

CHAPTER 341

THE ADVOCATES ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

Section

Title

PART I

PRELIMINARY PROVISIONS

1. Short title.
2. Interpretation.
3. Certain officers exempt from provisions of the Act.

PART II

ADVOCATES COMMITTEE

4. Establishment of an Advocates Committee.
5. Attorney-General to fix times and places for meetings of Committee.

PART III

COUNCIL OF LEGAL EDUCATION

5A. Establishment and procedure of Council.

5B. Functions of Council.

PART IV

ROLL OF ADVOCATES

6. Registrar to keep the Roll of advocates.

7. Roll and precedence of existing advocates.

8. Admission and enrolment of advocates.

9. Precedence of advocates.

PART V

REMOVAL FROM AND RESTORATION TO THE ROLL

10. Meetings of Committee.

11. Information upon which Attorney-General may act.
12. Authority of Attorney-General to require affidavit of allegations of misconduct.
13. Powers of Committee.
14. Rules governing Committee.
15. Disobedience to summons and refusal to give evidence.
- 16.-21. [Repealed.]
22. Disciplinary powers of Judges and High Court apart from inquiry by Committee.
23. [Repealed.]
24. Orders of the High Court to be noted on the Roll and copy to be sent to other East African countries.
- 24A. Appeals.
25. Reciprocal enforcement of suspensions and striking-off in East African countries.
26. Effect of disciplinary action.
27. Limitation of time for certain applications to remove name from the Roll.
28. Person suspended or disbarred may apply for variation of order.
29. Application by petition supported by affidavit and served on Attorney-General.
30. Hearing in open court.

- 31. Hearing of petition and decision thereon.
- 32. Costs where application unsuccessful.
- 33. Proceedings under this Part in addition to other remedies.

PART VI

PRACTISING CERTIFICATES

- 34. Registrar to issue practising certificates.
- 35. Application for practising certificates.
- 36. Discretion of Chief Justice to refuse certificate in special cases.
- 37. Adjudication in bankruptcy to suspend practising certificate.
- 38. Date and period of validity of practising certificates.

PART VII

PRIVILEGES, RESTRICTIONS AND OFFENCES IN CONNECTION WITH PRACTICE

- 39. Qualifications for practising as advocate.
- 40. Rights of practising advocate.

- 41. Unqualified person not to act as advocate.
- 42. Penalty for pretending to be an advocate.
- 43. Penalty for unqualified persons preparing certain instruments.
- 44. Instruments to be endorsed with name and address of drawer.
- 45. Offences by bodies corporate.
- 46. Power to exclude touts from precincts of courts.
- 47. Acting as tout prohibited.
- 48. Offence of, and penalty for, inducing clients to abandon their advocates.

PART VIII

REMUNERATION OF ADVOCATES

- 49. Power to make general orders as to remuneration of advocates.
- 50. Scales of rates of commission and percentage.
- 51. Security for payment of remuneration and regulating interest.
- 52. Taxation of bills of costs.
- 53. Agreements with respect to remuneration for non-contentious business.

- 54. Powers to make agreements as to remuneration for contentious business.
- 55. Miscellaneous provisions as to agreements with respect to costs of contentious business.
- 56. In certain circumstances the taxing officer may reduce the amount payable under agreement.
- 57. Death or incapacity of advocate, etc.
- 58. Agreement excludes taxation.
- 59. Miscellaneous provisions as to remuneration for contentious business.
- 60. Power of High Court to order advocate to deliver his bill and to deliver up deeds.
- 61. Action to recover advocates' costs.
- 62. Taxation of bills on the application of the party chargeable or the advocate.
- 63. Taxation on application of third parties and beneficiaries under trusts, etc.
- 64. General provisions as to taxation.
- 65. Charging orders.

PART IX

MISCELLANEOUS PROVISIONS

- 66. Advocates to be officers of High Court.
- 67. Payment of expenses of Committee.
- 68. Authentication of Regulations and other documents.
- 68A. Fees for admission and practising certificate to be paid to Law Society.
- 69. Regulations.
- 70. Saving of other laws.
- 71. [Transitional provisions.]
- 72. [Repeal.]

CHAPTER 341

THE ADVOCATES ACT

An Act to provide for the law relating to advocates and for connected matters.

[1st January, 1955]

Ords. Nos.

25 of 1954

18 of 1957

Acts Nos.

C.A. 2 of 1962

16 of 1963

39 of 1969

11 of 1971

22 of 1983

12 of 1990

9 of 1996

31 of 1997

G.Ns. Nos.

347 of 1961

433 of 1961

490 of 1962

154 of 1971

92 of 1975

515 of 1991

PART I

PRELIMINARY PROVISIONS (ss 1-3)

[PCh341s1]1. Short title

This Act may be cited as the Advocates Act.

[PCh341s2]2. Interpretation Acts Nos. 16 of 1963; 39 of 1969 s. 2; 11 of 1971; 22 of 1983; 12 of 1990; 9 of 1996 Sch.

In this Act, unless the context otherwise requires—

"advocate" means any person whose name is duly entered as an advocate upon the Roll;

"client" includes any person who, as a principal or on behalf of another, or as a trustee or personal representative, or in any other capacity, has power, expressed or implied, to retain or employ, and retains or employs or is about to retain or employ, an advocate and any person who is or may be liable to pay to an advocate any costs;

"Committee" means the Advocates Committee established under section 4;

"costs" includes fees, charges, disbursements, expenses and remuneration;

"Council" means the Council of Legal Education established by section 5A;

"East African country" means the United Republic of Tanzania, Kenya and Uganda;

"Law Society" means the Tanganyika Law Society established under the Tanganyika Law Society Act *;

"Minister" means the Minister responsible for justice;

"parastatal organisation" means—

(a) a body corporate established by or under any written law other than the Companies Act *;

(b) a trade union registered under the Trade Unions Act;

(c) a company registered under the Companies Act * not less than fifty per centum of the issued share capital of which is owned by the Government, a local government authority or a parastatal organisation or, where the company is limited by guarantee, a company in respect of which the amount that the Government, a local government authority or a parastatal organisation or, where the company is limited by guarantee, a company in respect of which the amount that the Government, a local government authority or a parastatal organisation has, as member, undertaken to contribute in the event of the company being wound up, is not less than fifty per centum of the aggregate amount which all the members have undertaken to contribute; and references in this paragraph to a parastatal organisation include references to any such company;

"practising certificate" means a certificate issued by the Registrar to an advocate, authorising him to practise as such within Tanzania, pursuant to the provisions of Part VI;

"Registrar" means the Registrar of the High Court;

"Remuneration Committee" means the Committee established under the provisions of Part VIII;

"Roll" means the list of advocates kept in accordance with the provisions of Part IV;

"taxing officer" means the taxing officer of the High Court.

[PCh341s3]3. Certain officers exempt from provisions of the Act Acts Nos. 11 of 1966 s. 2; 11 of 1971; G.Ns. Nos. 347 and 433 of 1961; 490 of 1962

(1) Every officer to whom this section applies shall, in connection with the duties of his office, be entitled to practise as an advocate in the High Court or in any court subordinate thereto constituted under the Magistrates' Courts Act * and to perform any of the functions which, in England, may be performed by a member of the Bar as such or by a solicitor of the Supreme Court of Judicature as such, and provided, be subject to the provisions of this Act.

