



## ANALYSIS

- |     |   |     |  |
|-----|---|-----|--|
| 1.  | Short Title and commencement                                      |     |  |
| 2.  | Interpretation  |     |  |
|     | <b><u>PART I</u></b>  |     |  |
|     | <b><u>ADMISSION TO</u></b>  |     |  |
|     | <b><u>THE PROFESSION</u></b>                                      |     |  |
| 3.  | Admission of practitioners  | 22. | Application  |
| 4.  | Application for admission   | 23. | Trust accounts   |
| 5.  | Enrolment   | 24. | Trust receipts   |
| 6.  | Certificate of enrolment  | 25. | Audit of trust accounts                                    |
| 7.  | Admission fees  | 26. | Auditors   |
| 8.  | The legal profession  | 27. | Irregularities   |
| 9.  | Practitioner may sue for<br>and recover costs                     | 28. | Suspension of trust<br>accounts                            |
| 10. | Practitioner deemed an<br>officer of the Court                    |     | <b><u>PART V</u></b>                                       |
|     | <b><u>PART II</u></b>   |     | <b><u>COOK ISLANDS LAW</u></b>                             |
|     | <b><u>PRACTISING CERTIFICATES</u></b>                             |     | <b><u>SOCIETY</u></b>                                      |
| 11. | Practitioner not to<br>practise without<br>practising certificate | 29. | The Law Society  |
| 12. | Issue and currency of practising<br>certificates                  | 30. | Qualifications for membership                              |
| 13. | Temporary practising certificate                                  | 31. | Other members  |
| 14. | Practising fees   | 32. | Resignation  |
|     | <b><u>PART III</u></b>  | 33. | Council of the Law Society                                 |
|     | <b><u>PROFESSIONAL MISCONDUCT</u></b>                             | 34. | Committees and delegation                                  |
| 15. | Complaints of professional<br>misconduct                          | 35. | Other officers   |
| 16. | Inquiry   |     | <b><u>PART VI</u></b>                                      |
| 17. | Interim suspension  |     | <b><u>FIDELITY GUARANTEE FUND</u></b>                      |
| 18. | Revocation of suspension  | 36. | Interpretation   |
| 19. | Evidence and proceedings  | 37. | Application of this Part                                   |
| 20. | Penalty and costs   | 38. | Establishment of Solicitors' Fidelity<br>Guarantee Fund    |
| 21. | Appeals   | 39. | Fund to be kept in separate bank<br>account                |
|     |   | 40. | Money payable into fund                                    |
|     |   | 41. | Expenditure from fund                                      |
|     |   | 42. | Audit of accounts  |
|     |   | 43. | Council to administer fund                                 |
|     |   | 44. | Solicitors in practice to pay<br>prescribed fees into fund |
|     |   | 45. | Accumulated fund not to exceed<br>\$50,000                 |

46. Solicitors may be required to pay levy		<b><u>PART VII</u></b>
47. Investment of fund	57. Code of ethics	<b><u>PROFESSIONAL ETHICS</u></b>
48. Application of fund		<b><u>PART VIII</u></b>
49. Claims against fund		<b><u>MISCELLANEOUS</u></b>
50. Defenses to claims against fund	58. Taxation of charges	
51. Subrogation of rights of action against defaulting solicitor	59. Scale of fees	
52. Provisions applicable if fund insufficient to satisfy claims	60. Application of Act	
53. Council may enter into contracts of insurance	61. Offences and penalty	
54. Application of insurance moneys	62. Incorporation	
55. Council may refund contributions in certain cases	63. Chief Justice not disqualified	
56. Rules for purposes of this Part of Act	64. Regulations	
	65. Act to bind the Crown	
	66. Transitional	
	67. Consequential amendments and repeals	
	Schedule	

1993-94, No. 15

An Act to make provision for regulating the practise of law

(20 January 1994)

**BE IT ENACTED** by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:-

1. Short Title and commencement - (1) This Act may be cited as the Law Practitioners Act 1993-94.

(2) This Act shall come into force on the 1st day of ~~March~~ 1994.

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

"Audit" means such financial investigations as shall be determined from time to time by the Society, in consultation with the Chief Justice;

"Barrister" means a person enrolled as a barrister only;

"Barrister and solicitor" means a person enrolled as a barrister and solicitor of the Court;

"Commonwealth" means the British Commonwealth of Nations, and includes Hong Kong;

"Court" means the High Court of the Cook Islands;

"Council" means the Council of the Cook Islands Law Society;

"Permanent resident" means a person who has the status of a permanent resident, pursuant to the provisions of the Entry Residence and Departure Act 1971-72;

"Practising certificate" means a certificate issued under Sections 12 or 13 of this Act;

"Practitioner" means, subject to Part IV, a person enrolled as a barrister and solicitor or as a barrister only pursuant to this Act;

"Registrar" means a registrar or deputy registrar of the High Court;

"Roll" means the roll of barristers and solicitors, and of barristers, kept by the Registrar pursuant to this Act;

"Society" means the Cook Islands Law Society established pursuant to this Act;

"Taxed" in relation to a practitioner's bill of costs means assessed as to fairness and reasonableness, having regard to the reasonable overheads of the practitioner, the degree of difficulty and the magnitude of the work done, the level of experience and expertise of the practitioner, and all relevant matters based upon the prevailing circumstances.

## PART I ADMISSION TO THE PROFESSION

3. Admission of practitioners - Every person shall be qualified for admission as a barrister and solicitor, or as a barrister only, as the case may be who -

- (a) has attained the age of 21 years; and
- (b) is a fit and proper person to practise law and has either, -
  - (i) been admitted as a barrister or solicitor, or both, as the case may be, pursuant to the laws of New Zealand or Australia, or of any other country of the Commonwealth which may from time to time be named by Order of the Minister after consultation with the Chief Justice; or
  - (ii) in the opinion of the Chief Justice, passed any suitable examination in law and who, while not having been admitted as a barrister or solicitor or both, demonstrates a satisfactory knowledge of law;
- and
- (c) is -
  - (i) Ordinarily resident in the Cook Islands;
  - (ii) A person who is not ordinarily resident in the Cook Islands but, in the opinion of the Chief Justice, has demonstrated a sound knowledge of Cook Islands law.

4. Application for admission - (1) Every application for admission shall be by application to the Chief Justice, and forthwith upon the filing thereof the Registrar shall deliver a copy to the Council which may require the applicant to appear before it for the purpose of an interview. The Council shall, after making or causing to be made such enquiries into the character, qualifications and experience of the applicant as it shall deem necessary, forward to the Chief Justice a confidential report regarding the suitability or otherwise of such applicant for admission, and if such confidential report is adverse to the applicant, communicate the contents thereof to the applicant.

