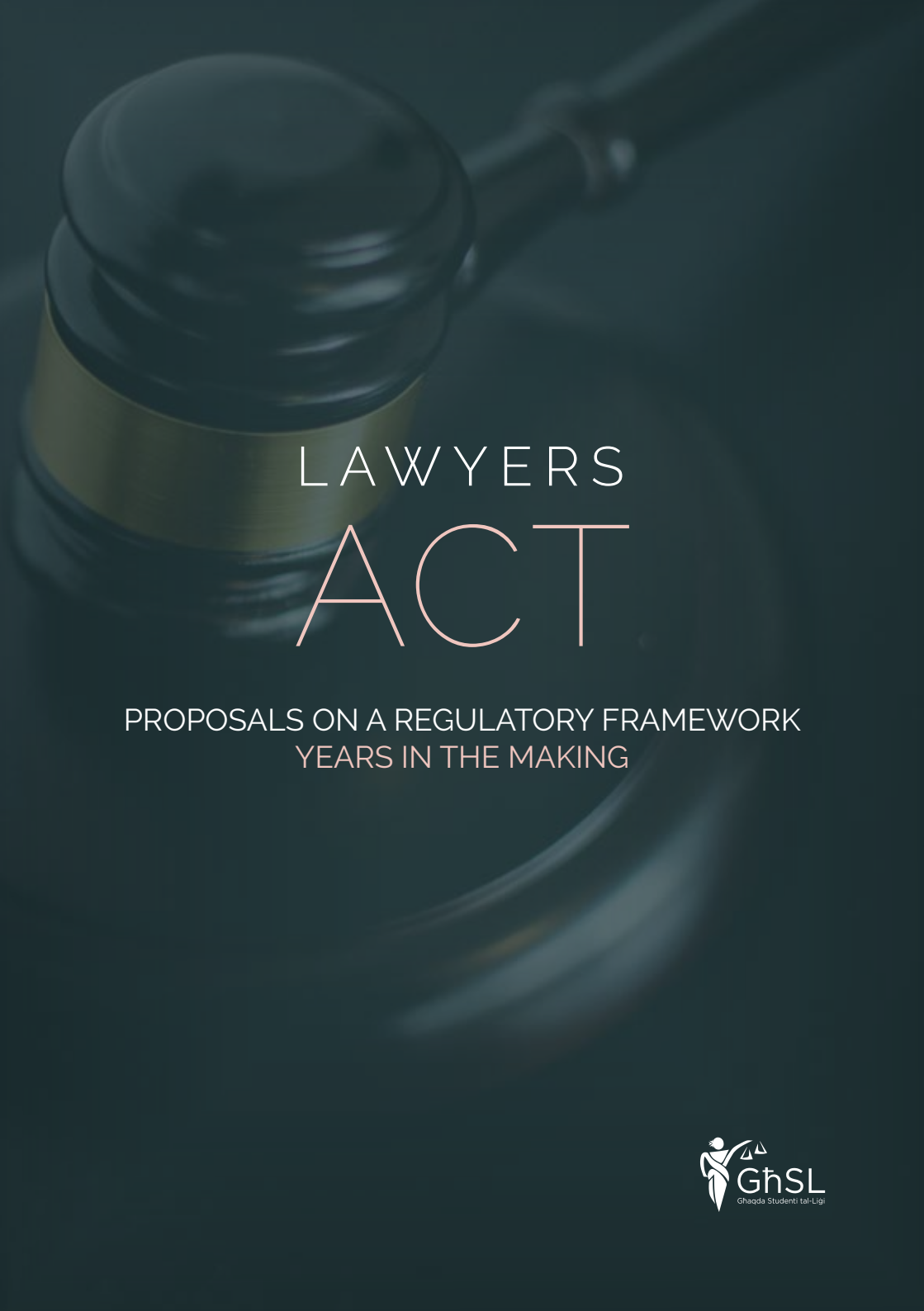

LAWYERS ACT

PROPOSALS ON A REGULATORY FRAMEWORK
YEARS IN THE MAKING

GħSL
Għaqda Studenti tal-Liġi

LAWYERS ACT

An Għaqda Studenti Tal-Liġi
Policy Paper

On behalf of my colleagues within the GħSL Executive Board, it's my esteemed honour to present this latest policy project: an in-depth, multi-faceted discussion on the proposed legislative framework outlining the legal profession in Malta.

The lingering need for a regulatory framework, and a discussion on the legal profession at large, has been lacking for far too long. While recent developments in this field have rendered contrasting results, it's only logical that those aiming to form part of this profession in the near future, should have a vocal say in the matter.

Thanks to GħSL's inveterate history in the policy field, fuelled by previous publications successfully examining a variety of socio-economic themes, this paper seeks to do just that.

This policy paper was created with one task at hand: To determine the future of our legal profession, by examining past legislative attempts, and extrapolating present needs.

It's a tall order, yet once again, GħSL's Policy Team was more than up to the task. The volume and quality of the work presented here is testament to the determination, energy and resourcefulness that law students, even in circumstances as unforeseeable as a global pandemic, continue to exhibit.

This policy team's ambition, led by our very own **Andrew Sciberras**, was matched only with their grit: The task that they set was exceedingly ambitious, yet their perseverance has paid off. They should, and ought to be, publicly lauded for their efforts.

We, as an organisation representing future members of the legal profession, aspire that this project significantly contributes and influences any legislative efforts undertaken in the upcoming months and years to come.

MATTHEW CHARLES ZAMMIT

PRESIDENT
2020/2021
Għaqda Studenti Tal-Liġi

The policy office is not the oldest of offices within GħSL, however since its inception it has strived to keep the organisation involved in any and all matters which affect students, as well as the legal sphere as a whole. This year the focus is squarely on the legal sphere, with the topic chosen reflecting the urgent need for an effective piece of legislation to bring the legal profession into the 21st Century.

I cannot not mention the members of the Policy Committee which I led, as without them, this paper would not be possible: **Maegan, Francesca, Thea, David, Maria, Gianluca, Deborah, Sarah**, and **Rheanne**. Another thank you is owed to Dr **Ivan Mifsud**, Dean of the Faculty of Laws, as well as Dr **Louis De Gabriele**, President of the Chamber of Advocates, who both offered their insights into this topic and aided us in our work. Special thanks are owed to Dr **Rueben Balzan** for his invaluable contribution as well.

In the past months, a bill has been tabled in Parliament which plans on updating the legal profession, however, in the words of the Chamber of Advocates: '*There is no genuine desire to regulate the profession in a manner which will enhance the profession in the public interest and in the interest of a stronger, and independent profession*.' A law regulating the profession needs to be robust, not introduced piece-meal.

All this being said, we hope that our proposals are taken to heart, and we are able to take part in the discussion of what form this law will take. If the legal profession remains regulated as it has been for the past decades, it is the public which will suffer.

It is not a question of **if** this law will be introduced, but **when**.

ANDREW SCIBERRAS

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LAWYERS
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HISTORY OF LEGAL EDUCATION IN MALTA

INTRODUCTION

The legal profession is not a modern concept but has long existed, dating back to Ancient Greece with the first form of lawyers being the Sophists who were itinerant teachers, individualistic in their profession and focused on oratory and persuasion. However, evidence of the study of law date back to ancient Babylon whose legal education was based on Lagash 'edubba' tablets, followed by Constantinople Law schools in the time of Justinian.[1] With the emergence of universities in the 12th Century, such as those in Bologna and Oxford, to mention a few, credentials that carried with them great distinction were attributed to the study of law.[2] The Universities advocated for a professional status such that it bestowed upon graduated students the doctorate in law. Such a professional status, showed that the graduate was analysed by a board of legal experts who claimed that such an individual is competent to form part of the ranks of public teachers of law.[3]

The late 18th Century in Malta presents the study of law as an eight-year course with three years dedicated to the Master of Arts and the remaining five years to the study of Jurisprudence. In the 19th Century, one finds the mention of the degree of Juris Utriusque Doctor which was awarded to a graduate qualified in Canon and Civil Law.[4] Following this, the University of Malta established the "dottore di legge" which, although not included in the Code of Organisation and Civil Procedure, was promulgated in the statutes of the University of Malta.[5] In the 20th Century, the law course underwent further changes

1 Anthony DeGiovanni, *The Evolution of the Legal Profession : Self-Regulation or External Control* (University of Malta 2016) 55.
2 ibid 56.
3 ibid.
4 ibid.
5 ibid 57.

which introduced the Bachelor of Laws (Hons.) which was a three-year course and followed by the LL.D. which constituted a thesis and practical experience. It was only after the LL.D. that one could graduate as a lawyer.[6] However, this was not the final change to occur, as in 2015, the Legum Doctor (LL.D.) was substituted with a Masters in Advocacy to be in accordance to European Regulations.[7]

RECENT DEVELOPMENTS – BOLOGNA PROCESS

The most recent change with regards to the law course occurred in 2014 when the LL.D. qualification was changed to a "4+1" year course awarding a Masters in Advocacy (M. Adv.) qualification to be in accordance with the EU Regulated Bologna Process. This change not only reduced the number of years of the law course which was deemed to be lengthy and outdated, but it also substituted the 35-thousand-word doctoral thesis with a shorter dissertation.[8] Another change brought about was that students were given the opportunity to sit for their warrant exam on them finishing their Masters unlike before where students needed to wait a year to obtain such a warrant.[9] The Bologna Process is an international collaboration and a reform with regards to higher education involving 48 countries.[10] The main aims of such a reform were to increase the competitiveness of the European Higher Education Area with international education, upsurge student

6 ibid.

7 ibid.

8 Editor, 'GhSL Clarifies Position on Retention of Doctor Title by 5th Year Law Students' (*The Third Eye*, 16 February 2017) <https://thirdeyemalta.com/ghsl-clarifies-position-on-retention-of-doctor-title-by-5th-year-law-students/> accessed 23 October 2020.

9 ibid.

10 EAC A3, 'The Bologna Process and the European Higher Education Area' (*Education and Training - European Commission*, 21 September 2018) <https://ec.europa.eu/education/policies/higher-education/bologna-process-and-european-higher-education-area_en> accessed 22 October 2020.

mobility and ease employability.[11] The Bologna Process was launched in 1999 involving 29 countries, with Malta being a full member from the start. Conferences were held every two years to see the progress of the systematic reforms being established within the countries.[12] From this reform, the European Credit Transfer and Accumulation system was established in Malta which aimed at making student mobility easier through credit transfer across different educational institutions within the European Union.[13] The removal of the doctorate title was one of the structural reforms put forward and this was met with a large amount of criticism from the Law students themselves and the Law Student Organisations which voiced such regrets.

CRITICISM OF THE CHANGE IN COURSE

The change in the law course to make it compliant with the Bologna Process sparked criticism among law students due to the abruptness in change. The retention of the doctorate title became applicable only to students who were already in the LL.D. course and the Law Student Organisations claimed that such an action was deemed unfair and should be applicable to prospective students could not have been aware of such a change before they joined the law course.[14] The main issue of the removal of the title presented by students was that they

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11 'European Higher Education Area and Bologna Process' <http://www.ehea.info/> accessed 22 October 2020.

12 'Infosheet Overview of the Bologna Process.Pdf' <https://ncfhe.gov.mt/en/Douments/Projects/Promoting%20the%20Bologna%20Process%20in%20Malta/Infosheet%20Overview%20of%20the%20Bologna%20Process.pdf> accessed 22 October 2020.

13 ibid.

14 'Law Students Want to Retain "Dr" Title - MaltaToday.Com.Mt' <https://www.maltatoday.com.mt/news/national/32958/law-students-want-to-retain-dr-title-20140108#.X5LhelgzY2w> accessed 23 October 2020.

would be compared to older lawyers who would have such a title.[15] They claimed that lawyers with the title might feel a certain sense of prestige over newly graduated lawyers who were not awarded with such a title.[16]The student organisations put forward such issues to Dr Owen Bonnici, then Minister of Justice, who stated that as a matter of convention one could still call themselves "Dr" basing this on the fact that dentists do use such a title although they are not given this qualification.[17] However, many professionals stated that the title "Dr" is a matter of qualifications and not convention and that such a practice is illegal under European Law.[18] They stated that even graduates from highly prestigious schools such Oxford and Harvard are not given such a title, so why should Maltese law graduates be given such a title?[19]

COMPARISON TO OTHER LOCAL ACTS

With such a development, law graduates have been left without a title which distinguishes them from the general public and serves as a credential stating that they are knowledgeable in the law. The course leading one to become an architect or engineer is more or less the same duration as the law course however, both these professions are given a title which is evidence that such a person is knowledgeable of the subject at hand. One can find these statements in the Periti Act (Article 19(3)) and the Engineering Profession Act (Article 20(3));

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15 Editor (n 8).

16 ibid.

17 '"I Am Not a Doctor, so Why Call Myself One?"' (*Times of Malta*) <https://timesofmalta.com/articles/view/-I-am-not-a-doctor-so-why-call-myself-one-.502162> accessed 23 October 2020.

18 ibid.

19 ibid.

Article 19(3): *For the purposes of article 18(2) and (3), the use on any card, letterhead, sign, board, plate, advertisement or other written, printed or engraved device, instrument or document, of the word* ***"Perit" or "Architect"*** *or either of those words used in combination with the words "****Civil Engineer" or "Structural Engineer",*** *shall be sufficient evidence of the knowledge of such use by the person in relation to whose name the said word is used, unless such person proves that the use of such word was made without his knowledge and that upon becoming aware of it, he took adequate steps to stop it.*[20]

Article 20(3): *For the purposes of article 19(2) and (3), the use of any card, letterhead, sign, board, plate, advertisement or other written, printed or engraved device, instrument or document, of the word* ***"Inġinier" or its abbreviation "Inġ."*** *in relation to a name, shall be sufficient evidence of the knowledge of such use by the person in relation to whose name the said word or abbreviation is used, unless such person proves that the use of such word or abbreviation was made without his knowledge and that upon becoming aware of the use he took adequate steps to stop it.*[21]

Therefore, the debate put forward by many law graduates is that lawyers are not given the opportunity to distinguish themselves from the general public while other professions are given a prefix to show that they acquired the knowledge attributed to the particular profession.

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20 Periti Act 1999 (Chapter 390, Laws of Malta) Article 19(3).

21 Engineering Profession Act 1988 (Chapter 321, Laws of Malta) Article 20(3).

COMPARISON WITH THE SITUATION IN OTHER COUNTRIES

Although the Bologna Process aimed at making qualifications more or less the same across European States, there was no mention with regards to the title given to graduates even though such a change removed the doctorate title. When looking at the situation abroad, one is quick to realise that law graduates are given a prefix or professional title which is a recognition of their qualifications and shows that they are part of the legal profession. For instance, one can look at neighbouring European Countries such as Italy, Spain and Germany. In Italy, law graduates are given the prefix 'Avv.' before their name which is short for *Avvocato.*[22] In Spain, after gaining the necessary qualifications from their course, passing the Spanish Bar exam and gaining membership into the Spanish Bar Association, they are attributed the professional title of *abogado.*[23] With such a title, they are constrained by the administrative, ethical, professional and legal rules and standards attributed to the law profession in Spain.[24] In Germany, after gaining the necessary qualifications, those able to practise law are given the prefix *RA* which is short for *Rechtsanwalt.*[25] Portugal was one of the few countries like Malta who granted law graduates a doctorate title however this has been replaced with the title *advogado* after the Bologna Process.[26]

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22 'ITALIAN SOLICITOR' (*Studio Legale Metta*, 2 February 2020) <https://www.studiolegalemetta.com/en/italian-solicitor/> accessed 23 October 2020.

23 'Regulation of the Legal Profession in Spain: Overview | Practical Law' <https://uk.practicallaw.thomsonreuters.com/6-634-9270?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 23 October 2020.

24 ibid.

25 'Lawyer in Germany | Entering Europe, A Network Apart' <http://www.entering-europe.eu/germany/lawyer_in_germany.php> accessed 23 October 2020.

26 Sara Diego, Norbert Sabic, 'Implementation of the Bologna Degree Structure in the European Higher Education Area'.

PROPOSED WAY FORWARD

Generally speaking, the new structure of the law course, that is, the 4+1 system consisting of an LL.B. (Hons) followed by a Masters in either Advocacy or Notarial Studies, depending on which profession the student would like to pursue. At the moment there is no title awarded for warranted lawyers, the same way there is a title awarded for warranted engineers and architects. Therefore, we propose that upon receiving their warrant and taking the oath in front of the Court of Appeal, that person will be able to make use of the title Advocate, Avukat in Maltese, shortened to Av. While this is currently the case in practice, following the restructuring of the course this needs to be provided for in legislation, to dispel any doubts.

REGULATING THE LEGAL PROFESSION - A COMPARATIVE ANALYSIS

COMMON LAW LEGAL SYSTEMS

ENGLAND AND WALES

The legal profession in England and Wales is split up into two main categories that play a different role within the legal system, these being barristers and solicitors. Barristers have the right to appear in the superior courts and are members of the Bar Council of England and Wales, governed by the Bar Standards Board. On the other hand, solicitors conduct legal research and represent clients in legal negotiations, passing the case over to a barrister if court action is needed. Solicitors are regulated by the Solicitors Regulation Authority and are represented by the Law Society, under the Solicitors Act 1974.[27]

The Solicitors Act starts off by laying down who has the right to practise as a solicitor. The law clearly states in Article 1 that a person can only act as a solicitor if he has been admitted as a solicitor, has his name on the Roll, and is in possession of a practising certificate issued by the Society.[28] Education and training of solicitors is regulated by the Society under this act. To be admitted as a solicitor, one needs to satisfy the criteria laid out in Article 3 to obtain a certificate from the Society, namely compliance with training regulations and suitability to be a solicitor.[29] The Society is also charged with keeping a list of all solicitors, known as the Roll. A solicitor's name is added to the Roll after the payment of a fee established by the Society. Practising certificates are issued on application to a person whose name is on the Roll, subject to a fee determined by the Society. Article 13B till Article 17 deals with the suspension of practising certificates, subject to court proceedings, by reason of fraud, bankruptcy or serious crime,

27 Solicitors Act 1974 (Chapter 47).

28 ibid Article 1.

29 ibid Article 3.

to name a few.[30] A note of the suspension has to be published and marked against the name of the solicitor on the Roll.

The Solicitors Act also lays down a number of practice, conduct and discipline rules. It empowers the Society to make such rules, such as those relating to the opening and keeping of accounts at banks by solicitors, interest payable by the solicitor, and the inspection of bank accounts by the Society.[31] Non-compliance with these rules can lead to a complaint being filed before the tribunal. These rules also apply to employees of solicitors. The law also lays down certain restrictions as to who can practice as a solicitor. Someone who has been struck off the Roll or suspended, or has failed to inform their new employer that they were struck off or suspended, shall not be employed as a solicitor.[32]

Article 44D lays down the disciplinary powers that the Society has over solicitors. These are exercised when there has been professional misconduct by the solicitor or a breach of the rules imposed by the Solicitors Act or the Society. In these cases, the Society can either give the solicitor a written reprimand, impose a penalty not exceeding £2,000, or both.[33] The solicitor can appeal this decision to the Solicitors Disciplinary Tribunal, and furthermore be brought before the High Court. Article 46 provides that any application or complaint made regarding any provision of the Solicitors Act is to be made to the Solicitors Disciplinary Tribunal. This Tribunal is appointed by the Master of the Rolls and consists of practising solicitors with no less than ten years' experience, and persons who are neither solicitors nor barristers. The Tribunal has the power to strike off the name of a solicitor from the Roll, as well as restore it, to end the suspension of

30 ibid Articles 13-17.
31 ibid Articles 31-33.
32 ibid Article 41.
33 ibid Article 44D.

a solicitor, and to request a solicitor to answer allegations, to name a few.[34]

Solicitors are officers of the Senior Courts. This means that the High Court, the Crown Court and the Court of Appeal have jurisdiction over solicitors. Applications to the High Court can be made in order for a solicitor to answer questions contained in an affidavit or to strike off the name of a solicitor from the Roll. In the latter case, Article 54 states that a solicitor cannot have his name struck off the Roll due to non-compliance with training regulations or the admission and enrolment process.[35]

The remuneration of solicitors is determined by a committee consisting of the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Society, a member of the Legal Services Board, a solicitor who is President of a local law society, and the Chief Land Registrar.[36] Article 56(4) states that solicitors should be paid by a gross sum, or a fixed sum for each document prepared, or in any other mode.[37] With regards to non-contentious business, the solicitor and his client can agree amongst themselves on the remuneration of the solicitor before or after business has been conducted.

