

MALAWI GOVERNMENT**(Published 2nd November, 2018)****Act****No. 31 of 2018**

I assent

PROF. ARTHUR PETER MUTHARIKA

PRESIDENT

24th October, 2018

ARRANGEMENT OF SECTIONS

SECTION

PART I—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II—THE MALAWI COUNCIL OF LEGAL EDUCATION

3. Establishment of Council of Legal Education
4. Object and functions of Council
5. Powers of Council
6. Members of Council
7. Tenure and vacancy
8. Invited persons
9. Meetings of Council
10. Procedure of Council
11. Allowances
12. Funding of Council
13. Accounts and audit of the Council

PART III—THE MALAWI INSTITUTE OF LEGAL EDUCATION

14. Establishment of Institute of Legal Education
15. Functions of Institute
16. Fees and charges
17. Executive Director of Institute
18. Duties of Executive Director

SECTION

19. Removal of Director
20. Staff of Institute
21. Consultants and instructors

PART IV—ADMISSION TO PRACTICE

22. Admission to practice
23. Qualifications for admission to practice
24. Admission to practice for legally qualified public officers
25. Admission to practice in a specific cause
26. Malawi Law Examination
27. Attorney General and Society party to proceedings
28. Applicant to make full and frank disclosure
29. Oath or affirmation before admission

PART V—LEGAL PRACTICE

30. Annual licence
31. Restrictions on practice
32. Legal practitioner is officer of court
33. Order of precedence
34. Legal practitioners' list
35. Setting up legal practice
36. Client account
37. Accounting for client's money
38. Embezzlement
39. Remuneration for legal practitioners
40. Agreement with respect to fees
41. Action for recovery of fees
42. *Pro bono* work
43. Clerks to legal practitioners
44. Client's rights and interests

PART VI—NOTARIES PUBLIC

45. Appointment of notary public
46. Functions of notary public
47. Certificate to practice as notary public
48. Jurat to state where and when oath, etc. is taken
49. Suspension or cancellation
50. Unlawfully acting as notary public
51. Powers of Chief Justice

SECTION

PART VII—SENIOR COUNSEL

52. Conferment of Senior Counsel
53. Subsistence of honour
54. Number of Senior Counsel
55. Attorney General, Solicitor General
56. Honorary Senior Counsel
57. Honours Committee
58. Tenure and vacancy
59. Meetings of Honours Committee
60. Procedure and quorum
61. Disclosure of interest
62. Powers of Chief Justice

PART VIII—THE MALAWI LAW SOCIETY

63. Establishment of Malawi Law Society
64. Objects of Society
65. Powers of Society
66. Membership of Society
67. Every legal practitioner to be member of Society
68. Honorary members
69. Fees and subscription
70. Resignation and expulsion
71. Cessation of membership
72. Delegation of powers and functions
73. Society's power to make rules
74. Chapters of Society
75. Executive Committee
76. Tenure and vacancy for Executive Committee
77. Meetings of Society
78. Secretariat of Society
79. Director of Society
80. Duties of Director
81. Removal of Director
82. Staff
83. Funds of Society

SECTION

- 84. Society Levy
- 85. Penalty upon failure to pay Levy
- 86. Accounts and audit of Society

PART IX—DISCIPLINE

- 87. Application to all legal practitioners
- 88. Saving powers of court
- 89. Disciplinary powers of High Court
- 90. Establishment of Disciplinary Committee
- 91. Functions of Disciplinary Committee
- 92. Minutes of meetings of Disciplinary Committee
- 93. Tenure and vacancy for Disciplinary Committee
- 94. Proceedings of Disciplinary Committee
- 95. Time limits
- 96. Penalties
- 97. Striking off
- 98. Suspension
- 99. Publication of names of legal practitioners struck off or suspended
- 100. Re-admission
- 101. Disclosure of interest
- 102. Evidence
- 103. Right to legal representation
- 104. Oath of secrecy
- 105. Allowances

PART X—THE FIDELITY FUND

- 106. Establishment of Fidelity Fund
- 107. Objects of Fund
- 108. Sources of funds
- 109. Insurance contracts for purposes of indemnification
- 110. Possession of Fund Certificates
- 111. Application for and issue of Fidelity Fund certificate
- 112. Contributions to Fund by legal practitioners
- 113. Payments from Fund
- 114. Limitation on liability
- 115. Claims against Fund

SECTION

- 116. Actions against Fund
- 117. Subrogation
- 118. Exemption of Fund from certain laws
- 119. Management and auditing of Fund

PART XI—MISCELLANEOUS

- 120. Indemnification in respect of certain acts in good faith
- 121. Powers of Minister
- 122. Repeal and savings

An Act to establish a Council of Legal Education and to provide for its functions and management; to establish an Institute of Legal Education and to provide for its functions and management; to establish criteria for admission of persons to practice as legal practitioners in Malawi; to provide for the regulation of legal practice in Malawi; to make comprehensive provision for notaries public and Senior Counsel; to provide for the professional discipline of legal practitioners; to provide for the establishment, organization and administration of the Malawi Law Society; to establish a Fidelity Fund and for matters incidental thereto and connected therewith

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Legal Education and Legal Practitioners Act, 2017, and shall come into force on a date to be appointed by the Minister, by notice published in the *Gazette*. Short title and commencement

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

“client” means a person on whose account, a legal practitioner may hold, holds or receives money;

“Council” means the Malawi Council of Legal Education established under section 3;

“Institute” means the Malawi Institute of Legal Education established under section 14;

“legal practitioner” means a person—

(a) who has been admitted to practice the profession of the law before a court; and

(b) whose name has been inscribed on the Roll;

"Malawi Law Examination" means examination in the local laws, legal practice and procedure of Malawi set by the Institute, from time to time, in accordance with section 26;

Cap. 30:12

"National Council for Higher Education" means the National Council for Higher Education established under the National Council for Higher Education Act;

"Registrar" means the Registrar of the High Court;

"Roll" means the Roll of Legal Practitioners maintained by the Registrar on which is inscribed the name of every person admitted to practice as a legal practitioner;

"Society" means the Malawi Law Society established under section 63.

PART II—THE MALAWI COUNCIL OF LEGAL EDUCATION

Establishment
of Council of
Legal
Education

3. There is hereby established a council of legal education which shall be a body corporate to be called "the Malawi Council of Legal Education" with perpetual succession and a common seal, with power to hold land, to sue and be sued in its corporate name.

Object and
functions of
Council

4.—(1) The object and purpose for which the Council is established is to exercise general supervision and control over legal education in Malawi and to advise the Government in relation to all aspects of legal education.

(2) Without prejudice to the generality of subsection (1), the Council shall—

(a) supervise and develop policies to guide the Institute;

(b) make rules for the syllabus and curriculum of legal education and for attendance at law schools in Malawi;

(c) advise and make recommendations to the Minister generally on matters relating to legal education and the requisite qualifications for the admission and enrollment of legal practitioners;

(d) advise the National Council for Higher Education on set criteria for accrediting institutions offering or intending to offer legal education;

(e) approve qualifications of persons with law degrees obtained from other countries; and

(f) perform other functions, and deal with other matters relating to legal education as the Minister may, in writing, from time to time, direct.

(3) Where a conflict arises between the provisions of this section and the provisions of any other written law for the time being in force, the provisions of this section shall prevail to the extent of the conflict.

5. For the better performance of its functions, the Council shall have power to—

Powers of Council

(a) establish committees and delegate to any of the committees any of its functions as the Council considers necessary;

(b) enter into contracts or agreements;

(c) raise money by way of loans or overdrafts;

(d) receive donations of money or other property from any person or body of persons for the furtherance of its functions;

(e) publish, from time to time, professional or other information which it deems necessary or expedient for the performance or exercise of the functions of the Council; and

(f) do any act, matter or thing it deems necessary for fulfilling the functions of the Council.

6.—(1) The Council shall consist of the Attorney General, who shall be chairperson of the Council, and the following other members—

Members of Council

(a) the Dean of Law at an accredited university, who shall be the vice chairperson;

(b) the chairperson of the Society;

(c) two (2) legal practitioners of at least ten (10) years' experience serving in the public service, appointed by the Minister;

(d) two (2) legal practitioners of at least ten (10) years standing at the Bar, nominated by the Society and appointed by the Minister;

(e) a judge appointed by the Chief Justice;

(f) a chief resident magistrate appointed by the Chief Justice;

(g) one (1) law lecturer teaching law at an accredited institution in Malawi of at least ten (10) years' experience appointed by the Minister; and

(h) one person appointed by the Minister to represent users of courts.

(2) The Principal of the Institute shall be the secretary to the Council.

7.—(1) A person appointed to the Council, other than an *ex-officio* member, shall hold office as a member of the Council for a period of four (4) years and may be eligible for reappointment for one (1) more term.

Tenure and vacancy

(2) Subject to subsection (1), the appointing authority shall in reconstituting the Council retain at least two members for purposes of continuity.

(3) A vacancy in the office of an appointed member shall occur if the member—

- (a) dies;
- (b) is adjudged bankrupt;
- (c) has physical or mental incapacity;
- (d) is sentenced under a written law to a term of imprisonment without the option of a fine;
- (e) ceases to possess the qualification necessary as a prerequisite to appointment;
- (f) is absent without reasonable justification from three (3) consecutive meetings of the Council, of which he has had notice; or
- (g) resigns in accordance with subsection (3).

(4) An appointed member may at any time resign his office by giving one (1) month written notice to the Minister.

(5) An appointed member may be removed from office by the Minister before the expiration of his term of office, on grounds of—

- (a) incompetence; or
- (b) misconduct.

(6) A vacancy in the membership of the Council shall be filled, for the remainder of the term, by the appointment of a new member:

Provided that if the remaining period is less than six (6) months, the vacancy may not be filled until the expiry of the period.

Invited
persons

8. The Council may, in its discretion at any time and for any period, invite any person to attend any meeting of the Council and take part in the deliberations of the Council, but the invited person shall not be entitled to vote at the meeting.

Meetings of
Council

9.—(1) The Council shall meet, at least once every three (3) months, at a place and at a time determined by the chairperson.

(2) An ordinary meeting of the Council shall be convened upon giving a written notice of at least fourteen (14) days to the members.

(3) The chairperson—

- (a) may, at his own instance, or
- (b) shall, at the written request of three (3) or more members and within seven (7) days of the request, convene an extraordinary meeting of the Council, at a place and at a time appointed by him.

10.—(1) The Council shall regulate its own procedure.