(2) Upon application for admission being made under the provisions of subsection (1), and after considering the confidential report of the Council (if any), and upon proof to his satisfaction of the qualification and suitability of the applicant, and upon production of such testimonials as to character as may be required, the Chief Justice, unless cause to the contrary is shown, shall by writing under his hand, admit the applicant to practise as either a barrister and solicitor or as a barrister only, upon such terms and conditions that he thinks fit and shall inform the Registrar accordingly.

(3) Where any applicant is dissatisfied with the content of any report made by the Society pursuant to subsection (2), he may apply to the Chief Justice for a review of the report.

5. Enrolment - (1) The Registrar shall keep in his office a roll of barristers and solicitors and of barristers of the Court.

(2) Upon the admission of any person to practise and upon payment of the prescribed fee the Registrar shall place the name of that person on the appropriate roll.

(3) The Court may at any time make an order, upon just cause being shown, that the name of any practitioner be struck off from the roll, and in such event the Registrar shall forthwith strike the name of the practitioner off the roll and make entry of the date and effect of the order.

(4) Upon an order made by the Court that the name of any practitioner be restored to the roll, and upon payment of the prescribed fee, the Registrar shall restore the name of the practitioner to the roll and make an entry of the date and effect of the order accordingly.

6. Certificate of enrolment - The Registrar shall grant a certificate of enrolment in the prescribed form under the seal of the Court to any person who has been enrolled.

7. Admission fees - The Queen's Representative may from time to time by Order in Executive Council prescribe the fees to be paid on application for admission.

8. The legal profession - (1) No person shall act in the Cook Islands as a barrister and solicitor or barrister whether in the High Court or the Court of Appeal or otherwise who is not at the time of his or her so acting duly enrolled under this Act.

(2) No person shall act in New Zealand or elsewhere as a barrister and solicitor or barrister appearing before the High Court or Court of Appeal of the Cook Islands when any such Court is sitting in New Zealand or elsewhere, unless such barrister and solicitor or barrister (as the case may be) has been instructed by the holder of a current practising certificate issued pursuant to this Act.

(3) Subject to the provisions of this Act, it shall be lawful for any person enrolled to practise in all the Courts of the Cook Islands, and every such person shall have all the powers, privileges, duties and responsibilities that barristers and solicitors, or barristers as the case may be, have in New Zealand.

(4) No person practising as a barrister only shall operate a trust account.

9. Practitioner may sue for and recover costs - Every practitioner shall be entitled to sue for and recover his costs in respect of services rendered in that capacity.

10. Practitioner deemed an officer of the Court - Every practitioner shall be deemed to be an officer of the Court.

**PART II**  
**PRACTISING CERTIFICATES**

11. Practitioner not to practise without practising certificate - (1) Subject to the provisions of subsection (6), no practitioner shall act in the Cook Islands as a barrister and solicitor or barrister unless that practitioner is the holder of a current practising certificate.

(2) If a practitioner has applied for a practising certificate and has paid the prescribed fees and levies, and is otherwise entitled under this Act to the issue of the certificate, that practitioner shall until the certificate is received by him be deemed for the purposes of this Act to be the holder of a current practising certificate of the kind applied for.

(3) Every practitioner who contravenes this section commits an offence against this Act.

(4) No information in respect of an offence under this section shall be laid except by the president or secretary of the Society.

(5) In any proceedings in respect of an offence under this section, the following shall, in the absence of proof to the contrary, be sufficient evidence that an offence has been committed -

(a) a certificate signed by the secretary of the Society to the effect that at the time of the alleged offence the defendant was not, and was not deemed pursuant to subsection (2) to be, the holder of a current practising certificate as a practitioner;

(b) a certificate signed by the president of the Society to the effect that the defendant was at the time of the alleged offence acting as a practitioner, or holding himself out in any such capacity.

(6) This section shall not apply to any person who has been instructed by the Crown or by a practitioner or firm of practitioners in the Cook Islands who -

(a) is in the Cook Islands for a particular cause or matter or for not more than 31 days, and departs from the Cook Islands before the end of that 31 day period, or at the end of the hearing of the cause or matter (whichever is the later); and

(b) obtains and pays the prescribed fee for a temporary practising certificate pursuant to section 13.

12. Issue and currency of practising certificates - (1) Subject to the provisions of subsection (3), and to the payment of the prescribed fee then payable pursuant to section 14 of this Act, the secretary of the Society, on application made for the purpose by any person whose name is on the roll, shall issue to that person, a certificate signed by the president or the secretary to the effect that person is duly enrolled as a barrister and solicitor or as a barrister (as the case may be) of the Court and is entitled to practise.

(2) No person (other than a person who is enrolled as a barrister only) who is a barrister and solicitor and who is -

(a) a sole practitioner, or

(b) a principal in a firm of barristers and solicitors,

shall be entitled to be issued with a practising certificate unless that practitioner, or the firm in which that practitioner is a principal (as the case may be) enters into and maintains such arrangements in respect of professional indemnity insurance as the Chief Justice may from time to time require.

(3) A person who is not a Cook Islander, or a permanent resident shall not be entitled to be issued with a practising certificate unless that person either -

- (a) holds the necessary permits under the Entry Residence and Departure Act 1971-72 entitling that person to reside in and work in the Cook Islands as a practitioner; or
- (b) has the necessary approvals under the Development Investment Act 1977 entitling that person to carry on business in the Cook Islands as a practitioner.

(4) Subject to subsections (5) and (6) of this section, every practising certificate shall be in force -

- (a) if it is issued before the date of the expiry of the current certificate of the same kind held by the applicant, from the 31st day of January next after the date of its issue until the 31st day of January next following;
- (b) in any other case, on and after the date of its issue until the 31st day of January next following.

(5) If the name of a practitioner is removed from or struck off the roll, every practising certificate issued to that practitioner by virtue of his or her being enrolled shall cease to be in force.

(6) If a practitioner is suspended from practise, any practising certificate issued to that practitioner shall, so long as the suspension continues in force, be deemed to be suspended and to be not in force in respect of any capacity to which the suspension relates, unless the certificate sooner expires; and until the suspension ceases to have effect the practitioner shall not be entitled to practise in that capacity.

