

LAW PRACTITIONERS ACT 1976

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THE LAW PRACTITIONERS ACT 1976
1976 No.20

AN ACT to regulate the practice of law in Samoa.

(17 December 1976)
(Commencement date: 01 January 1977)

PART I
PRELIMINARY PROVISIONS

1. Short title and commencement - (1) This Act may be cited as the **Law Practitioners Act 1976** .

(2) This Act shall come into force on the 1st day of January 1977.

2. Interpretation - (1) In this Act, unless the context otherwise requires:

"Barrister of the Supreme Court" means a person whose name is for the time being entered on a roll referred to in section 8(a) or section 8(b).

"Council" means the Council of the Law Society.

"Court of Appeal" means the Court of Appeal of Samoa.

"Law Society" or **"Society"** means the Samoa Law Society established by section 12.

"Practising certificate" means a practising certificate that is issued under section 31 and is for the time being in force.

"Practitioner" means a barrister or solicitor of the Supreme Court.

"President" means the President of the Law Society.

"Roll" means a roll referred to in section 8.

"Rules" mean rules made by the Law Society under section 14.

"Rules of Court" means rules made under section 50.

"Secretary" means the Secretary of the Law Society.

"Solicitor of the Supreme Court" means a person whose name is for the time being entered on a roll referred to in section 8(c) or section 8(d).

"Supreme Court" means the Supreme Court of Samoa.

"Territory" includes any state, province, or other area within a country.

"Trust account", in relation to any solicitor, means a trust account at any bank in Samoa either in the name of that solicitor or in the name of a firm of solicitors in which he or she is a partner or is held out to be a partner, or in the name of a solicitor or firm of solicitors by whom he or she is employed or engaged.

(2) Without limiting the meaning of the expression "practise as a solicitor" in this Act, a person practises as a solicitor for the purposes of this Act if he or she draws or prepares for or on behalf of any other person or holds himself or herself out as being ready to draw or prepare for or on behalf of any other person:

(a) Any conveyance of any real or personal property; or

(b) Any deed relating to any real or personal property; or

(c) Any tenancy agreement or agreement evidencing a tenancy if the tenancy is for a term exceeding 12 months, or any right of renewal is conferred on the tenant by the agreement, or any charge is made directly or indirectly for the drawing or preparation of the agreement or for any incidental service:

PROVIDED THAT the preparation or perusal or delivery of documents for or in connection with an international bank licensed under the International Banking Act 2005 or the giving of advice on international banking matters, or services by or for a trustee company registered under the Trustee Companies Act 1987, shall be deemed not to be practised as a solicitor in this Act.

PART II

THE PRACTICE OF LAW

3. Status of barristers - After the commencement of this Act, barristers of the Supreme Court shall continue to have the same powers, privileges, duties, and responsibilities as barristers had in Samoa immediately before the commencement of this Act, and such other powers, privileges, duties, and responsibilities as may from time to time be conferred on them by law.

4. Persons who may practise as barristers - (1) No person shall practise as a barrister unless:

- (a) He or she is a barrister of the Supreme Court; and
- (b) He or she holds a practising certificate.

(2) Every person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months.

5. Persons who may practice as solicitors - (1) No person shall practice as a solicitor unless:

- (a) He or she is a solicitor of the Supreme Court; and
- (b) He or she holds a practising certificate.

(2) Every person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months.

6. Restrictions on right of solicitors to commence private practice - (1) No solicitor shall commence practice as a solicitor on his or her own account, whether in partnership or otherwise unless:

- (a) During the period of 5 years immediately preceding the date on which he or she so commences practice, he or she has had at least 3 years experience as a barrister, or as a solicitor, or as a legal officer in any Government department, either in Samoa or in any other country for the time being approved by the Council for the purposes of this subsection; or
- (b) The Supreme Court has, on his or her application, granted leave under subsection (2) to commence practice on his or her own account; or
- (c) At any time previously, he or she has lawfully practised as a solicitor in Samoa on his or her own account.

(2) On hearing any application under subsection (1) by any solicitor for leave to practise on his or her own account, the Supreme Court may grant leave accordingly to the applicant, subject to any conditions that it may think proper, if it is satisfied that the applicant is, by reason of age, qualifications, and experience, a fit and proper person to be permitted to practise as a solicitor on his or her own account.

(3) Every person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5 penalty units and to a further fine not exceeding 1 penalty unit for every day on which the offence has continued.

7. Power of Courts to punish for contempt - Every person who contravenes section 4(1) or section 5(1) or section 6(1) in any Court of law is in contempt of the Supreme Court, and may be dealt with accordingly in addition to being liable under this Act to any penalty for the commission of an offence.

