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GOVERNMENT GAZETTE

STAATSKOERANT

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STATE PRESIDENT'S OFFICE

No. 1281.

20 July 1993

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

No. 114 of 1993: Recognition of Foreign Legal Qualifications and Practice Act, 1993.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1281.

20 Julie 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 114 van 1993: Wet op Erkenning van Buitelandse Regs-kwalifikasies en -Praktyk, 1993.

ACT

To provide for the exemption of certain persons from certain requirements contained in the Admission of Advocates Act, 1964, and the Attorneys Act, 1979; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 9 July 1993.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—

- (i) “applicant” means a person who has applied for exemption in terms of section 3; (ii)
- (ii) “Minister” means the Minister of Justice; (iii)
- (iii) “panel” means the panel appointed in terms of section 4. (iv)

Minister may grant exemption

2. (1) Notwithstanding anything to the contrary in any other law contained, the Minister may, on the recommendation of the panel, unconditionally or on such conditions as he may in each case determine—

- (a) exempt an applicant from—
 - (i) a requirement referred to in section 3(2)(a)(i) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
 - (ii) the requirements for the degree referred to in section 2(1)(a) of the Attorneys Act, 1979 (Act No. 53 of 1979), and from the provisions of section 15(1)(b)(iii)(aa), (ivA) and (v) of that Act;
- (b) exempt an applicant who has practised as a legal practitioner in another country, or an applicant referred to in subsection 2(c)(ii), from—
 - (i) service under articles of clerkship referred to in section 2 of the Attorneys Act, 1979, and from the provisions of section 15(1)(b)(vi) of that Act;
 - (ii) a practical examination referred to in section 14 of the Attorneys Act, 1979, and from the provisions of section 15(1)(b)(iv) or 18(1)(d) of that Act.

(2) Exemption under subsection (1) shall only be granted to an applicant if the Minister is satisfied that—

- (a) the applicant is a South African citizen who left the Republic at some stage and that such applicant lawfully and permanently returned to the Republic;
- (b) the applicant is proficient in at least the Afrikaans or English language; and
- (c) an applicant referred to in subsection (1)(b)—
 - (i) has indeed practised as a legal practitioner in another country in the Supreme Court or the High Court of that country; or
 - (ii) is entitled to practise as such on account of his academic qualifications, and practical training or examinations, whether or not such practical training or examinations were a prerequisite for the completion of the academic qualifications concerned.

Application for exemption

3. (1) Any person who claims an exemption in terms of section 2(1) may lodge a written application with the Minister for such exemption.

(2) The Minister shall as soon as practicable submit such application together with any other relevant documents to the panel for consideration.

WET

Om voorsiening te maak vir die vrystelling van sekere persone van sekere vereistes vervat in die Wet op die Toelating van Advokate, 1964, en die Wet op Prokureurs, 1979; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 9 Julie 1993.)*

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

- 5 1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 (i) "applikant" 'n persoon wat ingevolge artikel 3 om vrystelling aansoek gedoen het; (i)
 (ii) "Minister" die Minister van Justisie; (ii)
 (iii) "paneel" die paneel ingevolge artikel 4 aangestel. (iii)

Minister kan vrystelling verleen

- 10 2. (1) Ondanks andersluidende bepalings van enige ander wet kan die Minister, op aanbeveling van die paneel, onvoorwaardelik of op die voorwaardes wat hy na gelang van die geval bepaal—
 (a) 'n applikant vrystel van—
 (i) 'n vereiste bedoel in artikel 3(2)(a)(i) van die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964); of
 (ii) die vereistes vir die graad bedoel in artikel 2(1)(a) van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979), en van die bepalings van artikel 15(1)(b)(iii)(aa), (ivA) en (v) van daardie Wet;
 (b) 'n applikant wat as regspraktisy in 'n ander land gepraktiseer het, of 'n applikant bedoel in subartikel (2)(c)(ii), vrystel van—
 (i) diens kragtens 'n leerkontrak bedoel in artikel 2 van die Wet op Prokureurs, 1979, en van die bepalings van artikel 15(1)(b)(vi) of 18(1)(d) van daardie Wet;
 (ii) 'n praktiese eksamen bedoel in artikel 14 van die Wet op Prokureurs, 1979, en van die bepalings van artikel 15(1)(b)(iv) van daardie Wet.
 (2) Vrystelling kragtens subartikel (1) word slegs aan 'n applikant verleen indien die Minister oortuig is dat—
 (a) die applikant 'n Suid-Afrikaanse burger is wat die Republiek die een of ander tyd verlaat het en dat sodanige applikant wettig en permanent na die Republiek teruggekeer het;
 (b) die applikant minstens die Afrikaanse of die Engelse taal magtig is; en
 (c) 'n applikant bedoel in subartikel (1)(b)—
 (i) wel in 'n ander land as 'n regspraktisy in die Hooggereghof of die Hoë Hof van daardie land gepraktiseer het; of
 (ii) geregtig is om as sodanig te praktiseer op grond van sy akademiese kwalifikasies, en praktiese opleiding of eksamens, hetsy sodanige praktiese opleiding of eksamens 'n voorvereiste vir die voltooiing van die betrokke akademiese kwalifikasies was al dan nie.