Procedure of
Council

(2) The quorum of the Council shall be five (5) members.

11. Members of the Council shall be paid an allowance determined by the Minister from time to time.

Allowances

12. The Council shall be adequately funded for the operations of the Council and the Institute by sums appropriated by the National Assembly for this purpose and may raise money by way of fees, donations, subscriptions, gifts or charges.

Funding of
Council

13.—(1) The Council shall keep and maintain proper books and records of account of its funds and shall in every respect comply with the Public Finance Management Act and the Public Audit Act.

Accounts and
audit of
Council
Cap. 37:02
Cap. 37:01

(2) The accounts of the Council shall be examined and audited annually by the Auditor General, or an auditor appointed and approved by the Auditor General.

(3) The Council may direct that the accounts of the Institute be examined and audited at any time.

PART III—THE MALAWI INSTITUTE OF LEGAL EDUCATION

14.—(1) There is hereby established an institute of legal education to be called "the Malawi Institute of Legal Education" (otherwise in this Act referred to as "the Institute").

Establishment
of Institute of
Legal
Education

(2) The Institute shall be subject to the general or special directions of the Council in carrying out its functions.

15.—(1) The Institute shall provide practical legal training in courses approved by the Council for purposes of the practice of law in Malawi, and the training shall be at post-graduate level.

Functions of
Institute

(2) Without prejudice to the generality of subsection (1), the Institute shall—

(a) set minimum education entry qualifications, approved by the Council, for persons seeking enrollment at the Institute;

(b) set and conduct, on behalf of the Council, the Malawi Law Examinations;

(c) organize and conduct courses—

(i) of instruction for the acquisition of legal knowledge and professional skills by persons seeking to be admitted as legal practitioners in Malawi;

(ii) in legislative drafting;

(iii) for public officers with a view to promote their better understanding of the law;

- (iv) for paralegals as prescribed by the Council;
- (v) for continuing legal education;
- (d) hold seminars and conferences on legal matters;
- (e) award certificates, fellowships, scholarships, bursaries and such other awards as prescribed by the Council; and
- (f) perform any other functions as directed in writing by the Council, from time to time.

Fees and
charges

16.—(1) The Institute may charge and receive fees and other charges as approved by the Council, for any course, training programme or activity offered by the Institute.

(2) All persons enrolled with the Institute for any course or attending any programme or activity offered by the Institute shall be liable to pay to the Institute, fees or charges for the course, programme or activity, and for any services or facilities offered by the Institute.

Executive
Director of
Institute

17.—(1) There shall be the office of the Executive Director of the Institute, which shall be a public office.

(2) The Executive Director shall be appointed by the Council, on terms and conditions determined by the Council.

(3) The Executive Director shall be a person who has a qualification in law and has continuously practiced the profession of law for at least ten (10) years prior to his appointment.

(4) The Executive Director shall hold office for a period of three (3) years and may be re-appointed for two (2) further terms of three (3) years.

Duties of the
Director

18.—(1) Subject to the general and special directions of the Council, the Executive Director shall be responsible for the day to day management of the Institute and shall exercise executive and administrative control over the other staff of the Institute.

(2) The Executive Director or an officer of the Institute that the Executive Director may designate, shall attend meetings of the Council or of any committee of the Council and may address the meetings but shall not vote on any matter.

Removal of
Executive
Director

19.—(1) The Council may remove the Executive Director from office, on the following grounds—

- (a) misconduct;
- (b) incompetence;
- (c) physical or mental incapacity;
- (d) if the Executive Director is convicted of an offence and sentenced to a term of imprisonment without the option of a fine;

(e) bankruptcy; or

(f) where the Council is satisfied that the Executive Director is otherwise unable or unfit to discharge the functions of his office.

(2) The Council may only remove the Executive Director from office upon giving him a reasonable opportunity to be heard.

20.—(1) The Council may appoint other officers of the Institute, subordinate to the Executive Director, as the Council considers necessary for the proper discharge of the functions of the Institute under the Act. Staff of
Institute

(2) The officers referred to in subsection (1) shall be officers in the public service and appointed on terms and conditions determined by the Council.

(3) The Council may, by directions in writing, delegate to the Executive Director, the appointment of other officers of the Institute as may be specified in the directions.

(4) The Executive Director shall report to the Council, at its regular meetings or as the Council may request, every appointment made pursuant to subsection (3).

21.—(1) The Council may engage persons, to serve as consultants or instructors to the Institute, on terms and conditions that the Council may determine. Consultants
and
instructors

(2) The Council shall engage persons as consultants to the Institute under subsection (1) on account of their knowledge, experience or competence in relation to the work of the Council or the Institute and shall assign to the consultants tasks for the discharge of the functions of the Council or the Institute.

PART IV—ADMISSION TO PRACTICE

22.—(1) A person shall not practice as a legal practitioner in Malawi, unless he has been admitted to practice in accordance with this Act. Admission to
practice

(2) A person may apply for admission to practice as a legal practitioner, if the person qualifies for admission in terms of section 23.

(3) An application for admission to practice as a legal practitioner shall be made by petition, to be verified by an affidavit of the petitioner, and shall be heard by the Chief Justice in open court.

(4) The Chief Justice may make rules generally regulating the procedure for the admission to practice of any person and more

particularly concerning the form of any petition, the affidavit or other annexures required to be filed with any petition, and their form, the procedure on the hearing of a petition, the order to be made after a hearing, the oath or oaths to be taken by any person admitted to practice.

(5) On admission to practice, the Chief Justice shall issue to the person admitted to practice as a legal practitioner, a certificate to practice the profession of the law which shall be in the form set out in Part I of the Fourth Schedule hereto and shall entitle the person named on it, upon payment of a fee set out in the First Schedule hereto, to practice as a legal practitioner.

(6) The certificate shall be evidence of compliance of this Act with respect to the requirements for admission to practice and the granting of the certificate under this section shall be recorded in the Register.

(7) When a certificate granted under the section has been lost, destroyed or damaged, it shall be replaced by a fresh certificate upon the application by the person named on it and upon payment of the fee set out in the First Schedule hereto.

(8) Notwithstanding the other provisions of this Part, recognition to practise the profession of law in Malaŵi may be granted to any person on the basis of, and in accordance with, any bilateral or multilateral agreement entered into in writing between Malaŵi and any other country or any group of countries providing for the reciprocal recognition of persons admitted to practise the profession of law in one country to be admitted to practise in the other country or in any country in the group of countries.

Qualifications
for admission
to practice

23.—(1) A person may be admitted to practice as a legal practitioner, if he is a citizen or permanent resident of Malawi at the date of the filing of his petition for admission, and has enrolled with the Institute for a period of not less than one (1) year and has passed the Malawi Law Examination and if the person—

(a) holds a degree in law awarded by an institution accredited to offer legal education in accordance with this Act; or

(b) subject to subsection (2), holds a foreign law qualification as defined in subsection (3); or

(c) has been admitted to practice as a legal practitioner in a country which applies, as its prevailing system of law—

(i) the Common Law or a legal system founded wholly or in part on the Common Law; or

(ii) the Roman-Dutch Law, as practiced in Southern Africa.

(2) A citizen or permanent resident of Malawi who holds a foreign law qualification shall only be eligible to be admitted to practice, if—

(a) the foreign law qualification was obtained from a jurisdiction that applies, as its prevailing basic system of law—

(i) the Common Law or a legal system founded wholly or in part on the Common Law; or

(ii) Roman-Dutch law as applied and practiced in countries of Southern Africa; and

(b) in the jurisdiction from which the foreign law qualification was obtained, he is either—

(i) admitted to practice the profession of law and is not under any disciplinary charge for professional misconduct;

or

(ii) eligible to practice the profession of law, but he is denied from practising solely on the ground that he is not a citizen or a resident of, or does not owe allegiance to, or solely to, the country or territory of that jurisdiction.

(3) For the purpose of this Part, a "foreign law qualification" means an undergraduate degree in law obtained from a jurisdiction other than Malawi,—

(a) taught in the English language;

(b) comprising subjects specified by the Council; from time to time; and

(c) was obtained pursuant to a course of undergraduate study, with a University or similar institution, that is designed to last at least three (3) academic years;

(d) is, as assessed by the Council, comparable in scope to the undergraduate degree in law awarded by a public university in Malawi, designated for that purpose by the Council or otherwise to be of the appropriate scope for the training of a person to qualify him to practice the profession of law; and

(e) constitutes qualifying training towards eligibility for admission to practice the profession of law in the jurisdiction from which it was obtained.

(4) In assessing a foreign law qualification for purposes of its recognition, the Council shall consider—

(a) the subjects of law studied;

(b) the content and duration of the courses of study that led to the award of the law degree;

(c) the basic system of law applied in the jurisdiction from which the degree was obtained;

(d) whether the applicant was admitted to practice the profession of law in the jurisdiction from which the qualification was obtained, and, if not, whether he fulfilled all the eligibility requirements for admission to practice the profession of law in that jurisdiction save only as otherwise provided in subsection (2)(b)(ii); and

(e) other matters of proficiency as may appear relevant to the Council.

(5) On presentation of a petition for the application to be admitted to practice the profession of the law in Malawi, an applicant shall pay an admission fee prescribed in the First Schedule.

(6) In addition to the requirement First Schedule under the section, a person seeking admission to practice as a legal practitioner shall be a proper and fit person to practice law in Malawi.

(7) For purposes of this Part, "Southern Africa" means countries listed in the *Second Schedule*.

Admission to
practice for
legally
qualified
public officers

24.—(1) A person who—

(a) has been admitted to practice as a legal practitioner in a country, other than Malawi, which applies, as its prevailing system of law—

(i) the Common Law or a legal system founded wholly or in part on the Common Law; or

(ii) the Roman-Dutch Law, as practiced in Southern Africa; and

(b) has been in active employment, in a judicial or legal capacity in public service, performing legal duties on behalf of the Government for a period of at least one (1) year, may, on application to the Chief Justice, be admitted by the Chief Justice, upon consultation with the Council, to practice as a legal practitioner.

(2) An application under subsection (1) shall be by petition addressed to the Chief Justice and shall be verified by affidavit of the applicant, and shall be made within ninety (90) days from the date of completing the qualifying period specified under subsection (1).

(3) The Chief Justice may hear an application under subsection (1) made out of time upon good cause being shown, by affidavit of the applicant, as to why the application was not made within the prescribed period.