13. Temporary practising certificate - (1) A practitioner admitted as a barrister and solicitor or barrister in another jurisdiction who is to appear in a Cook Islands Court for a particular cause or matter on instructions from the Crown or a practitioner or firm of practitioners in the Cook Islands, and who has paid to the Society the prescribed fee, shall, subject to the provisions of the Development Investment Act 1977 and of the Entry Residence and Departure Act 1971-72, be entitled to the issue of a temporary practising certificate.

(2) A temporary practising certificate may be issued for a period of time not exceeding 31 days, or in respect of a particular cause or matter.

14. Practising fees - (1) The Society may from time to time in general meeting fix -

- (a) a library levy; and
- (b) the fee to be paid to the Society for a practising certificate as a barrister and solicitor, or as a barrister only; and
- (c) the fee to be paid for the annual renewal of every practising certificate;
- (d) the fee to be paid for a temporary practising certificate.

(2) On application by any practitioner, the Council may, if it thinks it just to do so in all the circumstances of the case, refund, or waive payment of, the whole or any part of the fee. Particulars of every such refund or waiver shall be reported to the Society at the next general meeting of the Society.

(3) The Council after consultation with the Society shall be responsible for the expenditure of fees so paid for such purpose or purposes as shall further the interests of the profession.

**PART III**  
**PROFESSIONAL MISCONDUCT**

15. Complaints of professional misconduct - (1) Any complaint by any person about the conduct of a practitioner or an employee of a practitioner in his professional capacity may be made to the Registrar, who shall forthwith forward the complaint, together with such comments as he thinks fit in relation to the complaint, to the Chief Justice.

(2) Where the Chief Justice receives such a complaint or has reasonable cause to suspect that a practitioner who is or was a member of the Society has in his professional capacity been -

- (a) guilty of misconduct; or
- (b) guilty of conduct unbecoming a barrister and solicitor or a barrister; or
- (c) negligent or incompetent, and that the negligence or incompetence has been of such a degree or so frequent as to reflect on his fitness to practise as a barrister and solicitor or barrister only, as will tend to bring the profession into disrepute; or
- (d) convicted of an offence punishable by imprisonment for a term exceeding one year, and is of the opinion that the conviction reflects on his fitness to practise as a barrister and solicitor or barrister only, or tends to bring the profession into disrepute;

the Chief Justice shall, unless he is of the opinion on reasonable grounds that the complaint is frivolous or vexatious, require from the practitioner such written explanation, within such time as the Chief Justice thinks fit.

(3) Where no explanation is received, or the Chief Justice is not satisfied with the explanation received, the Chief Justice may appoint a person who in his opinion is suitably qualified and competent to conduct an independent investigation into the matter complained of, and to report his findings to the Chief Justice.

(4) Every such complaint shall be enquired into as soon as practicable.

16. Inquiry - (1) For the purpose of the investigation of any complaint, the Chief Justice and any person appointed by him pursuant to section 15(3), shall have all powers necessary to obtain all documents and information relevant to the complaint and shall have the right of access to the office and the books, documents, and records of the practitioner.

(2) For the purpose of conducting an investigation the Chief Justice and any person appointed by the Chief Justice pursuant to section 15(3), shall in addition to the powers set out in subsection (1), have all the powers of a Commission of Inquiry and may if he thinks fit hold a hearing in private for the purpose of considering the complaint and shall allow the complainant and the practitioner against whom the complaint has been made, to be represented by counsel at such inquiry.

17. Interim suspension - At any time after professional misconduct has been alleged against any practitioner under this Act, the Chief Justice may without giving any notice to the practitioner, make an order that the practitioner be suspended from practise, or from practising in a particular capacity, until the charge has been heard and disposed of.

18. Revocation of suspension - A practitioner in respect of whom any interim suspension order is made under this section may at any time apply to the Chief Justice for revocation of the order, and the Chief Justice may grant or refuse any such application as he thinks fit.

19. Evidence and proceedings - (1) The Chief Justice, and any person appointed by him pursuant to section 15(3) may by notice in writing require any person to attend and give evidence at the hearing of any inquiry under this Part, and to produce all books or documents in that person's custody or under his control relating to the subject matter of any such application or enquiry.

(2) Witnesses, counsel, and the practitioner complained against shall have the same privileges and immunities in relation to inquiries under this Part as they would if they were proceedings in a court of law.

(3) The Chief Justice may from time to time make rules in respect of the hearing and determination of applications and enquiries under this Part insofar as rules are not herein provided.

20. Penalty and costs - After the hearing of any application or inquiry under this Part the Chief Justice may, in addition to making an order striking the name of a practitioner from the Roll -

- (a) order the practitioner to pay a fine not exceeding \$5,000;
- (b) reprimand the practitioner;
- (c) make such order as to the payment of costs by the practitioner as he thinks fit;
- (d) order the practitioner to make reinstatement to any person who has suffered loss by the action or inaction of any practitioner and any sum so paid shall be a debt due by the practitioner to the person to whom it is ordered to be paid, and shall be recoverable in any Court of competent jurisdiction.

21. Appeals - (1) An appeal against any order or decision of the Chief Justice under this Part shall lie to the Court of Appeal at the instance of the practitioner to whom the order or decision relates.

(2) Such appeal shall not be by way of re-hearing but shall lie on questions of law only.

#### PART IV TRUST ACCOUNTS

22. Application - This Part shall not apply to any person enrolled and practising as a barrister only.

23. Trust accounts - (1) All money received by a practitioner for or on behalf of any person shall be held by him exclusively for that person, to be paid to that person or as that person directs, and until it is so paid all such money shall be paid into a Bank to a general trust account or separate trust account of that practitioner.

(2) No such money shall be available for the payment of the debts of any other creditor of the practitioner, nor shall such money be liable to be attached or taken in execution under the order or process of any Court at the instance of any such creditor, nor shall such money be available for any other purpose save for the purpose for which the practitioner has received the money.



(3) Every practitioner who knowingly acts in contravention of this section commits an offence against this Act.

(4) Nothing in this section shall be construed so as to take away or affect any just claim or lien that any practitioner may have against any money so received by him.

(5) It shall be the duty of every practitioner -

(a) to keep his trust account books or records in such a manner as to disclose clearly the position of the funds therein and to enable the same to be conveniently and properly audited; and

(b) to account properly for trust account money to his clients.

(6) No practitioner shall open or operate a trust account for the purposes of receiving any money for investment on behalf of any client in a name the practitioner knows or has reason to believe is not the name by which the client is usually known, unless the practitioner, after reasonable enquiry (the proof of which shall lie on the practitioner), is satisfied that the client has no unlawful purpose for using the assumed name.