Schedule 1 describes the instances in which the Society may intervene in a solicitor's practice. These include suspicion of dishonesty, non-compliance with rules laid down in the Act, bankruptcy, a prison sentence, not being able to practise due to illness, injury, or accident, lacking the capacity to act as a solicitor, striking off from the Roll or suspension, or abandonment of practice.[38] If the Society does intervene, it has the power to control payments made to the solicitor

34 ibid Article 46.
35 ibid Article 54.
36 ibid Article 56 (1).
37 ibid Article 56 (4).
38 ibid Schedule 1.

or take possession of a sum of money, as well as request the solicitor to hand over all documents that relate to his practice.

Unlike solicitors, barristers do not have an official piece of legislation regulating the profession. Instead, barristers are represented by the Bar Council and regulated by the Bar Standards Board and have to follow the BSB's Handbook, which includes a code of conduct to set standards of behaviour for barristers. The Bar Standards Board is also in charge of admission to the bar and disciplinary proceedings for barristers. They also have to be a member of one of the four Inns of Court in London; Inner Temple, Middle Temple, Lincoln's Inn and Gray's Inn.[39] The Inns serve as a professional and social hub where barristers can meet. Barristers can also be appointed by the monarch to form part of the Queen's Counsel, in recognition of their excellence and experience in the profession. Although this can be seen as an aristocratic system, it plays a significant role in encouraging barristers to maintain high standards in their work.

In order to become a barrister, one has to first obtain an undergraduate law degree, and proceed to pass the Bar Course Aptitude Test. They then have to complete a vocational training course with their Inn before they are called to the Bar by their Inn of Court, whereby they can commence a twelve-month period of pupillage before they can qualify for a practising certificate.[40] According to the Bar Standards Board, barristers are *"regulated specialist legal advisers and court room advocates"*.[41] The services they can provide include representing people and businesses in court or a tribunal, giving

39 Kate Jackson, 'Oxford LibGuides: United Kingdom Law: Legal Profession' <https://ox.libguides.com/c.php?g=422832&p=2887402> accessed 16 October 2020.

40 Bar Standards Board, 'Becoming a Barrister: An Overview' <https://www.barstandardsboard.org.uk/training-qualification/becoming-a-barrister.html> accessed 28 October 2020.

41 Bar Standards Board, 'Information about Barristers' <https://www.barstandardsboard.org.uk/for-the-public/about-barristers.html> accessed 28 October 2020.

advice to their clients, and the initiation of legal proceedings in court. They can specialise in various areas of law, the most common being criminal, family, commercial, and immigration law.

SCOTLAND

In Scotland, the Law Society of Scotland aims to further the interest of the solicitors' profession in Scotland, and the interest of the public in relation to that profession.[42] There may be no more than 3 approved regulators at one time, and to become a regulator an application must be submitted which would then be agreed to be approved by the Lord President along with the Scottish Ministers.[43] If a regulator is approved, then they must *"make a regulatory scheme for licensing and regulating the provision of legal services by its licensed legal services providers,"* as well as, be able to apply this scheme in relation to them.[44] This scheme must include the license rules, the practice rules and the compensation rules, as well as *"cover such other regulatory matters as the Scottish Ministers may by regulations specify."*[45]

Scottish solicitors who have a practising certificate must be members of The Law Society of Scotland. Though, if a solicitor is suspended from practice or for some other reason his certificate ceases to have effect, then he will be treated as if he wasn't a member of the Society.[46]

The Council of the Society will continue to conduct the business of the Law Society of Scotland[47], and the members of the Council shall

42 Solicitors (Scotland) Act 1980 1980 (1980 c 46, Laws of Scotland), Article 1(2).

43 Legal Services (Scotland) Act 2010 2010 (2010 asp 16, Laws of Scotland), Article 6, 7, 9.

44 ibid, Article 12(1).

45 ibid, Article 12(2).

46 Solicitors (Scotland) Act 1980, Article 2.

47 ibid, Article 3(1).

be; solicitor members elected or co-opted to the Council, and non-solicitor members appointed to the Council. Any individuals who are electable or eligible to be co-opted must be members of the Society, while those appointable as non-solicitor members must be qualified to *"represent the interests of the public in relation to the provision of legal services in Scotland"* or they must have regard *"to the Society's function, to be suitable in other respects."*[48] This Council is the decision-making body, and has a number of obligations which it must fulfil, some of them being; *"[having] responsibility for the overall governance regime for the Law Society"* and *"the election of the elected Council members on the Board."*[49] The Council must also approve the Law Society of Scotland's strategy, annual business plan, as well as annual budget.[50] The Council must not exercise its regulatory functions through any other means or interfere in the regulatory committee's business.[51]

There is also the Regulatory Committee, which was created by the Legal Services (Scotland) Act 2010 and it is a committee of the Council of the Law Society, but acts independently from it.[52] This committee's membership can include those who are not members of the Council and at least half of the committee's members are to be lay persons; those who are not solicitors, advocates, *"conveyancing or executry practitioners"* or *"confirmation agents or will writers."* These lay persons are *"appointable to the committee if they would be appointable to the Council as non-solicitor members."*[53]

If any dispute arises between the Regulatory Committee and the

48 Legal Services (Scotland) Act 2010, Article 132.

49 'Our Council' (*Law Society of Scotland*) <https://www.lawscot.org.uk/about-us/who-we-are/council-members/> accessed 17 October 2020.

50 ibid.

51 Solicitors (Scotland) Act 1980, Article 3B(3).

52 'Regulatory Committee' (*Law Society of Scotland*) <https://www.lawscot.org.uk/about-us/who-we-are/our-committees/regulatory-committee/> accessed 18 October 2020.

53 Solicitors (Scotland) Act 1980, Article 3C.

Council, and cannot be settled by the parties, then it is to be submitted to arbitration.[54] The arbitrator is to be appointed either together by both parties, or else if they still do not agree on who to choose, then by the Lord President on a request made by either, or even both, of them.[55]

When referring to the regulatory functions within the Council, they are any functions which help regulate any matter of professional practice. These regulatory functions include their functions as to; *"admission of persons to the profession", "keeping the Roll and other registers"* and *"making regulatory rules under any relevant enactment",* among others.[56]

As every country, Scotland has its requirements for one to practise as a solicitor, these being; *"[having] been admitted as a solicitor", "[has] his name on the Roll"* and *"has in force a certificate issued by the Council in accordance with the provisions of this Part authorising him to practise as a solicitor"*.[57] The Council has the ability, with the concurrence of the Lord President, to make regulations for practical training, attendance at a course of legal education, and the passing of examinations.[58]

To be admitted as a solicitor in Scotland, one must satisfy the Council; where he would have complied with the requirements above and is *"fit and proper"* to become a solicitor. An individual must also have obtained a certificate from the Council as well as paid a sum when admitted, which would have been fixed by the Council with the Lord President's approval.[59] If a person has complied with these, and the Council has not *"lodged a petition for his admission as a solicitor*

54 ibid, Article 3D.
55 ibid, Article 3D.
56 ibid, Article 3F.
57 ibid, Article 4.
58 ibid, Article 5.
59 ibid, Article 6(1).

within one month of his having complied" then he may apply to the court by petitioning to be admitted as a solicitor.[60]

Practising certificates are issued by the Council and issued to an enroled solicitor when they apply for a certificate. No practising certificates may be issued to solicitors who are suspended from practice.[61] An application is made when a solicitor wants to obtain a practising certificate, and if the information given on the application is incorrect, then this may be treated as professional misconduct unless the individual proves that it was not done with the intention to deceive.[62]

Every practising certificate issued shall show the date when it was issued, though when issued in November it will always show the 1st of November, and would expire on the 31st of October next after it is issued.[63] If a person is removed from the Roll or suspended from practising as a solicitor, then any practising certificate in force for that solicitor will cease to have effect. Though, in the case of a suspension, if the person *"ceases to be so suspended during the period for which the practising certificate would otherwise have continued in force, the certificate shall thereupon again have effect."*[64]

Suspension of a practising certificate could take place for multiple reasons, some being; *"a guardian is appointed to a solicitor under the Adults with Incapacity (Scotland) Act 2000," "a solicitor grants a trust deed for [behalf] of creditors"* or "*the estate of the solicitor is sequestrated."*[65] A solicitor may also be suspended by the Council if he has been convicted of an offence which would include dishonesty,

60 ibid, Article 6(2).
61 ibid, Article 14.
62 ibid, Article 13(3).
63 ibid, Article 17 (2, 3).
64 ibid, Article 17(4).
65 ibid, Article 18(1).

sentenced to imprisonment for 12 months or more, or fined a certain amount.[66]

Every solicitor must be a part of the Roll in Scotland and this is the responsibility of the Council, and kept within its secretary's office.[67] Any individual who is admitted as a solicitor should include a request to the Council to enter one's name into the Roll.[68] The names are in alphabetical order and next to each name, one can find the address of the place of business of that solicitor. The Roll is public to anyone but can only be seen when going to the office during office hours.[69] If someone want to remove his name for any reason from the Roll, then an application may be made to the Council, and the Council will remove their name from the Roll.[70]

In the Solicitors (Scotland) Act, consultants are treated as practising solicitors, and the provisions relating to practising certificates apply to them as well. A consultant is a solicitor who is either not *"in partnership with a solicitor or other solicitors causes or permits his name to be associated with the name of that solicitor or those solicitors or their firm's names"* or *"not being a director of an incorporated practice, causes or permits his name to be associated with that incorporated practice."*[71]

If a person practises as a solicitor without having a valid practising certificate, he shall be guilty of an offence and it will be treated as professional misconduct, unless the individual proves that he acted with no intent of receiving any payments or gains, directly or indirectly.[72] If, on the other hand, a solicitor acts as an agent for an individual who is not qualified, when knowing that they are not qualified, then the

66 ibid, Article 18(1ZA).
67 ibid, Article 7(1).
68 ibid, Article 6(4).
69 ibid, Article 7(2, 2A, 3).
70 ibid, Article 9.
71 ibid, Article 21.
72 ibid, Article 23.

qualified solicitor will also be guilty of an offence.[73]

The Tribunal of the Council is the place where one would go to place a complaint, and where it will be investigated as well as prosecuted.[74] When referring to a complaint, this includes *"a complaint in respect of conveyancing and executry practitioners and the provision by them of conveyancing and executry services"*.[75] The people who can make a report to the Tribunal includes senior legal professionals and judges.[76] Action may be taken by the Tribunal for a number of reasons, some being; *"after holding an inquiry into a complaint against a solicitor... [and they are] satisfied that he has been guilty of professional misconduct"* or a solicitor has been convicted of an act which involves dishonesty or has been sentenced to imprisonment for 12 months or more.[77] The Tribunal may take action once a complaint has been confirmed, and they may choose that the solicitor has his name taken off of the Roll, that his right of audience is suspended or revoked, be given a fine, among others.[78] This is almost identical as to what happens within the Scottish Courts regarding professional misconduct.[79] If on the other hand, the Tribunal is either not satisfied that the individual has been guilty of professional misconduct, or considers that they have been guilty of unsatisfactory conduct, then the complaint should be dealt with by the Council.[80] The Tribunal may then *"make available to the Council any of its findings in fact in its inquiry into the complaint"*.[81]

In Scotland, one may also come across the Notary Public, which are

73 ibid, Article 26(1).
74 ibid, Article 51(1).
75 ibid, Article 52(1A).
76 ibid, Article 51(3).
77 ibid, Article 53(1).
78 ibid, Article 53(2).
79 ibid, Article 55A.
80 ibid, Article 53ZA.
81 ibid, Article 53ZA.

individuals who play a very important legal role *"where legal validity of a document requires the swearing of an oath"*.[82] Any solicitor is able to apply to the Court to be admitted as a notary public, and once admitted will be registered by the Council in the register of notaries public. To apply, one must submit an application for their admission, as well as *"as order on any such petition admitting that person as a solicitor may admit him as a notary public and direct the Council to register him in the register of notaries public"*.[83] The Notary Public's offices and functions of the clerk to the admission of notaries public, and the keeper of the register of notaries public, are both transferred to the Council. Upon admission as a notary public, one will have to pay a fee, which would be set by the Council and which may change at any time.[84] Just like solicitors, notary publics have a draft of rules which they must follow, and this would be sent to every single notary public. If the individual does not comply with the any of the rules, then this may be treated as a professional misconduct or unsatisfactory professional conduct.[85]

As always, a person has the right for payment for his professional services, and thus a solicitor, when reaching an agreement with a client in writing, shall be paid under any such agreement. On some occasions, there may also be an agreement that if the solicitor wins a case, then the amount agreed would be increased by a certain percentage which would not exceed the limit which the Courts agree on.[86]

In Scotland there is a time limit for a prosecution of an offence,

82 'Notary Public' (*Law Society of Scotland*) <https://www.lawscot.org.uk/members/membership-and-fees/practising-certificate-holders/notary-public/> accessed 22 October 2020.
83 Solicitors (Scotland) Act 1980, Article 53.
84 ibid, Article 57.
85 ibid, Article 59A.
86 ibid, Article 61A.

where a prosecution of any offence *"must commence within 6 months of its first discovery by the prosecutor or in any event within 2 years after the commission of that offence"*.[87]

One will also find advocates within Scotland, which are self-employed professional litigators. To become an advocate, an individual must first train as a solicitor and then undergo further training before being able to be called to the bar.[88] Advocates are able to represent clients in the highest courts in Scotland, whilst solicitors can only appear in lower courts.[89]

Meanwhile, Advocates are not able to provide their services to the general public but must be available to be instructed by solicitors or other professional bodies.[90] The Faculty of Advocates is an organisation which *"regulates the training and professional practice, conduct and discipline of advocates"*.[91] The Faculty's aim is to *"secure that high quality legal advice and representation is available to anyone who needs it, throughout Scotland"*.[92]

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87 ibid, Article 63.

88 Administrator, 'What Is an Advocate?' <http://www.advocates.org.uk/about-advocates/what-is-an-advocate> accessed 23 October 2020.

89 'Solicitor-Advocates and Advocates' (*Shelter Scotland*) <https://scotland.shelter.org.uk/get_advice/advice_topics/complaints_and_court_action/legal_representation/solicitor-advocates_and_advocates> accessed 2 November 2020.

90 Administrator, 'Different Ways of Instructing an Advocate' <http://www.advocates.org.uk/instructing-advocates/different-ways-of-instructing-an-advocate> accessed 2 November 2020.

91 Administrator, 'What Is the Faculty of Advocates?' <http://www.advocates.org.uk/faculty-of-advocates/what-is-the-faculty-of-advocates> accessed 23 October 2020.

92 Gaynor Adam, 'History of Faculty' <http://www.advocates.org.uk/faculty-of-advocates/history-of-faculty> accessed 23 October 2020.

The Society of Writers to Her Majesty's Signet is a private Society comprised of Scottish lawyers. This Society helps *"support and [entertain] lawyers and legal business with research, comment, learning, networking and culture"*.[93] They also provide support services to the charitable sector.

Nowadays, most solicitors work in law firms or in-house within the public or private sector. These solicitors must take a special oath before an officer of state, which would signify his personal commitment to the *"exceptional standards of competence and integrity expected of those associated with the historic seal of Scotland's kings and queens, known as the Signet"*.[94]

93 'The Society of Writers to Her Majesty's Signet' (*wssociety*) <http://www.wssociety.co.uk/about/who-we-are> accessed 23 October 2020.
94 ibid.

CYPRUS

The legal profession in Cyprus is regulated by the Advocates Law, which established the Cyprus Bar Association as the regulatory body, the Disciplinary Board, and the Legal Council.[95] Apart from this, Cyprus also has Local Bar Associations made up of all practising lawyers from each district. There are six Local Bar Associations, representing the six districts of Cyprus.[96] Therefore, a lawyer in Cyprus is both a member of the Cyprus Bar Association and his Local Association. Despite the legal system being based on the English model, there is no distinction between solicitors and barristers. Instead, qualified advocates are given the title of Cyprus Lawyer or Cyprus Advocate.

The Advocates Law starts off by establishing the Legal Council, which consists of the Attorney General as Chairman the Secretary of the Bar Council, and three advocates from the Greek-Cypriot and Turkish Community. Article 3(4) establishes the duties of the Legal Council, which mainly include the enrolment of advocates, carrying out examinations and issuing certificates.[97] A person is entitled to be enroled as an advocate and receive a Legal Council certificate if he has reached twenty-one years of age, are of good character, and are citizens of Cyprus with permanent residence. For non-Cypriot citizens, the requirements to be enroled as an advocate include holding a degree or diploma from a university in Greece or Turkey, being a barrister at law of England, Northern Ireland, Ireland or an advocate of Scotland, or having a law degree from a university in the UK or Ireland.[98] Both Cypriot and non-Cypriot citizens must also complete

95 The Advocates Law (Chapter 2).

96 'Cyprus Lawyers: The Practice of Lawyers in Cyprus | GK Law Firm' (*George K. Konstantinou Law Firm*) <https://gk-lawfirm.com/publications/cyprus-lawyers/> accessed 24 September 2020.

97 The Advocates Law, Article 3.

98 ibid, Article 4.

a training period of not less than twelve months with an advocate in practice for at least five years.

Articles 4A and 4B deal with trainee advocates. A person who has commenced training with a practising advocate or at the office of the Attorney General has to submit an application to be enroled as a trainee no later than thirty days from commencement of the traineeship, which lasts for one year.[99] This application has to be submitted to the Legal Council and signed by the advocate in practice or Attorney General. A registered trainee may appear on behalf of the advocate with whom he trains, or on behalf of the Attorney General, before any court in civil and criminal proceedings and the Supreme Court in any appeal.[100] They may also appear alongside the practising advocate or Attorney General and participate in court proceedings. However, in order to appear before a court, the trainee has to complete at least four months of training beforehand. A person is entitled to enrol as an advocate once he has obtained a certificate by the Legal Council, and is required to pay a fee in order to have his name added to the Register of Advocates.[101] Practising advocates will then have their name enroled in the Register of Practising Advocates, kept by the Bar Council. The Bar Council, alone or upon application by a Local Bar Association, has the power to remove an advocate from the Register.[102]

The Advocates Law also contains provisions on the regulation of Lawyers' Companies. The incorporation of a company as a Lawyers' Company must be approved by the Legal Council, and is necessary for its registration. Such companies, being a general or limited partnership, must have all their intended partners be advocates enroled in the Register of Practising Advocates. In the case of limited liability companies, all intended shareholders and members of the

99 ibid, Article 4A.
100 ibid, Article 4B.
101 ibid, Article 6.
102 ibid, Article 6A.

board of directors have to be enroled advocates.[103]

Part III of the law regulates the conditions of practice as an advocate. In order to practise as an advocate, a person has to be enroled as stated previously, has to take out an annual licence, and has to contribute to the Advocates Pension Fund. Practising as an advocate without being enroled or without holding an annual licence is an offence and carries with it a prison sentence of not more than three months or a fine, or both.[104] The law also states that judicial officers who have retired from the service cannot appear as an advocate before a court until one year has passed from his retirement.

Advocates who are nationals of a Member State of the European Union may provide legal services in Cyprus, in accordance with Article 14A of the Advocates Law.[105] In doing so, they can make use of their professional title in the language of their home member state, along with indicating the professional organisation they belong to or the court before which they practice. Whilst practising as a lawyer in Cyprus, the advocate is subject to the same terms, conditions and obligations as Cypriot advocates. Before appearing in front of a court, the Legal Council requires the advocate to produce documents stating his capacity, information as to the services he will provide the Republic and their possible duration, his address and that of the Bar Council of his home Member State, and a statement of all disciplinary penalties against him.[106] A register of all the names of advocates who are Member State nationals and practising in Cyprus is kept by the Chief Registrar, known as the Register of Member State Advocates who Provide Services.[107] Once the advocate has regularly practiced

103 ibid, Article 6C.
104 ibid, Article 11.
105 ibid, Article 14A.
106 ibid, Article 14E.
107 ibid, Article 14F.

for at least three years under Cypriot law, they can gain full admission to the profession of advocate of the Republic.