25.—(1) The Chief Justice may, without formality, admit to practice as a legal practitioner for the purpose of a specific cause or matter, any person who, in the opinion of the Chief Justice—

Admission to
practice in a
specific cause

(a) has sufficient legal knowledge and a foreign law qualification obtained from a jurisdiction that applies as its prevailing basic system of law the common law or a legal system founded wholly or in part on the common law or Roman-Dutch law as applied and practiced in countries of Southern Africa;

(b) is of good character;

(c) has come to Malawi for the purpose of appearing in the specific cause or matter;

(d) has paid a fee to the Society as prescribed in the First Schedule; and

(e) has paid a contribution to the Fidelity Fund, as determined by the Society.

(2) A person admitted to practice in accordance with this section shall, for purposes of this Act, be deemed to be a legal practitioner for the period he is required to appear in the cause or matter.

26.—(1) Except as otherwise provided under this Act, a person who seeks to be admitted to practice law in Malawi shall be required to take and pass the Malawi Law Examination.

Malawi Law
Examination

(2) A petition for admission shall not be heard, unless the Institute has certified in writing to the Registrar that the applicant has passed the Malawi Law Examination.

(3) The Malawi Law Examination shall be set, conducted and managed by the Institute, and for that purpose, the Institute shall—

(a) develop a syllabus in respect of which candidates shall be examined and shall make the syllabus generally available; and

(b) make available to every candidate, at least thirty (30) days before the date of the examination, a copy of the syllabus for the examination.

(4) The Institute shall review the syllabus from time to time.

(5) The Institute may enlist the services of any person, body or institution with relevant expertise to assist it with the development of the syllabus referred to in subsection (3) and the setting, conduct or management of the Malawi Law Examination.

(6) A candidate of the Malawi Law Examination shall, before taking the examination—

(a) produce an original qualification for inspection by the Institute; and

(b) pay the prescribed fees to the Institute.

(7) The examination fee paid by a candidate shall not be refundable whether the candidate passes or fails the examination.

(8) A candidate who fails the Malawi Law Examination and disputes the results may appeal to the Council to have his answers re-marked and the Council, if satisfied with the reasons in support of the appeal, shall direct that the answers be re-marked within a reasonable time by any other competent person appointed by the Institute for that purpose.

(9) A candidate who fails the Malawi Law Examination may re-take the examination for a maximum of four (4) times subsequent to the first attempt.

Attorney
General and
Society
party to
proceedings

27.—(1) A person applying for admission to practice as a legal practitioner shall serve the petition on the Attorney General and the Society.

(2) The Attorney General or the Society may reply to any matter raised in the petition and shall be given an opportunity to be heard at the hearing of the petition for admission to practice as a legal practitioner.

Applicant to
make full and
frank
disclosure

28.—(1) In an application for admission to practice as a legal practitioner, the applicant shall make full and frank disclosure of all material facts that would affect the outcome of his application.

(2) If the applicant does not make full and frank disclosure of all material facts in his application, the Attorney General or the Society may, at any time that the material facts come to their knowledge, apply to the Chief Justice to nullify the admission.

(3) The Attorney General or the Society may, in addition to the application under subsection (2), institute disciplinary or legal proceedings against the applicant.

Oath or
affirmation
before
admission
Third
Schedule

29.—(1) A person who applies to be admitted to practice the profession of law in Malawi, shall, before he is admitted, take an oath or affirmation prescribed in the Third Schedule, that he shall—

(a) uphold the Constitution of the Republic of Malawi;

(b) uphold the interests of their clients; and

(c) maintain the integrity of the profession of law.

(2) The Registrar shall administer the oath or affirmation prescribed under this section.

(3) Upon admission, the Registrar shall issue a certificate of admission.

PART V—LEGAL PRACTICE

30.—(1) The Society shall, on production of a certificate to practice issued under section 22 and on payment to it of the relevant fees determined by the Society from time to time, issue an annual licence to a legal practitioner. Annual licence

(2) Every licence to practice shall expire on 31st January next following the date of its issue, and every legal practitioner desirous of practising thereafter shall renew his licence on payment of the relevant fee determined by the society.

(3) Every licence to practice shall expire on 31st January next following the date of its issue, and every legal practitioner desirous of practising thereafter shall renew his licence.

(4) A legal practitioner shall not be entitled to practice unless he has had issued to him a valid licence to practice.

(5) The Registrar shall not issue a licence to practice to a legal practitioner, unless the legal practitioner has—

- (a) paid the annual subscription to the Society;
- (b) performed the full hours prescribed for the annual mandatory *pro-bono* work as determined by the Society, from time to time;
- (c) attained the minimum number of units of continuing legal education as determined by the Society from time to time;
- (d) paid an annual contribution to the Fidelity Fund as determined by the Society from time to time;
- (e) a valid annual professional indemnity insurance cover;
- (f) submitted a certified copy of a valid tax clearance certificate issued under the Taxation Act.
- (g) where applicable, complied with penalties imposed under this Act.

Cap. 41:01

(6) Where a legal practitioner does not renew his licence to practice for a period of six (6) months after its expiry, the licence shall only be renewed with the consent of the Chief Justice, upon application for renewal by the legal practitioner and the application shall be supported by affidavit stating the reasons why the licence was not renewed on time.

(7) Subject to subsection (2), every legal practitioner shall annually deliver to the Society, an Accountant's Certificate in accordance with the Legal Practitioners (Accountants' Certificates) Rules.

(8) Subsections (4)(b), (d) and (e) shall not apply to legal practitioners in the public service.

Restrictions
on practice

31.—(1) A person who is not, or who has ceased to be, entitled to practice as a legal practitioner by virtue of this Act or any other written law, and who, does any of the following acts—

(a) commences, carries on or defends any action, suit or other proceedings in the name of any other person or in his own name, or does any act required by law to be done by a legal practitioner in a court;

(b) draws or prepares any instrument relating to real or personal property or any proceeding in law or draws or prepares any document or caveat relating to land registration; or

(c) does any other work in respect of which scale or minimum charges are laid down by the Legal Practitioners (Scale and Minimum Charges) rules, or by any other rules for the time being in force prescribing or relating to charges for any services to be performed by a legal practitioner, commits an offence and shall, upon conviction, be liable to a fine of five million Kwacha (K5,000,000) and imprisonment for ten (10) years.

(2) The Society may prosecute a person who contravenes this section but shall not prosecute a person for an offence under this section—

(a) without the written consent of the Director of Public Prosecutions; and

(b) for any work restricted by this section which is regulated by an Act of Parliament.

(3) This section shall not extend to—

(a) any public officer drawing or preparing instruments in the course of his duty; or

(b) any person who is employed merely to engross any instrument or proceeding.

(4) For the purpose of this section, the expression “instrument” does not include—

(a) a letter or power of attorney under seal;

(b) a transfer of stock containing no trust or limitation thereof;

(c) a letter written for the purpose of collection of monies;

(d) an undefended trademark or patent application; or

(e) a passport application.

(5) Nothing in this section shall be deemed to limit the right of any person to appear on his own behalf before any court in proceedings to which he is a party.

(6) A legal practitioner admitted to practice in accordance with section 24 and serving in the public service or for a public body shall not be entitled to practise the profession of the law other than in his official capacity.

32. Every legal practitioner shall be deemed to be an officer of the court.

Legal
practitioner is
officer of
court

33. Legal practitioners shall take precedence in the following order—

Order of
precedence

- (a) the Attorney General;
- (b) the Solicitor General;
- (c) Senior Counsel, according to the date of their conferment;
- (d) the chairperson of the Society; and
- (e) legal practitioners according to the date they signed the roll.

34.—(1) The Society shall publish, soon before or after 31st March, in the *Gazette* and in at least two (2) newspapers with the widest circulation each year, a Legal Practitioners List (in this Act, otherwise referred to as “the List”) of all legal practitioners licensed to practice the profession of the law during that year.

Legal
practitioners’
list

(2) The List shall include, with respect to a legal practitioner, the following information—

- (a) his name and address;
- (b) the year in which he was admitted to practice in Malawi; and
- (c) other biographical information on his legal and educational background.

35. A legal practitioner shall not establish a legal firm, whether as sole practitioner or in partnership with other legal practitioners, unless—

Setting up
legal practice

- (a) the legal practitioner has been practising the profession of the law for at least five (5) years; and
- (b) the principal office of the firm and any branch thereof complies with the Legal Practitioners Practice Rules.

36.—(1) A legal practitioner who receives or is due to receive money on behalf of the client, shall not hold or receive the money

Client
account

without first opening a client account at a bank in his name or the name of his firm in which name, the word "client" appears.

(2) Every legal practitioner shall, immediately upon receipt of money on behalf of a client and without delay, deposit the money into the client account.

(3) A legal practitioner may keep as many client accounts as he thinks fit.

(4) A legal practitioner who receives or is due to receive money on behalf of a client shall comply with the Legal Practitioners Accounts Rules.

Accounting
for client's
money

37.—(1) Every legal practitioner shall, at all times, keep proper books of accounts, as necessary to—

(a) show all his dealings with regard to—

(i) money held, received or paid by him on behalf of clients;
or

(ii) any other money dealt with by him through a client's account; and

(b) distinguish the money held, received or paid by him on account of each separate client and to distinguish that money from other money held, received, or paid by him on any other account.

(2) Every legal practitioner shall preserve for at least seven (7) years from the date of the last entry, all accounts, books, ledgers or records kept by him under this Part.

(3) A legal practitioner who contravenes this section shall be liable to disciplinary action.

Embezzlement

38.—(1) Where it is proved to the satisfaction of the court that a legal practitioner has, in the course of carrying out his duties, received, or has in his custody or under his control, any money or other property on behalf of another person, whether it is his client or not, and the legal practitioner is unable to produce the money or other property to the client or the other person on whose behalf he holds the money or property, or make due account for the money or property, the legal practitioner shall, unless he satisfies the court to the contrary, be presumed to have embezzled the money or other property.

(2) A legal practitioner who embezzles money or other property held on behalf a client commits an offence, and shall, upon conviction, be liable to imprisonment for ten (10) years.

39.—(1) There shall be a Remuneration Committee of the Society which shall consist of five (5) legal practitioners, two (2) of whom shall be Senior Counsel, elected by the Society at the Annual General Meeting.

Remuneration
for legal
practitioners

(2) The Remuneration Committee shall advise on, and recommend to, the Minister, all matters regarding remuneration of legal practitioners.

(3) The Minister may, on the recommendation of the Remuneration Committee, by rules—

(a) prescribe both scale charges and minimum charges that may be levied by legal practitioners; and

(b) provide for the taxation of costs and the remuneration of legal practitioners.