(7) Every trust account opened and operated for the purposes of receiving for investment any money on behalf of a client in an assumed name, shall be clearly marked in its heading with -

(a) the name by which the client is usually known; and

(b) the name assumed by the client in relation to the money held or to be held in the account; and

(c) any other name assumed by the client in relation to money held or to be held in any other trust account of the practitioner for the purposes of investment on behalf of the client.

(8) No practitioner shall open or operate any savings bank account that includes money held in trust for more than one client.

(9) All amounts withdrawn by a practitioner from any savings bank account subject to this Act shall be paid into a general trust banking account of that practitioner.

(10) No trust account ledger account of any client or of the practitioner shall at any time be permitted to be overdrawn.

(11) No practitioner shall cause or permit money of any client to be deposited with or lent to any company (other than a solicitors nominee company) in respect of which the principal financial benefit or the effective control is vested directly or indirectly in any one or more of the following persons -

(a) the practitioner;

(b) any of the practitioner's partners;

(c) the spouse of the practitioner or the spouse of any of the practitioner's partners;

(d) any child of the practitioner or a child of any of the practitioner's partners.

(12) No practitioner shall cause or permit any rent, interest, installment or debt due to a client to be collected by any company of the kind referred to in subsection (11) (other than a solicitor's nominee company).

(13) The trust account of a practitioner shall not be used for a practitioner's private and household transactions, but may be used for the practitioner's property and investment transactions if they are kept in a distinct and separate ledger account in the name of the practitioner and are dealt with in all aspects as if the practitioner were a client.

(14) No practitioner shall receive any money from a client on account of the practitioner, or of the practitioner's spouse or of them both, whether on deposit or by way of loan with or without security over property, except under the following conditions -

- (a) before the making of any such deposit or loan, the practitioner shall secure the signature of the depositor or lender to a written acknowledgement of the making of any such deposit or loan;
- (b) the signature of the depositor or lender shall be attested by an independent practitioner, and it shall be the duty of the independent practitioner to satisfy himself or herself that the depositor or lender fully understands the nature and effect of the proposed deposit or loan and of the acknowledgement;
- (c) a copy of the acknowledgement shall forthwith be lodged with the secretary of the Society;
- (d) a trust receipt shall be issued, which shall contain such particulars of names, amounts and dates as shall clearly identify the deposit or loan with the deposit or loan acknowledged in the acknowledgement.

24. Trust receipts - (1) Upon receiving any trust monies a practitioner shall forthwith issue a trust account receipt setting out clearly the purpose for which the funds are lodged with him, such receipt to be issued within two (2) days of receipt of the money, provided that where funds have been lodged by means of a direct credit to the trust account of the practitioner, a receipt shall be issued within two (2) days of notification to the practitioner of that deposit, whether such notification is by way of bank statement or otherwise.

(2) Every trust account receipt shall be in a form prescribed by regulations or, where no form is so prescribed, in a form approved by the Chief Justice.

25. Audit of trust accounts - (1) Within twenty days of the last day of each month the practitioner or his firm practising shall prepare a list of balances held by him on trust for clients, together with a reconciliation of such amount with his bank account.

(2) Every practitioner shall be required to have his books, papers and accounts audited each year by an auditor approved under this Act for such purpose.

(3) The Chief Justice may at any time without giving any reason for so doing order any auditor approved pursuant to this section to undertake a special audit of the books, papers and accounts of any practitioner and on completion of such audit the auditor shall report in writing to the Chief Justice.

(4) The Chief Justice may in addition to appointing any auditor, at any time appoint any officer or member of the Society, to examine the accounts of a practitioner or firm of practitioners, and to furnish to him a confidential report as to any irregularity in the accounts of any practitioner or firm of practitioners that may be disclosed by any such examination or as to any other matter that in the opinion of the person so appointed should be reported upon or further investigated.

(5) Every appointment made under this section shall be by instrument in writing, and shall be signed by the Chief Justice.

(6) Any person for the time being holding an appointment under this section may at any time, if requested by the Chief Justice, without further authority than this section, examine the accounts of any practitioner or firm of practitioners.

(7) Without limiting the generality of the foregoing provisions of this section, if the Chief Justice has reasonable cause to believe -

- (a) that any money entrusted to a practitioner has been stolen by him or by his employee or agent; or
- (b) that any trust account of any practitioner or firm of practitioners is not being kept or operated in accordance with this Act; or

(c) that any practitioner is, owing to absence, or physical or mental disability, unable to properly administer his trust account, any person for the time being holding an appointment under this section may at any time, acting under the general or specific directions of the Chief Justice, examine the accounts of that practitioner or firm of practitioners.

(8) On production by any person so appointed of the instrument of appointment, that person may at any time -

- (a) require any practitioner or firm of practitioners, or any practitioners, to produce all records or documents relating to the business or accounts of any practitioner or firm of practitioners, and to give all information in relation thereto that may be reasonably required by him; and
- (b) inspect all records and documents relating to any moneys received by any practitioner or firm of practitioners, or any employee, agent or banker of any practitioner or firm of practitioners, whether the money has been paid into a private account or a trust account at a bank or has not been paid to any such account, and make copies of them or any entries in them.

(9) A person appointed pursuant to this section to audit or examine accounts shall not communicate any matters that come to his knowledge in the exercise of any of his powers under this section, except -

- (a) for the purposes of his investigation; or
- (b) in the course of any report to the Chief Justice; or
- (c) in evidence in proceedings under this Act; or
- (d) to a member of the Police acting in the performance of his duty; or
- (e) in evidence in any Court.

(10) The Chief Justice on receiving any report pursuant to this Part may, in his discretion, communicate the contents of it, or any part of the contents, to -

- (a) any practitioner to whom the report relates, or any practitioner representing that practitioner, or, if that practitioner is a partner in the firm of practitioners, to any partner in the firm;
- (b) the Council;
- (c) any member of the Police.

(11) Nothing in this section shall prevent the Chief Justice, in his discretion, from giving to any client of a practitioner or firm of practitioners any information disclosed in any such report so far as it relates to the client's affairs, and is required by the client.

(12) Where the contents or any part of the contents of any report is disclosed to the Council under subsection (10), the Council shall consider the information given in committee and not otherwise; and it shall not be lawful for any member of that Council or any of its officers to publish to any person any information so disclosed except in evidence in disciplinary proceedings under this Act.