Part IV of the Advocates Law deals with the disciplinary liability of advocates. The law establishes a Disciplinary Board *"to exercise, subject to the provisions of this law, control and disciplinary jurisdiction over every advocate"*.[108] This board consists of the Attorney General as Chairman, the elected Chairman of the Bar Council as *ex officio* member, and three advocates elected every three years.[109] If an advocate is convicted by a court of an offence which involves *"disgraceful, fraudulent, or unprofessional conduct towards the profession"*,[110] the Disciplinary Board can order the advocate's name to be struck off the Register, suspend the advocate for a period of time, order the advocate to pay a fine, or warn or reprimand the advocate. Disciplinary proceedings may be initiated by the board itself, by the Attorney General, through a report by the court to the Disciplinary Board, by the Bar Council or a Local Bar Committee, or through an application by any aggrieved person.[111] The provisions in this part apply also to trainee advocates, advocates from Member States practising in Cyprus, and to a Lawyer's Company.

Apart from the provisions contained in the Advocates Law, anyone practising law in Cyprus must follow the Advocates' Code of Conduct Regulations, drawn up by the Cyprus Bar Association.[112] These regulations include duties towards the Government, the Society and the Courts of Law, and duties owed to clients and colleagues.

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108 ibid, Article 16(1).

109 ibid, Article 16(2).

110 ibid, Article 17.

111 ibid, Article 17(2).

112 Cyprus Bar Association, 'Advocates' Code of Conduct Regulations'.

NEW ZEALAND

In New Zealand, the legal profession is regulated by the Lawyers and Conveyancers Act 2006, which establishes the New Zealand Law Society as the regulatory and representative body of all lawyers. As stated in Article 3, the aims of this law are to ensure public confidence in legal services, to protect consumers, and to recognise the status of the legal profession.[113] This act reformed prior laws relating to lawyers and provides a more responsive regulatory framework for lawyers. The law also lays down four fundamental obligations that lawyers must follow; upholding the rule of law and facilitating the administration of justice, being independent when providing services to clients, acting in accordance with fiduciary duties and duties of care owed by lawyers, and protecting the interests of clients.[114]

The Act starts by laying down provisions on misconduct and offences committed by lawyers, law firms and other persons. In Article 7, the law defines misconduct in relation to lawyers and law firms.[115] Misconduct is understood to be conduct that is dishonourable, that contravenes any provision in the Act, that involves wilful or reckless failure by the lawyer or firm, or that consists of excessive charges for legal work. A lawyer or firm is also guilty of misconduct if they employ someone who is suspended from practice or has his name struck off the Roll. Apart from misconduct, the law also includes a provision on unsatisfactory conduct by lawyers or law firms. Unsatisfactory conduct is one that *"falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent lawyer"*.[116] An offence is committed by a person who is not a lawyer or law firm but provides a legal service in New Zealand and falsely

113 Lawyers and Conveyancers Act 2006, Article 3.
114 ibid, Article 4.
115 ibid, Article 7.
116 ibid, Article 12(a).

describes himself as a lawyer, legal practitioner, barrister, solicitor, attorney-at-law, or counsel, and wrongly makes others believe that they hold any type of admission, enrolment, or practising certificate.[117] However, this does not apply in situations where a person represents himself in court proceedings. Proceedings against anyone who breaks a provision of this law can be initiated by the President of the New Zealand Law Society, or by a person authorised by the Council of the New Zealand Law Society.

The New Zealand Law Society is in charge of the issuing of practising certificates. These are issued upon application by a person whose name is on the Roll and can either be for a barrister, or a barrister and solicitor.[118] No person can hold both a practising certificate as a barrister, or a barrister and solicitor, and a practising certificate as a conveyancer.[119] The Society may refuse the issuing of a certificate until all fees are paid, or on the grounds that the person does not meet the criteria laid out in the law, or is not fit and proper to hold a practising certificate.[120] In deciding this, the factors that are taken into account include: obtaining a certificate because of incorrect information; contravening a condition of the certificate; contravening the Act; contravening an order of the Disciplinary Tribunal; or, not undertaking the legal education required to practise. Appeals can be made to the Disciplinary Tribunal against any decision of the New Zealand Law Society, by way of rehearing.[121]

Unlike the English system, a person has to be admitted by the High Court as both a barrister and a solicitor.[122] Article 49 groups

117 ibid, Article 22.
118 ibid, Article 39.
119 ibid, Article 39(3).
120 ibid, Article 39(4).
121 ibid, Article 42.
122 ibid, Article 48.

the qualifications needed for admission into three categories, with a person needing to fit into at least one category to be admitted. The first category includes, having all the qualifications required by the New Zealand Council of Legal Education, being a fit and proper person; and, meeting the criteria prescribed by this law. The second category includes having been admitted as a barrister, solicitor, barrister, and solicitor, advocate, or attorney in any other country, having all the qualifications required by the New Zealand Council of Legal Education, and being a fit and proper person. The last category involves mutual recognition of certificates by New Zealand and Australia.[123]

In deciding whether a person is fit and proper for admission, the following are taken into account: if the person is of good character; past bankruptcy issues; if any offences have been committed by the person; whether they have practiced law unlawfully in another country; complaints and disciplinary actions against the person; removal from the Roll in a foreign country; and the mental and physical capabilities of the person.[124] The Registrar must keep a Roll of all barristers and solicitors. A person's name is placed on the Roll upon admission by the High Court and after the payment of an admission fee.[125] The striking off of a person's name from the Roll, or its restoration, is made by order of the Disciplinary Tribunal or the High Court.[126]

Membership of the New Zealand Law Society is voluntary, and does not impose any obligations on its members. The regulatory functions of the Law Society include: contRolling and regulating the legal profession; upholding the obligations of lawyers; monitoring and enforcing the provisions of the Act that relate to the regulation

123 ibid, Article 49.
124 ibid, Article 55.
125 ibid, Article 57.
126 ibid, Article 58.

of lawyers; and to assist and promote the reform of the law.[127] The Law Society also acts as a representative body for its members and serves their interests. Furthermore, the New Zealand Law Society is in charge of issuing practising certificates, keeping a register of persons who hold practising certificates, issuing practice rules for all lawyers, and instituting prosecutions against lawyers.[128] Every lawyer has to pay an annual practising fee to the Society, which is used to fund its regulatory and representative functions.[129]

Part 6 of the Act provides for practice rules and regulations, which are handled by the New Zealand Law Society. The Society must have rules which provide for: eligibility for a practising certificate; payment of fees; standards of professional care and conduct; matters relating to the Lawyers' Fidelity Fund; services given by firms; the operation of a complaints service; and amending and replacing such practice rules.[130] The Law Society must also have practice rules relating to the indemnity of practitioners or law firms, which may require them to hold professional indemnity insurance.[131] For the approval of practice rules, the Minister must be satisfied that the rules are necessary, that any restrictions are proportionate to the benefits that are expected, and that they are consistent with New Zealand's international obligations. The Law Society can also from time to time investigate the accounts of lawyers or law firms.[132] The Law Society must also establish a complaints service to receive complaints about lawyers, firms and employees. This must also include the establishment of one or more Lawyers Standards Committees, to investigate and resolve

127 ibid, Article 65.
128 ibid, Article 67.
129 ibid, Article 73.
130 ibid, Article 94.
131 ibid, Article 99.
132 ibid, Article 109.

complaints.[133]

A person who holds a practising certificate as a barrister, and not as a barrister and solicitor, is eligible to be appointed to the Queen's Counsel.[134] Once a person holds the rank of Queen's Counsel, they cannot provide regulated services as a barrister and solicitor, or in partnership with another lawyer.

133 ibid, Article 126.

134 ibid, Article 118.

CIVIL LAW SYSTEMS

ICELAND

Within Iceland, the term 'lawyer' is used to refer to what in Malta we would term 'advocate', with this term referring to any person who has a licence to represent clients before the Courts.[135] Their professional titles are the abbreviations *hdl* and *hrl*, making reference to the name of the profession in the native Icelandic, and may only be used by those who have the licence to practise as a lawyer.[136] Someone who holds such a licence is the only person who can represent clients in court; that is, unless a litigant wishes to proceed *pro se*.[137]

It is important that one notes the difference between a representative body and a regulatory body. A representative body acts as a union of sorts, representing the collective interests of its members, while a regulatory body establishes the rules which all members of the profession must abide by. Starting with the representative body, in Iceland one finds the Icelandic Bar Association, which represents lawyers regarding all issues *"pertaining to the legal profession"*[138] and which one cannot help but compare to Malta's Chamber of Advocates. A big difference when it comes to representative bodies in Iceland and Malta is whether or not an advocate must form part of these bodies. In Iceland, every lawyer has a duty to be a member of the Icelandic Bar Association.

Besides representation, one must also look at regulation, which

135 Act on Professional Lawyers 1998 (Law of Iceland), Article 1.
136 ibid, Article 29.
137 ibid, Article 2.
138 ibid, Article 5.

generally speaking, is a committee which handles disciplinary procedures, as well as regulating the profession using the country's Code of Ethics. In Iceland, this is known as the Resolution Committee, which forms part of the Icelandic Bar Association.[139] The Resolution Committee is made up of three people: one person is appointed by the Icelandic Bar Association; another by the Minister of Justice; and another by the Supreme Court.[140] This will allow minimal room for bias, as well as allowing for more diverse people to be chosen. If the Resolution Committee receives a complaint against a lawyer, and it is proven that the lawyer has repeatedly or seriously violated the law, the Committee may propose a suspension of the lawyer's licence. If the case is serious enough, they may even revoke the lawyer's licence completely.[141]

To become a lawyer, naturally, one must possess certain qualifications and fulfil specific requirements. In Iceland, one must *inter alia "[possess] legal competency and [be] mentally capable of practising law*" as well as having completed one's legal studies.[142] There is also a test that one must sit for to be able to become a lawyer in Iceland. This test is conducted by a committee of three members, which are all appointed by the Minister of Justice after receiving nominations from the Icelandic Bar Association, the Iceland Judges' Association, with the last position going to a non-practising lawyer.[143] This test will be both theoretical and practical, including "*fields that are most relevant for law offices, including the lawyers' code of ethics*."[144] This is important because, as everyone knows, a big part of the legal profession is practical work. Even if a lawyer decides not to work in

139 ibid, Article 3.
140 ibid, Article 3.
141 ibid, Article 14.
142 ibid, Article 6.
143 ibid, Article 7.
144 ibid, Article 7.

Court, there still needs to be a level of knowledge on how to handle certain situations, and what to do if ever the need arises to appear in Court.

When a person takes on any assignments which are reserved for lawyers, while not being licensed as a lawyer, or as a lawyer's assistant, then fines will be charged against this individual. Fines will also be issued if a person offers any services of a lawyer to others, or makes use of the professional titles or abbreviations, when he does not possess the necessary licence to work as a lawyer.[145] This is to make sure that it is clear to the public who is, and who is not a lawyer, as well as punish those who deceive the public.

Any lawyer has the right to apply for a licence to practise as a Supreme Court lawyer, as long as he fulfils a set of requirements, including: a) the lawyer *"has been licensed as a district lawyer for a period of five years"*, and b) he would have represented the litigants in at least 30 cases, 10 of them being private cases which would *"fulfil the requirements for appeal to the Supreme Court."* The individual must also undergo a test, which is made up of an oral presentation of 4 cases in the Supreme Court.[146] If one wishes to apply for this test, he must notify the Supreme Court, and prove that he fulfils the other requirements.

The Minister of Justice will advertise any licences given in the Law and Ministerial Gazette, and this shall also be done in cases of deprivation and automatic cancellation, as well as when licences are declared out of effect. A registry will be kept by the Ministry of Justice of all lawyers which hold a valid professional licence.[147]

To help with the workload, an assistant may be employed by a

145 ibid, Article 29.
146 ibid, Article 9.
147 ibid, Article 17.

lawyer. The assistant must have the same qualifications that are required for an individual to become a lawyer.[148] A lawyer is to "*notify the courts of the engagement of an assistant*" and then the assistant will be able to attend court sessions, "*as an agent of his employer and on the employer's responsibility, taking care of the interests of the employer's clients*."[149]

There are a number of duties a lawyer must fulfil, which include: a) maintaining an office open for the public, b) having a *"separate trust account in an accredited banking institution for monies belonging to clients",* and c) having a valid professional liability insurance. An application can be made to the Icelandic Bar Association to be exempt from these, as long as a lawyer: a) holds a permanent position with a public or private institution, b) remains in the employment of another lawyer, and c) holds a permanent position with an association.[150]

Any information which clients share with their lawyer is bound under professional secrecy. This is also the case with any of the lawyer's employees who become aware of any confidential matters in their work. A lawyer is also obliged to bring to a client's attention any possible danger of conflict of interests.[151]

While being able to take on any case a lawyer would like, he also has every right to resign from a task which he has accepted at any point in time, as long as the client's interests are not damaged.[152] In addition to this, as any person who provides his services to others, lawyers are entitled to charging a reasonable fee, as long as they are able to explain to a client what the total fee might amount to. Guidelines may be issued by the Icelandic Bar Association when it

148 ibid, Article 11.
149 ibid, Article 11.
150 ibid, Article 12.
151 ibid, Article 22.
152 ibid, Article 21.

comes to reasonable amounts of payment "*which they may reserve for their clients from a debtor, to cover fees for the collection of monetary claims.*"[153]

If there is a dispute between a lawyer and his client when it comes to the amount due, the dispute may be referred to the Resolution Committee.[154] On the request of either or both parties, the Committee may provide an opinion for submissions in court. However, the Committee may dismiss the case if legal action on the matter has been concluded.[155]

A complaint may be submitted against a lawyer to the Resolution Committee if any person considers that a lawyer has "*damaged his interests by unlawful conduct, or conduct contrary to [the] rules issued*" that a lawyer is meant to follow.[156] The Resolution Committee, upon taking a decision, may issue a formal warning or, in more serious cases, the lawyer may have his warrant suspended or possibly revoked.[157] A fee may need to be paid when referring a case to the Resolution Committee. However, if it is concluded that there is a valid reason for why the matter was submitted, then this amount will be refunded. A resolution of settlement concluded before the Committee may be enforced by "*an enforcement action in the manner of a court decision or a settlement in court.*"[158]

153 ibid, Article 24.
154 ibid, Article 26.
155 ibid, Article 26.
156 ibid, Article 27.
157 ibid, Article 27.
158 ibid, Article 28.

GERMANY

In Germany, a lawyer is known as a Rechtsanwalt, who is *"an independent agent in the administration of justice"* and practices a liberal profession.[159] A Rechtsanwalt is also said to be *"an appointed and independent advisor and representative in all legal matters"* and his right to appear before a court may only be restricted by an Act of the Federal Parliament.[160] Every individual has the right to be given legal advice, and be represented by a Rechtsanwalt of his choice in the courts.[161]

A Rechtsanwalt must practice his profession thoroughly and responsibly, while showing that he is *"worthy of the respect and trust that his status as Rechtsanwalt demands, both when practising and when not practising his/her profession"*.[162] One must observe professional secrecy, as well as make sure not to behave with a lack of objectivity within one's professional practice. It is important that a Rechtsanwalt does not enter into any ties that could potentially pose a threat to his professional independence and when representing, he must not represent conflicting interests.[163]

A Rechtsanwalt has the duty to give legal advice *"as provided for under the Law on Legal Advice"*.[164] If a Rechtsanwalt who is approached for professional services, decides that he does not want to accept the case, then he must advise the client of this immediately.[165] If there is a delay in informing the client, to the extent that there is some form of

159 Bundesrechtsanwaltsordnung (The Federal Lawyers Act) 1959 (Laws of Germany), Article 2.
160 ibid, Article 3.
161 ibid, Article 3.
162 ibid, Article 43.
163 ibid, Article 43a.
164 ibid, Article 49a.
165 ibid, Article 44.

damage, then compensation must be provided.[166]

For a person to be admitted into the legal profession, they must be qualified to sit as a judge under the German Judge Act, meet the requirements *"for admission to the profession under the Act concerning the Work of European Lawyers in Germany"* or have passed the aptitude test.[167] When an individual is qualified to sit as a judge in one place in Germany, he will also be able to apply to be *"admitted to the legal profession in any other German Land."*[168] One needs to apply to be admitted to the legal profession, though this application may be rejected for a number of reasons, some being: *"the applicant has forfeited a basic right by virtue of a decision of the Federal Constitutional Court"; "the applicant does not have the right to take public office on grounds of a criminal conviction";* or, the lawyer has behaved in a way which makes him appear unworthy of practising as a Rechtsanwalt.[169] The Regional Judicial Administration decides whether an application is accepted or not, and before the decision is taken, a report is sought from the Council of the Bar in the district that the applicant seeks to be admitted.[170]

An individual who applies to be admitted to the legal profession and is accepted, will receive a certificate of admission, which is issued by the Regional Judicial Administration. Upon receiving this certificate, the person is validly admitted to the legal profession, and has the right to use the professional title of 'Rechtsanwalt'.[171] There are some reasons for which a licence may be withdrawn or revoked. These include *"[becoming] unfit to take public office on grounds of criminal*

166 ibid, Article 44.
167 ibid, Article 4.
168 ibid, Article 5.
169 ibid, Article 7.
170 ibid, Article 8.
171 ibid, Article 12.

conviction", and health reasons.[172] In such cases, the withdrawal or revocation will be *"ordered by the Regional Judicial Administration in the Land in which the Rechtsanwalt is admitted"*.[173] This lawyer will be given a hearing and *"the opinion of the Council of the Bar must be sought before admission of the legal profession is withdrawn or revoked."* The reasons as to why this individual is being withdrawn or revoked from the legal profession must be stated, and *"shall be served on the Rechtsanwalt and notified to the Council of the Bar"*.[174]

It is important that a Rechtsanwalt establishes a law practice in the locality of the court in which he has been admitted. If admitted before a number of courts from different localities, then he must establish his law practice within the locality that he was first admitted in.[175] However, an individual who has been admitted before a Local Court, may establish his/her law practice in another locality under the court's jurisdiction, instead of establishing the law practice in the same locality as the court.[176] It is not allowed for a Rechtsanwalt to establish a branch office, or hold consulting days, outside of the law practice. However, the Regional Judicial Administration *"may grant permission for this to be done if it seems to be in the pressing interests of the proper administration of justice in the circumstances which prevail in the locality"*.[177] For this to happen, the opinion of the Council of the Bar must first be sought.[178]

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172 ibid, Article 14.
173 ibid, Article 16.
174 ibid, Article 16.
175 ibid, Article 27.
176 ibid, Article 27.
177 ibid, Article 28.
178 ibid, Article 28.

To be able to start practising as a Rechtsanwalt, one must first be entered into the List of Rechtsänwalte, however the legal validity of any of the acts which the Rechtsanwalt has committed prior to this will not be affected.[179] An individual may decide to delete his name off of the List of Rechtsänwalte, though one must have a valid reason to do this, including; the fact that their admission to the court has expired, or their admission to the court has been revoked.[180]

A Rechtsanwalt's admission to the court may expire for a number of reasons. If his admission to the legal profession has expired, then his admission to the court shall also expire. If his admission to the legal profession has been withdrawn or revoked, then his admission to the court shall expire.[181] An individual may also have his admission to the court revoked. This again may be for many reasons, including one's inabiliy to comply with the duty to establish a law practice, or *"if a Rechtsanwalt abandons his/her law practice without being granted dispensation from the duty"*.[182]

In the German system, one can also come across Specialised Lawyers, which in German are known as Fachanwälte, and these are Rechtsänwalte who possess a special expertise and experience in a particular field of law. This title may be granted to someone who specialises in a maximum of two fields, which include administrative law, fiscal law, employment law and social law. A Rechtsanwalt may apply to the Council of the Bar to be able to use this title, and the Council of the Bar takes the decision *"through a notice to be served on the Rechtsanwalt, after a committee of the Bar has examined the evidence to be submitted by the Rechtsanwalt concerning the acquisition*

179 ibid, Article 32.
180 ibid, Article 36.
181 ibid, Article 34.
182 ibid, Article 35.

of particular expertise and experience".[183]

It is not allowed for someone to agree on, or ask for lower fees than those provided for in the Federal Scale of Lawyer's Fees.[184] In individual cases however, one may *"give consideration to a client's particular personal circumstances",* and may decide to lower the fees based on the person's ability to pay.[185]

When a Rechtsanwalt does not perform his duties, he may be issued a fine, which would not exceed €1000.[186] Within a month of receiving the fine, one may appeal against it by petitioning to the Higher Lawyers' Courts.[187]

When passing his first state examination, a Rechtsanwalt should partake in a reasonable amount of training and must give the Referendar, which is his professor in practical professional training at his law practice institution, *"instruction in the duties of a Rechtsanwalt, providing guidance and opportunities to undertake practical work."*[188] The professional training should *"particularly be the work of Rechtsanwalt in and out of court, dealing with clients, professional ethics, rights and duties and the organisation of a law practice."*[189]

The Bar shall hold its seat within the locality of the Higher Regional Court, and this occurs when Rechtsanwälte are admitted in the district of a Higher Regional Court, and law firms which have *"their principle place of business in such districts"*, associate to form a Bar.[190] A further Bar may be established in the district of a Higher Regional Court if

183 ibid, Article 43c.
184 ibid, Article 49b.
185 ibid, Article 49b.
186 ibid, Article 57.
187 ibid, Article 57.
188 ibid, Article 59.
189 ibid, Article 59.
190 ibid, Article 60.

there are more than 500 Rechtsanwälte or law firms admitted in the district.[191]

The Bar must have a Council, which shall adopt the rules of procedure, and it shall consist of seven members who are elected by the Assembly of the Bar.[192] Persons may be eligible for election if they are a member of the Bar, reached the age of 35, and have been practising as a Rechtsanwalt for *"an uninterrupted period of at least five years."*[193] On the other hand, a Rechtsanwalt may be ineligible to be elected if he has *"been disbarred from practising or acting as counsel"*, if he has been publicly prosecuted on grounds of a criminal offence, or if he has *"incurred a caution or a fine in the last five years or [have] been banned from acting as counsel."*[194] One may also refuse to be elected if they have reached the age of 65 or if they have been a member of the Council in the last four years.[195] Those who are elected are there for four years, and every two years *"half of the members shall resign from the Council. In the case of uneven numbers, the larger number shall resign the first time. The members resigning for the first time shall be determined though a draw."*[196] A member of the Council may retire prematurely for the following reasons, these being: that he is no longer a member of the Bar, thus no longer eligible for election, or he resigned from office.[197] A written statement must be submitted to the Council explaining his intention to resign from the office, and when accepted a new member shall be elected for the remainder of the former member's term of office.[198]

191 ibid, Articles 60, 61.
192 ibid, Articles 63, 64.
193 ibid, Article 65.
194 ibid, Article 66.
195 ibid, Article 67.
196 ibid, Article 68.
197 ibid, Article 69.
198 ibid, Article 69.