PART III **THE ROLLS OF PRACTITIONERS**

8. Registrar to maintain rolls of practitioners - The Registrar of the Supreme Court shall establish and maintain at the Registrar's office the following rolls:

- (a) A permanent roll of barristers of the Supreme Court, containing the names of all persons who are admitted as barristers of the Supreme Court under section 21;
- (b) A temporary roll of barristers of the Supreme Court, containing the names of all persons who are admitted temporarily as barristers of the Supreme Court under section 22;
- (c) A permanent roll of solicitors of the Supreme Court, containing the names of all persons who are admitted as solicitors of the Supreme Court under section 21;
- (d) A temporary roll of solicitors of the Supreme Court, containing the names of all persons who are admitted temporarily as solicitors of the Supreme Court under section 22.

9. Enrolment - (1) Where the Supreme Court makes an order under section 21 or section 22 that any person be admitted as a barrister or as a solicitor, or as a barrister and solicitor of the Supreme Court, and that order has taken effect, the Registrar of The Supreme Court shall enter the name of the person forthwith on the appropriate roll accordingly.

(2) Where the Registrar of the Supreme Court enrolls any person pursuant to an order made under section 22, the Registrar shall specify on the appropriate roll the period for which the person is so enrolled.

10. Removal, suspension, and restoration of names - (1) The Registrar of the Supreme Court.

- (a) On receipt of a certificate signed by the Secretary that the Council has made an order under this Act that the name of any practitioner be struck off a roll, or that any practitioner be suspended from practice; or
- (b) Where the Supreme Court makes an order under section 27 that the name of any person be restored to a roll, and that order has taken effect,-

shall forthwith strike the name of the practitioner off, or note the suspension of the practitioner, or restore the name of the person, on the appropriate roll accordingly, as the case may require.

(2) In amending a roll under subsection (1), the Registrar of the Supreme Court shall note on the roll the date of the order, by whom it was made, and the reason for the order.

11. Review of roll on appeal - Where, as the result of any appeal, an order of the Council or of the Supreme Court relating to any matter or affecting a roll is reversed or varied and the order of the Court determining the appeal has taken effect, the Registrar of the Supreme Court shall make such entries on the roll as are necessary to give effect to the order of the Court determining the appeal.

PART IV **THE SAMOA LAW SOCIETY**

12. Establishment of Law Society - (1) There is hereby established a society to be called the Samoa Law Society.

(2) The Law Society shall consist of every person who is for the time being a barrister or a solicitor of the Supreme Court.

(3) The Law Society is a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property and of suing and being sued, and of doing and suffering all other things that bodies corporate may lawfully do and suffer.

13. Functions of Law Society - The Law Society shall have the following functions:

- (a) To promote and encourage proper conduct among members of the legal profession;
- (b) To suppress illegal, dishonorable, unprofessional, and improper conduct by practitioners;
- (c) To preserve and maintain the integrity and status of the legal profession;
- (d) To provide, promote, and encourage opportunities for the acquisition, development, and diffusion of legal knowledge;
- (e) To promote and encourage the maintenance of the rule of law;
- (f) To consider and suggest amendments of the law;
- (g) To provide for, promote, and encourage the amicable settlement of professional differences;
- (h) Generally to protect the interests of the legal profession and the interests of the public in relation to legal matters.

14. Powers and duties of Law Society - (1) The Law Society shall have all the powers that are necessary or reasonably expedient to enable it to carry out its functions.

(2) Without limiting the generality of subsection (1), the Law Society may do all or any of the following things:

- (a) Investigate charges of professional misconduct against any practitioner;
- (b) Institute prosecutions against practitioners or other persons for the breach of any enactment relating to the practice of law;
- (c) Appoint any barrister to appear in any Court of law on behalf of the Society in respect of any matter referred to in paragraphs (a) and (b) or in any other matter in which the Society may be concerned or interested;
- (d) In accordance with this Act, or with rules, impose or levy and collect fees or other charges on its members and on candidates for admission as barristers or solicitors;
- (e) Exercise any other powers that are conferred on it by this Act or any other enactment.

(3) The Law Society may from time to time make rules, not inconsistent with this Act, for any matter in this Act that is to be prescribed, determined, or regulated by rules and for any other purposes regulating the officers of the Society and the conduct of its members and any other persons to whom under this Act such rules may be applied.

(4) Rules shall bind all members of the Law Society and all other persons to whom under this Act such rules may be applied.

(5) The Secretary shall provide to any person to whom rules apply, at that person's request and on payment of such fee, if any, as may be prescribed, by resolution in general meeting or by rules, a copy of the rules.

(6) The Law Society shall establish and maintain, at such bank in Samoa as it may determine, an account to be called the Samoa Law Society Account, into which shall be paid forthwith all money lawfully received by the Society, or by the Council, or by any officer or member of the Society, or by any other person, on its behalf.