(2) The officers to whom this section applies are—

(a) the Attorney-General, Parliamentary Draftsmen and State Attorneys, and any person duly qualified holding office in the Attorney-General's Chambers;

(b) the legal secretary Income Tax Department;

(c) any person duly qualified holding office in any municipality established under the Local Government (Urban Authorities) Act * or any township authority established under the Local Government (District Authorities) Act *;

(d) the Registrar-General, Administrator-General, Public Trustee, Official Receiver, Commissioner for Lands and any person duly qualified holding office in the office of the

Registrar-General, or of the Administrator-General, or of the Official Receiver or the Land Officer;

(e) any person duly qualified holding office in such parastatal organisation as the Minister may, by order published in the Gazette, designate for the purposes of this section.

(3) For the purposes of this section "person duly qualified" means a person who is the holder of one of the professional qualifications set out in paragraph (a) of subsection (1) of section 8.

PART II

ADVOCATES COMMITTEE (ss 4-5)

[PCh341s4]4. Establishment of an Advocates Committee Acts Nos. 39 of 1969 s. 3; 22 of 1983

(1) There shall be established for the purposes of this Act a committee to be called the Advocates Committee consisting of—

- (a) a Judge of the High Court of the United Republic nominated by the Chief Justice;
- (b) the Attorney-General, or the Deputy Attorney-General or Director of Public Prosecutions;
- (c) a practising advocate nominated by the Council of the Law Society.

(2) During the temporary incapacity or absence from Tanzania of the member nominated by the Council of the Law Society, such Council may nominate any practising advocate to act as

a temporary member in the place of such member until his recovery from incapacity or his return, as the case may be, or until the expiration of his period of office, whichever first occurs.

(3) During the temporary incapacity or absence from Tanzania of the High Court Judge nominated by the Chief Justice, the Chief Justice may nominate another Judge of the High Court to act as a member of the Committee and such Judge may so act.

(4) The High Court Judge shall be the chairman of the Committee and shall preside at all meetings of the Committee. In the absence from any meeting of the High Court Judge duly nominated by the Chief Justice either under subsection (1) or subsection (3), the Attorney-General, the Deputy Attorney-General or the Director of Public Prosecutions, shall be the chairman of the meeting.

(5) Two members of the Committee, one of whom shall be the Attorney-General or the Deputy Attorney-General, and the Director of Public Prosecutions shall form a quorum.

(6) Any question before the Committee shall be decided by a majority of votes of the members present and voting; in the event of equality of votes the chairman of the meeting shall, in addition to his deliberative vote as a member of the Committee, have a casting vote.

(7) Where the conduct of the member nominated by the Council of the Law Society is the subject matter of an application or allegation made under the provisions of section 13, such member shall be disqualified to sit as a member of, or vote at, any meeting during which such application or allegation is considered or determined by the Committee, and in any such case the

Committee may nominate any practising advocate to act as a temporary member in the place of such nominated member for the purposes of such meeting.

(8) The Committee may appoint any public officer to be a secretary to the Committee.

[PCh341s5]5. Attorney-General to fix times and places for meetings of Committee

Meetings of the Committee shall be held at such times and places as the Attorney-General shall fix.

PART III

COUNCIL OF LEGAL EDUCATION (ss 5A-5B)

[PCh341s5A]5A. Establishment and procedure of Council Act No. 16 of 1963 s. 4

(1) There is hereby established a Council of Legal Education which shall consist of—

- (a) the Chief Justice or his representative;
- (b) the Attorney-General or his representative;
- (c) the Dean of the Faculty of Law of the University of Dar es Salaam or his representative; and
- (d) two practising advocates elected by the Law Society.

(2) The members of the Council elected by the Law Society shall hold office for such period, not exceeding three years, as the Law Society may determine and shall be eligible for re-election.

(3) The meetings of the Council shall be held at such times and places as the Chairman may determine.

(4) At any meeting of the Council three members thereof, of whom one shall be either the Chairman or the Attorney-General or his representative, shall constitute a quorum.

(5) Questions coming before the Council shall be determined by a majority of votes of the members present and voting but the Chairman shall have no casting vote.

(6) Subject to the provisions of this section the Council may regulate its own procedure.

[PCh341s5B]5B. Functions of Council Act No. 16 of 1963 s. 4

The functions of the Council shall be to exercise the functions conferred upon it by or under this or any other law and to exercise general supervision and control over legal education in Tanzania for the purposes of this Act and to advise the Government in relation thereto.

PART IV

ROLL OF ADVOCATES (ss 6-9)

[PCh341s6]6. Registrar to keep the Roll of advocates

The Registrar shall keep, in accordance with the provisions of this Act and of any regulations made thereunder, a Roll of all advocates.

[PCh341s7]7. Roll and precedence of existing advocates

The Registrar shall enter upon the Roll the name of every person who is qualified to practise as an advocate in Tanzania; and the order of entry of such names shall be according to the precedence of such persons as between themselves.

[PCh341s8]8. Admission and enrolment of advocates Acts Nos. 16 of 1963 s. 3; 31 of 1997 Sch.; G.N. No. 395 of 1963

(1) A person may apply to the Chief Justice to be admitted as an advocate—

(a) if he holds one of the following professional qualifications, that is to say—

(i) if he is the holder of a degree in law granted after examination by the University of East Africa or the University of Dar es Salaam by such other university or other institution as may be recognised by the Council for the purposes of this section;

(ii) if he is a legal practitioner (by whatever name called) and thereby has a right of audience before any court having unlimited jurisdiction in civil and criminal matters in any Commonwealth country or in any other country designated by the Minister for the purposes of this section;

(iii) if he is a Solicitor of the Supreme Court in England, Northern Ireland or the Republic of Ireland, a Writer to the Signet, a Solicitor in the Supreme Court of Scotland, or a person admitted or deemed to have been admitted as a solicitor under the Solicitors (Scotland) Act, 1933, of the United Kingdom, or if he is the holder of any similar qualification which is accepted by the Council as a professional qualification for the purposes of this subparagraph; and

(b) subject to the provisions of subsection (2), if either—

(i) he has complied with such requirements (whether relating to instruction or examination or otherwise) as to the acquisition of professional experience as may be specified in regulations made hereunder by the Council; or

(ii) he has been in continuous practice as an advocate in Kenya, Uganda or Zanzibar during the five years immediately preceding his application.

(1A) The Council may exempt any person from all or any of the requirements specified under subparagraph (i) of paragraph (b) of subsection (1).

(2) Every application made under this section shall be by petition to the Chief Justice in such form and manner and on payment of such fee as may be prescribed.

(3) Upon an application being made under this section and upon proof to his satisfaction of the qualification and suitability of the applicant, the possession by the applicant of an adequate knowledge of the language of the Court, and upon production of such testimonials as to character as he may require, the Chief Justice shall, unless cause to the contrary is shown to his satisfaction, by writing under his hand and in such manner and form as he may, from time to time, think fit, admit the applicant as an advocate.

(3A) There shall be endorsed on each certificate of admission issued by the Chief Justice words to the effect that the certificate in itself is not a licence to practise as an advocate.

(4) The Registrar, upon production of an admission certificate signed by the Chief Justice, and on payment to the Registrar of the prescribed fee, shall enter on the Roll the name of the person so admitted.

(5) Nothing in this section shall prejudice or affect the qualification or status of any person who immediately before the commencement of this Act was qualified to practise as an advocate according to the law then in force.

(6) All reports and communications under this section shall be absolutely privileged.