The Council shall have the duties assigned to it by law which it must perform, while protecting and promoting the interests of the Bar. Some of the Council's duties include: *"[advising] and [instructing] the members of the Bar in matters of professional ethics", "[mediating] between the members in cases of dispute",* and *"[co-operating] in training and examining students and trainee Rechtsanwälte (Referendare) and in particular to propose qualified examiners and instructors for study groups."*[199]

The Council shall be convened by the President, who must convene a meeting if *"three members of the Council apply for this in writing indicating the matter to be discussed."*[200] Any resolutions of the Council must be taken by *"a simple majority of votes cast"* and the same applies to elections carried out by the Council. A member is not allowed to cast a vote on any matters in which he has an interest, but this is not the case in elections.[201]

The Council has the ability to issue reprimands to Rechtsanwälte on different grounds, mainly on grounds of conduct that has caused the individual to breach his duties. The individual must be given a hearing before the reprimand has been issued and reasons for the notice of the reprimand must be given. Within a month of the notice of the reprimand being served, the Rechtsanwalt may appeal against it.[202]

The Council may, if permitted by the Bar's rules of procedure, form a number of divisions. Each division has to be made up of at least three members of the Council. The number of divisions shall be determined by the Council at the beginning of the calendar year, together with a delegation of matters to the divisions, and a determination of the

199 ibid, Article 73.
200 ibid, Article 70.
201 ibid, Article 72.
202 ibid, Article 74.

members of the individual divisions. A member of the Council can be part of several divisions.[203]

The Assembly of the Bar is required to perform duties that are assigned to it by law, which include discussing matters which are of general importance to the legal profession. The Assembly must also: elect the Council; determine the dues, charges, administration fees and dates when payments are due; prepare guidelines for compensation for expenses, and others.[204]

There is also the Lawyers' Disciplinary Court which shall have its seat within the same locality as the Bar and shall have *"the required numbers of presiding judges and further members"*. One of the members shall be appointed as the role of Managing Presiding Judge, and this person, along with another member of the Bar, has to be qualified to take office as a judge.[205] Only Rechtsanwälte are able to be appointed as members of the Lawyers' Disciplinary Court, and must be part of the Bar for whose district the Lawyers' Disciplinary Court has been constituted. The members of this Disciplinary Court are to be appointed by the Regional Judicial Administration, and they shall sit for a term of four years, after which they may be reappointed.[206] There are also further divisions within the Lawyers' Disciplinary Court, and these shall decide on the *"appointment of their three members including the Presiding Judge"*.[207] There should be a registry which is established at the Lawyers' Disciplinary Court, and the necessary staff, offices and resources shall be provided by the Bar.[208]

The Lawyers' Disciplinary Court may impose sanctions on a

203 ibid, Article 77.
204 ibid, Article 89.
205 ibid, Article 92, 93.
206 ibid, Article 94.
207 ibid, Article 96.
208 ibid, Article 98.

Rechtsanwalt *"who is in negligent breach of the duties under [the Lawyers Act] or set out in the professional code of conduct".*[209] His professional duties which represent an unlawful act shall be considered as a breach of duty.[210] Some of the sanctions which may be given include: a warning, a caution, a fine, or an exclusion from the legal profession.[211]

The Higher Regional Court shall have established the Higher Lawyers' Court, and if there are many Higher Regional Courts within one place, then *"the government of the Land may, by statutory order, establish the Higher Lawyers' Court for the districts of all or several Higher Regional Courts at one or several Higher Regional Courts or at the Highest Regional Court if such a concentration is expedient to the administration of justice in matters concerning [lawyers]"*.[212] The Higher Lawyers' Court is to have a President, a number of presiding judges, lawyers, and professional judges.

The professional judges *"are to be appointed by the Regional Judicial Administration from the permanent members of the Higher Regional Court"* and shall serve for a term of four years. Meanwhile, the members of the Higher Lawyers' Court who are lawyers are to be appointed by the Regional Judicial Administration and are to also serve for a term of four years.[213]

The German Federal Bar, which is a public corporation and is state regulated by the Federal Ministry of Justice, represents the interest of 28 German Bars, and thus represents the entire legal profession in the Federal Republic of Germany.[214] Some of the German Federal Bar's

209 ibid, Article 113.

210 ibid, Article 113.

211 ibid, Article 114.

212 ibid, Article 100.

213 ibid, Articles 101, 102, 103.

214 'The German Federal Bar' <https://www.europeanlawinstitute.eu/membership/institutional-members/the-german-federal-bar/> accessed 24 October 2020; BRAO, Article 176.

duties include: to obtain the opinions of the regional Bars and discover the opinion of the majority through discussions; *"set out guidelines for the welfare institutions of the regional Bars"*; and *"to submit opinions which have been requested by an authority or corporation of the Federal Government that is involved in passing legislation or to submit reports that have been requested by a federal court"*.[215]

Resolutions are to periodically be taken from the German Federal Bar, which is convened by the President, who *"must convene the General Assembly if at least three regional Bars apply for this in writing stating the subject matter to be discussed"*.[216] Each regional Bar is to have one vote and the *"resolutions of the General Assembly are to be taken by a simple majority of the votes cast in as far as nothing to the contrary is set out in the by-laws"*.[217]

215 BRAO, Article 177.
216 ibid, Article 189.
217 ibid, Article 190.

MIXED LEGAL SYSTEMS

SOUTH AFRICA

In South Africa, the legal profession is divided into two fields: attorneys and advocates. When seeking legal advice, initial contact is made with an attorney, who handles various affairs for individuals and companies. Attorneys can also qualify as conveyancers and notaries upon examination, although this will not be tackled in this anaylsis.

Attorneys will have to apply in order to appear in front of the High Court, unlike Advocates. Advocates mainly deal with the presentation of cases in court, and can only accept briefs from attorneys, not directly from the general public. They can also give legal advice, and draft legal documents, but have to practise as sole practitioners.[218] There are four pieces of legislation that govern these two fields; the Attorneys Act 1979, the Uniform Rules for the Attorneys' Profession, the Admission of Advocates Act 1964, and the Uniform Rules of Professional Conduct. There is a comparison to be made between this system of attorneys and advocates in South Africa, and the English system of solicitors and barristers.

Attorneys are regulated by the Attorneys Act and the Uniform Rules for the Attorneys' Profession. The Attorneys Act was enacted to provide laws relating to the admission and practice of attorneys, notaries and conveyancers, the establishment of the Fidelity Guarantee Fund for Attorneys, and the relevant law societies.[219] In order to be admitted as an attorney, one has to complete a clerkship, either: a) for a period of

218 'Regulation of the Legal Profession in South Africa: Overview | Practical Law' <https://uk.practicallaw.thomsonreuters.com/w-009-0607?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 4 September 2020.

219 Attorneys Act 1979 (No 53).

two years after obtaining their *baccalaureus procurationis* degree; b) for a period of two years after being admitted as an advocate of the Supreme Court; or c) for a period of three years after obtaining any degree.[220]

The clerkship must be conducted alongside a practising attorney. The clerk must serve in the office of his principal, or in the case of the principal being the State Attorney, in the office of the State Attorney or a member of his staff.

Attorneys are then admitted by the court if they satisfy the following requirements: a) they are a fit or proper person; b) they are twenty-one years old; c) they are South African citizens or hold permanent residence; d) they have completed their degree and all necessary examinations; and e) have completed their clerkship.[221] After being admitted by the court as an attorney, an application can also be made to the same court to be admitted as a notary or conveyancer. The Registrar of every court has to keep a separate Roll of all attorneys, notaries and conveyancers. Attorneys can, upon application by the Society, have their name struck off the Roll if: a) they are no longer a South African citizen, b) if they have failed any examination, c) they are no longer practising as an attorney, or d) if the court determines that they are no longer a fit and proper person to continue their practice.[222]

The Attorneys Act also establishes the Attorneys, Notaries and Conveyancers Fidelity Guarantee Fund.[223] This is used to reimburse persons who suffer a loss due to theft committed by the practitioner, his clerk or employees. Practitioners shall make annual contributions to this fund. Chapter III of the Act provides for the establishment of five separate Law Societies, for the different provinces and territories

220 ibid, Article 2.
221 ibid, Article 15.
222 ibid, Article 22.
223 ibid, Article 25.

of South Africa.[224] Every practitioner has to be a member of the Law Society in his province. The Societies regulate the profession and uphold and improve its standards, and the behaviour of practitioners. The Society is managed and contRolled by a Council, which is made up of a number of members of the Society. The Council is mainly in charge of the administrative and monetary aspect of the Society, and has disciplinary powers over practitioners.[225]

In 2016, the Rules for the Attorneys' Profession were published in the Government Gazette, after an agreement by all the law societies in South Africa, to create a standardised body of rules, thus repealing the rules published by the individual societies.[226] These rules contain similar provisions to those contained in the Attorneys Act relating to membership and the Council. However, they include more detailed provisions as to the general practice and conduct of practitioners.

Regarding candidate attorneys, the rules state that they have no right to appear in any court on behalf of the attorney with whom they are conducting their clerkship. Any clerk that goes against the rules is guilty of unprofessional conduct. The rules also introduce provisions on pro bono services. These are provided by attorneys who have practised for less than forty years, and are less than sixty years of age.[227] A list of services that are to be recognised as pro bono services is published by the Council, and said services can only be delivered through recognised structures to those who cannot afford professional services. A record of all pro bono services delivered by each member, is kept by the Council. A practising member who refuses to perform pro bono service hours without good cause shall be deemed to act

224 ibid, Article 56.

225 ibid, Article 60.

226 Rules for the Attorneys' Profession 2016 (Notice 2 of 2016).

227 ibid, Article 25.2.

unprofessionally.[228]

Members will also be guilty of unprofessional or dishonourable conduct if they do not comply with the conduct rules laid down in Part VI of the Rules for the Attorneys Profession. Article 40 lists the duties of an attorney, which include maintaining high standards of honesty, respecting the interests of their clients, upholding the interests of justice, maintaining ethical standards, and maintaining confidentiality.[229] They must also account faithfully for any of their clients' money, keep it separate from their own money, and inform clients of the likely success of their case at the earliest time possible. The Council acts as the disciplinary body for attorneys. It can take disciplinary action either on its own account, or after a complaint is made by an aggrieved person.[230] If the Council finds the attorney guilty of such conduct, then it shall impose a sanction authorised by the Attorneys Act.

For advocates, the relevant legal provisions are found in the Admission of Advocates Act of 1964, and the Uniform Rules of Professional Conduct, published by the separate provincial Bar Councils. As the name states, the Admission of Advocates Act provides for the admission of persons to practise in front of the Supreme Court.[231] For a person to be admitted as an advocate, he has to be a fit and proper person; he has to be over the age of twenty-one; he has to be qualified to be admitted, and he has to be a South African citizen, or has permanent residence in South Africa. The academic qualification needed is the *baccalaureus legum* from any university in South Africa.[232] A person is authorised to practise as an advocate if

228 ibid, Article 25.15.
229 ibid, Article 40.
230 ibid, Article 50.3.
231 Admission of Advocates Act 1964 (No 74).
232 ibid, Article 3.

he has been admitted as an advocate of the Supreme or High Court, if he practises in the territory in which they were admitted, if he is a fit and proper person, and if he has not been suspended or struck off the Roll of advocates.[233] Any person admitted to practise as an advocate will then have his name added to the Roll of Advocates, kept by the Secretary for Justice. Upon application, the court has the power to suspend an advocate from practice, and remove his name from the Roll.

The Uniform Rules of Professional Conduct was set up by the General Council of the Bar of South Africa to act as a code of conduct for advocates.[234] The rules lay down the duty an advocate has towards his clients to uphold their interests. The advocate also has a duty to provide the courts with material facts, to not mislead the court, and to keep the case confidential. The general professional conduct provisions state that an advocate should not interview his clients or witnesses, without the presence of an attorney or his clerk. A provision on the advocates' appearance in court is also included, stating that suitable clothing should be worn under the gown and in court.[235] Advocates should also not contribute to non-legal publications regarding pending cases, nor should they correspond to newspapers, or issue press statements on the subject of a case. Bar meetings are also confidential, and should not be communicated to the press.

Advocates can render professional services only if they are briefed by an attorney to do so. This has to be done in writing, however oral briefings are also sometimes allowed. A brief should not be accepted by the advocate, if it compromises his independence. Like attorneys,

233 ibid, Article 5.

234 General Council of the Bar of South Africa, 'Uniform Rules of Professional Conduct' <https://www.johannesburgbar.co.za/wp-content/uploads/05-GCB-Uniform-Rules-of-Ethics-updated-2017-AGM.pdf> accessed 23 October 2020.

235 ibid, Article 4.14.

the local Bar Council also requires advocates to undertake pro bono work. Advocates must also charge a reasonable fee for their services. This is determined by the time and labour required, customary charges for similar services, and the amount involved in the facts of the case.[236] These considerations are not binding; they merely act as guidelines for advocates to fix a reasonable fee. Every advocate must also keep a fee book, showing the fees earned, the briefing attorneys, and details relating to the work done.

236 ibid, Article 7.1.

OTHER REGULATED PROFESSIONS - A LOCAL COMPARISON

THE ACCOUNTANCY, NOTARIAL, AND ARCHITECT PROFESSIONS

A vision set forward by the Chamber of Advocates in Malta proposes a destination in which the legal profession, through a Lawyers Act, may be held to a set of standards to enhance both the consistency of the practice across the board, as well as public trust in the profession.[237]

One must look at the way in which such a framework should be created, or more specifically, what to include in it. One pertinent approach would be an examination of other similar, regulated professions, and their regulatory laws. Three such examples are the Accountancy Profession Act[238], the Periti Act[239], and the Notarial Profession and Notarial Archives Act[240].

When looking at the Accountancy and Periti Acts, one will at once start to note several structural similarities. In their preambles, they both declare their purpose of regulating their respective professions *"and to provide for matters connected therewith and ancillary thereto"*. Subsequent to the definitions, they set out the requirements to be satisfied for one to obtain a warrant, and declare that the warrant is needed to practise[241], one of the most crucial aspects of any warranted profession.

The Notarial Profession and Notarial Archives Act begins by stating

237 'Lawyers Act Will Be Key Milestone, but Not the Only One – New Chamber of Advocates President' <https://www.independent.com.mt/articles/2018-11-11/local-news/The-Lawyers-Act-will-be-a-key-milestone-but-not-the-only-one-new-Chamber-of-Advocates-President-6736199133> accessed 19 November 2020.

238 Accountancy Profession Act (Chapter 281, Laws of Malta).

239 Periti Act (Chapter 390, Laws of Malta)

240 Notarial Profession and Notarial Archives Act 1927 (Chapter 55, Laws of Malta).

241 Periti Act, Articles 3-5; Accountancy Profession Act, Articles 3, 4.

that notaries are public officers, and lists all their powers and functions.[242] Immediately afterwards, the legislator prescribes that being a notary is incompatible with certain other professions, *inter alia*, holding the warrant of an advocate, being a bank manager, being an estate agent or similar broker.[243] The other two Acts have similar provisions outlining the process one must go through, to be a warranted member of the respective professions. For the Periti Act the requirements include the academic qualifications, training under the supervision of a warranted architect, and passing any warrant examination.[244] There is no similar warrant exam required for an accountant, just that the person applying attains the required academic qualifications.[245]

The Chief Notary to Government has the responsibility to publish a list which contains the names of all practising notaries.[246] This is similar to the Periti Act, which holds that the *Bord tal-Warrant tal-Periti* is bound to keep a register of all warrant holders.[247] The Accountancy Profession Act has no similar provision, perhaps due to a looser regulatory framework when compared to the other Acts.

A few of the distinguishing elements found within this Act are the Notarial College and the Notarial Council, as well as the Court of Revision of Notarial Acts. The Notarial College has the goal of promoting the welfare and progress of the notarial profession and is made up of all practising notaries around the Maltese islands.[248] The Notarial College shall annually elect the Notarial Council, which shall be entrusted with the direction and management of the College.[249]

242 Notarial Profession and Notarial Archives Act, Article 2.
243 ibid, Article 3.
244 Periti Act, Article 3(2).
245 Accountancy Profession Act, Article 3(2).
246 Notarial Profession and Notarial Archives Act, Article 4.
247 Periti Act, Article 7(3).
248 Notarial Profession and Notarial Archives Act, Article 85.
249 ibid, Article 86.

The College, through the Council, has the responsibility to represent all notaries, and further the interests of the profession. This is similar to the position of the Chamber of Advocates, as well as the *Kamra tal-Periti* and the Malta Institute of Accountants[250], although the Notarial College has a much more regulated framework, owing to the fact that notaries are public officers and are more intertwined with Government, having the requirement to keep open channels with Government regarding *"all matters affecting the profession"*.[251] One of the main responsibilities of the Council is the Code of Ethics for Notaries, which it must send to the College as well as the Minister for Notarial Affairs (customarily the Minister for Justice) to be approved.[252]

The Council has the power to inquire into notarial conduct in the case of any occurrences of negligence or abuse, or allegations of such behaviour. In the case of an admonishent, the Attorney General and Court of Revision must be informed.[253] The Court of Revision may, if the notary has been admonished by the Council three times within a period of five years, be suspended for a period from one to six months.[254] Any punishment inflicted by the Council may be appealed to the Court of Revision.[255]

In Article 6 of both the Accountancy Profession Act and the Periti Act we find the constitution of two respective boards which have the duty of regulating the profession.[256] Starting with the Accountancy Board, it is composed of the following: a chairman of recognised standing and experience in the accountancy and auditing profession; a member

250 Recognition of the Malta Institute of Accountants Regulations 2020 (S.L.281.06, Laws of Malta)

251 Notarial Profession and Notarial Archives Act, Article 87.

252 ibid, Articles 92(2), 93.

253 ibid, Article 89.

254 ibid, Article 89(2).

255 ibid, Article 91.

256 Accountancy Profession Act, Article 6; Periti Act, Article 6.

nominated by the teaching staff of the University of Malta; an official of the Ministry of Finance; two members nominated by a recognised accountancy body; and two other members chosen by the Minister of Finance.[257] The relative board found in the Periti Act is known as the *Bord tal-Warrant tal-Periti*, and is composed of a chairman appointed by the Minister from among those who are or have been qualified to be appointed judges, (i.e. a lawyer with at least 12 years' experience); two members appointed by the Minister who have held their warrant for at least eight years; two members appointed by the *Kamra tal-Periti*, who also have held their warrant for at least eight years; and two members elected by secret ballot from among warrant holders.[258]

The boards have different functions. Whereas the functions of the *Bord tal-Warrants tal-Periti* is limited to issues surrounding the warrant exam, training, requirements, and other ancillary matters, the Accountancy Board, additionally has disciplinary functions and investigatory functions, therefore giving the Accountancy Board much wider discretion when it comes to the regulation of the profession.[259] The Notaries Act provides for a Board of Examiners, to regulate and examine candidates who take the warrant exam. The board is to be comprised of the person presiding the Court of Revision of Notarial Acts, the Chief Notary to Government, a notary proposed by the Notarial Council, and two other practising notaries appointed by the Minister.[260]

257 Accountancy Profession Act, Article 6(2).

258 Periti Act, Article 6(1).

259 ibid, Article 7; Accountancy Profession Act, Article 7.