(7) The Samoa Law Society Account may not be operated on except by cheque or other instrument signed by an officer of the Law Society who is for the time being authorised for that purpose by the Council and countersigned by any other officer of the Society who is for the time being so authorised.

(8) The Law Society shall keep proper records and books of account and shall cause its accounts to be audited annually, and the Secretary shall provide to every member a copy of the annual accounts together with the auditor's report on the accounts.

15. Meetings of Law Society - (1) The Law Society shall in every calendar year hold an annual general meeting to elect the officers of the Society and to transact any other business that is before the meeting.

(2) The first annual general meeting shall be held within 3 months after the commencement of this Act at a time and place to be appointed by the Attorney-General. Every subsequent annual general meeting shall be held at a time and place to be appointed by the Council.

(3) Not more than 15 months shall elapse between one annual general meeting and the next annual general meeting following it.

(4) The Council may at any time, and shall whenever required to do so by a notice in writing by not less than 10 percent of the members of the Society, call an extraordinary general meeting of the Society at a time and place (being within 28 days after receipt of any such notice) to be appointed by the Council.

(5) Not less than 14 days' notice of every general meeting and of the business to be transacted at the meeting shall be given to every member of the Law Society, but an accidental failure to comply with this subsection shall not invalidate the proceedings.

(6) At every general meeting, not less than 40 per cent of the members of the Law Society personally present shall be a quorum.

(7) At the first annual general meeting, the Attorney-General shall preside. At every other general meeting, the President shall preside if he or she is present. If the President is not present the Vice-President shall preside if he or she is present.

(8) On every question before a general meeting of the Law Society:

(a) Every person who is member of the Society by virtue of being enrolled on any roll specified in section 8(a) or section 8(c) shall have one vote; and

(b) Every other member may speak on the question but may not vote on it.

(9) Every question before a general meeting of the Law Society shall be decided by a majority of the votes of the members present who are entitled to vote.

(10) At every general meeting the person presiding shall have a deliberative vote, and, in the case of an equality of votes, he or she shall also have a casting vote.

(11) Notwithstanding any other provision in this section no person who is under this Act suspended from practice as a barrister or as a solicitor may participate or vote in any general meeting.

(12) Subject to this Act, and to rules, the Law Society may regulate its procedure in its general meetings in such manner as it fits proper.

16. Council of Law Society - (1) There shall be a Council of the Samoa Law Society which shall consist of the following councillors, who shall be the officers of the Society:

(a) The President;

(b) The Vice-President;

(c) The Secretary;

(d) Four other councillors.

(2) No person shall be capable of holding office under subsection (1) unless he or she is a member of the Law Society by virtue of being enrolled on any roll specified in section 8(a) or section 8(c) and is not suspended under this Act from practice as a barrister or as a solicitor.

17. Tenure of office of councillors - (1) Every officer of the Law Society, unless he or she sooner vacates office, shall hold office until the next annual general meeting following the one at which the officer is elected to office, and may from time to time be re-elected.

(2) Notwithstanding subsection (1), unless the officer sooner vacates office, every officer of the Law Society shall continue in office until a successor comes into office.

(3) An officer of the Law Society may resign from office or may be removed from office by the Society in general meeting for disability, insolvency, neglect of duty, or misconduct proved to the satisfaction of the general meeting.

(4) Where an officer of the Law Society for any reason vacates office, the vacancy thereby occurring shall be deemed to be an extraordinary vacancy and may be filled by the Society in general meeting by the election of another member of the Society to hold office for the remainder of the term of the officer vacating office.

18. Functions, powers, and duties of Council - (1) The Council shall be the executive body of the Law Society, and subject to this Act shall be charged with the administration, control, and management of the affairs of the Society, and of its funds and other assets, and shall have such other functions and duties as may be conferred on it by this Act or by any other enactment, or by rules.

(2) The Council shall have all the powers that are necessary or reasonably expedient for the exercise and performance of its functions and duties, including such powers as may be conferred on it by this Act or by any other enactment, or by rules.

(3) The Council may from time to time in writing appoint committees of members of the Law Society (being persons who are qualified to be officers of the Society) and may delegate to any such committee any of the powers of the Council, and may at any time revoke any delegation.

(4) Subject to this Act, and to rules, the Council may regulate its own procedure in such manner as it thinks proper.

PART V

THE ADMISSION OF PRACTITIONERS

19. Qualifications for admission - (1) Every person is qualified for admission as a barrister or as a solicitor, or as a barrister and solicitor, of the Supreme Court who:

- (a) Is a citizen of Samoa; and
- (b) Has attained the age of 21 years; and
- (c) Is of good character; and
- (d) Holds the prescribed qualifications.

(2) For the purpose of subsection (1), "prescribed qualifications" means qualifications prescribed from time to time, by the Council, by notice published in the Gazette.