(13) The reasonable expenses of the Chief Justice acting in the exercise of any of the powers conferred by this Part of this Act in respect of any practitioner shall be recoverable from the practitioner as a debt.

(14) A notice giving particulars of the expenses claimed shall be served on the practitioner.

(15) Any such notice may be served personally on the practitioner or any representative, or may be forwarded to him by registered letter or facsimile addressed to his last known place of business or residence.

(16) Within 21 days after any such notice has been so served or posted, the practitioner may apply to the Chief Justice for a review of the expenses claimed, and on hearing any such application the Chief Justice may make such order as he thinks fit.

26. Auditors - (1) The Chief Justice may from time to time approve auditors for the purpose of auditing practitioners trust accounts.

(2) The auditor shall not, otherwise than as prescribed by this Part, divulge any matter of which he shall be informed in the course of audit.

27. Irregularities - (1) When the auditor has reason to believe there is any material irregularity in a trust account he shall immediately cause an investigation to be made and for this purpose shall have access to all papers, documents, books of the practitioner, and any bank account and the records of the bank.

(2) The results of any such investigation where irregularities are shown to exist shall immediately be reported to the Council and to the Chief Justice.

28. Suspension of trust accounts - (1) Where the Chief Justice is satisfied there is reasonable cause to believe that a practitioner may be guilty of theft of money entrusted to him, or has been stolen by a servant or agent of the practitioner, or there is any material irregularity or defalcation in the trust account, the Chief Justice may order the banker holding the trust account to pay all monies held in the trust account to the Court, and such payment shall be a complete discharge of the liability of the bank in respect of that money.

(2) Where the Chief Justice is satisfied that any practitioner is unable to administer a trust account owing to physical or mental disability, death, adjudication as a bankrupt, having his name struck from the roll or being suspended from practice, or has ceased to practice and has neglected to deal with or wind up his trust account after reasonable notice has been given to him, the Chief Justice may order that any money entrusted to that practitioner be paid to the Court.

(3) All money paid to the Court pursuant to this section shall be dealt with in such manner as the Court may direct.

(4) Where an order is made under this section the Court shall if it considers it expedient in the circumstances, order that the practitioner's records and documents relating to the practitioner's trust account be placed in the possession of the Registrar of the High Court or such other person as the Court may direct.

## PART V COOK ISLANDS LAW SOCIETY

29. The Law Society - (1) There is hereby established a society under the name of the Cook Islands Law Society, and by that name the Society shall have perpetual succession and a common seal. The Society shall have power to hold real and personal property and may sue and be sued in matters whether relating to contract or tort or otherwise in connection with the exercise of its powers or the carrying out of its functions under this Act.

(2) All persons who at the date of the coming into force of this Act are members of the unincorporated Society known as the Cook Islands Law Society are hereby deemed to be members of the Society created by subsection (1).

(3) Subject to the provisions of this Part, the members of the Society shall regulate and conduct the Society's affairs as they may think fit and may exercise the powers conferred on it by this Act.

(4) The Society shall have the functions of providing for the welfare of the profession in the Cook Islands, and without limiting the generality of the foregoing, shall promote and encourage proper conduct among the members of the legal profession, suppress illegal, dishonourable, or improper practices, preserve and maintain the dignity and

status of the legal profession, provide opportunities for the acquisition and diffusion of legal knowledge, to consider and suggest amendments to the law, and provide means for the amicable settlement of professional differences and generally to protect the interests of the legal profession and the interest of the public in relation to legal matters and to do all things that appear to the Society to be necessary or beneficial to the profession or its members or to the Cook Islands generally, including if necessary the establishment of a benevolent fund for employees, maintenance of law libraries, the furtherance of legal education, the representation of practitioners at overseas conferences and the assistance of universities or other lawful

authorities teaching law, assist in the investigation of charges of professional misconduct against any practitioner, and take such action thereon as may seem proper.

(5) Every member of the Society shall pay into the funds of the Society such levies, fees or subscriptions as may from time to time be fixed by the Society pursuant to this Act.

(6) The Society may incorporate in the Cook Islands under the provisions of the Incorporated Societies Act 1908, provided that the objects and rules shall not be inconsistent with the provisions of this Act.

30. Qualifications for membership - (1) The membership of the Society shall consist of every person who for the time being is engaged in practice having been duly enrolled under the provisions of this Act, whether or not that person applies for membership of the Society.

(2) Persons qualified for admission under this Act but who have not been so admitted, (other than persons who have been refused admission) may apply for membership of the Society.

(3) The Society may elect persons to be honorary members of the Society.

31. Other members - (1) The Attorney-General shall be an ex-officio member of the Society.

(2) The Society may admit to membership such other legally qualified persons for the time being resident in the Cook Islands as the Council may determine.

32. Resignation - While a member of the Society continues to practise he shall not be permitted to resign from membership.

33. Council of the Law Society - For the proper management of the affairs of the Society there shall be a Council consisting of a president, vice president and three other members all of whom shall be members of the Society and elected annually by the Society.

34. Committees and delegation - The Council may from time to time appoint committees consisting of members of the Society and may delegate to any such committee all or any of the powers of the Council.

35. Other officers - There shall be such secretary, treasurer or other officers of the Society as the Council may from time to time appoint, and subject to this part of this Act, the Society shall regulate its own affairs.

**PART VI**  
**FIDELITY GUARANTEE FUND**

36. Interpretation - In this Part of this Act, unless the context otherwise requires -

"Fund" means the Solicitors' Fidelity Guarantee Fund established under this Part of this Act;

"Prescribed" means prescribed by this Part of this Act or any rules made under this part of this Act;

"Solicitor" means a person enrolled as a barrister and solicitor, but not a person enrolled as a barrister only.

37. Application of this Part - (1) This Part of this Act applies to every solicitor who is for the time being the holder of a current practising certificate.

38. Establishment of Solicitors' Fidelity Guarantee Fund - (1) There is hereby established a fund to be known as the Solicitors' Fidelity Guarantee Fund.

(2) The fund shall be the property of the Society, and shall be held in trust for the purposes set out in this Act.

39. Fund to be kept in separate bank account - All money belonging to the fund shall, pending the investment or application thereof in accordance with this part of this Act, be paid into a bank, to the credit of a separate account to be called the Solicitors' Fidelity Guarantee Fund Account.

40. Money payable into fund - The fund shall consist of -

- (a) All sums paid to or on account of the fund by solicitors, either as annual contributions or as levies, in accordance with the provisions of this Part of this Act in that behalf;
- (b) The interest from time to time accruing from the investment of the fund as hereinafter provided;
- (c) All money recovered by or on behalf of the Society in the exercise of any right of action conferred by this Part of this Act;
- (d) Any other money that may be lawfully paid into the fund.