[PCh341s9]9. Precedence of advocates C.A. Act No. 2 of 1962 s. 4

Advocates shall take precedence among themselves according to the order of entry of their respective names on the Roll:

Provided that the Attorney-General shall take precedence over all other advocates:

And provided further that any person admitted to the Roll, who was, immediately before his application for admission to the Roll, the holder of an office to which the provisions of section 3 apply, may be accorded by the Chief Justice, with the consent of the Committee, precedence commensurate with the period immediately preceding the date of such application during which he held any such office within Tanzania.

PART V

REMOVAL FROM AND RESTORATION TO THE ROLL (ss 10-33)

[PCh341s10]10. Meetings of Committee Act No. 39 of 1969

The Attorney-General may at any time, and shall, when requested to do so by the chairman of the Committee, convene a meeting of the Committee for the purpose of enquiring into any allegation of misconduct made against any advocate.

[PCh341s11]11. Information upon which Attorney-General may act Act No. 39 of 1969

In the exercise of his power under section 10, the Attorney-General may act upon information which is brought to his notice in any manner whatsoever.

[PCh341s12]12. Authority of Attorney-General to require affidavit of allegations of misconduct

The Attorney-General may, instead of or in addition to summoning before the Committee any person who makes allegations of misconduct against any advocate, require that person to support such allegations by an affidavit setting out the facts on which he relies as proof of misconduct.

[PCh341s13]13. Powers of Committee Act No. 39 of 1969 s. 5

(1) The Committee shall have jurisdiction to hear and determine—

(a) any application by an advocate to procure the removal of his name from the Roll;

(b) any application by any person to remove the name of any advocate from the Roll;

or

(c) any allegation of misconduct made against any advocate by any person.

(2) Where an application or allegation of misconduct is made under paragraph (b) or paragraph (c) of subsection (1), the Committee shall have power to require the advocate in respect of whom such application is made, or in respect of whom such allegation is made, to

show cause why his name should not be removed from the Roll of advocates or to answer the allegation made, as the case may be:

Provided that where, in the opinion of the Committee, an application under paragraph (b) of subsection (1), or an allegation under paragraph (c) of that subsection does not disclose a prima facie case, the Committee may refuse such application or may dismiss the allegation without requiring the advocate to whom the application or allegation relates to show cause why his name should not be removed from the Roll or to answer the allegation, as the case may be.

(3) On the hearing of an application under paragraph (b) of subsection (1) or any allegation under paragraph (c) of that subsection—

(a) the Committee shall give the advocate to whom the application relates or against whom the allegation is made an opportunity to appear and be heard by it, and for that purpose shall, not less than seven days before the date fixed for the hearing, inform him of such date and of the particulars of the application or allegation, furnish to him a copy of any affidavit made in respect of the application or allegation, and notify him of the time and place when and where he may inspect and make a copy of any other document in the possession of the Committee which it deems relevant to the application or allegation;

(b) the Committee may in the course of the hearing, hear such witnesses and receive such documentary evidence as in its opinion may assist it in coming to a conclusion as to the truth or otherwise of any allegation made against the advocate.

(4) Upon the conclusion of a hearing subsection (3) the Committee may, if it is satisfied of the truth of the allegations upon which an application under paragraph (b) of subsection (1) is founded or of any allegation of misconduct made against the advocate—

- (a) direct that the name of the advocate be removed from the Roll;
- (b) admonish the advocate; or
- (c) suspend the advocate from practising for such period as the Committee may direct.

(5) In any proceedings under this section the Committee shall have power to make any such order as to payment by any party of any costs or witness expenses as it may think fit, and any such order shall be deemed to be an order of the High Court and may be enforced in like manner.

(6) If in the course of any hearing before the Committee after the whole or any part of the evidence has been heard and recorded, there is for any reason a change of the members of the Committee, the Committee may act on the evidence so recorded before such change, or partly recorded before and partly recorded after such change, as the case may be, or the Committee may re-summon the witnesses and recommence the hearing:

Provided that the advocate whose misconduct is the subject matter of the proceedings may, when the Committee resumes its proceedings after such change, demand that all the witnesses or any of them be re-summoned and reheard and shall be informed of such right by the Committee when it so resumes its proceedings.

[PCh341s14]14. Rules governing Committee Act No. 39 of 1969 s. 6

(1) The Committee, with the approval of the Chief Justice, may from time to time make rules for regulating the making, hearing and determination of applications to the Committee under this Part.

(2) For the purposes of any application made to it under this Part, the chairman of the Committee may administer oaths and may issue summonses under his hand directing any person named therein to attend at the time and place therein mentioned to give evidence or to produce documents therein specified or to do both.

(3) Every proceeding before the Committee under section 13 shall, for the purposes of Chapter XI of the Penal Code *, be deemed to be judicial proceeding.

[PCh341s15]15. Disobedience to summons and refusal to give evidence

If any person upon whom a summons issued under the provisions of section 13 has been served refuses or omits without sufficient cause to attend at the time and place mentioned in the summons, or refuses without sufficient cause to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the concurrence of the Committee, or refuses or omits without sufficient cause to produce any documents in his possession or under his control which are mentioned in the summons, he shall be liable on conviction to a fine not exceeding one thousand shillings:

Provided that no person giving evidence before the Committee shall be compellable to incriminate himself, and that every such person shall, in respect of any evidence given by him or

any document he is required to produce, be entitled to all the privileges to which a witness in a trial before the High Court is entitled in respect of evidence given by him or a document he is required to produce before such court.

[PCh341s16]16.-21. Repealed

[Repealed by Act No. 39 of 1969 s. 7.]

[PCh341s22]22. Disciplinary powers of Judges and High Court apart from inquiry by Committee

(1) Nothing in this Act contained shall supersede, or interfere with the powers vested in the Chief Justice or any of the Judges of the High Court to deal with misconduct or offences by advocates.

(2) Without prejudice to the generality of the foregoing subsection, notwithstanding that no inquiry may have been made by the Committee—

(a) the Chief Justice or the High Court shall have power, for any reasonable cause to admonish any advocate or to suspend him from practising during any specified period or make an order of removing his name from the Roll;

(b) any Judge of the High Court shall have power to suspend any advocate in like manner temporarily, pending a reference to, or disallowance of such suspension by, the High Court;

(c) any advocate aggrieved by any decision or order of the Chief Justice or a judge of the High Court made in pursuance to paragraph (a), may, within thirty days of such decision or order appeal—

(i) in the case of a decision or order by a judge of the High Court, to the Advocates' Committee; and

(ii) in the case of a decision or order of the Chief Justice, to the Court of Appeal:

Provided that where the decision or order appealed against was made by a judge of the High Court nominated by the Chief Justice to be a member of the Advocates' Committee under section 4(1)(a) of this Act, such judge shall not sit at the hearing of the appeal by the Committee, and in such case, the Chief Justice may nominate another judge of the High Court as provided under subsection (3) of section 4 of this Act; and save further that in an appeal to the Court of Appeal against a decision or order of the Chief Justice the latter shall not sit to hear the appeal.

[PCh341s23]23. Repealed

[Repealed by Act No. 39 of 1969 s. 7.]

[PCh341s24]24. Orders of the High Court to be noted on the Roll and copy to be sent to other East African countries Act No. 39 of 1969 s. 8

(1) Where, in proceedings under or by virtue of this Act, any advocate is admonished, or an order is made by the Committee removing his name from the Roll, or suspending him from practice, or as to the payment by him of costs, the Registrar shall cause a note of the effect of

such admonition or order to be entered against the name of the advocate on the Roll and, where the order so directs, shall remove his name from Roll.