(3) No qualifications shall be prescribed for the purpose of subsection (1) unless they are or are in the opinion of the Council equivalent to:

- (a) An academic qualification in law; or
- (b) A professional qualification in law; or
- (c) An academic and professional qualification in law, -

in any country or territory, or in any jurisdiction within any country or territory, which in the opinion of the Council has a legal system similar to that of Samoa.

(4) The Secretary shall cause every notice published in the Gazette under subsection (2) to be also published forthwith in the Savali, but publication in the Savali shall not affect the validity of the notice.

20. Applications for admission - (1) Every application for admission as a barrister or as a solicitor, or as a barrister and solicitor, of the Supreme Court shall be made by the applicant to the Supreme Court in the manner prescribed by rules of Court, or, if there are no such rules, then in such manner as the Supreme Court may direct.

(2) A certificate issued by the Council and signed by the Secretary, that the applicant is of good character and holds the prescribed qualifications, shall be sufficient evidence that the applicant has the qualifications specified in section 19(1)(c) and (d).

(3) Before issuing any certificate under subsection (2), the Council may require the applicant to attend before the Council to be interviewed and to answer such questions and provide such information as the Council thinks proper to enable it to decide whether to issue a certificate; and the Council may cause such other inquiries as it thinks proper to be made concerning the applicant for such purpose.

21. Admission - On application being made to the Supreme Court in accordance with this part, the Supreme Court shall, where it is satisfied that the applicant is qualified under section 19 for admission, make an order admitting the applicant as a barrister or as a

solicitor, or as a barrister and solicitor, of the Supreme Court, as the case may require.

22. Temporary admission - (1) On application being made to the Supreme Court in accordance with this Part, the Court may, notwithstanding any other provision in this Act, where it is satisfied that the applicant is not a citizen of Samoa but is in all other respects qualified under section 19 for admission, make any order admitting the applicant as a barrister or as a solicitor, or as a barrister and solicitor, of the Supreme Court, as the case may require, temporarily for such period not exceeding 3 years at a time as the Court shall specify in the order.

(2) Notwithstanding subsection (1) no person shall be temporarily admitted as a barrister or as a solicitor, or as a barrister and solicitor, of the Supreme Court, for any periods exceeding in the aggregate 6 years.

23. Oath of admission - (1) Where an order is made under section 21 or section 22, admitting any person as a barrister or as a solicitor, or as a barrister and solicitor, of the Supreme Court, that person shall before he or she is enrolled take the following oath.

"I A.B., swear that I will truly and honestly conduct myself in the practice of a barrister (or solicitor) (or barrister and solicitor) of the Supreme Court of Samoa according to the best of my knowledge and ability."

(2) No order under section 21 or section 22 shall take effect until the person in respect of whom the order is made has taken the oath required by this section.

24. Restriction on further applications - Where the Supreme Court refuses any application made under section 20, it may order that no further application under that section may be made by the applicant or such period, not exceeding 2 years, as the Court specifies.

25. Admission fees - (1) The Law Society may from time to time prescribe, by resolution in general meeting or by rules, fees that shall for the time being be payable to the Society by applicants on admission as barristers or as solicitors of the Supreme Court.

(2) Separate fees may be prescribed for admission as barristers and solicitors, or as barristers only, or as solicitors only, and for admission under section 21 or section 22.

26. Removal of name at own request - On the application of any practitioner, the Supreme Court may make an order that the practitioner's name be removed from any roll.

27. Restoration of names to rolls - (1) Any person whose name has been struck off or removed from any roll may, subject to this Act, apply to the Supreme Court for the restoration of his or her name to that roll.

(2) On application being made to the Supreme Court under this section, the Court may, if

it is satisfied that the person is a fit and proper person to practise as a barrister or as a solicitor, or as a barrister and solicitor, make an order that the name of the person shall be restored to that roll.

(3) In making an order under subsection (2), the Supreme Court may impose the condition that the practitioner shall not practise as a barrister or as a solicitor, or as a barrister and solicitor, or shall not practise as a solicitor on his or her own account, until on his or her further application he or she is authorised by the Council to do so.

28. Restoration fees - The Law Society may from time to time prescribe, by resolution in general meeting or by rules, fees that shall for the time being be payable to the Society for the restoration of practitioners' names to any rolls.

29. Suspension of disabled practitioners - Where after due inquiry the Council is satisfied that because of physical or mental disability any practitioner is unable to perform his or her professional duties, and that it is in the public interest to suspend the practitioner from practice, the Council may make an order suspending him or her from practice, as a barrister or as a solicitor, or as a barrister and solicitor, until the practitioner satisfies the Council that he or she is no longer incapacitated.