41. Expenditure from fund - There shall from time to time be paid out of the fund, as required, -

- (a) The amount of all claims, including costs, allowed or established against the fund as hereinafter provided;
- (b) All legal expenses incurred in defending claims made against the fund, or otherwise incurred in relation to the fund;
- (c) All premiums payable in respect of contracts of insurance entered into by the Council under section 53 of this Act;
- (d) All refunds made to solicitors or to their personal representatives under section 55 of this Act;
- (e) The expenses involved in the administration of the fund, including allowances to members of the Council in respect of their services and their actual and reasonable expenses incurred in connection with the management of the fund;

- (f) All other money payable in respect of any matter for which payment is required or deemed necessary by the Council for the purposes of this Part of this Act or the rules made thereunder, including the cost of investigations directed by the Council.

42. Audit of accounts - The accounts of the fund shall be audited annually by an accountant appointed for the purpose by the Minister. No person shall be so appointed to audit the fund unless he is authorised to audit solicitors' trust accounts in accordance with the provisions of this Act.

43. Council to administer fund - The fund shall be administered by the Council on behalf of the Law Society.

44. Solicitors in practice to pay prescribed fees into fund - (1) Except as provided in section 45 of this Act, every solicitor to whom this Part of this Act applies, on making application for a practising certificate pursuant to sections 12 or 13, shall, in addition to all other fees then payable by him, pay such fee as may from time to time be prescribed for the purposes of this Part of this Act, (being in any event not less than \$500) and no such certificate shall be issued unless and until the prescribed fee and any levy payable pursuant to section 46 by that solicitor, is paid.

(2) If any solicitor to whom this Part of this Act is not applicable at the time of his application for a practising certificate, thereafter in the year for which that certificate is issued commences to practise as a solicitor, he shall thereupon become liable to pay to the fund the amount of the prescribed fee for that year.

(3) Where any solicitor who for any year has paid the fee prescribed under subsection (1) remains in practice for less than three months of that year, the Council may, out of the money received by it under that subsection, refund to the solicitor such portion of the prescribed fee as it thinks fit. If any solicitor commences practice during the last three months of any year for which the prescribed fee is payable, the Council may accept in full satisfaction of the fee of that year, such portion of the fee as it thinks fit.

(4) All fees payable under this section shall be paid in the same manner as practising fees are paid, and the person receiving any fees under this section shall forthwith pay them into the fund.

45. Accumulated fund not to exceed \$50,000 - No further contributions in accordance with section 44 of this Act shall be made to the fund at any time while the amount of the fund, including any investments thereof, and after deducting the amount of all unpaid claims and other liabilities outstanding against the fund, is more than fifty thousand dollars.

46. Solicitors may be required to pay levy - (1) If at any time the fund is not sufficient to satisfy the liabilities of the Society in relation thereto the Council may by resolution impose on every solicitor to whom this Part applies, for payment into the fund, a levy of such amount as it thinks fit, not exceeding \$500.

(2) The amount of every such levy shall become payable on a date and in a manner to be fixed by the Council, and if not theretofore paid shall be paid together with the next annual fee payable to the fund under section 44 of this Act.

(3) No solicitor shall be required to pay by way of levy under this section more than \$1,000 in any one year.

47. Investment of fund - Any money in the fund that is not immediately required for the purposes thereof may be invested in any manner in which trustees are for the time being authorised by law to invest trust funds.

48. Application of fund - (1) Subject to the provisions of this Part, the fund shall be held and applied for the purpose of reimbursing persons who may suffer pecuniary loss by reason of the theft by a solicitor to whom this Part applies, or by his servant or agent, of any money or other valuable property entrusted to him, or to his servant or agent, in the course of his practice as a solicitor, including any money or other valuable property as aforesaid entrusted to him as a solicitor-trustee.

(2) No person shall have any claim against the fund in respect of any theft committed before the coming into force of this Act, and in respect of any theft committed after that date, no person shall have a claim against the fund unless notice of the claim is given in writing to the Council within twelve months after the claimant has become aware of the theft.

49. Claims against fund - (1) The Council may receive and settle any claim against the fund at any time after the commission of the theft in respect of which the claim arose, but no person shall be entitled, without leave of the Council, to commence any action in relation to the fund unless and until the claimant has exhausted all relevant rights of action and other legal remedies available against the defaulting solicitor or any other person in respect of the loss suffered by him.

(2) No person shall be entitled to recover from the fund an amount greater than the balance of the loss suffered by him after deducting from the total amount of his loss the amount or value of all money or other benefits received or receivable by him from any source other than the fund in reduction of his loss, including any benefits received by reason of professional services rendered or disbursements paid by the defaulting solicitor.

(3) The fund shall not be liable to meet a claim or claims made against the fund in any one year -

(a) in excess of \$50,000; or

(b) a sum exceeding the total amount held in the fund in that year (less the amount of any unpaid claims for which the fund is liable) plus the total contributions and any levies payable to the fund by solicitors in that year,

(whichever sum is the lesser) and where the total amount claimed exceeds the sum of \$50,000 and such total is in respect of more than one claim, then the amount to be paid to each claimant shall, subject to section 52, abate on a pro-rata basis.

(4) No amount shall be paid or payable out of the fund as interest on the amount of any judgement obtained or of any claim admitted against the fund.

(5) No right of action shall lie in relation to the fund in respect of any loss suffered by any person by reason of any theft committed by a solicitor at any time after the claimant or his privies have received a notification in writing from the Council warning him or them against the employment or continued employment of that solicitor.

(6) No right of action shall lie in relation to the fund in respect of any loss suffered by any person by the spouse of a solicitor by reason of any theft committed by that solicitor, or in respect of any loss suffered by any solicitor by reason of any theft committed by any partner of that solicitor, or by reason of any theft committed by a servant of the solicitor or a servant of any firm of solicitors in which the solicitor is a partner is employed.

(7) No action for damages shall lie against the Society or any member or servant of the Council for any notification given in good faith and without malice for the purposes of subsection (4) of this section.



50. Defenses to claims against fund - In any action brought against the Society in relation to the fund, all defenses which would have been available to the defaulting solicitor shall be available to the Society.