(2) The Registrar shall send to the Supreme Court or High Court, as the case may be, of each East African country a certified copy of every order (including orders made on appeal) made under or by virtue of this Act as to removal of the name of an advocate from the Roll, as to replacing the name of an advocate on the Roll or as to suspending an advocate from practice.

[PCh341s24A]24A. Appeals Acts Nos. 39 of 1969 s. 9; 12 of 1990

(1) Any advocate aggrieved by any decision or order of the Committee under this Act may, within thirty days of such decision or order, appeal to the High Court against such decision or order.

(2) On any appeal under this section the High Court may affirm, reverse or vary the decision or order appealed against, and may in addition thereto exercise all the powers conferred upon the High Court by the Civil Procedure Code *, in relation to an appeal from civil suits.

(3) In any appeal under this section the Committee shall be made a party thereto and shall have a right to be represented at the hearing and to oppose the appeal.

(4) Every appeal under this section shall be heard by a full bench of the High Court composed of not less than three Judges:

Provided that where the proceedings concern a decision or order made by a judge of the High Court under paragraph (a) of subsection (2) of section 22 such judge shall not sit to hear the appeal before the full bench of the High Court.

(5) [Omitted].

[PCh341s25]25. Reciprocal enforcement of suspensions and striking-off in East African countries Act No. 9 of 1996 Sch.

(1) If any advocate who is also an advocate or legal practitioner, (by whatsoever name or style designated, of, or is entitled to practise as such in, any reciprocating Commonwealth country, is suspended from practice in such country by order of a competent court or other competent authority of or in such country, a note of such suspension shall be entered by the Registrar against the name of the advocate on the Roll, and thereupon such advocate shall be suspended from practice as an advocate in Tanzania for the period for which his suspension from practice in such country remains effective, or until the note of such suspension is deleted in accordance with the provisions of subsection (3) of this section, as the case may be.

(2) If the name of any such advocate as aforesaid is, by order of a competent court or other competent authority of or in any reciprocating Commonwealth country made otherwise than on the application or at the request of the advocate himself, removed or struck from or off the Roll or list of advocates or legal practitioners of such country, or if by any such order as aforesaid, made otherwise than on the application or at the request of the advocate himself, such advocate is disbarred, or otherwise disentitled to practise as an advocate or legal practitioner, by whatsoever name or style designated, in such country, the name of such advocate shall be removed from the Roll by the Registrar.

(3) Notwithstanding anything in this Act contained the Chief Justice may, if he thinks fit, either on his own initiative or on the recommendation of the Committee at any time—

(a) order that a note of the suspension from practice of any advocate in an reciprocating Commonwealth country shall not be entered by the Registrar against the name of the advocate on the Roll;

(b) order that the name—

(i) of any advocate which by order of a competent court or other competent authority of or in any reciprocating Commonwealth country made otherwise than on the application or at the request of the advocate himself has been removed or struck from or off the roll or list of legal practitioners of such country; or

(ii) of any advocate who by any such order as in subparagraph (i) of this paragraph is disbarred or otherwise disentitled to practise as an advocate or legal practitioner, by whatsoever name or style designated in such country, shall not be removed from the Roll by the Registrar;

(c) order the Registrar to replace on the Roll the name of any advocate whose name has been removed from the Roll in accordance with the provisions of this section; or

(d) order the Registrar to delete from the Roll any note of the suspension from practice of any advocate in an East African country entered against the name of such advocate on the Roll.

(4) If in any case to which the provisions of this section apply the name of an advocate is restored to the Roll or list of advocates or legal practitioners in any East African country, or if he

otherwise becomes entitled again to practise as aforesaid in such country, his name shall, subject to the provisions of this Act, be replaced on the Roll by the Registrar.

(5) In this section, the expression "reciprocating commonwealth country" means any Commonwealth Country in respect of which the Minister declares, by order published in the Gazette, that he is satisfied that reciprocal effect will be given under the law of that country to any order made under this Act for the suspension of advocates from practice or the removal of their names from the Roll.

[PCh341s26]26. Effect of disciplinary action

Where under any provision of this Act the name of an advocate has been removed from the Roll or an advocate has been suspended from practice, his practising certificate (if any) shall be deemed forthwith to have been cancelled, or, in the case of suspension for a period less than the unexpired period to which his practising certificate relates, to have been suspended for such lesser period.

[PCh341s27]27. Limitation of time for certain applications to remove name from the Roll

Subject as hereinafter provided, no advocate shall be liable to have his name removed from the Roll on account of any defect in his admission and enrolment, unless the application to remove his name from the Roll is made within six months after the date of his enrolment:

Provided that this section shall not apply to any case where fraud is proved to have been committed in connection with the admission or enrolment.

[PCh341s28]28. Persons suspended or disbarred may apply for variation of order Act No. 39 of 1969 s. 10

(1) Subject to the provisions of subsection (2), any person who, in accordance with the provisions of this Act or otherwise by the High Court, has been suspended from practising during a specified time or whose name has been removed from the Roll, may apply to the High Court for an order, in the former case, to set aside the order or to reduce the period of suspension and, in the latter case, to set aside the order or for re-admission.

(2) The right to apply under subsection (1) shall be subject to the following limitations—

(a) in the case of an order of suspension, no application shall be made until after the expiration of two years from the date of such order or of half the period of suspension, whichever is the less, and when an application has been made and determined no further application shall be made until after the expiration of two years from the date of such determination; and

(b) in the case of an order removing a name from the Roll, no application shall be made until after the expiration of two years from the date of such order and when an application has been made and determined, no further application shall be made until after the expiration of two years from the date of such determination and, in the case of subsequent applications, until after the expiration of two years from the date of the determination of the last previous application:

Provided that in the event of any new material fact coming to light since the making of the original order of suspension or removal from the Roll, which fact might have influenced the Court or the Committee in making the order, the person affected may, at any time, apply to a

Judge in Chambers for permission to apply for reconsideration of the original order, and if the Judge is of the opinion that such fact should be placed before the Court or the Committee which made the original order, whether or not he considers that such fact would have influenced the original decision, he may grant such application, and where such application is granted –

(a) if the original order was an order made by the High Court, the High Court shall proceed to reconsider the order;

(b) if the original order was an order made by the Committee, the Committee shall proceed to reconsider the order.

[PCh341s29]29. Application by petition supported by affidavit and served on Attorney-General

(1) Every application under section 28 shall be by petition and shall be accompanied by an supported affidavit setting forth the grounds upon which the applicant relies.

(2) A copy of such petition and affidavit shall be served upon the Attorney-General not less than seven days before the day of hearing.

[PCh341s30]30. Hearing in open court

The petition shall be heard in open court and the petitioner and the Attorney-General may appear or be represented.

[PCh341s31]31. Hearing of petition and decision thereon

The High Court at the hearing of the petition may require any statement made by or on behalf of the petitioner to be verified on oath or may require further evidence either orally or by affidavit in respect of any specified matters or after hearing the petitioner and the Attorney-General in reply may adjourn the determination of the petition for a period not exceeding two years and may require to be supplied at a specified time or times during the adjournment with any such information relating to the petition as the Court may think necessary; or the Court may—

(a) in the case of an application to set aside the order of suspension or to reduce the period of suspension—

(i) set aside the order of suspension; or

(ii) reduce the period of suspension for a specified time or to a specified date;

or

(iii) decline to make any order; and

(b) in the case of an application to set aside an order removing a name from the Roll or for re-admission—

(i) set aside the original order; or

(ii) direct the Registrar to re-admit the petitioner either forthwith or at some future date; or

(iii) decline to make any order; and

(c) make such order relating to the Roll and otherwise as the Court thinks fit.