260 Notarial Profession and Notarial Archives Act, Articles 7, 8.

MEDICAL PRACTITIONERS AND ENGINEERS

Article 6 of the Engineering Profession Act establishes the Engineering Profession Board, and this particular provision thoroughly lays out how the board should be composed. Some members are to be appointed by the Minister, whilst others shall be elected by warrant holders from amongst themselves. The members of this board consist of a chairperson, appointed by the Minister from among those who have the qualifications to be appointed a judge, three members appointed by the Minister from amongst warrant holders, one of whom must be an academic member from the University of Malta, and three members elected by secret ballot from amongst warrant holders.[261] The members also have different term lengths, with those appointed by the Minister holding office for a maximum of three years, whilst elected members shall hold office for a maximum period of two years.[262] In the case of a vacancy within the Board, such as the resignation of a member, Article 6(5) comes into effect, which provides that:

> *…the Minister shall, as soon as practicable, in the case of an appointed member, appoint another person to fill the vacancy, and in the case of an elected member, cause an election to be held to fill the vacancy.*[263]

Sub-Article 4 of Article 6 provides for the possibility that these members would be re-appointed or re-elected whenever their term of office comes to an end.[264] Article 7 of the Engineering Profession Act lists the functions of the above-mentioned Board, with the power to review and consider applications for the issue of the warrant and

261 Engineering Profession Act, Article 6(1).
262 ibid, Article 6(2).
263 ibid, Article 6(5).
264 ibid, Article 6(4).

making recommendations to the Minister.[265] Another responsibility of the Board is its involvement in cases where a warrant may have to be suspended or revoked, due to certain misbehaviour such as those laid out in Articles 12 and 14 of the Act.[266] The Board is also tasked with keeping open communication with the Minister on all matters affecting the profession, as well as making recommendations to the Minister on relevant matters.[267] Even after the Board has revoked the warrant of an engineer, the Board may still issue a fresh warrant, subject to certain conditions which may be deemed necessary.[268]

The Engineering Profession Act goes into considerable detail regarding the application for a warrant, and it does this by laying out certain criteria.[269] These include good conduct, and the applicant being a Maltese citizen[270], or a citizen of Member State of the European Economic Area, or is permitted to work in Malta.[271] Other requirements include the satisfaction of the Board that the applicant is in possession of the adequate academic qualifications.[272] Apart from the academic training, aspiring engineers are also required to undertake practical training, as well as training under a practitioner.[273]

Besides laying out the requirements to receive the warrant, the Engineering Profession Act regulates the process of receiving the warrant application. Article 3A of the Engineering Profession Act states that the Board must acknowledge the application for a warrant as soon as possible, *"and in any case not later than one month from the*

265 ibid, Article 7(1)(a).
266 ibid, Articles 7(1)(c), 12, 14.
267 ibid, Article 7(1)(d).
268 ibid, Article 16.
269 Engineering Profession Act, Article 3.
270 ibid, Article 3(2)(a).
271 ibid, Article 5(1).
272 ibid, Article 3(2)(d)(i).
273 ibid, Articles 3(2)(d)(ii), (iii).

date of the receipt of the application".[274] The law, besides simply setting out a time period for informing the applicant of receipt of payment, also contemplates a time period within which all applications must be processed, which is currently three months, extendable by a further month provided that the applicant is appropriately informed.[275]

When it comes to the Health Care Professions Act, one must note that more than one profession is being regulated. This is different from other Acts which regulate singular professions. A cursory view of the first page of the Act shows the different sections and different professions which are contained in the act; namely, Medical Practitioners, Dental Surgeons, Pharmacists and Pharmacy Technicians, Nurses and Midwives, and other professions complementary to medicine. Medical licences for the different professions are all issued by the President of Malta, on the recommendation of the various Councils established for each profession.[276] The requirements are similar for all professions, but will not be dealt with in detail in this paper. These multiple professions are regulated by different Councils, with different compositions and different procedures to obtain the warrant.

As an example, one can look at the Medical Council, the one that deals with medical professionals and dental surgeons. Article 9 lists the members of the Council, which include: the President of the Council appointed from amongst legal professionals; two licenced medical practitioners, one appointed by the Prime Minister and another by the University of Malta; a licensed dental surgeon appointed by the Prime Minister; five licenced medical practitioners and two licenced dental surgeons elected from amongst all practitioners, and two lay persons appointed by the Prime Minister.[277] The functions of the Council is laid

274 ibid, Article 3A(1).

275 ibid, Article 3A(2).

276 Health Care Professions Act 2003 (Chapter 464, Laws of Malta), Articles 7, 9, 13, 16, 19, 22.

out in the following article, and includes *inter alia:* the recommendation for the medical licence; the maintaining of a register of practitioners; advising the Minister on relevant matters; and, maintaining ethical and professional standards in the profession.[278] These provisions apply *mutatis mutandis* to the Pharmacy Council, the Council for Nurses and Midwives, and the Council for the Professions Complementary to Medicine, with some minor changes particular to each council and profession.

Part VII of the Health Care Professions Act is specifically dedicated to any disciplinary action which one might have to face if he breaches any regulation. In addition to this, this part focuses on offences and the possibility of a removal of a name from the Register.[279] Article 31 starts off by stating that the relevant Council of each profession has the power of scrutinising any allegation made with respect to professional misconduct or breach of ethics.[280]

Moreover, in the case that a Council would be investigating a particular individual of the relevant profession, the Council has the responsibility to conclude the inquiry within a period of two years, such period starting from the day from which the proceedings are served on the party accused.[281] Furthermore, the Act provides the way forward when a health care professional has been found guilty of professional or ethical misconduct, or has been convicted for breaching Articles 198 to 209 of the Criminal Code, or is awarded a term of imprisonment exceeding one year. The concerned Council may: either have his name erased from the register, impose a monetary sanction on him, have him cautioned; or order him to undergo a period of training.[282]

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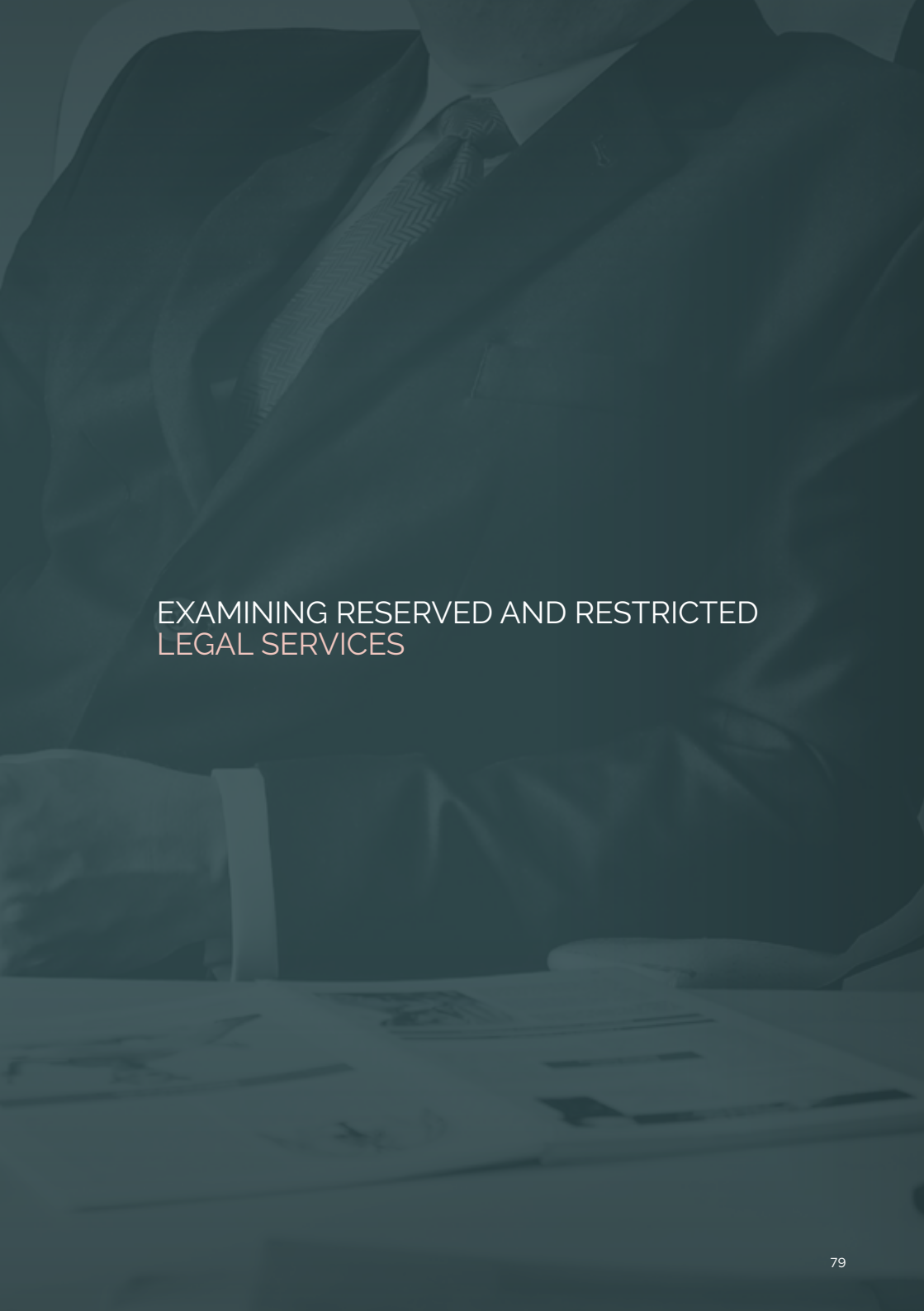
277 ibid, Article 9.
278 ibid, Article 10.
279 ibid, Article 32.
280 ibid, Article 31(1).
281 ibid, Article 31(2).
282 ibid, Article 32.



EXAMINING RESERVED AND RESTRICTED LEGAL SERVICES

RESERVED LEGAL SERVICES

Schedule 1 of the 2012 draft of the Lawyers Act sets out four specific legal services, activities which can only be carried out by a practising advocate or a registered European professional.[283] This is because there are certain services, known as *'reserved legal services'*, which cannot be performed by anyone, and the law limits such services to warranted legal professionals. As of the 2012 bill, the reserved legal services are the following:

1. The offering of legal advice to another person for consideration.
2. Advocacy in any of the Superior Courts of Malta or other tribunals which, by virtue of any law, are reserved for practising advocates.
3. The preparation and drafting of any acts or pleadings to be filed in any court or tribunal mentioned above.
4. The preparation, drafting, and negation of any document or contract, whether it is to be executed as a public deed or private writing, and which is intended to document, create or acknowledge legal rights and obligations between the contracting parties.[284]

283 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. (n 32), Schedule I.

284 ibid, Schedule I, Part A, Article 1.

PRESENT POSITION IN THE CODE OF POLICE LAWS

Part III of the Code of Police Laws, entitled *"Of the Law Courts"* establishes the offence of *touting*, which is essentially providing the services of a lawyer when one is not actually warranted.[285] Such an offence brings with it imprisonment for up to three months, or a fine (*multa*), of not more than €58.23, or both.[286] The Registrar of the Courts is also obliged to keep a list of touts and provide such list at the entrance of the court house and in every court room, so that the public will be aware of who is on such list.[287] A judge or magistrate is also empowered to order the removal of such persons from any part of the law court.[288]

Our interview with Dr Louis de Gabriele, President of the Chamber of Advocates, drew our attention to the fact that these provisions are essentially a dead letter, and are not enforced. This has allowed certain professionals who are not lawyers to provide legal work. While there are certain issues which need not necessarily be tackled by a legal professional, such as financial advice which an accountant is qualified to give, it is important for this to be regulated properly. This is where the restricted legal services come in.

285 Code of Police Laws 1854 (Chapter 10, Laws of Malta), Part III.
286 ibid, Article 47.
287 ibid, Article 44.
288 ibid, Article 45.

RESTRICTED LEGAL SERVICES

Part B of Schedule I tackles restricted legal services, meaning those legal services which although traditionally provided by a legal professional, may be provided by other designated professionals.[289] These services may only be provided by a practising advocate or by members of the designated professions. The definition of such a person is explained in the bill as such:

> *A member of the Designated Professions is a person who, although not an advocate: (a) has received formal training in certain areas of the law and is qualified and competent to provide limited legal services for which he has been duly trained and in which he is duly qualified, and (b) is subject to appropriate professional regulation and supervision in the conduct of his own profession.*[290]

As of the 2012 draft of the bill, there were two professions which were mentioned explicitly, those being accountants and architects. Under this bill, accountants may give legal advice regarding fiscal and taxation matters and other matters incidental thereto, as well as the provision of legal advice in relation to any of the following:

- The setting up of companies and other commercial partnerships under Maltese law.
- The legal and regulatory requirements and process for the licensing or authorization of any entity intending to undertake or operate any activity which, under Maltese law, requires some form of licensing or other authorization.

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289 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. (n 32), Schedule I, Part B, Article 1.

290 ibid, Schedule I, Part B, Article 2.

- The legal and regulatory obligations, and compliance with such obligations, of any entity that is the subject of a license or other authorization under the laws of Malta.[291]

If a member of a designated profession is providing a restricted legal service, the bill requires them to disclose to their client in writing the fact that they are not advocates and they are not trained in the law in general, and are instead only trained in their particular field.[292]

RESERVED VS RESTRICTED LEGAL SERVICES

A reserved legal service is something only a suitably qualified legal professional is trained to provide, and under the 2021 BIll, there are four specific instances where this 'reservation' is applied, as outlined above. On the other hand, restricted legal services are instances where the law delegates power to other non-legal professionals to undertake certain legal tasks, recognising the fact that they are trained in that field and that field alone. Naturally, such services must be strictly regulated to ensure that members of the designated professions do not operate *ultra vires*.

The issue of restricted legal services was actually one of the stumbling blocks for the Lawyers Act.[293] A disagreement arose between the Chamber of Advocates and various accountancy firms, which protested the bill as it was since it limited the work that accountancy firms had grown accustomed to providing, even though such services go against the provisions of the Code of Police Laws.[294] Eventually an agreement was struck in order to allow such services

291 ibid, Schedule I, Part B, Article 3.

292 ibid, Schedule I, Part B, Article 4.

293 Interview with President of the Chamber of Advocates Dr Louis De Gabriele

294 Code of Police Laws Part III.

which although traditionally provided by advocates, can reasonably be provided by other professionals, such as in this case accountants.

THE SITUATION IN THE UK

The UK Legal Services Act (LSA) 2007[295] deals with the concepts of restricted and reserved legal services, and such issues are overseen by the Legal Services Board[296] as established in the same Act. In section 12 of the Act six specific legal services are listed.[297] These are:

1. The exercise of a right of audience – the right to appear before and address a court, including the right to call and examine witness.
2. The conduct of litigation – the issuing of proceedings before any court in England and Wales, the commencing, prosecuting and defending of those proceedings and the performing of any ancillary functions in relation to those proceedings.
3. Reserved instrument activities – preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002, making an application or lodging a document for registration under that Act; and preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales.
4. Probate activities – preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales.

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295 Legal Services Act 2007 (2007 c 29, Laws of the United Kingdom).

296 ibid, Section 2, Schedule 1.

297 ibid, Section 12(1).

5. Notarial activities – activities which immediately before the day the relevant section of the LSA came into force, were customarily carried on by notaries under the Public Notaries Act 1801.
6. The administration of oaths – exercising powers conferred on a commissioner for oaths under the Commissioners for Oaths Act 1889; the Commissioners for Oaths Act 1891; and section 24 of the Stamp Duties Management Act 1891.

In certain cases, persons may carry on a reserved legal activity without needing to be authorised – they are considered exempt for the purposes of the LSA. Some examples include the following:

A RIGHT OF AUDIENCE

A person is considered to be exempt if:

- A right of audience has been granted by a specific court in relation to specific proceedings.
- A right of audience has been granted before a specific court in relation to specific proceedings because of a particular legislative provision.
- They are party to particular proceedings and they would have a right of audience in their capacity as a party, had the LSA not been passed.

- They are assisting in the conduct of litigation, under instructions given by and under the supervision of an authorised person in proceedings which are being heard in chambers in the High Court or a county court.

CONDUCT OF LITIGATION

A person is considered to be exempt if –

- A right to conduct litigation has been granted by a specific court in relation to specific proceedings.
- A right to conduct litigation has been granted in relation to specific proceedings, because of a particular legislative provision.
- They are a party to particular proceedings, and they would have a right to conduct litigation in their capacity as a party, had the LSA not been passed.

CONCLUSION

Ultimately, without regulation on this matter, other professions will keep encroaching on our profession and devaluing it. It is crucial to ensure that any and all legal advice, if not given by a warranted advocate, might not be up to standard, which is another motivation for the introduction of such restricted service providers. Further to this, it should be a requirement that with regards to any legal services provided by restricted professions, such services are subject to investigation by the Committee for Advocates and Legal Procurators, to ensure that any and all impropriety is kept in check and the safeguards in place to ensure all legal advice, even if not given by an advocate, is subject to the Code of Ethics.

As the 2020 bill stands, there are no provisions relating to this subject, and therefore the dead letter found in the Code of Police Laws is left standing. Any delegation of the work traditionally undertaken by lawyers should be grounded in legislation and not done contrary to the law.

A REGULATORY PERSPECTIVE ON LAW FIRMS

INTRODUCTION

Currently, law firms are regulated as regular civil partnerships, as in Title X of Book Second, Part II of the Civil Code; however, both the 2012 Bill, and the 2020 Bill, seek to regulate them in a more *ad hoc* fashion. Each bill adopts its own approach, which will be tackled separately in this section.

THE 2012 BILL

The introduction of the 2012 Bill would impose certain provisions which would regulate the services and set-up of Maltese law firms. Four articles within the bill deal with regulation of law firms, with the first article stating that a law firm involves the partnership of two or more Advocates who intend to practise law.[298] Only an advocate may become a partner of a law firm, have voting rights within the firm and account for more than 30% of management of the law firm.[299] Other members of designated professions may form part of the firm, however certain restrictions are in place; for example, they may not have more than 25% of ownership rights of the law firm, and although they may vote, the control and decision-making would ultimately fall on the advocates.[300]

Under this proposal, a law firm is only considered as such when it is registered in the Regster, and the partners of the firm need to acknowledged and authorised so as to be able to act on behalf of

298 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. 2012 [123 of 2012]. Article 26(1).
299 ibid, Article 26(2).
300 ibid, Article 26(3).

the law firm.[301] Under this proposal, the Chamber is at liberty to issue certain regulations with relation to both the use of the law firm, and the manner in which the services are set-up.[302] The Bill also regulates the name of the firm, in which it states that it would need to be either the name of one or more of the partners if the firm, or the name of a partner who has ceased to be a practising lawyer, or a partner or, an abbreviation of such mentioned names.[303] The Chamber would also be able to consent to other names for law firms as long as they do not create public confusion, similar to the law of trademarks under Article 32 of the Commercial Code.[304]

Article 29 of the 2012 Bill deals with the obligations that are applied to both the partners, and the law firm itself. It states that any action mentioned within the bill may be done by any partner on behalf of the law firm and any action done in the name of the law firm may be done by one or more of the partners.[305] Also, if a prohibition is imposed on only one of the partners, such an imposition is applicable to all the partners and the law firm itself even though it may not be directly involved.[306] The partners within such a partnership are jointly and severally liable for all the actions and errors of each and every partner, as well as any practising lawyer or any person offering legal service on behalf of the firm.[307] The liabilities resulting from any act or omission only come to an end when a partner ceases to form part of the firm either because of retirement, death or any other cause.[308]

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301 ibid, Article 27(1).
302 ibid, Article 27(2).
303 ibid, Article 28.
304 ibid, Article 28.
305 ibid, Article 29(1)(a).
306 ibid, Article 29(1)(b).
307 ibid, Article 29(2).
308 ibid, Article 29(3).