(4) The members of the Remuneration Committee shall hold office for a period of two (2) years and may be eligible for re-election for a further term of two (2) years.

(5) The Scale and Minimum Charges prescribed under this section are exclusive of tax.

40.—(1) Subject to section 39 or any other written law, a legal practitioner and his client may, before, after or in the course of any contentious business make an agreement in writing fixing the amount of the legal practitioner's remuneration in respect thereof and the agreement shall be binding on the parties, where it is signed by both parties.

Agreement
with respect
to fees

(2) A party to the agreement under subsection (1) may, within six (6) months after execution of the agreement, apply to the Registrar to have the agreement set aside or varied on the ground that it is harsh, unconscionable, exorbitant or unreasonable.

(3) The Registrar may, after hearing an application made under subsection (2), order that—

(a) the agreement be upheld;

(b) the agreement be varied by substituting the amount of remuneration fixed by the agreement for an amount that the Registrar may deem just;

(c) the agreement be set aside; or

(d) the amount in question be taxed.

(4) Where, after a legal practitioner has performed part of the business to which the agreement made under this section applies and the legal practitioner dies or becomes incapable of acting, or the client changes his legal representative, any party, or the personal

representatives of any party to the agreement, may apply to the Registrar to have the agreement varied or set aside.

(5) An application made under subsection (4) shall be dealt with in accordance with subsection (2).

Action for
recovery of
fees

41.—(1) A legal practitioner may not bring an action for the recovery of fees due to him or his firm until the expiry of three (3) months after the bill of costs has been delivered to the client.

(2) Where a legal practitioner has reasonable belief that his client is likely to leave Malawi before the expiry of the three (3) months, the legal practitioner may, with leave of the court, commence the action referred to in subsection (1) before the expiry of three (3) months.

Pro bono
work

42.—(1) The Society shall, in liaison with the Director of the Legal Aid Bureau, allocate *pro bono* work to every legal practitioner annually.

(2) When allocating the *pro bono* work, the Society shall have regard to *pro bono* work that a legal practitioner already undertook on his own in that particular year and any outstanding *pro bono* work that a legal practitioner may have.

(3) Where a legal practitioner informs the Society that he is not, for good and justifiable reason, able to perform the *pro bono* work, he shall pay to the Society an amount of money, determined by the Society, with which the Society shall hire services of another legal practitioner to perform the work.

(4) A legal practitioner who fails to perform *pro bono* work in accordance with this section and fails to comply subsection (3) shall be liable to disciplinary action.

(5) This section shall not apply to legal practitioners employed in the public service.

Clerks to
legal
practitioners

43.—(1) Where—

(a) a person who is or was a clerk to a legal practitioner, has been convicted of an offence involving fraud or of any other offence in respect of any money or property belonging to, held or controlled by the legal practitioner by whom he is or was employed or any client of the legal practitioner; or

(b) it appears to the Society that a person who is or was a clerk to a legal practitioner, has been a party to any act or default of the legal practitioner in respect of which an order has been made under section 92, the Society may make an application, by summons returnable in chambers, to the High Court, for an order

directing that, as from a date specified in the order, any legal practitioner shall not, in connexion with his practice as a legal practitioner, take or retain the clerk in his employment, or remunerate the clerk, without the written consent of the Society.

(2) The High Court shall have power to make an order referred to in subsection (1), and to order the payment of costs by any party, but the order shall not be made against any person without giving him an opportunity of being heard and of calling witnesses.

(3) An application under this section may be heard by any judge.

(4) Every order under this section shall be filed with the Registrar, and the file shall be open to inspection by any legal practitioner without payment of fees.

(5) A clerk, in respect of whom an order under subsection (1) has been made, shall not be employed in the practice of any legal practitioner until the order expires or is revoked.

44.—(1) A legal practitioner who is suspended from practice or struck off the Roll or has not practised for a period prescribed by the Society shall, within twenty-one (21) days from the date of the occurrence of any such event, as the case may be, make arrangements for availing to his clients or another legal practitioner instructed by his clients or himself—

Client's rights
and interests

(a) all deeds, wills or testamentary documents, documents constituting or evidencing title to any property, papers, books of account, records, vouchers and other documents in his or his firm's possession or control, or relating to any trust of which he is a sole trustee, or co-trustee with one or more of his partners, clerks or servants; and

(b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subjected to any trust as aforesaid.

(2) Where a legal practitioner who is referred to under subsection (1) fails to comply with subsection (1), the Society shall order him to produce or deliver documents or property referred to in subsection (1) to another legal practitioner appointed by the Society within a period prescribed by the Society.

(3) A person who has possession or control of the documents or property referred to in subsection (1) and does not comply immediately with requirements imposed under this section, commits an offence and shall, upon conviction, be liable to a fine of two million Kwacha (K2,000,000) and twelve (12) months imprisonment.

(4) A legal practitioner appointed by the Society under subsection (2) shall make inquiries to ascertain the ownership of the documents or property and shall deal with those documents or property in accordance with the directions given to him by the owner.

(5) The Society shall also exercise its powers *mutatis mutandis* under subsection (2), with necessary modifications, in relation to a legal practitioner who—

(a) dies;

(b) abandons his practice;

(c) is adjudged bankrupt or makes a composition or arrangement with his creditors; or

(d) is prevented, for any other reason, from performing his functions as a legal practitioner, and where the Society is satisfied that his clients are likely to suffer due to his failure to make suitable arrangements as referred to in subsection (1).

(6) A legal practitioner who is struck off or suspended is entitled to receive fees for work done prior to and notwithstanding the striking off or suspension.

PART VI—NOTARIES PUBLIC

Appointment
of notary
public

45.—(1) A legal practitioner holding a licence to practice the profession of law and who has been so practising for at least seven (7) years may apply to the Chief Justice for a certificate entitling him to practice as a notary public.

(2) In considering the application for the certificate referred to in subsection (1), the Chief Justice shall have regard to the requirements of the public for notarial services and the number of notaries public already practising in the district in which the applicant resides.

(3) The granting of a certificate to practice as a notary public shall be in the sole discretion of the Chief Justice and the certificate shall not be granted to a legal practitioner who has not held a licence to practice for three (3) years prior to his application, unless the Chief Justice, for good reason, thinks fit so to do.

(4) The Registrar shall maintain a Register for Notaries Public which shall include—

(a) the name of the notary public;

(b) the date of appointment to practice as a notary public; and

(c) the location and address of the notary public.

46. The functions of a notary public shall include—Functions of
notary public

- (a) attesting to the signature and execution of documents;
- (b) authenticating execution of documents;
- (c) authenticating the contents of documents;
- (d) administering oaths and declarations;
- (e) attending upon the drawing up of bonds;
- (f) drawing deeds, sales or purchases of property, wills and other legal documents for use abroad;
- (g) authenticating documents to deal with the administration of the estate of people who are abroad, or own property abroad;
- (h) authenticating personal documents and information for immigration or emigration purposes, or marriage applications or for purposes of working abroad;
- (i) authentication of translations from foreign languages to English and vice versa;
- (j) taking evidence in Malawi as a Commissioner for Oaths for foreign courts;
- (k) provision of notarial copies;
- (l) preparing and witnessing powers of attorney, corporate records, contracts for use in Malawi or other countries;
- (m) authenticating company and business documents and transactions;
- (n) conducting international domain name transfers; and
- (o) any other function prescribed by an Act of Parliament.

47.—(1) A certificate to practice as a notary public shall be in the form set out in Part II of the Fourth Schedule hereto and shall entitle the person named on it, upon payment of a fee set out in the First Schedule hereto, to practice as a notary public until the 31st March next following the date of issue and to levy fees in accordance with part ii of the Fourth Schedule hereto.

Certificate to
practice as
notary public

(2) The certificate shall, on the expiry of its validity, be renewed by the Chief Justice for a period of one year, by endorsement thereon by the Registrar of the High Court, upon the application of the person named therein, and upon payment of the fees set out in the First Schedule hereto.

(3) The granting of the certificate under this section and every renewal thereof shall be recorded in the Register.

(4) When a certificate granted under the section has been lost, destroyed or damaged, it shall be replaced by a fresh certificate

upon the application by the person named on it and upon payment of the fee set out in the *First Schedule* hereto.

(5) The Registrar shall keep a separate Register for renewal of certificates of notaries public.

Jurat to state
where and
when oath,
etc. is taken

48. A notary public before whom an oath, affidavit, declaration or acknowledgement is taken or made shall state truly in the jurat or attestation at what place and on what date the oath, affidavit, declaration or acknowledgement is taken or made.

Suspension or
cancellation

49. The Chief Justice may—

(a) suspend or cancel a certificate granted under section 47, if a notary public ceases to be entitled to practice as a legal practitioner; or

(b) cancel a certificate granted under section 47, if, in the opinion of the Chief Justice, the notary public fails to carry out his duties as a notary public satisfactorily.

Unlawfully
acting as
notary public

50.—(1) A person shall not hold himself out to be a notary public or receive a fee or reward as a notary public without being entitled to practice as or perform duties of a notary public.

(2) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine of one million Kwacha (K1,000,000) or for a subsequent offence to a fine of two million Kwacha (K2,000,000) and imprisonment for six (6) months.

(3) Nothing in this section shall be construed so as to exempt a person from any prosecution under any other law to which he would otherwise be liable so long as the person shall not be punished twice for the same offence.

Powers of
Chief Justice

51. The Chief Justice may make rules for the better carrying out of this Part.

PART VII—SENIOR COUNSEL

Conferment
of Senior
Counsel

52.—(1) The President may, on recommendation of the Honours Committee, confer on a legal practitioner, the honour of Senior Counsel.

(2) A legal practitioner may apply, in a prescribed manner, to the Attorney General for letters patent entitling him to be conferred the honour of Senior Counsel, if the legal practitioner—

(a) is of irreproachable character;

(b) has been practising the profession of the law for a period of or for periods amounting in all to at least fifteen (15) years whether in public service or otherwise; and

(c) has made significant contribution towards the development of the law in Malawi.

(3) Subject to subsection (2), the Honours Committee may, of its own motion, recommend to the President that a legal practitioner be conferred the honour of Senior Counsel.

53.—(1) The honour of Senior Counsel shall subsist for life.

Subsistence
of honour

(2) A person who has been conferred the honour of Senior Counsel shall be entitled to add the words "Senior Counsel (SC)" after his name.