[PCh341s32]32. Costs where application unsuccessful

Where the High Court, in the case of an application to have an order of suspension set aside or to have the period of suspension reduced, refuses to make an order setting aside or reducing the period of suspension and, in the case of an application to have an order removing a name from the Roll set aside or for re-admission, declines to make any order setting aside or for re-admission, the High Court may direct that the applicant do pay to the Attorney-General his taxed costs or such sum in lieu of taxed costs as the Court may specify.

[PCh341s33]33. Proceedings under this Part in addition to other remedies

(1) No proceedings, whether civil or criminal, and whether pending or terminated, shall be a bar to any proceedings under this Part based on the same or substantially the same facts as those to which such civil or criminal proceedings relate and no such proceedings, howsoever determined, shall in any way derogate from the power of the High Court to admonish an advocate, or make an order removing his name from the Roll or suspending him from practice or from the powers of the High Court or a judge under the provisions of section 22.

(2) No proceedings under this Part, whether pending or terminated, shall be a bar to any civil or criminal proceedings or other remedy based on the same or substantially the same facts as those to which the proceedings under this Part relate.

PART VI

PRACTISING CERTIFICATES (ss 34-38)

[PCh341s34]34. Registrar to issue practising certificates

It shall be the duty of the Registrar to issue in accordance with the provisions of this Part certificates authorising the advocates named therein to practise as advocates.

[PCh341s35]35. Application for practising certificates Act No. 31 of 1997 Sch.

(1) Every advocate applying for a practising certificate shall—

(a) deliver or send to the Registrar a written declaration in the prescribed form in duplicate stating the name and place of business of the applicant and the date of his admission and signed by the applicant or his partner;

(b) pay to the Registrar the prescribed fee; for the practising certificate; and

(c) pay into the funds of the Law Society the annual subscription for the current year prescribed under the Tanganyika Law Society Act *.

(2) The Registrar shall cause all the particulars contained in the declaration to be entered in a register kept for that purpose, and any person may inspect such register during office hours without payment.

(3) Subject to the provisions of section 36, the Registrar, if satisfied that—

(a) the name of the applicant is on the Roll and he is entitled to practise in Mainland Tanzania;

(b) he has paid his annual subscription for the current year into the funds of the Law Society;

(c) he has paid the prescribed fees for the practising certificate;

(d) he has paid for the business licence; and

(e) if he is employed or committed otherwise than as an advocate, he has obtained approval from his employer or such other principal to practise as an advocate,

shall, after the expiration of six days from the delivery to him of the declaration, deliver to the applicant or his agent upon demand a practising certificate in such form as may be prescribed.

(4) If in any case, not being a case to which section 36 applies, the Registrar on application duly made to him refuses or neglects to issue a practising certificate, the applicant may apply to a Judge of the High Court who may make such order in the matter, including an order for payment of costs by or to either the Registrar or the applicant, as shall be just.

(5) Notwithstanding the provisions of the Business Licensing Act * every business licence granted to an advocate under that Act shall expire on the thirty first day of December next following the date of issue.

[PCh341s36]36. Discretion of Chief Justice to refuse certificate in special cases

(1) In any of the following cases, that is to say, where an advocate—

(a) applies for a practising certificate, having neglected to obtain such a certificate within six months after the expiration of the last certificate issued to him;

(b) applies for a practising certificate whilst he is an undischarged bankrupt; or

(c) having been suspended from practice or had his name removed from the Roll, first applies for a practising certificate after the expiration of his suspension or after his re-admission to the Roll, as the case may be,

he shall, unless the Chief Justice otherwise orders, give to the Registrar, at least six weeks before the application is made, notice of his intention to make the application, and the Chief Justice in his discretion may refuse the application.

[PCh341s37]37. Adjudication in bankruptcy to suspend practising certificates

(1) An adjudication in bankruptcy of an advocate shall operate immediately to suspend the practising certificate (if any) of such advocate for the time being in force, and such suspension shall continue in operation until the certificate expires or the adjudication in bankruptcy is annulled, and an office copy of the order annulling the adjudication has been served upon the Registrar or the suspension is terminated by order of the Registrar or the Chief Justice under subsections (2), (3), (4) or (5), whichever shall first happen.

(2) At any time before the certificate would, apart from any suspension hereunder, have expired, and (in the case of adjudication in bankruptcy) notwithstanding that the adjudication has not been annulled, such advocate may apply to the Registrar to terminate the suspension, and the Registrar, in his discretion, may decide to terminate by order the suspension unconditionally or subject, to such terms and conditions as he may in his discretion think fit or may refuse the application.

(3) If the Registrar shall refuse the application to terminate the suspension subject to any terms or conditions, such advocate may appeal against such decision to the Chief Justice who

may either affirm the decision of the Registrar or by order vary any terms or conditions imposed by the Registrar or terminate the suspension unconditionally or subject to such terms and conditions as he may think fit.

(4) When the practising certificate of an advocate has become suspended by virtue of his adjudication in bankruptcy or by virtue of an order of the Chief Justice, the Registrar shall forthwith cause a notice of such suspension to be entered against the name of such advocate in the Roll.

(5) When the suspension of the practising certificate of an advocate has been terminated by annulment of the adjudication in bankruptcy of the advocate and service upon the Registrar of an office copy of the order annulling the adjudication or by order of the Registrar or Chief Justice under this section the Registrar shall forthwith cause a note of the termination of the suspension to be entered against the name of such advocate in the Roll.

[PCh341s38]38. Date and period of validity of practising certificates

(1) Every practising certificate shall, subject as hereinafter provided, take effect on the day on which it is issued by the Registrar:

Provided that every practising certificate issued between the first day of January and the first day of February in any year to an advocate who held a valid practising certificate on the thirty-first day of December of the preceding year shall have effect for all purposes from the first day of January in that year.

(2) Every certificate shall continue in force from the day on which it has been taken or takes effect in accordance with this section until the thirty-first day of December next following (both days inclusive) and shall then expire.

(3) The Registrar shall cause to be entered upon the Roll a note of the date of issue to any advocate of a practising certificate.

PART VII

PRIVILEGES, RESTRICTIONS AND OFFENCES IN CONNECTION WITH PRACTICE (ss 39-48)

[PCh341s39]39. Qualifications for practising as advocate Act No. 31 of 1997 Sch.

(1) Subject to the provisions of section 3 no person shall be qualified to act as an advocate unless—

- (a) his name is on the Roll;
- (b) he has in force a practising certificate; and
- (c) he has a valid business licence,

and a person who is not so qualified is in this Part referred to as an "unqualified person".

(2) Notwithstanding anything to the contrary contained in this Part, the Chief Justice may, upon payment to the High Court of the prescribed fee admit to practise as an advocate for the purpose of any one case any of the persons mentioned in subsection (1) of section 8 who has come or intends to come to Tanzania for the purpose of appearing in such case.

(3) The fee prescribed for the purposes of subsection (2) may relate to the case as a whole or to any day on which such case continues or both.

(4) Any person who is admitted to practise as an advocate for the purpose of any one case under the provisions of subsection (2) shall be deemed to be subject to the provisions of this Act as if he were an advocate.

[PCh341s40]40. Rights of practising advocate C.A. Act No. 2 of 1962 4th Sch.