The unlawful use of a law firm designation would carry with it sanctions, whereby it would *"be liable for each offence to a fine (multa) not exceeding twelve thousand euro (€12,000) and to imprisonment for a term not exceeding six months or to both such fine and imprisonment; and in the case of a continuing offence to an additional fine (multa) not exceeding one thousand and two hundred euro (€1,200), for each day during which the offence continues".*[309]

The proviso under Article 27(1) sets out the possibility for multiple practising advocates to share an office although they are providing services independently of one another.[310] This system is not very common here in Malta, but forms the basis of barrister culture in the United Kingdom and other countries which maintain a strict separation of the legal profession into solicitors and barristers. The main difference between this system of *'chambers'* as it is known in the United Kingdom allows barristers to share an office and clerical staff while at the same time running completely independent legal practices, sometimes even arguing cases against each other. With the system of a law firm, all partners are jointly and severally liable for each other, and they have a system of profit sharing.

COMPARISON WITH OTHER ACTS

The Engineering Profession Act and Periti Act both incorporate provisions which regulate partnerships with regards to both professions. The provisions are mainly similar to those proposed in the 2012 Bill: all three partnerships require two or more warrant holders in order to form a partnership with the main aim of the partnership being the practice of their profession. Engineers and Architects within

309 ibid, Article 30.
310 ibid, Article 27(1).

a partnership are jointly and severally liable for the actions and errors and any losses and damages which are result of such proceedings.[311] The only difference between the partnerships mentioned above and that of a law firm, is that the liability of something which was done or not done by a partner within the partnership does not cease after the partner retires, dies or any other cause which brings his partnership to an end.[312] The final difference is the mention of indemnity insurance in both the Engineering Profession Act and the Periti Act.[313] Such an insurance policy is intended for a number of professions including engineers, lawyers and architects.[314] It protects the professionals from claims by clients against them for injury, loss or damage which were a by-product of a negligent act, or inaccuracies which occurred when carrying out their services.[315] The Engineering Profession Act states that any member of the partnership must have indemnity insurance, while in the Periti Act it is mentioned, however it is not yet enforceable and ultimately there is no mention of such a policy in the proposed 2012 Bill. Such a policy can also be extended to cover situations such as dishonesty of employees, libel, slander and breach of confidentiality.[316]

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311 Engineering Profession Act, Article 9; Periti Act, Article 10.

312 Engineering Profession Act, Article 9(d); Periti Act, Article 10(c).

313 Engineering Profession Act, Article 10; Periti Act, Article 11.

314 www.mapfre.es, 'Professional Indemnity Insurance' (*MAPFRE Malta*) <https://www.middle-sea.com/insurance-mt/business/professional-indemnity/> accessed 24 October 2020.

315 ibid.

316 Atlas Insurance, 'Atlas Insurance - Professional Indemnity' (*Atlas Insurance Malta*) <https://www.atlas.com.mt/insurance/business/indemnity/> accessed 24 October 2020.

THE 2020 BILL

Article 10 of the new Bill, which was tabled in Parliament on the 4th of December, provides for some rudimentary regulation of law firms, separate from the current provisions on partnership in the Civil Code.[317]

The Article starts off by introducing of a registration process with regards to law firms. For an association of persons to be considered a law firm, it must submit a written application to the Register which will be headed by the Committee for Advocates and Legal Procurators. It is only after it is duly registered that can one act on behalf of the law firm. Should this bill become law, firms already established before the enactment of this law will be given 12 months to register. If the firm is not registered after this period, no person shall be authorised to act on behalf of the firm. The application set forth must have a series of facts included, *inter alia* the name of the law firm, address of the place and personal details of each member forming part of the law firm. If a law firm continues to operate as a legal entity without being duly registered, it may be found guilty of an offence.

The bill also includes a set of conditions which need to be met with regards to the name of the law firm. It starts of by stating that the name should include words such as *'advocates'*, *'legal'*, *'law firms'* or any other similar word so as to show the partnership is indeed a law firm, and to avoid confusion or mislead the beliefs of the general public. The suggestions set forth, however, did not exclude the possibility of including one or more names of the advocates posing as present partners, or the ability to maintain the name of a past partner. Any law firm which does not satisfy the aforementioned conditions will not be registered by the Committee.

317 An Act to amend legislation regulated the legal profession. 2020 [181 of 2020], Article 10..

The bill also provides that no other entity shall be permitted to use a name which can reasonably be construed to appertain to a law firm if the said entity is not in fact a law firm.

The third article, in cryptic language, provides for the legal personality of a lawfirm. Also, laws imposed which create prohibitions on the acts and/or services of the advocates also applies to law firms.

The fourth article which would be implemented should this bill become law regarding law firms is the establishment of a Register. The information kept in this register, besides the names of all those who possess the warrant both of advocates, as well as legal procurators, includes law firms established under the previous articles. This includes the particulars of each law firm, the names of those advocates and other warranted professionals who are members of the firm.

CURRENT PROCEDURES RELATED TO THE ISSUING OF A WARRANT

THE CURRENT WARRANT PROCEDURE

A warrant is an instrumental document in the exercise of the legal profession; however, the purpose of the warrant has changed drastically since its original intention. In relation to these changes, one must also have regards to the changes made to the requirements to become a practising advocate.

Traditionally, the warrant was only necessary for those lawyers who required the right of audience before judicial tribunals. Albeit, over the years the activities reserved to practising advocates and the requirements to be a practising advocate have increased. Under the 2020 Bill, the warrant will be given on advice from the Committee for Advocates and Legal Procurators, an organ of the Commission for the Administration of Justice.[318] It is after undergoing these actions and taking both the oath of office, and oath of allegiance[319], that a person becomes a practising advocate. This allows them to partake in legal activities which are reserved to practising lawyers. Such services, along with the right of audience before judicial tribunals, include the provision of legal advice, and the drafting of contracts or agreements intended to create legal rights and obligations between third parties.[320]

Naturally, there are a number of requirements in order for someone to attain the warrant required to practise as an advocate. At present there are six requirements which are laid down in Article 81 of the Code of Organisation and Civil Procedure; namely, the attainment of the required academic qualifications, full knowledge of the Maltese Language as the language of the courts, attend pupillage for at least

318 An Act to amend legislation regulated the legal profession. 2020 [181 of 2020] Article 6(a).
319 Code of Organisation and Civil Procedure 1855 (Chapter 12, Laws of Malta) Article 80.
320 Chamber of Advocates, 'Regulating the Legal Profession for the 21st Century' (2008) <https://www.avukati.org/download/regulating-the-legal-profession-for-the-21st-century-coa-2008/>.

one year, and be examined and approved by two judges.[321] Bill 181 of 2020 seeks to amend this framework by granting the Committee for Advocates and Legal Procurators, the ability to issue warrants.[322] This is by giving the Committee the authority to determine whether the aspiring advocate is *"fit and proper"*. This is similar to what other jurisdictions refer to as a *'character and fitness'* examination, where a hearing may be scheduled if there is some doubt as to the character of the applicant.

PRATTIKA

The system of pupillage, or *prattika* as it is more commonly known, is a professional apprenticeship that is required by people looking to obtain their warrant. It is a way by which students are introduced to the procedural aspects of the law. It offers exposure to different fields of law, and an opportunity to be passively involved with clients and in the courtroom by attending the office of a practising advocate and sittings before the Superior Courts of Malta. It is the first time law students get a taste of what it is really like to be an advocate, and is therefore a priceless piece of legal education.

Prattika must be undertaken for at least a year in order to be able to sit for the warrant exam. The 2012 bill provided for, *inter alia*, a register of trainee lawyers as well as certain requirements for those advocates offering training, however this has not been adopted in the new 2020 bill.[323] It is also possible for trainee lawyers to complete their period of *prattika* in two six-month periods, in order to gain exposure in different

321 Code of Organisation and Civil Procedure Article 81.

322 An Act to amend legislation regulated the legal profession. (n 27) Article 6.

323 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. 2012 [123 of 2012]; An Act to amend legislation regulated the legal profession. (n 27).

legal fields, however this should be planned in advance in order for the period of pupillage to be continuous.

THE WARRANT EXAM

The warrant exam is the final step before admission to the Bar of the Superior Courts of Malta. The exam is divided into two sections, the written section and the oral section. The written exam is a three hour exam where the applicant is tested on the knowledge of the law, as well as ethics and other related subjects. Following a favourable grade on the written exam, the applicant may proceed to the oral exam which is conducted by two members of the judiciary who may ask the applicant any question they wish related to law.[324] Following yet another favourable grade, the judges may issue a certificate under their signature and seal confirming as such, as required under Article 81(f) of the Code of Organisation and Civil Procedure.[325] Every year two sessions are held, typically in January following the University graduation and another in July, with exact dates published in the Government Gazette.[326]

324 'Warrant to practise Law in Malta' (*Chamber of Advocates Malta*) <https://www.avukati.org/warrant-to-practice-law/> accessed 24 December 2020.

325 Code of Organisation and Civil Procedure Article 81(f).

326 'Warrant to practise Law in Malta' (n 33).

SCRUTINISING PROPOSED REGULATORY FRAMEOWORKS

INTRODUCTION

This paper was originally formulated with two aims: first, to summarise the regulatory framework of the proposed Bill[327] of the Lawyers Act (published in 2012), and the ancillary framework of the Commission for the Administration of Justice Act in relation to it; second, to flag flaws, including human rights concerns, perceived in the Bill and put forward an alternative regulatory framework to remedy those evils. While this work was underway, it was brought to our attention that amendments, as yet unpublished, had been made to the Bill as it then stood, and these were incorporated into the position paper.

Recently, a new and distinct Bill[328] was published that departed quite substantially from the regulatory framework and philosophy of the old Bill. The proposal has already faced comment from the Chamber of Advocates[329], which claims it is a U-turn from the discussions that until then had been ongoing with the Government on the regulatory control of the profession. The main difference is the move from a separate Lawyers Act to amendments to the Code of Organisation and Civil Procedure[330] and the Commission for the Administration of Justice Act, as well as the inclusion of amendments to ensure compliance with Moneyval.

Our paper thus had to be modified to address the new Bill, but our aims remained the same. We have also decided to retain the comments on the old Bill, and compare and contrast the two Bills,

327 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. (n 32).

328 An Act to amend legislation regulated the legal profession. (n 27).

329 Chamber of Advocates, 'Chamber of Advocates Press Statement' (10 December 2020) <https://www.avukati.org/2020/12/10/chamber-of-advocates-press-statement/>.

330 Code of Organisation and Civil Procedure.

since it is not precluded that certain issues set aside by the new Bill may again be brought into discussion in the future. The comparison will also bring out our satisfactions and dissatisfactions in the differences between the two and the new position adopted by the 2020 Bill. Of course, this paper is to be treated as taking a position on the current new Bill, and on any aspects of the old Bill that are brought back into the discussion. We have also appended our full proposals as regards the old Bill to that end.

Regrettably, the new Bill went through its third reading by the House of Representatives only a few days before the intended launch date of this paper. It was presumably given the Moneyval fast-pass, unlike its predecessor. This means its assent by the President and publication in the Government Gazette to give it legal force are imminent. Though this means we have been rendered unable to contribute to the discussion as we had intended when we set out to tackle the 2012 Bill, we hope that our proposals will not be shunned. Indeed they remain as valid as ever: they still express our opinion on the legislator's position, except where amendments have been made of which we were not aware.

THE FRAMEWORK OF THE BILLS

This first section will review the regulatory framework proposed by the Bills, and within which all lawyers are expected to work. We will compare and contrast the Bills, but will save critical comments for further sections.

THE GENERAL REGULATORY FRAMEWORK

The old Bill was set to entrust the regulation of the legal profession to the Chamber of Advocates, which was to be the recognised and approved regulator and representative body for advocates in Malta.[331] Its functions would be, *inter alia* to represent the profession and promote its general wellbeing; maintain and enhance professional and ethical standards in the profession; and, maintain effective and efficient complaints and disciplinary procedures.[332] This is in furtherance of the principle that the profession should be self-regulating, without outside meddling.

The Chamber was required to have the necessary regulatory arrangements in place to fulfil its new role as regulator of the profession, this being in general the power and authority to issue guidelines and directives to lawyers to better regulate the profession, as set out in Article 5. The old Bill lists a number of general arrangements. These are: arrangements for inscribing persons in the Roll; Professional Rules governing the practice of practising advocates, and as to the conduct required of them; disciplinary arrangements for practising advocates, including Professional Rules on the matter; procedures to receive, investigate and process complaints against practising advocates, and any other Professional Rules or arrangements required for the Chamber to better fulfil its regulatory role.

The framework would have barred any person from practising law, exercising the profession of advocate or holding himself out as providing any reserved legal services in Malta, unless he is a practising advocate or European legal professional and registered in

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331 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. (n 32), Article 4(1).

332 ibid, Article 4(2).

accordance with the old Bill.[333] The same applied for anyone holding himself out as providing restricted legal services[334], although here a member of a designated profession would be allowed to offer such services as was provided in Article 9.

The new Bill presents a starkly different regulatory position. The regulatory body is now to be a revamped Committee for Advocates and Legal Procurators[335], responsible for recommending a person to be issued a warrant to practise the profession[336] and for disciplining members of the same.[337] The distinction between reserved legal services and restricted legal services is not made in the new Bill.

THE WARRANT

The COCP currently lays down that no person can exercise the profession of advocate without the authority of the President of Malta, granted by warrant under the Public Seal of Malta.[338] The old Bill included the additional requirement of the President acting on the advice of the Minister responsible for justice[339] upon an application by the prospective lawyer, while the new one has placed the advisory power in the hands of the Committee.[340]

The applicant needed to satisfy a number of requirements under the old Bill, namely: being of full legal capacity; being a Maltese

333 ibid, Article 8.

334 ibid, Article 3; Schedule I.

335 Hereinafter, 'the Committee'.

336 An Act to amend legislation regulated the legal profession. (n 27), Article 4.

337 This power is already vested in the Committee and will be discussed in the section dealing with the Commission for the Administration of Justice Act.

338 Code of Organisation and Civil Procedure, Article 79.

339 Hereinafter, 'the Minister'.

340 An Act to amend legislation regulated the legal profession. (n 27), Article 4.

citizen, citizen of an EU Member State, or eligible to work in Malta; having an LL.D. degree or some foreign equivalent, and having full knowledge of Maltese. Furthermore, the Chamber itself needed to be satisfied that he was a fit and proper person to practise law in Malta. This meant that: he had been examined and approved by an exam board, consisting of a judge, a Chamber representative and a representative of the Minister; the Chamber was satisfied that he had undergone two years of training with an eligible practising advocate; the Chamber was satisfied of the person's ethical standards and understanding of the profession's ethical rules; and, the Chamber was satisfied of the person's probity and integrity. Moreover, the Chamber was permitted to issue Professional Rules regarding examination of warrant applicants. The relevant provisions here are Articles 10 and 12.

The new Bill has retained the requirements already present in the COCP, subject to a few tweaks. A new ground has been added, mirroring that in the old Bill, that the person must be a fit and proper person as recommended by the Committee, with no further qualifications. Second, the good conduct and morals criterion has seen the addition of a requirement that there are no doubts as to the person's honesty and integrity through his behaviour etc.[341]

Possession of a warrant duly issued under the old Bill entitled the holder to practise law in Malta, to inscription in the Roll, and to the issuance of a practising certificate with no further formalities for a one-year period following the issuance of the warrant.[342] However, no person would have been allowed to hold a warrant to practise as an advocate and another profession's warrant at the same time.[343] The new Bill has preserved these rights, save the issuing of practising

341 ibid, Article 6.

342 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. (n 32), Article 10(3).

343 ibid, Article 10(2), 10(4).

certificates. It has also done away with the prohibition of possessing another warrant besides that of advocate.

THE ROLL

The Roll under the old Bill was an unprecedented electronic register of all persons admitted to practise law and the profession of advocate in Malta.[344] It was to be held by the Chamber, subject to the Data Protection Act. The possessor of a warrant was obliged to apply to be enlisted in the Roll against a fee, and he was admitted by virtue of a confirmation in writing and a certificate to be issued by the Chamber. A refusal was subject to an appeal before the Committee for Advocates and Legal Procurators. The Chamber could make regulations on admittance and removal from the Roll after consultation with the Minister. The Roll was to be freely accessible to the public.

The new Bill has retained the Roll system, restyled the Register.[345] However, there are no fees levied for enlistment, nor certificates to be issued by the Committee as confirmation. This is because the granting of a warrant obliges the Committee to introduce that lawyer into the Register, and thus there is no need for application.

TRAINEESHIP

The old Bill laid down a framework regulating pupillage, contained in Articles 15 to 18. To apply as a trainee, the applicant needed to have attained the age of 18 years, have obtained the prior consent of the Chamber, read law for a minimum of 3 years, and fulfilled

344 ibid, Article 11.

345 An Act to amend legislation regulated the legal profession. (n 27) Article 10.

other requirements prescribed by the Chamber from time to time. The trainee needed to inform the Chamber within 30 days of having commenced training, together with a confirmation from his advocate mentor. The Chamber also needed to be promptly informed of a change in mentor.

The Chamber had the right to conduct inquiries to assure itself of the usefulness of the traineeship. It could view the trainee's academic performance and his good character in pursuance of this. Once it was duly satisfied, it was to admit the trainee into a register for the purpose.

Traineeship imposed certain requirements on the mentor as well. The practising advocate must have been in continuous practice (absence for the past 5 years was a disqualification), must not have been suspended from the Roll and could only have up to two trainees at any one time. The number could have been increased to three trainees per advocate upon a waiver by the Chamber.

The regulation of traineeships has been scrapped by the new Bill. This does not preclude further legislation on the matter, however the current bill before the House is silent on the matter.

PRACTISING CERTIFICATES

This was a novel feature introduced by the old Bill[346], and done away with by the new one. A practising certificate was to be issued yearly following the first year of the warrant's issue, as proof of proper conduct during the past year. The certificate was to be issued upon application and payment of a fee. The requirements for having the certificate issued or renewed were that the lawyer was still a fit and

346 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. (n 32), Articles 19, 20.

proper person to practise law in Malta, was not subject to disciplinary action by the Chamber or Committee that was inconsistent with the issuance of the certificate, and had satisfied criteria issued by the Chamber from time to time. There were also grounds for refusal, such as being found guilty in a Court of Law of certain offences (involuntary homicide not being one of them). However, once the cause for ineligibility ceased to exist (such as paying prescribed fees owed to the Chamber), the person could still have been issued his certificate.

DISCIPLINARY MEASURES

The Chamber was empowered to take certain disciplinary measures in consequence of specific events under the old Bill; namely, it was permitted to suspend the practising certificate of any advocate on certain grounds (the same grounds on which it can refuse to renew a certificate) and upon notification by the President of Malta of the suspension of the lawyer's warrant under the Code of Ethics.[347]

The grounds were the following:

- Suspension from practice where the period for suspension had not yet expired;
- Failure to give the Committee an explanation deemed by it as sufficient and satisfactory as regards his conduct after being invited to do so, and upon notification by the Committee of this failure;
- Being adjudged bankrupt or entering into a composition with creditors;
- Contravention or failure to comply with an order of the Chamber or Committee relating to discipline or ethics;

347 ibid, Article 20(6).

- Failure to pay the fees prescribed in the Act;
- Failure to discharge a final Court judgement or Court order against him within eight weeks of the day it was issued;
- Being found guilty by a Court of Law of an offence under the Act or any regulations made under it;
- Being found guilty in a Court of Law of a crime affecting public trust, or of theft, fraud, or of knowingly receiving property obtained by theft or fraud, or of any crime punishable by a term of imprisonment exceeding one year (except for involuntary homicide).

The Chamber no longer being the regulatory body under the new Bill has seen the disciplinary powers consolidated in the Committee, which was originally created for pure disciplinary purposes. However, the new Bill only deals with disqualifications to practise, entailing the permanent or temporary disability of the lawyer to practise the profession.[348] The disqualification is to be declared by the President of Malta, on the advice of the Commission for the Administration of Justice, subject to the right of the President to remove the disability at any time. The grounds for disqualification are:

- No longer being a fit and proper person;
- The serious, repeated or systematic failure to satisfy his anti- money laundering and terrorism financing obligations;
- Being found guilty by a Court of Law of certain crimes, as in the old Bill;
- Infirmity of mind seriously affecting the exercise of his profession;

348 An Act to amend legislation regulated the legal profession. (n 27), Article 7.

- If the lawyer is foreign, the withdrawal of the foreign authorisation by the competent authority of that State.