PART VI **PRACTISING CERTIFICATES**

30. Annual Practising fees - (1) The Law Society may from time to time prescribe, by resolution in general meeting or by rules, fees that for the time being shall be payable annually to the society by practitioners for the issue of practising certificates as barristers or as solicitors.

(2) Separate fees may be prescribed for admission as barristers and solicitors, or as barristers only, or as solicitors only, and for practitioners admitted under section 21 or section 22.

31. Issue of annual practising certificates - (1) Where the Registrar of the Supreme Court is satisfied that any practitioner has paid to the Law Society the practising fee payable under section 30 by that practitioner, and that the practitioner is not for the time being suspended under this Act from practice as a barrister or as a solicitor, the Registrar shall issue to the practitioner, a practising certificate as a barrister or as a solicitor, or as a barrister and solicitor, as may be appropriate.

(2) Every practising certificate shall expire:

- (a) With the 31st day of December in the year in which it is issued; or
- (b) When for any reason the holder ceases to be a practitioner to which the certificate relates; or

(c) When for any reason the holder is suspended under this Act from practice as a practitioner to which the certificate relates.

(3) Notwithstanding subsection (2), where in any year for which a practising certificate is issued, the striking off or suspension of any practitioner is reversed or revoked, by order of the Court of Appeal or the Supreme Court or otherwise, the practising certificate shall thereupon come into force and effect again.

PART VII **SOLICITORS' TRUST ACCOUNTS**

32. Solicitor to pay clients' money into trust account at bank - (1) All money received for or on behalf of any person by any solicitor of the Supreme Court shall be held by him or her exclusively for that person, to be paid to that person or as he or she directs, and until so paid all such money shall be paid into a bank to a general or separate trust account of that solicitor.

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

(3) Every solicitor who knowingly contravenes subsection (1) or subsection (2) commits an offence, and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding one year.

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

33. Administration of trust account in certain cases - (1) This section applies in any case where the Council is satisfied that any solicitor of the Supreme Court practising in Samoa:

- (a) Owing to physical or mental disability, or for any other reason is unable properly to administer his or her trust account or has failed properly to administer his or her trust account; or
- (b) Has died; or
- (c) Is insolvent; or
- (d) Has had his or her name struck off the roll; or
- (e) Has been suspended from practice; or
- (f) Has been guilty of theft or of improper conduct in relation to the money or property of any other person; or
- (g) Has ceased to practise and has neglected to wind up his or her trust account after reasonable notice has been given to him or her by the Council requiring him or her to do so,-

and that any money entrusted to that solicitor is held in a bank in any trust account of the solicitor.

(2) Where in any case to which this section applies the Council is of opinion that it is expedient that any such trust account be administered by the Council, the Secretary may serve on the bank a notice signed by any 2 members of the Council requiring the bank to pay to the Law Society all money held by the bank in the trust account.

(3) Upon receipt of the notice, the bank shall forthwith pay to the Law Society all money held in the trust account to which the notice relates, and the receipt of the Society shall be a complete discharge to the bank from all liability in respect of that money.

(4) Upon receipt of the money, the Council shall forthwith cause it to be paid into a separate account at the bank and the separate account may be operated on by such persons, being not less than 2 in number, as the Council appoints in that behalf.

(5) Where any money that was held by a solicitor on behalf of any person is paid to the Law Society under this section, that money shall be held by the Society in trust for that person.

(6) Notwithstanding anything in subsections (1) to (5), any person claiming to be adversely affected by any payment to the Law Society under this section, and, where the money was paid from the trust account of a deceased solicitor, the executors or administrators of the deceased solicitor or any person claiming to be entitled to a grant of probate or letters of administration of his or her estate, may at any time apply to the Supreme Court for an order directing the Society to repay the money into the bank account from which the money was paid or for such other order as the Supreme Court thinks fit. On the hearing of any such application the Supreme Court may make such order as it thinks fit.

(7) The Council may at any time, in its discretion and without requiring an order of the Supreme Court, repay the money or any part of it into the bank account from which the money was paid.

34. Regulations for audit of trust accounts - (1) The Head of State, acting on the advice of Cabinet, may from time to time make regulations for all or any of the following purposes:

- (a) Providing for the auditing of the trust accounts of all solicitors by the Controller and Chief Auditor or by accountants approved by the Council for the purpose, and for a report of the result of every such audit;
- (b) Requiring the production to the auditor of books, papers, and accounts, subject to such conditions as are prescribed;
- (c) Prescribing the persons to whom the reports of auditors shall be sent for inspection, information, or record;

- (d) Providing that the auditor shall be subject to an obligation not to divulge, otherwise than as prescribed, any matter or which he shall be informed in the course of the audit, and shall also be subject to the same liability in damages to a client of the solicitor as the solicitor would be if the solicitor divulged any such matter;
- (e) Prescribing that, in the absence of any prior agreement in writing with the client to the contrary, the auditor's fees shall be paid by the solicitor;
- (f) Generally by all such means as may be prescribed to ensure that all trust accounts shall be duly kept and audited and that persons beneficially entitled to money and securities held by solicitors upon trust shall have full information of such matters.