(3) If circumstances arise which would otherwise disqualify a person from being conferred the honour of Senior Counsel, the Honours Committee shall recommend to the President to withdraw the conferment of the honour of Senior Counsel from the person.

54. Where the President is conferring the honour of Senior Counsel, the number of Senior Counsel being conferred shall not exceed three (3) legal practitioners during one (1) calendar year:

Number of
Senior
Counsel

Provided that the number of three (3) shall not include a serving Attorney General or Solicitor General, as the case may be.

55. The President may confer the honour of Senior Counsel on a sitting Attorney General or Solicitor General who has served that office for at least two (2) years.

Attorney
General,
Solicitor
General

56. The President may, after consultation with the Honours Committee, confer on any person, as he deems fit, the honour of Senior Counsel *honoris causa*, if the person consents to the conferment.

Honorary
Senior
Counsel

57. There shall be an Honours Committee of the Society which shall consist of—

Honours
Committee

(a) the Chief Justice, who shall be the chairperson;

(b) the Attorney General;

(c) the Solicitor General, who shall be the secretary;

(d) two (2) Senior Counsel, nominated by the Society;

(e) the chairperson of the Society; and

(f) a Dean of Law at an accredited university and appointed by the Council.

58.—(1) The members of the Honours Committee, other than *ex-officio* members, shall hold office for a term of three (3) years and may be re-appointed once.

Tenure and
vacancy

(2) A vacancy in the office of an elected member shall occur, if the member—

(a) dies;

(b) is adjudged bankrupt;

(c) is sentenced for an offence against any written law to a term of imprisonment without an option of a fine;

(d) is absent from three (3) consecutive meetings of the Honours Committee, without reasonable cause, of which he has had notice;

(e) is physically or mentally incapacitated; or

(f) resigns from office in accordance with subsection (3).

(3) An elected member may, at any time, resign his office by giving one (1) month written notice to the Society.

(4) A person elected to fill the vacancy shall serve for the remainder of the term but a person shall not be so elected where the remainder of the term is a period of less than six (6) months.

Meetings of
Honours
Committee

59.—(1) The Honours Committee shall meet, at least twice annually, at a place and at a time determined by the chairperson.

(2) An ordinary meeting of the Honours Committee shall be convened upon giving a written notice of at least fourteen (14) days to the members.

(3) The Chairperson—

(a) may, at his own instance; or

(b) shall, at the written request of three (3) or more members and within seven (7) days of the request,

convene an extraordinary meeting of the Honours Committee at a place and at a time appointed by him.

Procedure
and quorum

60.—(1) The Honours Committee shall regulate its own procedure.

(2) Half of the members of the Honours Committee shall form a quorum.

(3) The validity of any of the proceedings of the Honours Committee shall not be affected by a vacancy in the membership of the Honours Committee or by a defect in the appointment of a member, or by reason that a person not entitled to do so took part in any proceedings.

Disclosure of
interest

61.—(1) If a member of the Honours Committee is present at a meeting of the Honours Committee at which any matter which is the subject of consideration is a matter in which the member or his

immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable, after the commencement of the meeting, disclose his interest.

(2) Unless the Honours Committee otherwise directs, the member referred to in subsection (1), shall not take part in any consideration or discussion of, or vote on, any question touching on the matter.

(3) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

62. The Chief Justice may make rules for the better carrying out of this Part.

Powers of
Chief Justice

PART VIII—THE MALAWI LAW SOCIETY

63. There is hereby established the Malawi Law Society which shall be a body corporate with perpetual succession and a common seal, with power to hold land, and to sue and be sued in its corporate name.

Establishment
of Malawi
Law Society

64. The objects for which the Society is established are to—

Objects of
Society

(a) promote the highest professional standards among legal practitioners and in legal practice;

(b) enhance credibility in the delivery of legal services;

(c) promote integrity, competence and transparency of professional services in legal practice;

(d) protect matters of public interest touching, ancillary or incidental to the law;

(e) promote research towards the development of the law;

(f) regulate the setting up, management and dissolution of legal practice; and

(g) do all other things that are incidental or conducive to the attainment of the foregoing objects or any of them.

65. The Society shall have powers to—

Powers of
Society

(a) engage in formal or informal activities designed to foster and extend the study of the law, and for the benefit both of members of the Society or of other persons interested in the profession of the law;

(b) discipline legal practitioners;

(c) acquire, hold, develop or dispose of properties, whether movable or immovable, and to derive capital or income therefrom, for all or any of the objects of the Society;

(d) raise or borrow money for all or any of the objects of the Society in a manner and on security determined by the Society, from time to time;

(e) invest or deal with money of the Society not immediately required in a manner determined by the Society; and

(f) do all other things that are incidental or conducive to the attainment of the objects of the Society or any of them under the Act or of any objects under any other written law.

Membership
of Society

66. The membership of the Society shall consist of the following—

(a) all legal practitioners who are members by reason of section 67 (1);

(b) all persons admitted to membership of the Society under section 67(4); and

(c) all persons elected as honorary members of the Society under section 68.

Every legal
practitioner to
be member of
Society

67.—(1) A person whose name is inscribed on the Roll shall, without election or appointment, become a member of the Society from the date on which his name was inscribed upon the Roll.

(2) A member of the Society by reason of subsection (1) shall remain a member until his name is removed, whether at his own request or otherwise and upon approval by the Society, from the Roll.

(3) A member of the Society by reason of subsection (1), and who—

(a) is suspended from practising; or

(b) has not paid subscription fees to the Society,

shall not be entitled during the period of the suspension or non-payment, to any of the rights and privileges of membership.

(4) The Society may, from time to time, confer membership on any other person resident in Malawi who possesses legal qualifications acceptable to the Society and applies for membership.

Honorary
members

68. The Society may confer honorary membership, either for life or for any period as it may deem appropriate, on any person it deems fit, and who consents to the election.

Fees and
subscription

69.—(1) A member of the Society shall pay fees and subscription to the Society, as determined by the Society from time to time.

(2) An honorary member shall not be required to pay subscription.

70.—(1) A member of the Society by virtue of section 67 (1) may not resign from the Society while his licence to practice is in force. Resignation
and expulsion

(2) A member of the Society, who is a member other than by virtue of section 67(1), may be expelled from the Society, if the member—

(a) is adjudged or declared bankrupt;

(b) ceases to hold a qualification enabling him to become a member; or

(c) conducts himself in a manner that brings the Society into disrepute, after having been given a reasonable opportunity to be heard.

71. Any member of the Society, other than an honorary member, who ceases to qualify for membership shall automatically cease to be a member of the Society. Cessation of
membership

72.—(1) The Society may, from time to time, delegate any of its powers or functions to any one or more of its officers or to any committee of the Society. Delegation of
powers and
functions

(2) For purposes of this section, “an officer” means an elected member and the Director of the Society.

73.—(1) The Society may make rules prescribing anything which under this part may be or is to be prescribed, and generally for the better carrying out of the purposes of this part and the objects for which the Society is established. Society's
power to
make rules

(2) Without prejudice to the generality of subsection (1) and subject to section 69, the Society may make rules for—

(a) annual and other subscriptions of the Society;

(b) the manner of application for membership of the Society;

(c) standards of professional conduct with which every legal practitioner shall comply;

(d) criteria for conferment of honorary membership to the Society;

(e) the grounds for suspension or expulsion of members of the Society and the procedure relating thereto;

(f) the resignation of members;

(g) the regulation of powers exercisable by any committee that the Society may establish, and delegation of the powers thereto;

(h) the manner of convening meetings of the Society and of committees, and quorums thereof, and the procedure relating thereto;

(i) the manner in which, and the conditions subject to which, any member not present at a general meeting may vote by proxy on any resolution before that meeting;

(j) the manner of election, removal and replacement of officers of the Society;

(k) the design, custody and use of the common seal;

(l) the regulation on setting up, running and dissolution of a legal practice;

(m) the classes of resolutions at meetings of the Society and their effect;

(n) the manner in which members shall fulfill the requirement to undertake annual continuing legal education;

(o) the requirements relating to the fidelity fund and indemnity insurance cover; and

(p) any other matter the Society deems necessary for the proper conduct and regulation of its affairs.

(3) The High Court shall have jurisdiction to make any order it deems necessary or appropriate for the implementation or enforcement of any of the rights conferred upon the Society or any committee thereof, as the case may be, by rules made under this section.

Chapters of
Society

74.—(1) The Society may, from time to time, establish chapters of the Society.

(2) The chapters of the Society shall comply with the provisions of this Act.

Executive
Committee

75.—(1) There is hereby established an Executive Committee of the Society.

(2) The Executive Committee shall be an organ of the Society and shall consist of the chairperson, one representative from each chapter of the Society, and any other officers determined by the Society.

(3) Members of the Executive Committee shall be elected at the Annual General Meeting of the Society.

Tenure and
vacancy for
Executive
Committee

76.—(1) A member of the Executive Committee shall hold office for a period of two (2) years.

(2) A member elected in accordance with subsection (1) may be eligible for re-election for another term of two years but the office of that member shall become vacant, if the member—

(a) dies;

- (b) becomes physically or mentally incapacitated;
- (c) resigns, upon giving a notice of one (1) month to the Society;
- (d) becomes bankrupt; or
- (e) fails to attend, without valid excuse, three (3) consecutive meetings of the Executive Committee of which he has had notice.

(3) On vacation of office by a member, the vacancy shall be filled by a person elected to fill the vacancy by the Society:

Provided that if the remaining period is less than three (3) months, the Society may not fill the vacancy until the expiry of the period.

77.—(1) The Society shall meet for the transaction of business at least once every three months at a place and at a time, the chairperson may determine. Meetings of Society

(2) An Annual General Meeting of the Society shall be called by the chairperson, before 31st March, upon written notice of not less than seven (7) days to all members of the Society.

(3) At the Annual General Meeting, the Society shall—

- (a) receive the chairperson's report;
- (b) receive audited accounts of the Society;
- (c) where the term of office of the Executive Committee has expired, hold elections of the Executive Committee or any other committee of the Society; and
- (d) transact any other business the Society deems fit.

(4) Where a third of the membership of the Society requests the chairperson for the holding of an extraordinary meeting of the Society, the chairperson shall convene the meeting within the number of days specified in the request.

(5) The provisions under this section shall apply *mutatis mutandis* to the chapters of the Society.

78. The Secretariat of the Society shall consist of the Director and other members of staff of the Society appointed under this Part. Secretariat of Society

79.—(1) There shall be the office of the Director of the Society who shall be the chief executive officer of the Society. Director of Society

(2) The Director shall be appointed by the Society, on terms and conditions determined by the Society.