40 Aansoek om vrystelling

3. (1) 'n Persoon wat ingevolge artikel 2(1) op vrystelling aanspraak maak, kan skriftelik by die Minister om sodanige vrystelling aansoek doen.
 (2) Die Minister lê so 'n aansoek tesame met enige ander tersaaklike stukke so gou doenlik aan die paneel ter oorweging voor.

Appointment of panel

4. (1) The Minister shall as soon as practicable after the commencement of this Act appoint a panel consisting of—

- (a) a judge of the Appellate Division of the Supreme Court of South Africa, or such a judge that has been discharged from active service under section 3(1)(a) or (b) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), or a former judge of the said Court, after consultation with the Chief Justice of South Africa;
- (b) a practising advocate, after consultation with the General Council of the Bar of South Africa;
- (c) a practising attorney, after consultation with the Association of Law Societies of the Republic of South Africa;
- (d) one lecturer in law at a university in the Republic, after consultation with the Society of University Teachers of Law; and
- (e) not more than two persons who, in the opinion of the Minister, have the necessary expertise to serve on the panel,

to perform the functions assigned to the panel in terms of section 6.

(2) The member of the panel referred to in subsection (1)(a) shall be the chairman of the panel.

(3) Subject to the provisions of subsections (1) and (2), the Minister may from time to time designate a person to serve on the panel in the place of a member of the panel who for any reason is no longer able to serve on the panel.

(4) A member of the panel who is not in the full-time service of the State shall in respect of his services as such member be paid such remuneration and allowances as may be determined by the Minister with the concurrence of the Minister of State Expenditure.

Meetings of panel

5. (1) A meeting of the panel shall be held at such time and place as the chairman may determine.

(2) The procedure at meetings of the panel shall, subject to the provisions of this section, be determined by the chairman of the panel.

(3) The majority of the members of the panel shall form a quorum for a meeting of the panel.

(4) The decision of the majority of the members of the panel present at any meeting thereof shall be the decision of the panel, and in the event of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote.

Functions of panel

6. (1) If the panel is satisfied that an applicant satisfies the requirements referred to in section 2(2), the panel shall consider the application concerned together with any relevant documents submitted to the panel in terms of section 3.

(2) In considering an application—

- (a) by virtue of the provisions of section 2(1)(a)—
 - (i) the panel shall evaluate the academic qualifications of the applicant, including the extent to which—
 - (aa) the syllabus in terms of which the applicant has been educated, or any part of such syllabus which has already been completed by the applicant; and
 - (bb) the standard of training received by the applicant, correspond with the syllabus and standard of training which are normally required by a university in the Republic for the completion of a degree referred to in section 3(2)(a)(i) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), or section 2(1)(a) of the Attorneys Act, 1979 (Act No. 53 of 1979), as the case may be; and
 - (ii) the panel shall consider whether or not the applicant, on account of his academic qualifications, would have the right to practise as a legal practitioner in the Supreme Court or the High Court of the other country concerned;

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Aanstelling van paneel

4. (1) Die Minister moet so gou doenlik na die inwerkingtreding van hierdie Wet 'n paneel aanstel bestaande uit—

