada
Democratic Socialist Sri Lanka
Dominica
Federal Republic of Nigeria
Fidji
Ghana
Grenada
Guyana
Independent Republic of Vanautu
Jamaica
Kingdom of Lesotho
Kingdom of Swaziland
Kingdom of Tonga
Malawi
Malaysia
Mauritius
New Zealand
Papua New Guinea
Republic of Botswana
Republic of Cyprus
Republic of the Gambia

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Republic of India
 Republic of Kenya
 Republic of Kiribati
 Republic of Maldives
 Republic of Malta
 Republic of Nauru
 Republic of Singapore
 Republic of South Africa
 Republic of Uganda
 Republic of Zambia
 Republic of Zimbabwe
 St. Christopher-Nevis
 St. Lucia
 St. Vincent and the Grenadines
 Seychelles
 Sierra Leone
 Solomon Islands
 Trinidad and Tobago
 Tuvalu
 United Kingdom of Great Britain and Northern Ireland
 United Republic of Tanzania
Western Samoa."

Substitution of long title
of Act 74 of 1964.

16. The following long title is hereby substituted for the long title of the principal Act:

"To provide for the admission of persons to practise as advocates in Namibia and for matters incidental thereto."

Amendment of section 14
of Act 74 of 1964.

17. The following section is hereby substituted for section 14 of the principal Act:

"Short title.

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

Short title.

18. This Act shall be called the Admission of Advocates Amendment Act, 1991, and shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.