Every advocate who has in force a practising certificate may practise as an advocate in the High Court or in any court subordinate thereto constituted under the Magistrates' Courts Act * and may perform any of the functions which, in England, may be performed by a member of the Bar as such or by solicitor of the Supreme Court of Judicature as such.

[PCh341s41]41. Unqualified person not to act as advocate

(1) No unqualified person shall act as an advocate, or agent for suitors or, as such, issue out any summons or other process, or commence, carry on or defend any action, suit or other proceeding in the name of any other person or in his own name, in any court of civil or criminal jurisdiction, or act as an advocate in any cause or matter, civil or criminal.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence against this Act and of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken and may be punished accordingly, and shall be incapable of maintaining any action for any costs in respect of anything done by him in the course of so acting, and shall, in addition to any other penalty or forfeiture and any

disability to which he may be subject, be liable on conviction to a fine not exceeding two thousand shillings.

[PCh341s42]42. Penalty for pretending to be an advocate Act No. 31 of 1997 Sch.

Any unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description, or uses any title which corresponds to the title of a legal practitioner in any Commonwealth country, implying that he is qualified to acts as an advocate, shall be liable on conviction to a fine not exceeding one million shillings or twelve months imprisonment or both.

[PCh341s43]43. Penalty for unqualified persons preparing certain instruments Act No. 31 of 1997 Sch.

(1) Any unqualified person who, unless he proves that the act was not done for, or in expectation of, any fee, gain or reward, either directly or indirectly, draws or prepares any instrument—

- (a) relating to movable or immovable property or any legal proceeding;
- (b) for or in relation to the formation of any limited liability company whether private or public;
- (c) for or in relation to the making of a deed of partnership or the dissolution of a partnership,

shall be liable on conviction to a fine not exceeding one million shillings or twelve months imprisonment or both and shall be incapable of maintaining any action for any costs in respect of the drawing or preparation of such instrument or any matter connected therewith.

(2) This section shall not extend to—

- (a) any public officer drawing or preparing instruments in the course of his duty; or
- (b) any person employed merely to engross any instrument, application or proceeding.

(3) For the purposes of this section and section 44 the expression "instrument" does not include—

- (a) a will or other testamentary instrument;
- (b) an agreement under hand only which does not and is not intended to operate as a deed under the Land Act *;
- (c) a letter of power of attorney; or
- (d) a transfer of stock or shares containing no trust or limitation thereof.

[PCh341s44]44. Instruments to be endorsed with name and address of drawer

(1) Every person who draws or prepares any instrument in contravention of section 43 shall endorse or cause to be endorsed thereon his name and address; and any such person omitting so to do or falsely endorsing or causing to be endorsed any of the said requirements shall be liable on conviction to a fine not exceeding two hundred shillings.

(2) It shall not be lawful for any registering authority to accept or recognise any instrument unless it purports to bear the name of the person who prepared it endorsed thereon.

[PCh341s45]45. Offences by bodies corporate

If any act is done by a body corporate or by any director, officer or servant thereof, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified, or recognised by law as qualified, to act as an advocate, such body corporate shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings, and, in the case of an act done by any director, officer or servant of such body corporate, he shall, without prejudice to the liability of the corporation, be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred shillings.

[PCh341s46]46. Power to exclude touts from precincts of courts

(1) The Chief Justice may, by order under his hand exclude from the precincts of the High Court or any court subordinate thereto any person declared by him to be a tout for such period as may be specified in such order:

Provided that no such order shall be made unless the person concerned shall have had opportunity of showing cause against such order.

(2) No person in respect of whom any order has been made under subsection (1) shall, while such order is in force, enter or remain within the precincts of the High Court or any court subordinate thereto without leave of a judge for special cause.

[PCh341s47]47. Acting as tout prohibited

Any person who, on behalf of any advocate, or for his own account, acts as a tout shall be liable to a fine not exceeding one thousand shillings and to imprisonment for a term not exceeding six months.

[PCh341s48]48. Offence of, and penalty for, inducing clients to abandon their advocates

Any person who induces or attempts to induce any client or prospective client of any advocate to cease to be the client of such advocate in order to become the client of the advocate whom such person serves as secretary, clerk or messenger or in any other capacity, shall be liable to a fine not exceeding one thousand shillings and to imprisonment for a term not exceeding six months.

PART VIII

REMUNERATION OF ADVOCATES (ss 49-65)

[PCh341s49]49. Power to make general orders as to remuneration of advocates

(1) For the purposes of this Part there shall be a Committee to be known as the Remuneration Committee which shall consist of five advocates elected by the Law Society of whom three shall form a quorum.

(2) The Chief Justice or the Remuneration Committee may make orders prescribing and regulating in such manners as he or it may think fit the remuneration of advocates in regard to both contentious and non-contentious business.

(3) Any order made under the provisions of this section shall be submitted to the President for approval together with, in the case of an order made by the Chief Justice, the

observations, if any, of the Remuneration Committee, and in the case of an order made by the Remuneration Committee, the observations, if any, of the Chief Justice.

(4) Any order made and submitted under the provisions of this section shall, if approved, be published in the Gazette and shall come into force on the date of such publication or such later date as may be specified in such order.

[PCh341s50]50. Scales of rates of commission and percentage

Any order made under section 49 may as regards the mode of remuneration, prescribe that it shall be according to a scale of rates of commission or percentage, varying or not in different classes of business, or by a gross sum, or by a fixed sum for each document prepared or perused, without regard to length, or in any other mode, or partly in one mode and partly in another, and may regulate the amount of remuneration with reference to all or any of the following, among other, considerations, that is to say—

(a) the position of the party for whom the advocate is concerned in the business, that is, whether as vendor or purchaser, lessor or lessee, mortgagor or mortgagee, charger or chargee, and the like;

(b) the place where, and the circumstances in which, the business or any part thereof is transacted;

(c) the skill, labour and responsibility involved therein on the part of the advocate;

(d) the number and importance of the documents prepared or perused, without regard to length.

[PCh341s51]51. Security for payment of remuneration and regulating interest

An order made under section 49 may authorise and regulate—

(a) the taking by an advocate from his client of security for payment of any remuneration, to be ascertained by taxation or otherwise, which may become due to him under any such order; and

(b) the allowance of interest.

[PCh341s52]52. Taxation of bills of costs

As long as any order made under section 49 is in operation the taxation of bills of costs of advocates shall, subject to the subsequent provisions of this Part with respect to agreements as to remuneration, be regulated by that order.

[PCh341s53]53. Agreements with respect to remuneration for non-contentious business

(1) Whether or not any order is in force under section 49, an advocate and his client may, either before or after or in the course of the transaction of any non-contentious business by the advocate, make an agreement in writing as to the remuneration of the advocate in respect thereof.

(2) The agreement may provide for the remuneration of the advocate by a gross sum, or by commission, or percentage, or by salary, or otherwise and it may be made on the terms that the amount of the remuneration therein stipulated for shall, or shall not include all or any disbursements made by the advocate in respect of searches, plans, travelling, stamps, fees or other matters.

(3) The agreement shall be signed by the person to be bound thereby or his agent in that behalf.

(4) The agreement may be sued and recovered on or set aside in the like manner and on the like grounds as an agreement not relating to the remuneration of an advocate:

Provided that if on any taxation of costs the agreement is relied on by the advocate and objected to by the client as unfair or unreasonable, the taxing officer may inquire into the facts and certify them to the High Court and if on that certificate it appears just to the High Court that the agreement should be cancelled, or the amount payable thereunder reduced, the High Court may order the agreement to be cancelled, or the amount payable thereunder to be reduced, and may give such consequential directions as it thinks fit.