(2) Regulations made under this section may provide that contraventions of the regulations shall be offences and may prescribe a fine not exceeding 10 penalty units for any offence against the regulations.

PART VIII

DISCIPLINE WITHIN THE LEGAL PROFESSION

35. Disciplinary powers of Council - The Council may inquire into and determine in accordance with this Part any charge of professional misconduct, or of conduct unbecoming a barrister or a solicitor, relating to any practitioner.

36. Procedure on inquiry - (1) Where it appears to the Council, after making such preliminary inquiries as it thinks proper, that there is reasonable cause to suspect that any practitioner is guilty of professional misconduct, or of conduct unbecoming a barrister or a solicitor, the Secretary shall serve a notice in writing of the charge on the practitioner.

- (a) Specifying the charge in sufficient detail to enable him or her to prepare any defence; and
- (b) Appointing a time and place, not being sooner than 21 days after the notice is served on the practitioner, at which the Council will proceed to hear and determine the charge.

(2) If the Secretary is unable to serve the notice on the practitioner because he cannot be found, or is abroad, the Secretary may effect service by publishing the notice in the Gazette or in the Savali or in any Samoa newspaper, on 2 separate occasions at least 14 days apart, and the notice shall be deemed to be duly served on the date on which it is so published for the second time.

(3) The Council may appoint any member of the Law Society to present the case against the practitioner.

(4) Where the Council is satisfied that the notice has been duly served in accordance with this section, it may proceed to hear and determine the charge, whether or not the practitioner appears to answer it.

(5) The practitioner against whom the charge is brought shall be entitled to be represented personally or by counsel, and cross-examine witnesses called against him or her, and call evidence in his or her defence, and address the Council on the charge.

(6) The Council may from time to time adjourn the hearing of any charge as it thinks proper and may reserve its decision.

(7) After hearing the charge in accordance with this section, the Council shall decide whether the charge is proved or not proved.

37. Powers of Council where charge proved - Where the Council decides under section 36 that any charge against a practitioner is proved, it may do one or more of the following things.

(a) If the Council is satisfied that, by reason of being guilty of the charge, the practitioner is not a fit and proper person to practise as a barrister or as a solicitor, or if the practitioner has been guilty of an offence involving dishonesty, the Council may make an order that:

(i) The name of the practitioner be struck off the roll of barristers or of solicitors, or off both rolls; or

(ii) The practitioner be suspended from practice as a barrister or as a solicitor, or as a barrister and solicitor, for such period, not exceeding 3 years, as the Council shall determine.

(b) In every case, the Council may:

(i) Make an order that the practitioner shall not practise as a solicitor on his or her own account, whether in partnership or otherwise, until on his or her further application he or she is authorised by the Council to do so;

(ii) Make an order that the practitioner shall pay to the law Society such fine, not exceeding 10 penalty units, as the Council shall determine;

(iii) Censure the practitioner; and

(iv) Make an order that the practitioner shall pay to the Society, in respect of the costs and expenses of the inquiry, and the investigation preceding it, such sums as the Council shall determine.

38. Interim suspension - At any time after the Council has decided to inquire into a charge against a practitioner in accordance with section 36, the Council may of its own motion and without having to give notice to the practitioner, make an order that he or she be suspended from practice as a barrister or as a solicitor, or as a barrister and solicitor, pending the disposal of the charge; and the Council may in the same manner at any time revoke such order.

39. Council to have powers of commission of Inquiry in disciplinary matters - For the purposes of the investigation, hearing and determination of any charge against a practitioner under this Part, the Council shall have the same powers and privileges as a

Commission of Inquiry under the Commissions of Inquiry Act 1964; and witnesses in the proceedings shall have the same protection as they have under that Act.

PART IX **APPEALS**

40. Rights of appeal to Supreme Court - Every person:

- (a) Who is suspended from practice as a barrister or as a solicitor by an order made by the Council under this Act; or
- (b) Against whom the Council makes any order or decision under section 37,-

may appeal to the Supreme Court against the order or decision of the Council.

41. Time for appeal - Every appeal under section 40 shall be brought within 21 days after the making of the order or decision to which it relates, or within such further time as the Supreme Court may in any case allow.

42. Powers of Supreme Court on appeal - On hearing any appeal brought under section 40, the Supreme Court may confirm, reverse, or vary in accordance with this Act, the order or decision of the Council to which the appeal relates.