(3) The Director shall be a person who has a qualification in law and has actually practiced the profession of law for at least five (5) years.

(4) The Director shall hold office for a period of three (3) years and may be re-appointed for two (2) further terms of three (3) years.

Duties of
Director

80. Subject to the general and special directions of the Society, the Director shall be responsible for the day to day management of the Society and shall exercise executive and administrative control over the staff of the Society.

Removal of
Director

81.—(1) The Society may remove the Director from office, on the following grounds—

- (a) misconduct;
- (b) incompetence;
- (c) physical or mental incapacity;
- (d) bankruptcy; or
- (e) where he is otherwise unable or unfit to discharge the functions of the Director.

(2) The Society shall only remove the Director from office upon giving him a reasonable opportunity to be heard.

Staff

82.—(1) The Society may appoint other officers of the Society, subordinate to the Director, as the Society considers necessary for the proper discharge of the functions of the Society under the Act.

(2) The Society may, by directions in writing, delegate to the Director, the appointment of junior officers at the secretariat as specified in the directions.

(3) The Director shall report to the Society, at its regular meetings or as the Society may request, every appointment made pursuant to subsection (2).

Funds of
Society

83.—(1) The funds of the Society shall consist of—

- (a) subscription fees;
- (b) a Society Levy paid pursuant to section 84; and
- (c) money raised by way of fees, charges, gifts, donations, materials or fines paid to the Society.

(2) The Society shall apply its funds for the purposes of its functions and may invest any surplus of its funds in a manner approved by the General Assembly of the Society.

Society Levy

84.—(1) A legal practitioner shall charge and levy on every matter on which he presents a bill to a client, and payable to the Society, a levy to be known as the "Society Levy" (in this Act, otherwise referred to as "the Levy").

(2) The Levy shall be the sum of money equal to one per centum (1%) of the fees the legal practitioner charges a client.

(3) The Minister may, on the recommendation of the Society, by order published in the *Gazette*, revise the percentage of the Levy.

(4) The Levy shall be paid monthly to the Society and where the Society informs a legal practitioner that the Levy is due, the legal practitioner shall make payment to the Society within thirty (30) days from the date of notification unless proof is given that the bill to which the levy relates remains unsettled.

85.—(1) Where a legal practitioner who, under this Act, is liable to pay the whole or any part of the Levy, fails to pay the whole or any part of the Levy in accordance with section 84, an additional sum of twenty per centum (20%) of the unpaid Levy shall become due and payable by the legal practitioner as a penalty.

Penalty upon
failure to pay
Levy

(2) Any sum payable as a penalty under this section shall, for the purposes of this Act, be deemed to be part of the Levy and shall be collected and recoverable accordingly.

(3) The Minister may, on the recommendation of the Society, by order published in the *Gazette*, revise the quantum of the punitive percentage under this section.

86.—(1) The Society shall keep and maintain proper books and records of account of its funds, property, assets and liabilities.

Account and
audit of
Society

(2) The accounts of the Society shall be examined and audited annually as at 31st January in every year by an auditor appointed by the Society at a General Assembly.

(3) The auditor referred in to subsection (2) shall personally present the audit report to the Society at an Annual General Meeting.

PART IX—DISCIPLINE

87. Every legal practitioner shall be subject to the jurisdiction of the High Court, and the Disciplinary Committee on matters of discipline.

Application
to all legal
practitioners

88. Nothing under this Part shall supercede, lessen or interfere with the powers vested in the Chief Justice or any judicial officer to deal with misconduct or an offence committed by a legal practitioner.

Saving
powers of
court

89.—(1) The High Court, either of its own motion and after due inquiry, or on an application made by the Attorney General, may make an order—

Disciplinary
powers of
High Court

(a) striking a legal practitioner off the Roll;

(b) suspending a legal practitioner; or

(c) admonishing a legal practitioner.

(2) The High Court shall make an order under subsection (1), where the legal practitioner—

(a) takes instructions in any cause or matter except from the party on whose behalf he is retained, or from some person who is an agent or representative of the party;

(b) is found guilty of fraudulent or improper conduct in the discharge of his professional duty;

(c) misleads the court, or allows the court to be misled in a manner that causes the court to make an order which he knew or ought to have known is wrong and improper;

(d) makes or agrees to make a payment or consents to the retention of the whole or any part of any fee paid or payable to him for his services, in consideration of any person procuring or having procured the employment, in any legal business, of himself or any other legal practitioner;

(e) directly or indirectly, procures or attempts to procure the employment of himself as a legal practitioner through or by the intervention of any person to whom any remuneration for obtaining the employment is given by him, or agrees or promises to be so given;

(f) without the previous written consent of the Society, makes any charges for professional services (where the charges are prescribed) other than those which are prescribed as scale charges, or less than those prescribed as minimum charges;

(g) is adjudged bankrupt;

(h) practices without a valid licence;

(i) is convicted of an offence punishable with a term of imprisonment without an option of a fine;

(j) is guilty of misconduct that brings the profession of the law into disrepute;

(k) directly or indirectly, applies or seeks instructions for professional business or does or permits, in the carrying out of his practice, any act or thing which can reasonably be regarded as touting or as calculated to attract business unfairly;

(l) holds himself out or allows himself to be held out, directly or indirectly, and whether or not, by name, as being prepared to do professional business in contentious matters at less than the scale fixed by law and in non-contentious matters at less than the scale of charges, if any, fixed by or prescribed by this Act;

(m) embezzles money or property belonging to his client or held on behalf of another person in the course of his duty;

(n) corrupts or attempts to corrupt a judicial officer;

(o) acts in a manner that poses, is likely to pose, or appears to pose, a conflict of interest, or breach of confidentiality;

(p) engages himself to represent a person without receiving instructions from the person;

(q) discharges himself from a client without due notice to the client and, where applicable, to the court; or

(r) fails to comply with this Act or subsidiary legislation made under this Act.

(3) Where the Court, on an application under subsection (1), is satisfied that a legal practitioner is guilty of dishonesty in connexion with his practice as a legal practitioner or in connexion with any trust for which he is a trustee, the court may order that no payment shall be made without the leave of a judge, by any banker named in the order out of any banking account in the name of the legal practitioner or his firm.

(4) Where a legal practitioner is struck off the roll or suspended under subsection (1), the court may give directions that it considers proper regarding the possession and control of deeds, wills, documents evidencing title to any property, books of account, records, vouchers or other documents in the possession or control of that legal practitioner or relating to any trust for which he is a trustee.

(5) An application to the court made under this section shall be heard by the Chief Justice sitting alone, or sitting together with another judge as he may direct, but no order shall be made suspending or striking off the Roll any legal practitioner without the legal practitioner being given a reasonable opportunity to be heard and to call witnesses.

90.—(1) There is hereby established the Disciplinary Committee of the Society.

Establishment
of
Disciplinary
Committee

(2) The Disciplinary Committee shall consist of—

(a) the Solicitor General, who shall be the chairperson; and

(b) the following members appointed by the Attorney General—

(i) one (1) legal practitioner of not less than ten (10) years standing at the bar, elected by the Society;

(ii) one Senior Counsel;

(iii) two (2) members of good standing in society and who are not legal practitioners.

(3) The Disciplinary Committee may inquire into the conduct of legal practitioners—

(a) at the request of the High Court;

(b) on a complaint made by any person stating grounds on which the High Court could make an order under section 89 against a legal practitioner.

(4) For the purpose of an inquiry under this Act, the Disciplinary Committee shall have all the powers of commissioners under sections 9 and 10 of the Commissions of Inquiry Act, and sections 11, 12 and 13 of that Act shall apply to proceedings before the Disciplinary Committee as though it were a Commission appointed under that Act, save that the legal practitioner into whose conduct an inquiry is being made shall not be entitled to his expenses of attending before the Disciplinary Committee.

Cap. 18:01

Functions of
Disciplinary
Committee

91. The Disciplinary Committee shall—

(a) receive complaints referred to it by the Society and the general public or a court, as the case may be;

(b) investigate all complaints brought before it;

(c) conduct hearings on disciplinary matters; and

(d) impose any penalty specified under section 96.

Minutes of
meetings of
Disciplinary
Committee

92. The Disciplinary Committee shall keep minutes of the proceedings of every meeting of the Disciplinary Committee.

Tenure and
vacancy for
Disciplinary
Committee

93.—(1) A person appointed to the Disciplinary Committee shall hold office for a period of three (3) years, unless he—

(a) sooner resigns;

(b) is removed from office; or

(c) ceases to have the qualification necessary as a prerequisite to appointment.

(2) At the expiry of a member's term of office, he may be eligible for reappointment for a maximum of two (2) other terms.

(3) A member of the Disciplinary Committee may be removed from office, by the Attorney General, on grounds of—

(a) physical or mental incapacity;

(b) misconduct;

(c) bankruptcy;

(d) absence, without valid excuse, from three (3) consecutive meetings of the Disciplinary Committee of which he has had notice; or

(e) conviction for an offence punishable with a term of imprisonment without an option of a fine.

(4) In case of a vacancy in the membership of the Disciplinary Committee, the vacancy shall be filled by a person—

(a) where the vacancy is occasioned by a person elected by the Society, by a person elected by the Society to replace him;

(b) where the vacancy is occasioned by a person appointed by the Attorney General, by another appointee of the Attorney General, until the expiry of the period from the date of appointment of the Disciplinary Committee:

Provided that if the remaining period is less than six (6) months, the Attorney General may not fill the vacancy until the expiry of the period.

94.—(1) Subject to other provisions of this Act, the Disciplinary Committee shall regulate its own procedure.

Proceedings
of
Disciplinary
Committee

(2) The Disciplinary Committee may make rules for regulating the making, hearing and determination of applications or complaints under this Part.

(3) The Disciplinary Committee shall meet for the transaction of business at a time and at a place determined by the chairperson.

(4) Half of the members shall form a quorum of any meeting of the Disciplinary Committee.

(5) At any meeting of the Disciplinary Committee, members shall, in the absence of the chairperson, elect one (1) of its number, to act as chairperson.

95.—(1) The Disciplinary Committee shall dispose of any matter before it within ninety (90) days.

Time
limits

(2) The Disciplinary Committee may, upon giving good and justifiable reasons, extend the period for disposing of any matter for a period not exceeding thirty (30) days.

(3) The Disciplinary Committee shall, upon reaching a decision on a matter before it, inform the complainant of its decision within seven (7) days of the decision.