[PCh341s54]54. Powers to make agreements as to remuneration for contentious business

Whether or not any order is in force under section 49 an advocate may make an agreement in writing with his client as to his remuneration in respect of any contentious business done or to be done by him, providing that he shall be remunerated either by a gross sum or by salary, or otherwise.

[PCh341s55]55. Miscellaneous provisions as to agreements with respect to costs of contentious business

(1) An agreement made pursuant to section 54—

(a) shall not affect the amount of, or any rights or remedies for the recovery of, any costs payable by the client to, or to the client by, any person other than the advocate, and that

person may, unless he has otherwise agreed, require any such costs to be taxed according to the rules for the time being in force for the taxation thereof:

Provided that the client shall not be entitled to recover from any other person under any order for the payment of any costs to which the agreement relates more than the amount payable by him to his advocate in respect thereof under the agreement; and

(b) shall be deemed to exclude any claim by the advocate in respect of the business to which it relates other than—

(i) a claim for the agreed costs; or

(ii) a claim for such costs as are expressly excepted therefrom.

(2) A provision in such an agreement that the advocate shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as an advocate, shall be void.

(3) No action shall be brought upon any such agreement, but the High Court, after hearing the Remuneration Committee if it wishes to be heard, may, on the application of any person who is a party to, or the representative of a party to, the agreement, or who is, or who is alleged to be, liable to pay, or who is or claims to be entitled to be paid, the costs due or alleged to be due in respect of the business to which the agreement relates, enforce or set aside the agreement and determine every question as to the validity or effect thereof.

(4) On any such application, the High Court—

(a) if it is of opinion that the agreement is in all respects fair and reasonable, may enforce it;

(b) if it is of opinion that the agreement is in any respects unfair or unreasonable, may declare it void and may order it to be given up to be cancelled and may order the costs covered thereby to be taxed as if the agreement had never been made;

(c) in any case, may make such orders as to the costs of the application as it thinks fit.

[PCh341s56]56. In certain circumstances the taxing officer may reduce amount payable under agreement

(1) If the business covered by any agreement made pursuant to section 54 is business done, or to be done, in any action, the amount payable under the agreement shall not be received by the advocate until the agreement has been examined and allowed by a taxing officer of the High Court, and if the taxing officer is of the opinion that the agreement is unfair or unreasonable, he may require the opinion of the Remuneration Committee to be taken thereon and may on receipt of such opinion reduce the amount payable thereunder, or order the agreement to be cancelled and the costs recovered thereby to be taxed as if the agreement had not been made.

(2) When the amount agreed upon under any such agreement has been paid by or on behalf of the client or by any person entitled so to do, the person making the payment may at any time within twelve months after payment apply to the High Court and the High Court, if it appears to it that the special circumstances of the case require the agreement to be re-opened, may, on such terms as may be just, re-open the agreement and may order the costs covered

thereby to be taxed and the whole or any part of the amount received by the advocate to be repaid by him.

(3) Where any such agreement is made by the client as the guardian or committee of, or as a trustee under a deed or will for, any person whose property will be chargeable with the whole or any part of the amount payable under the agreement, the agreement shall, before payment, be laid before the taxing officer of the High Court and that officer shall examine the agreement and may disallow any part of it or may require the opinion of the High Court to be taken thereon.

(4) Any such client as is mentioned in subsection (3) who pays the whole or any part of the amount payable under the agreement without the agreement having been allowed by the taxing officer or by the High Court, shall be liable at any time to account to the person whose property is charged with the whole or any part of the amount so paid for the sum so charged, and the advocate who accepts the payment may be ordered by the High Court to refund the amount received by him.

[PCh341s57]57. Death or incapacity of advocate

(1) If, after some business has been done under an agreement made pursuant to section 54 but before the advocate has wholly performed it, the advocate dies or becomes incapable of acting, then any party to, or the representative of any party to, the agreement, may apply to the High Court and the High Court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as it would have had if the advocate had not died or become incapable of acting:

Provided that the High Court may, notwithstanding that it is of opinion that the agreement is in all respects fair and reasonable, order the amount due in respect of the business done thereunder to be ascertained by taxation, and in that case—

(a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and

(b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been completely performed.

(2) The provisions of subsection (1) shall apply in the event of the client changing his advocate before the conclusion of the business to which the agreement relates in the same manner as they apply when the advocate dies or is incapacitated:

Provided that, if an order is made for the taxation of the amount due to the advocate in respect of the business done under the agreement, the High Court shall direct the taxing officer to have regard to the circumstances under which the change of advocate has taken place, and the taxing officer, unless he is of opinion that there has been no default, negligence, improper delay or other conduct on the part of the advocate affording to the client reasonable ground for changing his advocate, shall not allow to the advocate the full amount of the remuneration agreed to be paid to him.

[PCh341s58]58. Agreement excludes taxation

Save as provided in the foregoing provisions, the costs of an advocate in any case where an agreement has been made shall not be subject to taxation or to the subsequent provisions of this Part of this Act with respect to the signing and delivery of an advocate's bill.

[PCh341s59]59. Miscellaneous provisions as to remuneration for contentious business

Nothing in sections 57, 58, 59, 60 or 61 shall give validity to—

(a) any purchase by an advocate of the interest or any part of the interest, of his client in any action, suit or other contentious proceeding; or

(b) any agreement by which an advocate retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success of that action, suit or proceeding; or

(c) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which is under the law relating to bankruptcy invalid against a trustee or creditor in any bankruptcy or composition.

[PCh341s60]60. Power of High Court to order advocate to deliver his bill and to deliver up deeds

(1) The jurisdiction of the High Court to make orders for the delivery by an advocate of a bill of costs and for the delivery up of, or otherwise in relation to, any deeds, documents or papers in his possession, custody or power, is hereby declared to extend to cases in which no business has been done by him in the High Court.

(2) In this section and in sections 61, 62 and 63, the expression "advocate" includes the executors, administrators, and assignees of the advocate in question.

[PCh341s61]61. Action to recover advocates' costs

(1) Subject to the provisions of this Act, no action shall be brought to recover any costs due to an advocate until one month after a bill thereof has been delivered in accordance with the requirements of this section:

Provided that, if there is probable cause for believing that the party chargeable with the costs is about to depart from Tanzania, or to become a bankrupt, or to compound with his creditors, or to do any other act which would tend to prevent or delay the advocate obtaining payment, the High Court may, notwithstanding that one month has not expired from the delivery of the bill, order that the advocate be at liberty to commence an action to recover his costs and may order those costs to be taxed.

(2) The following are the requirements referred to in subsection (1)–

(a) the bill must be signed by the advocate or, if the costs are due to a firm, one partner of that firm, either in his own name or in the name of the firm, or be enclosed in, or accompanied by, a letter which is so signed and refers to the bill; and

(b) the bill must be delivered to the party to be charged therewith, either personally or by being sent to him by post to, or left for him at, his place of business, dwelling house, or last known place of abode, and where a bill is proved to have been delivered in compliance with those requirements, it shall not be necessary in the first instance for the advocate to prove the

contents of the bill, which shall be presumed until the contrary is shown, to be a bill bona fide complying with this Act.