51. Subrogation of rights of action against defaulting solicitor - On payment out of the fund of any money in settlement in whole or in part of any claim under this Part of this Act, the Society shall be subrogated, to the extent of that payment, to all the rights and remedies of the claimant against the solicitor in relation to whom the claim arose, or, in the event of his death or insolvency or other disability, against his personal representatives or other persons having authority to administer his estate, and to all other rights and remedies whatsoever of the claimant in respect of the theft to which the claim relates.

52. Provisions applicable if fund insufficient to satisfy claims - (1) No money or other property belonging to the Society other than the fund shall be available for the satisfaction of any judgment obtained against the Society in relation to the fund, or for the payment of any claim allowed by the Council; but if at any time the fund is not sufficient to provide for the satisfaction of all such judgments and claims they shall, to the extent to which they are not so satisfied, and subject to section 49(3), be charged against the future accumulations of the fund.

(2) The Council may, having regard to the rules in subsection (3), determine the order in which the judgments and claims charged against the fund as aforesaid shall be satisfied, and may, if the amount accumulated is not sufficient to satisfy all such judgments and claims in full, satisfy any such judgments or claims in whole or in part.

(3) The Council shall, in applying the fund towards the settlement of any such judgments and claims as aforesaid, have regard to the following rules -

- (a) It shall take into consideration the relative degrees of hardship suffered or likely to be suffered by the several claimants in the event of their claims against the fund not being satisfied in whole or in part;
- (b) Claims for amounts not exceeding \$2,000 shall, unless in special circumstances, be satisfied in full before claims for amounts exceeding \$2,000 are satisfied to a greater extent than \$2,000;
- (c) Where all other considerations are equal, claimants shall have priority as between themselves according to the dates of the judgments or the dates when the claims were admitted by the Council, as the case may be.

53. Council may enter into contracts of insurance - (1) Notwithstanding anything to the contrary in this Part of this Act, the Council may in its discretion enter into any contract or contracts of insurance with any person or company carrying on fidelity insurance business whereby the Society will be indemnified to the extent and in the manner provided by the contract or contracts against liability to pay claims under this Part of the Act.

(2) Any such contract of insurance may be entered into in relation to solicitors generally or in relation to any solicitor or solicitors named therein.

(3) No action shall lie against the Society, or against any member or servant of the Council, for injury alleged to have been suffered by any solicitor by reason of the publication in accordance with fact of a statement that any contract of insurance entered into under this section does or does not apply to that solicitor:

54. Application of insurance moneys - No claimant against the fund shall have any right of action against any insurance company or other person with whom a contract of insurance is made under this Part of this Act in respect of that contract, or have any right to claim any money paid by the insurer in accordance with any such contract of insurance; but all such money shall be paid into the fund and shall be applied in or towards the settlement of relevant claims.

55. Council may refund contributions in certain cases - In the event of the death or on the retirement from the practice of his profession of any solicitor in respect of whom no claim has been made under this Part of this Act, or, if any such claim has been made, in respect of whom no such claim has been sustained, the Council may in its discretion pay to him, or to his personal representatives, as the case may be, a sum not exceeding the aggregate amount of his contributions to the fund.

56. Rules for purposes of this Part of Act - (1) For the purposes of this Part of this Act, and subject to subsection (2), the Council may from time to time make rules for all or any of the following purposes:

- (a) Prescribing the amount of the annual contributions to the fund to be paid by solicitors to whom this Part of this Act applies;
- (b) Providing for the investment of so much of the fund as is not immediately required for the purposes thereof;
- (c) Prescribing forms of notice to be given to the Council in relation to claims against the fund, and the conditions subject to which and the extent to which the council may settle any such claims without recourse being had to legal proceedings;
- (d) Prescribing the duties of accountants appointed to conduct an examination of any accounts under this Part of this Act; and prescribing also the duties of the solicitor or solicitors concerned in relation thereto, and the circumstances in which that solicitor or those solicitors may be required to pay the cost of the examination;
- (e) Such other matters as may be considered necessary for the purpose of protecting the fund or of giving full effect to the intent of this Part of this Act.

(2) Rules made under this section shall not come into force unless they are approved by the Chief Justice.

## PART VII PROFESSIONAL ETHICS

57. Code of ethics - (1) The code of ethics set out in the Schedule shall apply to practitioners in the Cook Islands.

(2) The code of ethics as set out in the Schedule may from time to time be amended by the Chief Justice after consultation with the Society.

## PART VIII MISCELLANEOUS

58. Taxation of charges - (1) A practitioner's bill of costs may on the application of the person affected, be taxed by the Registrar.

(2) There shall be an appeal against a decision of the Registrar to a Judge of the High Court, and his decision shall be final.

(3) Where on an application for taxation of any bill of costs more than one-sixth of the Bill is deducted, the practitioner shall pay the reasonable costs of the taxation. In every other case the party charged shall pay those costs.

59. Scale of fees - (1) The Society may from time to time publish for use by its members, a scale of fees.

(2) Where the Society has published a scale of fees, every practitioner shall be bound thereby, but may, where special circumstances exist (the proof of which shall lie on the practitioner in the event of a bill of costs being taxed under this Act) charge a greater or lesser fee as may be justified by those circumstances.

60. Application of Act - This Act shall not apply to persons qualified for admission who are employed full-time in any trust company, bank or similar institution, provided that person does not advise professionally, whether for gain or otherwise, any person or organisation other than the company or clients of the company or institution by whom he is employed.

61. Offences and penalty - (1) Every person who practices, or wilfully pretends to be, or takes or uses any name, title or description implying that he is qualified to practise while not enrolled or while being suspended from practise, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

(2) This section shall not apply to any person (other than a person suspended from practise) who, with the approval of the Judge or Justices of the Peace presiding, acts as an agent for any person in the Land Division of the High Court.

(3) Every person who commits an offence against this Act, shall, where no other penalty is provided, be liable upon conviction to a fine not exceeding \$2,000.

62. Incorporation - (1) Nothing in this Act shall be construed so as to prohibit any firm of practitioners from incorporating pursuant to the Companies Act 1970-71, provided that any person so doing shall demonstrate and maintain to the satisfaction of the Chief Justice, adequate arrangements for professional indemnity insurance.

(2) A firm of practitioners duly incorporated as a limited liability company under the Companies Act 1970-71, notwithstanding anything to the contrary in this Act or in the Companies Act 1970-71, use in place of the word "Limited" or "Ltd", the words "professional corporation" or "P.C." as part of the name of the company.

(3) For the purpose only of complying with the requirements of the Companies Act 1970-71, a company formed pursuant to this section by a sole practitioner may have one shareholder who is not a practitioner, provided that shareholder shall not hold more than one percent of the total shareholding of the company, or one share, whichever is the lesser.