- (a) 'n regter van die Appèlafdeling van die Hooggereghof van Suid-Afrika, of so 'n regter wat kragtens artikel 3(1)(a) of (b) van die Wet op Besoldiging en Diensvoorwaardes van Regters, 1989 (Wet No. 88 van 1989), van aktiewe diens onthef is, of 'n voormalige regter van genoemde Hof, na oorleg met die Hoofregter van Suid-Afrika;
 - (b) 'n praktiserende advokaat, na oorleg met die Algemene Balieraad van Suid-Afrika;
 - (c) 'n praktiserende prokureur, na oorleg met die Vereniging van Prokureursordes van die Republiek van Suid-Afrika;
 - (d) een dosent in die regte aan 'n universiteit in die Republiek, na oorleg met die Vereniging van Universiteitsdosente in die Regte; en
 - (e) hoogstens twee persone wat na die oordeel van die Minister oor die nodige kundigheid beskik om in die paneel te dien,
om die werksaamhede te verrig wat by artikel 6 aan die paneel toegewys word.
- (2) Die lid van die paneel bedoel in subartikel (1)(a) is die voorsitter van die paneel.
- (3) Behoudens die bepalings van subartikels (1) en (2) kan die Minister van tyd tot tyd iemand aanwys om in die paneel te dien in die plek van 'n lid van die paneel wat om die een of ander rede nie meer in die paneel kan dien nie.
- (4) 'n Lid van die paneel wat nie in die heeltydse diens van die Staat is nie, word in verband met sy dienste as so 'n lid die vergoeding en toelaes betaal wat die Minister met die instemming van die Minister van Staatsbesteding bepaal.

Vergaderings van paneel

5. (1) 'n Vergadering van die paneel word gehou op die tyd en plek wat die voorsitter bepaal.

(2) Die prosedure by vergaderings van die paneel word, behoudens die bepalings van hierdie artikel, deur die voorsitter bepaal.

(3) Die meerderheid van die lede van die paneel maak 'n kworum vir 'n vergadering van die paneel uit.

(4) Die besluit van die meerderheid van die lede van die paneel wat op 'n vergadering daarvan aanwesig is, is die besluit van die paneel, en by 'n staking van stemme het die voorsitter benewens sy beraadslagende stem 'n beslissende stem.

Werksaamhede van paneel

6. (1) Indien die paneel oortuig is dat 'n applikant aan die vereistes bedoel in artikel 2(2) voldoen, oorweeg die paneel die betrokke aansoek tesame met enige tersaaklike stukke wat ingevolge artikel 3 aan die paneel voorgelê word.

(2) By oorweging van 'n aansoek—

- (a) uit hoofde van die bepalings van artikel 2(1)(a)—
 - (i) beoordeel die paneel die akademiese kwalifikasies van die applikant, met inbegrip van die mate waarin—
 - (aa) die leerplan ingevolge waarvan die applikant onderrig ontvang het, of enige deel van sodanige leerplan wat reeds deur die applikant voltooi is; en
 - (bb) die standaard van opleiding wat die applikant ontvang het, ooreenstem met die leerplan en standaard van opleiding wat normaalweg deur 'n universiteit in die Republiek vereis word vir die voltooiing van 'n graad bedoel in artikel 3(2)(a)(i) van die Wet op die Toelating van Advokate, 1964 (Wet No. 74 van 1964), of artikel 2(1)(a) van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979), na gelang van die geval; en
 - (ii) oorweeg die paneel of die applikant op grond van sy akademiese kwalifikasies die reg sou hê om as regspraktisy in die Hooggereghof of die Hoë Hof in die betrokke ander land te praktiseer, al dan nie; en

- (b) by virtue of the provisions of section 2(1)(b), the panel shall in addition to the academic qualifications referred to in paragraph (a) evaluate—
 (i) (aa) the nature and extent of the legal practise of the applicant in that country; and
 (ii) (bb) the period for which the applicant has practised as a legal practitioner in that country; or
 (iii) the nature of the practical training or examinations referred to in section 2(2)(c)(ii).
- (3) The panel may for the purposes of its functions in terms of this section consult with any person, organization or institution before a recommendation in terms of subsection (4) is made.
- (4) After considering an application the panel shall—
 (a) make a recommendation—
 (i) as to the question whether or not, in the opinion of the panel, the applicant qualifies to be exempted by the Minister in terms of section 2;
 (ii) whether the applicant should pass any supplementary examinations prescribed in terms of section 8; and
 (b) inform the Minister in writing of its recommendation.
- Administrative work incidental to functions of panel** 20
7. The administrative work incidental to the performance of the functions of the panel shall be carried out by officers of the Department of Justice designated for that purpose by the Director-General: Justice.
- Regulations**
8. The Minister may, after consultation with the panel, make regulations 25 regarding—
 (a) the supplementary examinations referred to in section 6(4)(a); and
 (b) in general, any other matter which the Minister may consider necessary or expedient to prescribe in order to achieve or promote the objects of this Act, and the generality of this paragraph shall not be limited by the preceding paragraph.
- Interpretation of Acts, and saving**
9. (1) (a) Section 3(2) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), shall be so construed that a person who has been exempted from the provisions of that section under this Act shall be deemed to comply with the provisions of that section to the extent to which such exemption has been granted. 35
 (b) Sections 14(3)(c), 15(1)(b) and 18(1)(d) of the Attorneys Act, 1979 (Act No. 53 of 1979), shall be so construed that an exemption referred to in those sections shall include an exemption in terms of this Act.
- (2) Any section of this Act shall, subject to the provisions of subsection (3), cease to have effect after the expiry of one year from the commencement of that section, but this shall not affect the previous operation of that section or any exemption granted in terms thereof.
- (3) The period mentioned in subsection (2) may be extended by the State President by proclamation in the *Gazette* for one year at a time: Provided that a second or subsequent extension shall only take place with the concurrence of Parliament. 45
- Short title and commencement**
10. (1) This Act shall be called the Recognition of Foreign Legal Qualifications and Practice Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. 50
 (2) Different dates may be so fixed in respect of different provisions of this Act.