[PCh341s62]62. Taxation of bills on the application of the party chargeable or the advocate

(1) On the application, made within one month of the delivery of an advocate's bill, of the party chargeable therewith, the High Court shall, without requiring any sum to be paid into Court, order that the bill shall be taxed and that no action shall be commenced thereon until the taxation is completed.

(2) If no such application is made within the period mentioned in subsection (1), then, on the application either of the advocate, or the party chargeable with the bill, the High Court may, upon such terms, if any, as it thinks fit (not being terms as to the costs of the taxation), order—

(a) that the bill shall be taxed;

(b) that, until the taxation is completed, no action shall be commenced on the bill, and any action already commenced be stayed:

Provided that—

(i) if twelve months have expired from the delivery of the bill, or if the bill has been paid, or if a decree, judgment or order has been obtained in a suit for the recovery of the costs covered thereby, no order shall be made on the application of the party chargeable with the bill except in special circumstances and, if an order is made, it may contain such terms as regards the costs of the taxation as the High Court may think fit;

(ii) in no event shall any such order be made after the expiration of twelve months from the payment of the bill.

(3) Every order for the taxation of a bill shall require the taxing officer to tax not only the bill but also the costs of the taxation and to certify what is due to or from the advocate in respect of the bill and in respect of the costs of the taxation.

(4) If after due notice of any taxation, either party thereto fails to attend, the taxing officer may proceed with the taxation ex parte.

(5) Unless—

(a) the order for taxation was made on the application of the advocate and the party chargeable does not attend the taxation; or

(b) the order for taxation otherwise provides,

the costs of the taxation shall be paid according to the event of the taxation, that is to say, if one-sixth of the amount of the bill is taxed off, the advocate shall pay the costs, but otherwise the party chargeable shall pay the costs:

Provided that the taxing officer may certify any special circumstances relating to the bill or the taxation thereof to the High Court, and the High Court may make thereon any such order as it thinks fit respecting the payment of the costs of the taxation.

[PCh341s63]63. Taxation on application of third parties and beneficiaries under trust, etc.

(1) Where a person other than the person who is the party chargeable with the bill for the purposes of section 62, has paid, or is, or was, liable to pay, the bill either to the advocate or to the party chargeable with the bill, that person or his administrators, executors or assignees may apply to the High Court for an order for the taxation of the bill as if he were the party chargeable therewith, and the High Court may make thereon the same order, if any, as it might have made if the application had been made by that party:

Provided that in cases where the High Court has no power to make an order except in special circumstances the High Court may, in considering whether there are special circumstances sufficient to justify it in making an order, take into account circumstances affecting the applicant, but which do not affect the party chargeable with the bill.

(2) If a trustee, executor or administrator has become liable to pay the bill of an advocate, the High Court may, upon the application of any person interested in the property out of which the trustee, executor or administrator has paid, or is entitled to pay, the bill, and upon such terms, if any, as it thinks fit, order the bill to be taxed, and may order such payments, in respect of the amount found due to or from the advocate, or to the executor, administrator or trustee, as it thinks fit:

Provided that, in considering any such application, the High Court shall have regard to—

(a) the provisions of section 62 as to applications by the party chargeable with the taxation of an advocate's bill so far as they are capable of being applied to an application made under this subsection;

(b) the extent and nature of the interest of the applicant.

(3) If an applicant under subsection (2) pays any money to the advocate, he shall have the same right to be paid that money by the trustee, executor or administrator chargeable with the bill as the advocate had.

(4) The following provisions shall apply to applications made under this section—

(a) except in special circumstances no order shall be made for the taxation of a bill which has already been taxed;

(b) the High Court may, if it orders taxation of a bill, order the advocate to deliver to the applicant a copy of the bill upon payment of the costs of that copy.

[PCh341s64]64. General provisions as to taxation

(1) Every application for an order for the taxation of an advocate's bill or for the delivery of such a bill and the delivering up of any deeds, documents and papers by an advocate shall be made in the matter of that advocate.

(2) The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the High Court, be final as to the amount of the costs covered thereby, and the High Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.

[PCh341s65]65. Charging orders

Any court in which an advocate has been employed to prosecute or defend any suit, matter or proceeding may at any time declare the advocate entitled to a charge on the property recovered or preserved through his instrumentality for his taxed costs in reference to that suit, matter or proceeding, and may make such orders for the taxation of the said costs and for raising money to pay or for paying the said costs out of the said property as it thinks fit, and all conveyances and acts done to defeat, or operating to defeat, that charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the advocate:

Provided that no order shall be made if the right to recover the costs is barred by limitation.

PART IX

MISCELLANEOUS PROVISIONS (ss 66-72)

[PCh341s66]66. Advocates to be officers of High Court

Any person duly admitted as an advocate shall be an officer of the High Court and shall be subject to the jurisdiction thereof.

[PCh341s67]67. Payment of expenses of Committee

(1) Any expenses certified to have been incurred by the Committee in carrying out any of the provisions of this Act or in supporting any report before the High Court shall, subject to the provisions of subsection (2), be paid out of the general revenue of the United Republic.

(2) The High Court may, on the application of the Committee, order that any such expenses shall be paid to the Permanent Secretary to the Treasury by the advocate concerned or by any party on whose application such expenses had been incurred.

(3) Where any such expenses have been paid in accordance with an order made under subsection (1), they shall form part of the general revenue of the United Republic.

[PCh341s68]68. Authentication of Regulations and other documents

All regulations, orders, certificates, notices and other documents made or issued by the Committee or the Remuneration Committee for any purpose whatsoever may be signed on behalf of the Committee concerned by the chairman or such member or other person as the Committee may for that purpose appoint.

[PCh341s68A]68A. Fees for admission and practising certificates to be paid to Law Society
Ord. No. 36 of 1961 s. 2

(1) The Registrar shall retain in a separate account all fees paid under the provisions of subsection (2) of section 8, subsection (1) of section 35 and subsection (2) of section 39, and shall pay the balance standing to the credit of that account on the first day of January, the first day of April, the first day of July and the first day of October in each year to the Law Society, and the Law Society may apply the same for any of the purposes for which the funds of the Society may be applied.

(2) The receipt of the Secretary of the Law Society, or of any other officer of the Law Society authorised by the Council thereof in that behalf, shall be a sufficient discharge to the Registrar for any payment made by him under this section.

[PCh341s69]69. Regulations

The Committee, with the approval of the Chief Justice, may make regulations for the better carrying out of the provisions and purposes of this Act and, in particular but without prejudice to the generality of the foregoing, may make regulations with respect to the following matters—

- (a) the keeping of accounts by advocates;
- (b) the acts or omissions which shall constitute misconduct on the part of an advocate;
- (c) practice and etiquette of advocates;
- (d) prescribing anything which under this Act is to be prescribed.

[PCh341s70]70. Saving of other laws

Nothing in this Act shall prejudice or affect—

- (a) the provisions of any other law empowering any person, not being an advocate to conduct defend or otherwise act in relation to any proceedings;
- (b) the provisions of any other law prohibiting any person or class of persons from conducting, defending or otherwise acting in relation to any proceedings; or

(c) any existing rules touching the remuneration of advocates, except only so far as they conflict or are inconsistent with any of the provisions of this Act or orders made thereunder. Such existing rules shall, except only as aforesaid, be deemed to be an order made pursuant to the provisions of section 49 until amended, revoked or repealed by orders made under the said section.

[PCh341s71]71. Transitional provisions

[Transitional provisions.]

[PCh341s72]72. Repeal

[Repeals F.R.L. Cap. 10 and F.R.L. Cap. 11.]