63. Chief Justice not disqualified - Where the Chief Justice has considered any matter or exercised any discretion or power pursuant to any provision of this Act, the exercise by him of such discretion or power shall not disqualify the Chief Justice from adjudicating in respect of that same matter in the High Court or Court of Appeal.

64. Regulations - The Queen's Representative may from time to time by Order in Executive Council, make all such regulations as are deemed necessary or expedient for the purpose of giving full effect to this Act and for the due administration thereof.

65. Act to bind the Crown - This Act shall bind the Crown.

66. Transitional - (1) The Queen's Representative may, by Order in Executive Council name those persons who at the date of the coming into force of the Order would be entitled to be admitted to practise in the Cook Islands, and every person so named shall be deemed to have been admitted pursuant to this Act on the date set out opposite that person's name in the Order whether or not that date occurs before or after the coming into force of this Act.

(2) The date set out opposite a person's name in the Order shall be the date on which that person commenced practise in the Cook Islands and where no such date is set out then that person shall be deemed to have been admitted on the date that this Act shall come into force.

67. Consequential amendments and repeals - (1) In any enactment (other than the Constitution and except where the context otherwise requires) a reference to a barrister and solicitor or barrister of the Supreme Court, the High Court, or the Court of Appeal of New Zealand shall be deemed to be a reference to a barrister and solicitor or barrister of the High Court of the Cook Islands.

(2) The Entry Residence and Departure Act 1971-72 is amended, by repealing section 22.

(3) The Law Practitioners Act 1978 is repealed.

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This Act is administered by the Justice Department.

SCHEDULE

(Section 57)

Code of Ethics

1. A practitioner shall at all times maintain the honour and dignity of his profession. He shall, in his practice, abstain from any behaviour which may tend to discredit the profession.
2. A practitioner shall preserve independence in the discharge of his professional duty. A practitioner practising on his own account or in partnership where permissible, shall not engage in any other business or occupation if by doing as he may cease to be independent.
3. A practitioner shall treat his professional colleagues with the utmost courtesy and fairness.
4. A practitioner who undertakes to render assistance to a foreign colleague shall always keep in mind that his foreign colleague has to depend on him to a much larger extent than in the case of another practitioner of the same country. Therefore his responsibility is much greater, both when giving advice and when handling a case.
5. It is improper for a practitioner to accept a case unless he can handle it promptly and with due competence, without undue interference by the pressure of other work.
6. Any oral or written communication between practitioners shall be accorded confidentiality, unless agreed otherwise by a client, or as may be required by law.
7. A practitioner shall always maintain due respect towards the Court. A practitioner shall without fear defend the interests of his client and without regard to any unpleasant consequences to himself or to any other person.
8. A practitioner shall never knowingly give to the Court incorrect factual information, or advice which is to his knowledge contrary to the law.
9. It shall be considered improper for a practitioner to communicate about a particular case or matter directly with any person whom he knows to be represented in that case or matter by another practitioner, without the latter's consent.
10. A practitioner should never solicit business and he should never consent to handle a case other than at the direct request of the party concerned, unless he is satisfied that the person making the request is authorised by the party concerned to do so. However, it is proper for a practitioner to handle a case which is assigned to him by the High Court or other tribunal, or which is forwarded to him by another practitioner.
11. A practitioner shall at all times give his client a candid opinion, and shall render his assistance with scrupulous care and diligence.

12. Subject to rule 13, a practitioner shall at any time be free to refuse to take instructions in respect of any matter, but should only withdraw from a matter during its course for good cause, and if possible in such a manner that the client's interests are not adversely affected.
13. It is a fundamental principle that every practitioner who holds himself out as being available to appear in Court has a duty not to refuse a brief to appear in a class of case in which he professes to practise on the ground that he disapproves of the client, the client's conduct or the cause. In particular the practitioner has an obligation not to refuse the brief either because the client or the cause is unpopular or because acceptance of the brief may, in the eyes of people who do not understand the obligation of the practitioner, cause criticism on that account.
14. The loyal defence of a client's case may never cause an advocate to be other than perfectly candid, subject to any lawful right or privilege to the contrary which his clients choose him to exercise.
15. A practitioner shall when in the client's interests, endeavour to reach a solution by settlement out of Court rather than start legal proceedings. A practitioner should never stir up litigation.
16. A practitioner should not acquire a financial interest in the subject matter of a case or matter which he is conducting. Neither should he, directly or indirectly, acquire property about which litigation is pending before the Court in which he practices.
17. A practitioner should not represent conflicting interests in any litigation, and should only do so in other matters where his clients have had the conflicting interest disclosed to them and they do not object. This also applies to all members of a firm or partnership of practitioners.
18. A practitioner should never disclose, unless lawfully ordered to do so by the Court or as required by law, what has been communicated to him in his capacity as a practitioner, even after he has ceased to be the client's counsel. This duty extends to his partners, to practitioners assisting him, and to his employees.
19. In pecuniary matters a practitioner shall be most punctual and diligent. He should never mingle funds of others with his own and he should at all times (subject to any lien) be able to refund money he holds in trust for others.
20. A practitioner shall not retain money he has received for his client for longer than is absolutely necessary.
21. A practitioner may require that a deposit is made to cover his expenses, but the deposit should be in accordance with the estimated amount of his charges and the probable expenses and labour required. His right to ask for a deposit or to demand payment for his services, (failing which he may withdraw from a case or refuse to handle it), should never be exercised at a moment when the client or prospective client may be unable to find other assistance in time to prevent irreparable damage being done.
22. A practitioner shall never forget that he should put first not his right to compensation for his services, but the interests of his client and the exigencies of the administration of justice.

23. The practitioner's fee should be fixed on a consideration of the amount involved in or the magnitude of the controversy or matter, and the interest in it of the client, the time and labour involved, the reasonable overheads and degree of experience of the practitioner, and all other personal and factual circumstances prevailing.
  24. A practitioner who engages a foreign colleague to advise on a case or to co-operate in handling it, is responsible for the payment of the latter's charges in the absence of express agreement to the contrary. When a practitioner directs a client to a foreign colleague, he is not responsible for the payment of the latter's charges, but neither is he entitled to a share of the fee of the foreign colleague.
  25. No practitioner should permit his professional services or his name to be used in any way which would make it possible for persons to practise law who are not legally authorised to do so. No practitioner shall delegate to a legally unqualified person not in his employ and control, any function which is by law only to be performed by a qualified practitioner.
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