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- (b) uit hoofde van die bepalings van artikel 2(1)(b), beoordeel die paneel benewens die akademiese kwalifikasies bedoel in paragraaf (a)—
 (i) (aa) wat die aard en omvang van die regspraktyk van die applikant in daardie land was; en
 5 (bb) die tydperk wat die applikant as regspraktisyn in daardie land gepraktiseer het; of
 (ii) die aard van die praktiese opleiding of eksamens bedoel in artikel 2(2)(c)(ii).
- (3) Die paneel kan vir die doeleindes van sy werksaamhede ingevolge hierdie artikel enige persoon, inrigting of instelling raadpleeg voordat 'n aanbeveling ingevolge subartikel (4) gedoen word.
- (4) Na oorweging van 'n aansoek moet die paneel—
 10 (a) 'n aanbeveling doen—
 (i) oor die vraag of die applikant na die paneel se oordeel kwalifiseer om kragtens die bepalings van artikel 2 deur die Minister vrygestel te word, al dan nie;
 (ii) of die applikant in enige aanvullende eksamens ingevolge artikel 8 moet slaag; en
 15 (b) die Minister skriftelik van sy aanbeveling in kennis stel.

20 Administratiewe werk verbonde aan werksaamhede van paneel

7. Die administratiewe werk verbonde aan die verrigting van die werksaamhede van die paneel word uitgevoer deur beampies van die Departement van Justisie wat vir dié doel deur die Direkteur-generaal: Justisie aangewys is.

Regulasies

- 25 **8.** Die Minister kan, na oorleg met die paneel, regulasies uitvaardig betrekende—
 (a) die aanvullende eksamens bedoel in artikel 6(4)(a); en
 (b) in die algemeen, enige ander aangeleentheid wat die Minister nodig of dienstig ag voor te skryf ten einde die oogmerke van hierdie Wet te bereik of te bevorder, en die algemeenheid van hierdie paragraaf word nie deur die voorafgaande paragraaf beperk nie.

Uitleg van Wette, en voorbehoud

- 9.** (1) (a) Artikel 3(2) van die Wet op Toelating van Advokate, 1964 (Wet No. 74 van 1964), word so uitgelê dat 'n persoon wat van die bepalings van daardie artikel kragtens hierdie Wet vrygestel is, in die mate waarin sodanige vrystelling verleen is, geag word aan die bepalings van daardie artikel te voldoen.
 (b) Artikels 14(3)(c), 15(1)(b) en 18(1)(d) van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979), word so uitgelê dat 'n vrystelling bedoel in daardie artikels 'n vrystelling ingevolge hierdie Wet insluit.
- 35 (2) 'n Artikel van hierdie Wet hou, behoudens die bepalings van subartikel (3), op om van krag te wees na die verloop van een jaar vanaf die inwerking-treding van daardie artikel, maar dit raak nie die vroeëre werking van daardie artikel of enige vrystelling wat daarkragtens verleen is nie.
 (3) Die tydperk in subartikel (2) vermeld, kan deur die Staatspresident by proklamasie in die *Staatskoerant* vir een jaar op 'n keer verleng word: Met dien verstande dat 'n tweede of daaropvolgende verlenging slegs met die instemming van die Parlement geskied.

Kort titel en inwerkingtreding

- 10.** (1) Hierdie Wet heet die Wet op Erkenning van Buitelandse Regskwalfikasies en -praktyk, 1993, en tree in werking op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal.
 (2) Verskillende datums kan aldus ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