43. Appeal not to stay effect of order or decision pending determination - Unless in any case the Supreme Court or the Court of Appeal so directs, no order or decision of the Council or of the Supreme Court shall be deemed to be stayed by reason only of the fact that an appeal is pending against that order or decision.

PART X **MISCELLANEOUS PROVISIONS**

44. Law Society to be a party to proceedings - (1) Where any person applies under this Act to the Supreme Court for any order, or appeals under this Act to the Supreme Court against any order or decision of the Council, or appeals to the Court of Appeal against any order or decision of the Supreme Court made under this Act, he or she shall serve notice of his or her application or appeal on the Secretary.

(2) The Law Society shall accordingly be a party to the proceedings, and shall be entitled to be represented by counsel and to be heard, and in the case of proceedings in the Supreme Court shall have a right of appeal as a party to the Court of Appeal.

45. Notice of decisions and orders to be given by Secretary - (1) Where the Council:

- (a) Makes an order under section 37 that the name of a practitioner be struck off a roll; or

(b) Makes an order under section 29, section 37, or section 38, that any practitioner be suspended from practice,-

the Secretary shall forward a certificate under his or her hand forthwith to the Registrar of the Supreme Court specifying the date and effect of the order.

(2) Where:

(a) The Supreme Court under section 21 or section 22 makes an order admitting any person as a barrister or as a solicitor, or as a barrister and solicitor, of the Supreme Court; or

(b) The Supreme Court makes an order under section 26 that any practitioner's name be removed from a roll; or

(c) The Supreme Court makes an order under section 27 that the name of any person be restored to a roll; or

(d) The Council, under section 29, section 37, or section 38, makes an order suspending any practitioner from practice; or

(e) The Council under section 37 makes an order that the name of any practitioner be struck off a roll; or

(f) The Council makes any order or decision under section 37(b) in respect of a practitioner; or

(g) The Supreme Court makes any order under section 42; or

(h) The Supreme Court otherwise makes any order to any effect specified in paragraphs (a) to (f); or

(i) The Court of Appeal makes any order in respect of any matter referred to in paragraphs (a) to (h),-

the Secretary shall cause notice of the order or decision to be published forthwith in the Gazette and in the Savali

46. Effect of orders and decisions by Council - Subject to any right of appeal by any person to the Supreme Court or the Court of Appeal, every order made by the Council under this Act that the name of any practitioner be removed from a roll, or that any practitioner be suspended from practice, shall have effect as if it were an order made by the Supreme Court to the same effect made within the jurisdiction of the Supreme Court.

47. Jurisdiction of Supreme Court reserved - No power conferred on the Council by this Act shall limit the jurisdiction of the Supreme Court.

48. Fees, penalties, and costs - (1) Where under this Act, or under any other enactment, any fees have been prescribed by the Law Society for the admission of persons as barristers or as solicitors, or for the restoration of practitioners' names to any roll, no order of the Supreme Court or of the Court of Appeal that any person be so admitted or that the name of any practitioner be so restored shall take effect until such fees have been

paid to the Law Society by the person concerned.

(2) Where under this Act the Law Society prescribes any fees or other charges, the Secretary shall cause details of the fees or charges to be published forthwith in the Gazette and in the Savali.

(3) Every fee or charge payable by any person to the Law Society under this Act, or under rules, or under any other enactment, or any sum of money ordered under section 37 to be paid by any person to the Society, shall be a debt due to the Society by that person, and shall be recoverable accordingly by the Society in proceedings brought by it in any Court of competent jurisdiction.

49. Protection of Law Society and officers - Neither the Law Society, nor the Council, nor any officer of the Society, nor any member of a committee of the Council, shall be under any criminal or civil liability in respect of any act or omission or words spoken or written, at or for the purposes of the consideration or hearing of any application or inquiry or other proceedings under this Act, unless it is proved to the Court before which any proceedings are taken that the defendant in the proceedings before the Court has acted in bad faith.

50. Rules of Court - The Head of State, acting on the advice of the Prime Minister, and with the concurrence of the Rules Committee established by section 40 of the Judicature Ordinance 1961, may from time to time make rules, not inconsistent with this Act, providing for all or any of the following matters:

- (a) The procedure to be followed in applications under Part V for the admission of barristers and solicitors of the Supreme Court;
- (b) The procedure to be followed in appeals under Part IX;
- (c) Providing for such other matters, in relation to proceedings under this Act before the Supreme Court, as are contemplated by or necessary for giving full effect to this Act and for its due administration.

51. Amendment of other enactments - (1):

- (a) and (b) These paragraphs amended the definition of the term "Samoa or United Kingdom or New Zealand representative" in section.2 of the Oaths, Affidavits, and Declarations Act 1963.
- (c) This paragraph amended section 14(1) of that Act;
- (d) This paragraph amended section 15 of that Act;
- (e) This paragraph amended section 21(1) of that Act;
- (f) (i) This subparagraph amended section 22(1) of that Act;
- (ii) This subparagraph amended section 22(2) of that Act.
- (g) This paragraph amended the Second and Third Schedules to that Act.