The new Bill has also widened the definition of misconduct as: a breach of the Code of Ethics; the serious failure to comply with anti-money laundering and terrorism financing legislation and obligations; and, being found guilty by a Court of Law of the offences mentioned in relation to disqualification.[349] The Committee has been given enhanced supervisory powers under the new Bill, under the amendments to the Commission for the Administration of Justice Act.

349 ibid, Article 12.

CHECKS, BALANCES AND CONTROLS EMBEDDED IN THE BILLS

When placed in the larger framework, the Chamber and its decisions were subject to other persons and entities in the old Bill. The main influences were two. There was the control influence exerted by the Minister responsible for justice on the one hand, and the appellate control exercised by the Committee for Advocates and Legal Procurators and the Commission for the Administration of Justice[350] on the other. The former will be tackled in this section, while the latter will be touched upon here and tackled more exhaustively in the next section.

The new Bill has seen Ministerial control to the extent provided for in the old Bill removed, and thus the checks and balances are exercised under the internal appeals system.

MINISTERIAL CONTROL

Under the 2012 Bill, the Chamber was subject to executive control by the Minister responsible for Justice in situations where the Chamber had somehow lagged in its regulatory responsibilities.[351]

The main scenarios were where:

- an act or omission of the Chamber had had, or was likely to have had, a material adverse effect on the regulatory objectives;
- the Chamber had failed to comply with any requirement imposed on it by law;

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350 Hereinafter also referred to as 'the Commission' or 'the CAJ'.

351 An act to regulate the Legal Profession and to provide for matters connected with, and ancillary thereto. (n 32), Articles 6, 7.

- the Chamber in its regulatory capacity had allowed itself to be influenced by its representative function, so far as practicable.

Following an investigation into these scenarios, the Minister had the power to issue orders and directives in writing to the Chamber for it to remedy or mitigate the situation, as the case may be, and to ensure it was not repeated in the future.

Nevertheless, the Minister was unable to take any action until he had consulted and received the advice of the Committee in relation to the necessity and timing of the proposed directives. He furthermore could not issue instructions to the Chamber in relation to a specific disciplinary or other regulatory proceeding without applying them to all, or at least a specific class, of such proceedings or cases. Any revocation of a direction given by the Minister was required to be published.

The Minister could have applied before the Court of Appeal if he deemed the Chamber had failed to comply with a direction issued by him. If the Court decided in his favour, it could then issue to the Chamber such directions it deemed would ensure the required compliance.

The Minister also had the general power to issue regulations under the Act.

INTERNAL APPEALS SYSTEM

Appeals from decisions of the Chamber could be taken before the Committee under the old Bill[352], and from there to the Commission[353]. These two appellate bodies are discussed more fully in the next section. However, it should be noted that under the new Bill the Chamber is not in the equation, and thus appeals lie from the Committee to the Commission.

THE COMMISSION FOR THE ADMINISTRATION OF JUSTICE AND THE COMMITTEE IN RELATION TO THE BILLS

This section will review the current powers and duties of the CAJ and the Committee, under the Commission for the Administration of Justice Act[354] and the Constitution, before mentioning the new roles bestowed upon them through the Bills. A thorough assessment is left to subsequent sections.

The Constitution establishes the Commission for the Administration of Justice as the parent body of a number of Committees under Article 101A. Its overriding function is to supervise and administer the administration of justice by the Courts. However, it shall have a permanent Committee for Advocates and Legal Procurators through which it discharges its functions in relation to the named professionals as provided by law[355]; namely, by the Commission for the Administration of Justice Act.

The Constitution specifically requires the CAJ to draw up a Code of Ethics for Advocates and Legal Procurators upon the advice of the

352 ibid, Articles 14, 20(8), 25.

353 Under the Commission for the Administration of Justice Act, discussed in the next Section.

354 Hereinafter also referred to as 'the CAJ Act'.

355 Constitution of Malta 1964 (Laws of Malta), Article 101A(6)(a).

Committee, and to exercise discipline over the same.[356] Nevertheless, the Constitution provides that in the said disciplinary cases, the CAJ shall first refer the matter to the Committee and allow it to decide upon it, and only where a report of the Committee's findings does not reach it within two months (extendable for a further four) can it act on its own judgement. In all other cases, save on appeal, it is to act on the advice and decision of the Committee.[357]

The Committee is composed of five members: an advocate of at least 10 years' standing appointed by the Commission, an advocate appointed by the Attorney General, and three advocates appointed by the Chamber. All are appointed for 4 years. However, in relation to legal procurators the three Chamber advocates are to be substituted by three legal procurators appointed by the Chamber of Legal Procurators. Any member can be challenged as though he were a judge of the superior courts, and if the challenge is successful the President can of his own judgement appoint a substitute member, ideally with the same qualities and qualifications as the challenged member. The chairman is elected from amongst the members between themselves. Three members constitute a *quorum*, and in the exercise of its functions it shall have all powers assigned to the First Hall of the Civil Court by the Code of Organisation and Civil Procedure.

The CAJ Act assigns the same powers vested in the CAJ relating to professional conduct and the exercise of the profession in general to the Committee; namely, what was discussed above. The Committee is to make a report for the CAJ of its findings in any investigation or study performed by it. The same Act then vests both powers of action and supervisory powers on the Committee. However, the Committee can only exercise its powers of action in consequence of its supervisory function.

356 ibid, Article 101A(11).

357 ibid, Article 101A(6)(b).

The supervisory role[358] is the Committee's power and duty to investigate, inquire into and decide upon any misconduct by a lawyer or legal procurator in the exercise of his profession, or upon his inability to exercise the same due to an infirmity of mind. It can do so of its own initiative, or upon a request of the CAJ or a complaint by any person. It can furthermore take such measures and impose such disciplinary penalties as it deems fit and as provided in the CAJ Act, without prejudice to any other action provided by any other law.

The powers of action relate to a finding that a lawyer or legal procurator has misbehaved in the exercise of his profession, or where it finds that the same suffers from an infirmity of mind that may seriously affect the exercise of his profession. Article 3(7) provides the Committee with a number of alternatives. Although nothing is mentioned in the CAJ Act, it would seem that the various consequences are listed in descending order of gravity, depending on the nature and extent of the misconduct/mental infirmity. In the gravest of cases, the Committee can request the Commission to recommend the Prime Minister to advise the President of Malta to suspend the person in question, either perpetually or temporarily, from the exercise of his profession. Secondly, it may impose a pecuniary penalty on the person not exceeding 10% of the Attorney General's annual salary, recoverable as a civil debt by the CAJ's Secretary. Thirdly, it may simply admonish the person. Finally, it may make the person such recommendations it deems appropriate in the circumstances. The same powers are vested in the CAJ upon an appeal.

The general course of action under the CAJ Act would be the following. The Commission may receive a complaint relating to an advocate or legal procurator and relay it to the Committee. Or, in general, the Committee is made aware of a possible misconduct

358 Commission for the Administration of Justice Act 1994 (Chapter 369, Laws of Malta), Article 5.

or mental infirmity. It is then obliged to look into it and come to a conclusion under Article 5. The investigation must commence within 3 months of the relevant person becoming aware of the issue. If it finds the person guilty, it will condemn him to one of the penalties under Article 3(7). That person can then appeal before the CAJ within 20 days from the notice of the Committee's decision.[359]

Procedurally, the complainant and defendant professional have the right to be present during the whole investigative process, produce witnesses and be assisted by an advocate or legal procurator, respectively. The default position is a hearing *in camera* unless the defendant requests otherwise, and the finding shall only be made public when not *in camera*. Any decision taken is to be transmitted to the respective Chamber of the defendant, which is to treat it as secret and confidential if the proceedings were not *in camera*. However, the Committee may, it if deems fit, make any action taken by it public.

As mentioned in the previous section, a person aggrieved by a decision of the Chamber was able to appeal to the Committee from that decision under the old Bill. Under the new Bill, all discipline falls under the Committee, and thus the process has been streamlined. Under the 2020 Bill, the Committee is also the new regulatory body, and is thus responsible, as seen, for recommending the issuing of a warrant and other regulatory functions. This led to its revamp, and its composition is, under Bill 181, as follows: a retired judge as chair (appointed by the CAJ), an advocate appointed by the Attorney-General, an advocate appointed by the State Advocate, a Senior Official of the Ministry responsible for justice, and 3 advocates appointed by the Chamber.[360]

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359 Committee for Advocates and Legal Procurators (Appeals) Rules 1997 (LN 32/1997 (SL 369.02)), Rule 3.

360 An Act to amend legislation regulated the legal profession. (n 27), Article 13.

APPRAISALS OF THE NEW BILL

These sections originally highlighted a set of issues within the framework proposed by the old Bill. The new Bill has fortunately gone a long way in settling these. Nevertheless, our criticisms are being retained and set out here for our position to be clear, while appraising the changes made in the new Bill. These fall under three headings:

1. Conflict between the representative and regulatory functions of the Chamber;
2. Conflict between the Chamber and the Committee in disciplinary matters;
3. Conflict between the precedence and importance of the warrant and the practising certificate.

The third issue, or conflict, is properly speaking an offshoot of the second, but merits its own sub-section.

THE CHAMBER AND ITS FUNCTIONS

The regulatory framework of the old Bill hinged on the fact that the Chamber would be the *'recognised and approved regulator and representative body for Advocates in Malta'*. The regulatory aspect will be tackled more deeply in the section after the next, but an overview is necessary here to set the stage.

Our criticism of the 2012 Bill was targeted at this new *doppia personalità* the Chamber would have had. The bottom line was that a representative institution should neither be recognised as the official State-approved representative body of an entire profession, nor vested with regulatory functions. The reasons were twofold. Firstly, unilaterally enforcing what is a lobby group as the 'public'

representative and regulator of all lawyers is tantamount to a closed-shop policy, which is known to be a breach of the right to freedom of association. Secondly, such an arrangement would have led to conflicts between the Chamber's 'public' representative functions (as legislatively-approved representative and regulator of all warranted lawyers) as described in the 2012 Bill and its 'private' representation (as representative of those lawyers who are subscribed as its members).

Our focal argument was, and remains, that vesting a representative body with a regulatory function remains ill-advised on point of principle. The primary reason is that it is firmly believed that such a body should not be tarnished by regulatory functions and burdens, but retain its invaluable role as lobbyist and representative. The Chamber has a role to play, but piling on functions is not the way to do it. It is not advisable to give such an entity the wheel, even if other jurisdictions opted for the same framework.

The reasons for this, expounded in the original critique of the old Bill, are recorded below. The pivotal argument was that the Chamber is, at heart, a lobby group: it purports to represent the entire body of advocates in Malta, but in practice only represents those lawyers which are its subscribed members. This is not to say the Chamber does not have a beneficial and important representative function in this capacity, and to that end history is the greatest testament.

The fact that the State intended to establish such a representative body as its own approved representative for Advocates was, to say the least, worrying. The implications were that the Chamber would be speaking and taking decisions on behalf of all lawyers, subscribed members or not. The Chamber is no House of Representatives, where the members are those wished by the majority of the electorate to represent them and their causes. The Chamber is its own thing, and to statutorily recognise it as the State's go-to lawyer representative would be to give it a position it should never have. Why should a non-

member be forced to be represented by a body he does not form part of or endorse? This would lead to a breach of the right to freedom of association, as the State would have forced the representation of all members of the profession under a body representing only a fraction of the same profession in practice.

This is, as stated, one of the reasons why the new Bill is a welcome step in the right direction. We would like to add, however, that it would be even more satisfactory to introduce a section detailing the Chamber's position at law. The provision should run on the lines that all lawyers have the right to become members of the Chamber as per its Statute, but that this is not an *ipso facto* reality of being warranted. The right to join the Chamber would thus be recognised as a right pertaining to all lawyers, and fully enshrine the Chamber's essentially lobby nature at law to lay the discussion to rest for good. Considering the rich history of the Chamber, this would essentially be confirming what is already the case.

On the second count, establishing the Chamber as approved regulator of the profession was even more worrying. The reason is the possible 'internal' conflict between its representative functions on the one hand and its regulatory functions on the other. The old Bill foresaw this, and appointed the Minister to rectify any abuses, purposeful or not, in the Chamber failing to distinguish properly between the two, as discussed earlier. However, this rectification still depended on a Ministerial investigation, and Ministers are not omniscient – they need to be informed of a possible wrongdoing to investigate it and set it right. Furthermore, the Minister's involvement would immediately cause, at the least, speculation on political motives behind decisions to rectify or not rectify an abuse.

One of the main issues not addressed by the old Bill in this functional conflict was the financial aspect. The Chamber raises fees from its members, and under the old Bill it would also be able to levy fees

for its regulatory functions. Nowhere is it written that the regulatory fees were to remain separate, and be used separately, from the representative fees, unlike other jurisdictions such as New Zealand, which also adopts the same regulatory framework proposed in the old Bill. The position taken in the new Bill to divest the Chamber of its regulatory function is thus also welcome as it avoids this conundrum.

Attention is being drawn to a particular case[361] before the European Court of Human Rights (ECtHR) in this regard. Applicant as an employer was obliged by law to pay annual fees to an organisation founded to promote Icelandic industry. However, he was not a member of the organisation, and furthermore did not endorse some of its political views. The Court held that the obligation to pay those fees was the same as forcing him to join the association against his will, and thus a breach of Article 11 of the Convention, the right to freedom of association. The main issue was that the system did not contain sufficient safeguards, mainly a lack of transparency and accountability, to ensure that the organisation *"did not use the charges to the disadvantage of non-members"*.[362] This bears overall similarity to the situation under the old Bill, which would have rendered the eventual Lawyers Act in violation of Article 11 of the European Convention on Human Rights (ECHR).

DISCIPLINE: CHAMBER VS COMMITTEE

A side-by-side reading of the disciplinary powers vested in the Chamber and in the Committee under the old Bill makes it clear that the former could only exercise its disciplinary function upon a decision of guilt of the latter followed by the consequence of either suspension or revocation of the warrant by the President of Malta.

361 *Vörður Ólafsson v Iceland* [2010] European Court of Human Rights 20161/06.
362 David Harris and others, *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights* (3rd edn, Oxford University Press 2014) 746.

This made the Chamber's disciplinary functions, which related to practising certificates, *per se* a dead letter, but this will be tackled in the next sub-section.

The Chamber was vested with the power to issue Professional Rules on the practice and conduct of practising advocates. On the other hand, the Committee was obliged to advise the CAJ on the drawing up of a Code of Ethics. These two separate legislative instruments in practice would have covered the same area, and it makes no sense to have two pieces of legislation, covering the same subject, in force at the same time. The situation was definitely not conducive of legal certainty.

In fact, our original proposal suggested that any changes that would be made with the Professional Rules should be united with the Code of Ethics. Our opinion remains that this Code should be the sole yardstick of professional conduct and ethics. It was also suggested that any new Professional Rules, such as those related to examinations, be consolidated into separate sections within the Code of Ethics. This remains our firm opinion, though the new Bill does not provide for Professional Rules at all.

WARRANTS AND PRACTISING CERTIFICATES

Warrants and practising certificates in the old Bill appeared to be at loggerheads. The warrant is the lawyer's *fact totum*; without it, he cannot practice as he lacks the necessary authority by the President of Malta.[363] The practising certificate would have been issued as a sign of good behaviour (understood as the lawyer not being subject to any of the things listed earlier) every year in addition to the warrant.

363 Code of Organisation and Civil Procedure, Article 79.

In our comments on the 2012 Bill, we noted that the two covered essentially the same area, and thus suggested that the practising certificate system should be scrapped. This was because it only added to the confusion already present between Chamber and Committee, giving the impression that the Chamber had material power when in reality it would have simply taken a Committee decision to its natural conclusion. Furthermore, as a system it was entirely useless given that the warrant is the be all and end all of the advocate, and it would have been unfair to not renew the certificate and disable a person from practice, albeit temporarily, when his warrant remained intact. We instead suggested that the warrant system be amended where it is deemed necessary and that discipline of the profession and all ensuing consequences rest with the Committee. The removal of the practising certificate system in the 2020 Bill, and the retention of discipline with the Committee, are thus two positive changes.

The reasons for our conclusions were that, as set out above, the certificate could only be suspended or revoked by the Chamber upon notification from the President of Malta that the warrant had already suffered the same fate. This arrangement made no sense and gave the Chamber ghost powers. Suspension or revocation of the warrant obviously entails inability to act as a lawyer under any circumstances, with the suspension or revocation of the practising certificate being a natural ancillary effect. Thus, the entire certificate system can be said to be unnecessary in this light.

Aside from certificate suspensions and revocations, the Chamber may have refused to issue or renew a certificate on any of the grounds listed earlier, in most cases until the situation is resolved. Most of the grounds in themselves merit a warrant suspension or revocation. This means that in practice, the Committee would in most cases already have taken the necessary steps to suspend or revoke the warrant, and not simply admonish the lawyer or subject him to a fine. Finally,

what sense is there to vest a lawyer with the power to practise law by authority of the President via a warrant, but prevent him from practising by withholding his certificate on some bizarre ground like non-payment of fees? In such circumstances, the certificate system is frivolous in the extreme.

THE ECHR AND THE BILLS: ASSESSMENT AND SUGGESTIONS

Thus far, the changes made in the 2020 Bill have been seen to be positive, rectifying many errors and flaws in the old one. However, true to Malta's track record as a violator of human rights, both perform dismally as far as the ECHR is concerned. The old Bill seemed to violate the ECHR on three fronts: Article 6, Article 11 and Article 1 to Protocol 1, and of course the corresponding Constitutional provisions. The breach of Article 11 has been resolved by divesting the Chamber of its regulatory functions, but the other two persistently remain. Suggestions are being put forward here to remedy this.

Even though the breach of Article 11, the right to freedom of association, has been resolved, we feel our reasons for holding such an opinion should nevertheless be presented here. Reference to this breach has already been made above. From there, a strong argument can be drawn that vesting a representative and lobby group with regulatory functions, involving the levying of obligatory fees, is a violation of the said Article. The framework originally proposed by this paper, and partially effected by the 2020 Bill, where the Chamber's role as regulator is scrapped and its representative function is properly delineated, remedies this situation. This is because, although fees are levied[364], they are so levied by an independent body intended solely for regulatory purposes, with no membership involved and thus no opportunity to use funds to disadvantage non-members. Furthermore, the necessary transparency and accountability safeguards are in place.

The other two violations, common to both Bills, can be tackled more or less in tandem, as they mainly relate to the issuance, suspension and

364 For example, for inscription in the Roll as the old Bill provided.

revocation of the warrant, the lawyer's licence/authority to practise his profession. It has been established in ECtHR case-law that Article 6 applies to *"the grant of a licence or other authorisation to […] practice a profession as well as the decision to withdraw it"*.[365] Decisions, even as a consequence of disciplinary action, to suspend or revoke a licence to practise count as the 'determination of civil rights and obligations' required under Article 6, as seen in ***Le Compte, Van Leuven and De Meyere v. Belgium***.[366] This dealt with the suspension of the medical licence of Belgian doctors, by the competent disciplinary body, to determine whether there was a breach of the Code of Ethics. The *"proceedings were "directly decisive" of the applicants' private law right to practise medicine because the suspension of the applicants' exercise of that right was a direct consequence of the decision that breaches of the rules had occurred"*.[367] Furthermore, a licence to operate or carry out a profession may also fall under the definition of a 'possession' for the purposes of Article 1 to Protocol 1, particularly where the licence creates a legitimate expectation in the licence-holder's favour as to his ability to remain licenced and benefit from the advantages it offers.[368]

The practising certificate system as proposed in the old Bill may reasonably be said to violate both these provisions, which is another reason to welcome its removal by the 2020 Bill. Moreover, doubts as to ECHR compatibility may be raised with the disciplinary procedure

365 David Harris and others (n 71) 382.

366 *Le Compte, Van Leuven and De Meyere v Belgium* [1981] European Court of Human Rights 6878/75; 7238/75.

367 Harris, O'Boyle, Bates, Buckley (n 37) pg 391.See also Tom Barkhuysen, Michiel van Emmerik, Oswald Jansen, Masha Fedorova, 'Right to a Fair Trial' in Pieter Van Dijk, Fried Van Hoof, Arjen Van Rijn, Leo Zwaak (eds.), *Theory and Practice of the European Convention on Human Rights* (5 edn., Intersentia Ltd 2018) pg 511-512.