(4) If the Disciplinary Committee fails to dispose of a complaint within the time limit specified under this section, a complainant may refer the matter to the Chief Justice.

Penalties

96.—(1) The Disciplinary Committee, upon being satisfied that a legal practitioner is responsible for misconduct, may—

(a) recommend to the Chief Justice that the legal practitioner be struck off the Roll;

(b) suspend the legal practitioner;

(c) impose a fine on the legal practitioner;

(d) admonish the legal practitioner; or

(e) advise the Director of Public Prosecution to institute criminal proceedings against a legal practitioner.

(2) In addition to a penalty imposed under subsection (1), the Disciplinary Committee may order the legal practitioner to—

(a) pay costs of the disciplinary proceedings; or

(b) pay compensation to the complainant.

(3) A person aggrieved by a decision of the Disciplinary Committee may, within thirty (30) days of the decision, commence judicial review proceedings against the decision, at the High Court.

(4) An application for judicial review under this section shall not operate as a stay of any decision of the Society.

Striking off

97.—(1) A legal practitioner whose name has been struck off the Roll shall not practice the profession of the law in Malawi.

(2) A legal practitioner who practises the profession of the law while he has been struck off the Roll or has been suspended, commits an offence and shall, upon conviction, be liable to a fine of ten million Kwacha (K10,000,000) and imprisonment for seven (7) years.

Suspension

98.—(1) A legal practitioner suspended by an order made under section 89 shall not practice the profession of the law in Malawi during the period of suspension.

(2) A legal practitioner shall not be suspended from practising the profession of the law for a period exceeding two (2) years.

Publication of names of legal practitioners struck off or suspended

99. The Society shall publish, in the *Gazette* and in at least two (2) newspapers with the widest circulation, names of legal practitioners who have been struck off the Roll or have been suspended and, in the case of suspension, the period of suspension.

100.—(1) A legal practitioner whose name has been struck off the Roll may, after the expiry of ten (10) years, apply to the Chief Justice for re-admission to practice. Re-admission

(2) On receipt of an application for re-admission, the Chief Justice may—

- (a) re-admit the applicant;
- (b) refuse to re-admit the applicant; or
- (c) order that the applicant shall not be re-admitted unless the applicant—

(i) enrolls at the institute and successfully passes the Malawi Law Examination;

(ii) is supervised by a legal practitioner of not less than ten (10) years standing at the bar for a period not exceeding one (1) year; or

(iii) restitutes any client's money or property, which is the subject of the striking off.

101.—(1) If a member of any committee established under this Part is present at a meeting of a committee at which any matter which is the subject of consideration is a matter in which the member or his immediate family member or his professional or business partner is directly or indirectly interested in a private or professional capacity, he shall, as soon as is practicable, after the commencement of the meeting, disclose his interest. Disclosure of interest

(2) Unless the Disciplinary Committee otherwise directs, the member referred to in subsection (1), shall not take part in any consideration or discussion of, or vote on, any question touching on the matter.

(3) A disclosure of interest shall be recorded in the minutes of the meeting at which it is made.

102.—(1) A person who—

(a) has been summoned before any committee under this Part, and

(i) refuses or fails, without justifiable cause, to attend and give evidence relevant to the inquiry at the time and place stated in the summons;

(ii) refuses to be sworn or affirmed; or

(iii) refuses or fails, without justifiable cause, to produce any book, record, document or thing which he is requested in the summons or otherwise to produce; or

Evidence

(b) appears before a committee and refuses to answer or to answer fully or satisfactorily to the best of his knowledge and belief any question lawfully put to him,

commits an offence and shall, upon conviction, be liable to a fine of one million Kwacha (K1,000,000) and imprisonment for six (6) months.

(2) Any person who at an inquiry under this Part, gives false evidence on oath, knowing his evidence to be false or not knowing or believing it to be true, commits an offence termed perjury and shall, upon conviction, be liable to the penalties provided under law for perjury.

Right to legal representation

103. A legal practitioner against whom a complaint is made and has been brought before the Disciplinary Committee is entitled to legal representation.

Oath of secrecy

104. A member of any committee established under this Part shall, on appointment, take an oath of secrecy prescribed under this Act.

Allowances

105. A member of a committee established under this Part shall be paid allowances as determined by the Society.

PART X—THE FIDELITY FUND

Establishment of Fidelity Fund

106.—(1) There is hereby established a fund to be known as the fidelity fund (in this Act, otherwise referred to as "the Fund"), which shall be administered and managed by the Society.

(2) The Fund shall be administered for the purposes of this Act in accordance with policies and procedures determined by the Society.

(3) The Society may, from time to time, invest any surplus funds which are not immediately required for the objects specified in this Act.

Objects of Fund

107.—(1) The Fund shall be applied for the purpose of compensating persons who suffer pecuniary loss as a result of theft committed by a legal practitioner, his clerk or employee, of money or other property entrusted by or on behalf of the persons to the legal practitioner or to his clerk or employee in the course of the legal practitioner's practice or while acting as executor or administrator in an estate of a deceased person or as a trustee or in any other similar capacity.

(2) Without prejudice to the generality of subsection (1), money of the Fund shall be applied for the following purposes—

(a) settlement of all claims, including costs and interest, payable under subsection (1);

(b) at the discretion of the Society, making a contribution towards expenses incurred by a claimant in establishing his claim;

(c) paying legal expenses incurred in legal proceedings involving the Fund;

(d) paying expenses incurred in the administration of the Fund, including investigations by the Society or its committees in respect of matters which concern the Fund;

(e) at the discretion of the Society, paying the premium or any portion thereof payable in respect of a professional indemnity group insurance policy taken out in favour of legal practitioners; or

(f) paying other expenses which are payable or may be paid from the Fund in accordance with this Act.

108. The sources of funds for the Fund shall consist of—

Sources of funds

(a) annual contributions paid by legal practitioners pursuant to applications for Fidelity Fund Certificates;

(b) money given or advanced to the Fund by the Society;

(c) interest paid to the Fund;

(d) revenue obtained, from time to time, from the investment of the Fund;

(e) money received on behalf of the Fund from any insurance company; and

(f) money paid to the Fund by way of grants, donations, gifts or charges from a source within or outside Malawi.

109.—(1) The Society may enter into a contract with any person offering professional fidelity insurance cover where the Society shall through the Fund, be indemnified to the extent and in the manner provided for in the contract against liability to pay claims arising under this Part.

Insurance contracts for purposes of indemnification

(2) A contract referred to in subsection (1) shall be entered into in respect of legal practitioners generally.

(3) A claimant against the Society shall not have—

(a) a right of action against any person offering fidelity insurance cover to the Society under this section, in respect of the contract; or

(b) a right to any money paid by the insurer in accordance with the contract.

(4) Money paid by the insurer in accordance with the contract shall be paid into the Fund for appropriation by the Society.

Possession of
Fund
Certificates

110.—(1) A legal practitioner shall not practice or act as a legal practitioner on his own account or in partnership unless he is in possession of a Fidelity Fund Certificate.

(2) A legal practitioner who practises or acts in contravention of subsection (1) shall not be entitled to any fee, reward or disbursement in respect of anything done by him while so practising or acting.

(3) Notwithstanding the provisions of this section, the Society may exempt any legal practitioner from the provisions of subsection (1):

Provided that the legal practitioner shall not be entitled to accept, receive or hold any trust money.

Application
for and issue
of Fidelity
Fund
Certificate
First, Fifth
Schedule

111.—(1) A legal practitioner intending to practice the profession of the law in Malawi on his own account or in a partnership, shall, unless he is exempt under section 110 (3), and has paid a contribution prescribed in the First Schedule, apply in a manner prescribed under the Fifth Schedule, to the secretary of the Society for a Fidelity Fund Certificate.

(2) Upon receipt of the application referred to in subsection (1), the secretary of the Society shall, if he is satisfied that the applicant has paid the contribution as prescribed and that the applicant has complied with any other lawful requirement of the Society, issue to the applicant a Fidelity Fund Certificate prescribed under Part II of the Fifth Schedule.

(3) A Fidelity Fund Certificate shall be valid until 31st January of the year next from the date it was issued.

(4) A Fidelity Fund Certificate issued contrary to the provisions of this Part shall be null and void and shall, on demand by the Society, be returned by the legal practitioner to whom it was issued to the Society within a period specified by the Society.

Contributions
to Fund by
legal
practitioners

112.—(1) Subject to this section, every legal practitioner intending to practice the profession of the law, shall on making an application for the Fidelity Fund Certificate, pay a contribution as may, from time to time, be determined by the Society.

(2) A legal practitioner who intends to commence practice on or after 1st July shall, in respect of the year, pay half of the contribution due.

(3) All contributions payable under this section shall be paid to the Society, and the Society shall remit the contributions to the Fund within thirty (30) days of receipt thereof.

113. If the amount of the Fund, including the assets thereof, is less than fifty per centum (50%) of the total income of the Fund for the previous year, the Society may, at its discretion, refuse to pay or may postpone the payment of any amount in respect of the purposes referred to in section 107. Payments from Fund

114.—(1) The Fund shall not be liable to pay any amount in respect of loss suffered by— Limitation on liability

(a) any person as a result of theft committed by a legal practitioner while the legal practitioner is employed by a person who is not a legal practitioner;

(b) a spouse of a legal practitioner as a result of any theft committed by the legal practitioner;

(c) any legal practitioner as a result of theft committed by a partner or employee of the legal practitioner or a partnership in which he is a partner;

(d) any legal practitioner as a result of theft committed by a member or employee of a company of which he is a member;

(e) any person as a result of theft committed by a legal practitioner whose fidelity has been guaranteed by another person, either in general or in respect of a particular transaction to the extent to which it is covered by the guarantee; or

(f) any person as a result of theft committed by a legal practitioner after the person has received a notification in writing from the Secretary of the Society warning him against the employment or continued employment of the legal practitioner.

(2) Only the balance of a loss suffered by a person after deduction from the loss of the amount or value of all money or other benefits received or receivable by the person from a source other than the Fund, may be recovered from the Fund.

115.—(1) A person shall not make a claim against the Fund in respect of theft referred to in section 107 unless— Claims against Fund

(a) written notice of the claim is given to the Society within three (3) months after the claimant becomes aware of the theft or by the exercise of reasonable care should have become aware of the theft; and

(b) within six (6) months after a written demand is sent to him, the claimant furnishes the Society with the proof that the Society may reasonably require.