(2) Every reference in any enactment in force in Samoa at the commencement of this Act to a barrister or to a solicitor of the Supreme Court of New Zealand shall from the commencement of this Act be read as a reference to a barrister or to a solicitor, as the case may be, of the Supreme Court of Samoa.

52. Revocation, transitional provisions, and savings - (1) The Samoa Law Practitioners Order 1935 (New Zealand) is hereby revoked.

(2) Not later than the 1st day of January 1977, the Chief Justice of Samoa shall compile and forward to the Registrar of the Supreme Court a list under his or her hand of all persons, whether or not citizens of Samoa, who were at the 1st day of December 1976 lawfully practising as barristers or solicitors before the Supreme Court of Samoa and who also had been so practising at the 1st day of November 1976.

(3) Notwithstanding any provision to the contrary in this Act, every person whose name appears on the list compiled by the Chief Justice under subsection (2) shall on the 1st day of January 1977 be deemed to be enrolled under section 8(a) as a barrister of the Supreme Court and under section 8(c) as a solicitor of the Supreme Court; and the Registrar of the Supreme Court shall enter their names forthwith on the rolls specified in sections 8(a) and 8(c) accordingly.

(4) Notwithstanding section 6, but subject to the other provisions of this Act, every person enrolled under subsection (3) as a solicitor of the Supreme Court shall be entitled to practise as a solicitor on his own account.

(5) Every person enrolled under subsection (3) as a barrister and solicitor of the Supreme Court shall be deemed to have been duly issued on the 1st day of January 1977 with a practising certificate under section 31 for the year 1977.

(6) Nothing in this Act shall affect the conduct of proceedings in or in respect of the Land and Titles Court.

THE FEES PAYABLE BY LAW PRACTITIONERS AND ADMISSION QUALIFICATIONS PRESCRIPTION 1977

1. The following fees are payable by practitioners in Samoa pursuant to section 48 of the **Law Practitioners Act 1976** :

- (a) Admission either solely as a barrister and solicitor or as a barrister or as a solicitor whether permanently or temporarily - \$300;
- (b) Restoration fee of practitioner's name to roll - \$700;
- (c) Annual Practising fee - \$300;

2. The Council of the Samoa Law Society has determined that the following qualifications shall be the prescribed qualifications pursuant to section 19 of the **Law Practitioners Act 1976** .

"Every person is qualified for admission as a barrister or as a solicitor, or as a barrister and solicitor of the Supreme Court who has-

EITHER: 1 - A qualification entitling him or her to be admitted as a barrister and solicitor or as a barrister or as a solicitor to the Supreme Court of New Zealand.

or **2** -

(a) Proof of graduation from a law school accredited by the Association of American Law Schools, The American Bar Association, or the appropriate State Bar Association; and

(b) Proof of admission to practise before the Highest Court of a State of the United States of America."

REVISION NOTES 1997

The Law Practitioners Act 1976 appearing in this reprint comprised that Act as it appears in the 1977 reprint together with the amendment to section 2(2) contained in the Offshore Banking Act 1988 No.7 comprising the addition of the proviso to subsection (2).

REVISION NOTES 2008

This law has been generally edited as provided for by section 5 of the *Revision and Publication of Laws Act 2008*. The following general revisions have been made –

(a) References to Western Samoa have been amended to Samoa in accordance with an amendment to the Constitution of Samoa in 1997.

(b) The fines have been amended and are stated as penalty units as provided for by the *Fines (Review and Amendment) Act 1998*.

(c) All references to the male gender have been made gender neutral.

(d) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.

(e) Amendments have been made to up-date references to offices, officers and statutes.

(f) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

The following amendments have been made to specific sections of the Act to incorporate amendments made by Act of Parliament passed since the publication of the *Western Samoa Statutes Reprint 1978-1996* –

By the International Banking Act 2005 (No. 8) -

Section 2 The proviso in section 2(2) was amended by deleting the words "with off-shore banking or the giving of advice on off-shore banking matters" and substituting the words "with an international bank licensed under the International Banking Act 2005 or the giving of advice on international banking matters".

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2007. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Revised and consolidated by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

REVISION NOTES 2008 No. 2

This law has been generally edited as provided for by section 5 of the *Revision and Publication of Laws Act 2008*. The following general revisions have been made –

- (a) the commencement date is inserted; and
- (b) other minor editing has been done in accordance with the lawful powers of the Attorney General.

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2008. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Revised and consolidated by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel).

REVISION NOTES 2009

There were no amendments made to this law since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2009. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.

Revised and consolidated by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

