

Government Gazette 14980

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

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; (i)
- (ii) "Minister" means the Minister of Justice; (ii)
- (iii) "panel" means the panel appointed in terms of section 4.  
(iii)

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 practiced 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 practiced as a legal practitioner in another country in the Supreme Court or the High Court of that country; or
  - (ii) is entitled to practice 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.

## 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 practicing advocate, after consultation with the General Council of the Bar of South Africa;
- (c) a practicing 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 practice as a legal practitioner in the Supreme Court or the High Court of the other country concerned;

(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 practice of the applicant in that country; and

(bb) the period for which the applicant has practiced as a legal practitioner in that country; or

(ii) 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

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 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.

(b) Sections 14(3)(c), 15(1)(b) and 18(1)(d) of the Attorneys Act, 1979

(act Not 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.

#### 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.

(2) Different dates may be so fixed in respect of different provisions of this Act.