(2) If the Society is satisfied, having regard to all the circumstances, that a claim or the proof required by the Society has been lodged or furnished as soon as practicable, it may, at its discretion, extend any period referred to in subsection (1).

Actions
against Fund

116.—(1) A claimant shall not institute an action against the Fund unless he exhausts all available legal remedies against a legal practitioner or his estate, in respect of whom the claim arose and against all other persons liable in respect of the loss suffered by the claimant.

(2) An action against the Fund in respect of loss suffered by a person as a result of theft committed by a legal practitioner or his clerk or employee, shall be instituted within one (1) year of the date of a notification directed to the person intending to commence the action or his legal representative by the Society informing him that the Society rejects the claim to which the action relates.

(3) In any action against the Fund, all defences which would have been available to the person against whom the claim arose shall be available to the Fund.

Subrogation

117. On paying money out of the Fund in settlement in whole or in part of a claim under this Act, the Fund shall be subrogated to the extent of the payment to all the rights and legal remedies of the claimant against a legal practitioner or a person in relation to whom the claim arose, or in the event of his death or insolvency or other legal disability, against any person having authority to administer his estate.

Exemption of
Fund from
certain laws

118.—(1) The revenue of the Fund shall be exempt from the provisions of any law relating to payment of income tax or any other tax or levy by the State.

(2) Any law relating to insurance, other than a law relating to the compulsory insurance of employees, or the provision of security in connection therewith, shall not apply to the Fund.

Management
and auditing of
Fund

119.—(1) The Society shall maintain, with a bank determined by the Executive Committee, a designated account into which all the money payable into the Fund shall be paid.

(2) The Society shall cause to be kept proper books of accounts of the payments made into and out of the Fund.

(3) The accounts relating to the Fund shall be audited annually by an auditor appointed by the Society in general assembly.

PART XI—MISCELLANEOUS

120. A person shall not institute an action for damages—

Indemnificati
on in respect
of certain acts
in good faith

(a) against the Society, or a member, an official or an employee of the Society in respect of anything done in good faith in the exercise or performance of powers and duties under this Act; or

(b) against the Society, any member of the Executive Committee of the Society or officer or employee thereof, in respect of a notification issued in good faith for purposes of section 114 (1) (f).

121.—(1) The Minister may, on recommendation of the Society,—

Powers of
Minister

(a) make regulations for the better carrying out of this Act; and

(b) amend any schedule to this Act; and

(2) The Minister may, on the recommendation of the Society, make Rules—

(a) as to the opening and keeping by legal practitioners of accounts at banks for client's money;

(b) as to the keeping by legal practitioners of accounts containing particulars and information as to moneys received, held or paid by them for or on account of clients;

(c) requiring the production by a legal practitioner of his books of accounts, bank passbooks, bank statements, statements of account, vouchers and any other necessary documents at any time on request by an officer of the Society for the inspection of a person nominated by the Society or by the Disciplinary Committee constituted under section 94;

(d) as to the regular audit of the accounts to be kept by legal practitioners and the furnishing of reports thereof; and

(e) for the purposes of protecting the interests, affairs or property of any person in the event of any legal practitioner bound by any professional duty or responsibility in respect of any interest, affairs or property, becoming precluded, or absenting himself, from the practice of his profession without having performed or discharged the duty or responsibility and having made no adequate provision for the performance or discharge thereof.

(3) Without derogation from the generality of the foregoing, the rules may confer, on the Society or any committee thereof, rights of

access to, and production and possession of, things as may be specified in the rules and may provide for the delegation of any of the rights, powers or duties of the Society or of any committee, to any member of the Society, or of the committee, any Law Officer or any nominee of any Law Officer.

(4) The High Court shall have jurisdiction to make an order it deems necessary or appropriate for the implementation or enforcement of any of the rights conferred upon the Society or any committee thereof, as the case may be, by rules made under this subsection; and the Chief Justice may, from time to time, make rules for the purposes of this subsection.

Repeal and
Savings
Cap. 3:04

122.—(1) The Legal Education and Legal Practitioners Act is hereby repealed.

(2) A person admitted to practice the profession of the law under the Act repealed under subsection (1) shall be deemed to have been admitted to practice under this Act.

(3) A person entitled to practice as a notary public under the Act repealed under subsection (1) shall be deemed to have been admitted to practice as a notary public under this Act.

(4) All rights, entitlements, conferments and grants made under the Act repealed under subsection (1) shall be deemed to have been made in accordance with this Act.

(5) Any subsidiary legislation made under the Act repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act and shall be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(6) All students enrolled for the study of law at the university of Malawi immediately before the commencement of this Act shall for purpose of seeking admission to practice as a legal practitioner be exempted from the requirements of enrolling with the institute for any period and the passing of the Malawi Law Examination.

SCHEDULES

FIRST SCHEDULE s.23, 25, 30, 47, 115

FEES	K	t
1. Certificate to practice as legal practitioner	25,000	
2. On admission to practice as legal practitioner	30,000	
3. On admission to practice in a specific cause	1,000,000	
4. On the granting of a certificate to practice as a notary Public	15,000	
5. On annual renewal of a Notary Public certificate	5,000	
6. On replacement of lost, destroyed or mutilated Certificates	15,000	
7. On application for a Fidelity Fund Certificate	5,000	

SECOND SCHEDULE s.23

COUNTRIES IN SOUTHERN AFRICA

(a) Angola;	(h) Namibia;
(b) Botswana;	(i) Seychelles;
(c) Democratic Republic of Congo;	(j) South Africa;
(d) Lesotho;	(k) Swaziland;
(e) Madagascar;	(l) Tanzania;
(f) Mauritius;	(m) Zambia; and
(g) Mozambique;	(n) Zimbabwe.

THIRD SCHEDULE s.29

OATH OR AFFIRMATION ON ADMISSION

"I,, freely accept the honour and privilege, duty and responsibility of practicing the profession of the law in the Republic of Malawi. I solemnly swear to protect and defend the rights and interests of the people that shall employ me; and conduct all cases truthfully, faithfully and to the best of my ability. I shall not neglect anyone's interest and shall faithfully serve and diligently represent the best interest of my client. I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences. I shall not pervert the law to favour or prejudice anyone, but in all things, I shall conduct myself honestly, with integrity and civility. I shall seek to promote and ensure access to justice and legal services for all. I shall seek to improve the administration of justice. I shall champion the rule of law and safeguard the rights and freedoms of all persons. I shall strictly observe and uphold the ethical standards that

govern my profession. I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. All this I do swear or affirm to observe and perform to the best of my skill, knowledge and ability. So help me God."

FOURTH SCHEDULE

s.47

PART I

HIGH COURT OF MALAWI

CERTIFICATE TO PRACTICE AS A LEGAL PRACTITIONER

It is hereby certified that has this day been admitted to practice the profession of the law as a legal practitioner in Malawi.

Dated this day of, 20.....

.....
Registrar

PART II

FEES FOR NOTARIAL ACTS

	K	t
1. For all protests, including drawing, engrossing and execution of protest and duplicate, copies of bills, attending to stamping and all incidental work, but excluding out-of-pocket expenses	25,000	00
2. For noting any bill, including all attendances, drawing fees and notarial signatures	7,500	00
3. For administering an oath, or receiving a declaration or acknowledgement, with or without attestation of signature	5,000	00
4. For every exhibit to an affidavit, declaration or acknowledgement	1,000	00
5. For each signature attested by a notary public in any document not otherwise provided for	5,000	00
6. For certifying to a copy of any document or part of a document if not exceeding 100 words	2,500	00
7. For every additional 100 words or fraction thereof, if the document or part of a document exceeds 100 words	1,500	00
8. For affixing notary's signature and seal if required to any document not otherwise provided for in this table	15,000	00

- | | |
|---|-----------|
| 9. For every notaries public seal affixed to a document, packet or article, when no signature is required | 15,000 00 |
| 10. For any other notarial act not specified in this table | 15,000 00 |

FIFTH SCHEDULE

s.118

PART I

MALAWI LAW SOCIETY
FIDELITY FUND CERTIFICATE

APPLICATION FORM

Year ending 31st December, 20.....

PLEASE COMPLETE IN BLOCK LETTERS IN BLACK INK.

1. Full names of the applicant:
2. Name of firm:
3. Physical address at which practice will be carried on (i.e. your principal place of practice):
.....
4. Contact details:
Postal address:
.....
Residential address:.....
.....
Telephone (business):
Telephone (home):
Fax:
E-mail:
5. (a) Any other physical address at which practice will be carried on:
.....
.....
.....
(b) Name of practitioner in control at such place or places:
.....
.....

6. Full names of partners, if any:
.....
.....
7. If no Fidelity Fund Certificate was obtained for the current year, state date on which the applicant will begin to practice for own account or in partnership or as a member of incorporated practice:
.....
8. If applicant ceased to practice for own account or in partnership or as a member of an incorporated practice and intends to resume practicing, state:
- (a) name and address of former practice:
.....
.....
- (b) when applicant ceased to practice:
.....
- (c) whether the practice purchases insurance cover to protect against the possibility of misappropriation of trust money or property?
If yes, what is the extent of the cover? per annum.
- (d) trust current banking account details: (use annexures, if there is more than one account):
- (i) Bank:
- (ii) Branch:
- (iii) Branch code:
- (iv) Account no:
- (v) Credit interest rate on banking account as at:
(AA) 31st March:; and
(BB) 30th September:
- (vi) Bank service fee formula:

I hereby authorize the above bank/s to provide the Fidelity Fund with changes in the above information, from time to time, as requested by the Fund.

I hereby authorize the Fidelity Fund to negotiate with my bankers the terms relating to interest accruing on, and bank charges levied against, my trust current banking accounts.

SIGNED on this day of, 20.... at in the presence of the undersigned witnesses:

AS WITNESSES:

1. Name:

Address:

Occupation:

Signature:

2. Name:

Address:

Occupation:

Signature:

.....
Signature of applicant.....
Date

PART II

FIDELITY FUND CERTIFICATE

MALAWI LAW SOCIETY

FIDELITY FUND CERTIFICATE

In compliance with section 115, the Malawi Law Society hereby certifies that has this day paid a contribution of K..... to the Fidelity Fund for the period beginning from the date hereof to the 31st March next.

Dated this day of, 20.....

.....
Secretary

Renewed until the, 20.....

Fee paid:..... 20.....

.....
Secretary

Passed in Parliament this twenty-ninth day of June, two thousand and eighteen.

FIONA KALEMBA
Clerk of Parliament