368 Pieter Van Dijk, and others, *Theory and Practice of the European Convention on Human Rights* (5th edn, Intersentia Ltd 2018) 858.

as a whole with both Bills. It has been established that a decision surrounding a licence to practise a profession, such as a warrant, is the determination of a civil right and obligation. This in turn subjects it to the benefit of a very important safeguard: the right to be heard by an independent and impartial court or tribunal, at least at last instance.[369] Can the CAJ, at least, as the last appellate body in the current and proposed systems, be said to be such a court or tribunal?

A swift reading of the Venice Commission's appraisal of the CAJ in its 2018 Report[370] suggests that it does not satisfy the requirements under Article 6, as the Report suggests that there should be a right of appeal in cases of judicial discipline from the CAJ to the Courts of Law.[371] Indeed, the most recent constitutional amendments have introduced a right of appeal from decisions of the CAJ to dismiss members of the judiciary to the Constitutional Court.[372] Should the same safeguards be instituted for a decision of the CAJ on lawyer discipline? The answer here lies in the question of whether the CAJ is an independent and impartial tribunal as required by Article 6 for all intents and purposes, and not merely from the judicial discipline point of view.

As a starting point, ECtHR jurisprudence is clear that the tribunal need not be part of the judicial hierarchy, so long as it has the power to decide on an appreciation of the facts and the law following prescribed proceedings.[373] Furthermore, it must have full power to remedy or quash a decision of the lower body; in other words,

369 ibid 550–551.

370 European Commission for Democracy through Law, 'Malta – Opinion on Constitutional Arrangements and Separation of Powers and the Independence of the Judiciary and Law Enforcement' (European Commission for Democracy through Law 2018) Opinion Report Op No 940/2018 <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)028-e>.

371 ibid 52–53.

372 Constitution of Malta, Article 101C. Added by Act XLV of 2020.

373 Pieter Van Dijk, and others (n 77) 598–612.

it must have full jurisdiction. Independence is taken to refer to the relationship between tribunal and other parts of government, while impartiality refers to that between tribunal on the one hand, and the parties and the case on the other. In ***Le Compte***, the ECtHR held that the deciding body satisfied the requirements of Article 6 as it was *"independent of the executive and also of the parties"*. The CAJ seems to satisfy these requirements, as it is free from outside pressure and there are no apparent conflicts of interest or semblances of dependence. Likewise it appears that the CAJ forms its opinion on objective arguments based on evidence produced in the trial.

However, the fact that it may investigate and determine a disciplinary case that it has sent to the Committee when the said Committee does not submit a report of its findings to it within a maximum period of six months[374] absolutely destroys any semblance of impartiality: it acts as judge and prosecutor. This breaches the objective approach adopted by the ECtHR in determining impartiality. This is even more so as the CAJ exercises both advisory and judicial functions in relation to lawyers, which basic framework raised the ECtHR's eyebrows in ***Kleyn***[375].

It is apparent that the CAJ does not fulfil the Article 6 requirements in relation to lawyers, principally due to its lack of impartiality. Fully adhering to ***Kleyn*** above would mean stripping the CAJ of its regulatory and advisory function, vesting it with solely judicial powers. This is admittedly not ideal. Thus, the only satisfactory solution is to subject a CAJ decision to the Courts of Law, ideally the Court of Appeal[376], which

374 Constitution of Malta, Article 101A(6)(b)

375 Kleyn and Others v The Netherlands App Nos 39343/98, 39651/98, 43147/98, 46664/99 (ECtHR, 6 May 2003).

376 Since this is not of so much constitutional significance as the discipline and removal of Judges and Magistrates and thus does not merit to be taken cognizance of by the Constitutional Court.

should have full jurisdiction as Article 6 requires. Arduous though this may seem, it ensures full compliance with Malta's obligations under the ECHR in the event of someone challenging the system all the way through. Nevertheless, the toing and froing between CAJ and Disciplinary Committee under Article 101A(6)(b) should definitely be removed in any case, in order to reduce unnecessary bureaucracy.

PROPOSED REGULATORY AMENDMENTS: OUR OPINION

INTRODUCTION

The preceding sections have highlighted that while the old Bill was a much-needed step in the right direction, the regulatory setup was quite dissatisfactory and created a number of uncertainties and conflicts. The main issue at hand appeared to be the Chamber: its conflicting regulatory and representative roles, its ghost disciplinary powers leading to ambiguity, and other dissatisfactions. As mentioned earlier, the ideal scenario would be to remove the Chamber from the driver's seat and vest the regulatory functions in an entirely separate body.

An alternative regulatory framework was proposed in our critique on the 2012 Bill. The core of the proposal was that the regulatory and disciplinary functions should be exercised by two separate bodies, an Advisory and Regulatory Committee for Advocates (ARCA) (as far as regulation, traineeship and warranting went) and the Committee (restyled Disciplinary Committee, for discipline purposes only). The new Bill goes one step further and vests both in a single body, the Committee for Advocates and Legal Procurators, and increases its composition. This is a very welcome change of stance as it reduces bureaucracy. Our alternative framework is thus not as relevant; however, we felt the need to mention it here for informative and historical purposes, should the discussion on separating the two functions resurface.

Nevertheless, there are issues in the proposed new composition of the Committee, and the regulatory setup *per se*, that should be addressed and rectified. We are thus laying out proposals to improve the system proposed in the 2020 Bill.

It goes without saying that, though we focus here on 'lawyers', we have in mind legal procurators as well.

COMPOSITION OF THE COMMITTEE

We concur and agree with the proposed composition of the Committee under the framework of the new Bill. Indeed, most of the persons proposed were our persons of choice in our original proposal on a new ARCA.[377] There are, however, a few things to point out and suggestions to be made, which we think would give it a more honourable standing.

In our original proposal, we had stressed that there should be no political interference in the warranting process, or indeed the whole regulatory setup, of lawyers[378]. We repeat: there should be no political considerations intertwined into the warranting or disciplinary process, and thus the Minister should have no seat or influence on the Committee either. However, for accountability's sake, we believe the Committee should be bound to submit a yearly report to the Minister on its performance etc. for that year, which can be presented in Parliament as true testimony of a functioning regulatory and disciplinary system. However, we equally stress that the Committee, CAJ, Minister and anyone else should not be blinded in this regard by numbers and statistics, nor should they employ these to pull the wool over the eyes of citizens. There is no need to repeat Mark Twain's famous aphorism on statistics.

Therefore, we suggest the removal of the senior official of the

377 These were a Judge, the State Advocate/representative, the Attorney General/representative, a Chamber representative and the Dean of the Faculty of Laws.

378 This was in relation to the supervisory role the Minister responsible for Justice had over the Chamber.

Ministry for Justice from the Committee. The absence of the senior official in our proposal leaves a one-person gap in the constitution of the Committee.

Our original proposal would have liked to see the Dean of the Faculty of Laws (or a representative) take on this role, and a small aside is due here to explain this. We felt that his presence would be of beneficial influence, since in the 2012 Bill the Chamber had the regulatory duty to develop a system of professional development for the profession and promote its general well-being. The Dean's presence on the ARCA would have helped further this objective, as the lawyer's formation lies in both his education and his training. We believe the Dean's presence would have helped bridge the gap between education and the profession, and ensured lawyers of high standards graduating from the law course. Interviewed on this possibility however, the current Dean expressed his opinion that as an academic institution, he did not feel that the Faculty should be involved in the regulation of the profession. He would, however, be more than happy to be engaged on an informal basis through consultations to see the academic level of the profession improved. We respect this opinion, but we do however feel that this possibility should remain open for discussion with the powers that be.

There is no mention (regrettably) of a regulatory duty of the Committee to develop a system of professional development etc. This is an opportunity to draw attention to this deficiency and ask that it be remedied. The Committee not having the necessary resources and manpower to achieve this task itself, it is not precluded that the Chamber can be delegated this specific role as its *lunga manus*. In this case, we stick to our view that the Dean on the Committee would be a welcome addition.

Should the Dean for some reason or other not make the cut, and the one-person gap persists, we are against adding a fourth Chamber

representative, firm to our view that a lobby group should not have a majority on such a Committee. Neither should one add another Attorney-General or State Advocate representative, as the current balance seems to be good. We thus conclude that no person should replace the senior official of the Ministry, bringing the number of members on the Committee down to six.

However, to avoid equalities in votes, stalemates and other encumbrances, we suggest the chairperson have a casting vote together with his original vote (something in our original proposal), for one main reason. The casting vote should encourage the members to reach an agreeable and common solution to all issues that arise. Additionally, to give the Chair a casting vote only would be to give the Chamber a majority in most cases, and we have already expressed ourselves on this matter. Furthermore, we suggest that the procedure laid down in the new Bill only allow the casting vote to be engaged after a second round of discussions. Thus, the procedure would be that, where an impasse on a particular issue is reached, the decision be put off to the next meeting to allow time for reflection. If in the next meeting an impasse is again reached, then the chairperson's casting vote would be triggered to decide the matter. This 'impasse procedure' again encourages the members to arrive at an amicable solution or conclusion, as the case may be. This procedure can also be adopted if the Dean is on the Committee, in which case the Chair would have a casting vote only.

Finally, we had also proposed that the ARCA be permanently constituted, and we reiterate this for the Committee, and indeed the CAJ as well. By this, we mean that once the term of appointment of the incumbent members is over, these would remain in office until a new member to replace them is decided upon, to avoid stalemates. There is thus no need to resort to the President of Malta to appoint the persons he deems in his personal judgement fit for the respective

positions, except for when the Committee comes to be first constituted following the Bill's promulgation. We are also of the opinion that the terms of appointment be renewable with no limit to the maximum number of terms any one individual may spend on the Committee.

NON-DISCIPLINARY FUNCTIONS OF THE COMMITTEE

We are in full agreement with the way the functions of the Committee are to be exercised in relation to non-disciplinary matters under the new Bill. It is imperative for the Committee to be the one advising the President of Malta to issue a warrant, and for the President to be bound by this advice. The keeping of a Register (presumably electronic) is another welcome addition, as is the retention of the judicial panel to vet applicants as part of the warranting process.

One remarkable regression under the 2020 Bill as opposed to the 2012 Bill is the complete lack of regulation of trainee lawyers. We feel that the system provided for in the 2012 Bill in relation to the vetting and registration of trainee lawyers should be retained, but naturally vested in the Committee.

There should also be appeals from a decision of the Committee to not recommend an applicant's warranting, or traineeship, to the CAJ, since this relates more to the merits of the candidate.

DISCIPLINARY SYSTEM

The disciplinary system should remain as is, with appeals to the CAJ and the Commission advising the President to suspend or revoke the warrant. The proceedings should of course ensure and be conducive of the speedy imparting of justice required in such a delicate profession. This way, the lawyer is not left in the dark for too

long.

The only drawback perceived in this system, pointed out in the discussion on human rights, is the lack of a final decision by an independent and impartial Court or Tribunal. This is a necessary addition to secure human rights compatibility.

One thing that should be highlighted is the power of the President of Malta to forgive the incapacity to practise the profession. This is presumably a general power, which in the absence of specific provision to the contrary is to be exercised on the advice of the Government of the day. To this, we reiterate our position that political influence in the profession should be avoided at all costs, but acknowledge the merit in granting a disbarred or temporarily disabled lawyer the opportunity to be reinstated in his profession on certain grounds. We believe this decision should be in the hands of the CAJ through a petition system on the part of the lawyer seeking reinstatement.

This petition system should not be viewed as the equivalent to a retrial in practice, and thus there should be set periods after the decision to disable the lawyer within which he cannot petition, as well as a general ground of inadmissibility based on frivolity. The grounds for considering any petition put forward should be laid down at law and certain, with the guiding principle being proof of good conduct/ reform subsequent to the decision to disable him. This is because the integrity of the profession should be the utmost priority. We believe this system is far more conducive of certainty and beneficial to the profession's integrity, as opposed to the new Bill's blanket power on the President (read, Government) to *"at any time […] remove the disability"*.[379]

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379 ibid, Article 7.

THE CODE OF ETHICS

The Code of Ethics for lawyers should continue to be in the hands of the Committee, as advisor to the CAJ on this matter. The new composition of the Committee places it in a better position to draft a sound Code of Ethics acceptable by the majority of the profession.

It is also our opinion that the Code of Ethics should have the force of law, as a legally binding instrument, particularly as a lawyer stands to face disciplinary proceedings for its breach. Furthermore, the definition of 'misconduct' is tied to a breach of the Code of Ethics in both the current CAJ Act and its amended version following the promulgation of the new Bill as it stands.[380]

This necessarily requires that the Code of Ethics form part of subsidiary legislation, which would then be placed on the table of the House as per the Interpretation Act[381] and published as a legal notice, as is the position with Notary Publics.[382] Presently, there are no official regulations on the Legislation.mt website for the Code of Ethics of Advocates, which would be a step in the right direction to increase accessibility and ease of use.

380 Commission for the Administration of Justice Act, Article 2.

381 Interpretation Act 1975 (Chapter 249, Laws of Malta).

382 Notaries' Code of Ethics Regulations 2018 (SL.55.09, Laws of Malta).

PROPOSED REGULATORY AMENDMENTS: A SUMMARY

The amendments listed here are the ones proposed in the preceding sections, which are, in our view, the healthiest options and fully ECHR-compliant. They are the ones we would ideally like to see in the amended new Bill during the rest of its legislative *iter* through the House of Representatives, or in an amendments made to it in the future once it becomes law.

- Delineate the Chamber's representative functions;
  - Make provision for the right of warranted lawyers to join the Chamber;
  - Clarify that the Chamber is, at heart, a lobby/ representative group for its own members with a view to ameliorate the whole profession;

- Amend the constitution of the Committee;
  - Remove the Senior Official of the Ministry from the Committee;
  - Add the Dean of the Faculty of Laws (if the Committee is given the duty of ensuring professional development and the general well-being of the profession);
    - In this case, give the Chair a casting vote only;
    - If not, give the Chair an original vote too;
  - Introduce the 'impasse procedure' mentioned;
  - Provide for the permanent constitution of the Committee;

- Have the Committee compile a yearly report of its activities and send it to the Minister;
- Make provision for the regulation of traineeships as mentioned;
- Add a right of appeal from a CAJ decision to the Court of Appeal;
- Remove the CAJ's power to refer disciplinary issues to the Disciplinary Committee and investigate and determine the matter itself if the latter defaults within 4 months;
- Replace the President's power to remove a disability to practise with a petition system before the CAJ as mentioned;
- Have a single Code of Ethics and do away with separate Professional Rules;
    - Have the Code of Ethics promulgated by the Minister on the advice of the CAJ as a Legal Notice to have the force of law;
- Implement any other amendments ancillary to any, and all of the above.

PROPOSALS -
A PATHWAY FORWARD

PROPOSAL 1:
TRAINEE LAWYERS, AND THE *PRATTIKA* SYSTEM

1. **Trainee lawyers**, commonly known in Maltese as those aspiring lawyers doing *'prattika'*, are an essential part of the legal education, and pursuing a year of *prattika* is a requirement in order to be admitted into the profession.

1.1. At the moment there are no official guidelines when it comes to the *prattika* requirement before being admitted to the profession. A Lawyers' Act should include provisions which outline who may provide *prattika*, as well as what that *prattika* should consist of.

1.2. The Committee of Advocates and Legal Procurators should have a system where those people who are beginning their *prattika* inform the Committee in writing, noting with whom the *prattika* shall be undertaken, as well as confirmation of the part of the tutoring advocate that they accept to tutor the pupil.

1.3. The Committee should maintain a register of all trainee advocates who are undertaking pupillage.

1.4. The advocate who is taking in students to do their *prattika* should be a lawyer who has been in continuous practice for the previous five years, to ensure that they are both experienced as well as in touch with any recent developments in the law.

1.4.1. Provided that lawyers who have ceased practising for an amount of time and therefore do not meet the five years continuous practice requirement should be able to apply to the Committee to be exempted from such requirement on a case by case basis.

1.4.2. Advocates which have been admonished by the Committee should cease taking on students for a time as to be set by the Committee.

1.4.3. A limit of the number of students per advocate should be in place, so that the advocate will be able to provide individual attention for each pupil.

1.5. If the advocate providing pupillage is not adhering to his duties and is neglecting their pupils, the Committee should institute disciplinary proceedings against the advocate, and if it is satisfied that the advocate was not justified in their actions, the Committee should have the ability to disallow the advocate from taking on more students, either temporarily or perpetually, as the case may be.

PROPOSAL 2:
THE REGISTRATION OF LAW FIRMS

2. Provide special provisions to regulate and **register law firms**.
    - 2.1. Clarification on whether partners are jointly and severally liable for the malpractice of one of the partners.
    - 2.2. An explanation on the relationship between associates of a firm and the firm itself, what acts they may do when representing clients in the name of the firm, etc.
    - 2.3. Recognition of the United Kingdom system of barristers' chambers, where while a number of advocates are associated together under the same roof, as well as sharing certain expenses, they are ultimately self-employed and do not have a system of profit-sharing as in a law firm proper.
    - 2.4. Protection of certain terms such as *'advocates'*, *'legal'*, and *'associates'*, which should only be used in registered law firms so as not to mislead the public.
    - 2.5. A register of law firms should be maintained by the Committee, with a list of partners and other advocates which form part of such firm.

PROPOSAL 3:
CERTAIN SERVICES SHOULD ONLY BE PROVIDED BY WARRANTED ADVOCATES

3. Bring the provisions found in the Code of Police Laws into the 21st Century by enforcing the law which provides that **certain services should only be provided by warranted advocates**.

    3.1. While in principle this law works, it is not being enforced and therefore those who are not warranted legal professionals have been giving legal advice, therefore encroaching on the services which ought to be provided solely by legal professionals.

    3.2. The provisions found in the 2012 bill, in theory are a good compromise which reserves certain services solely for warranted professionals, such as representation in the courts or tribunals, as well as the drafting and preparation of any legal document or contract.

    3.3. Other legal services are said to be *restricted*, which would allow other professionals to provide certain legal advice within their area of expertise. An example would be architects who would be permitted to provide legal advice within the sphere of development planning law.

3.3.1. It is crucial however that such restricted professions, while they are providing legal services, should be required to follow the ethical guidelines present for legal professionals. This would include adherence to the Code of Ethics drafted by the Commission for the Administration of Justice, and also require them to be subjected to the jurisdiction of the Committee for Advocates and Legal Procurators (perhaps with an altered membership when dealing with such professions), so that they may respond to any disciplinary proceedings which may arise.

3.3.1.1. In no way however should the professional and client be subject to professional secrecy, as this is a privilege which should not be diluted excessively.

3.3.2. It should also be clear to the client that while the professional in question is allowed to provide certain legal services, they are not legal professionals as such, and therefore it is the client's right to be informed as much.

PROPOSAL 4:
REFORMING THE CODE OF ETHICS

4. **Reform the Code of Ethics**, with a look at the punishments which are levied on the contravening of the ethical standards.
    - 4.1. The maximum punishment currently is a penalty which cannot exceed 10% of the annual salary of the Attorney General, which amounts to around six thousand euros.
    - 4.2. We maintain that for serious transgressions, the only acceptable remedy is the disbarment of the offender, so that their actions will not impact the reputation of the profession as a whole.
    - 4.3. Such Code of Ethics should be included as a part of subsidiary legislation, similar to the situation in place when it comes to the Code of Ethics of the notarial profession, which is included under subsidiary legislation of Chapter 55 of the Laws of Malta.

PROPOSAL 5:
REVAMPING THE COMMITTEE FOR ADVOCATES AND LEGAL PROCURATORS

5. Revamp the **Committee for Advocates and Legal Procurators**

5.1. Under Bill 181 of 2020, the makeup of the Committee is altered to include a more diverse group of advocates, including a balance of three members nominated by the Chamber of advocates, and one member each from the Attorney General, State Advocate, and the Ministry of Justice, with the Chairperson being a retired judge.

5.1.1. While we applaud the effort to diversify the members of the Committee, it is contrary to good governance that a member of the Ministry is present. Every effort to ensure the impartiality and apolitical nature of the Committee should be maintained. Further to this, the seat occupied by the Minister's representative could be filled by a representative of the Dean of the Faculty of Laws, as the educator of future lawyers.

5.1.2. In the interest of achieving consensus, we believe that the Chairperson should only have a casting vote and not an original vote, in order to act as much as possible as an arbiter between the parties. In the same vain, if there is an impasse between the parties, the matter will be postponed for further discussion, with the casting vote only being used in this subsequent meeting.

5.2. When it comes to the granting of the warrant, it should be such Committee which advises the President on the warrant, and not the Minister of Justice as the system works at present.

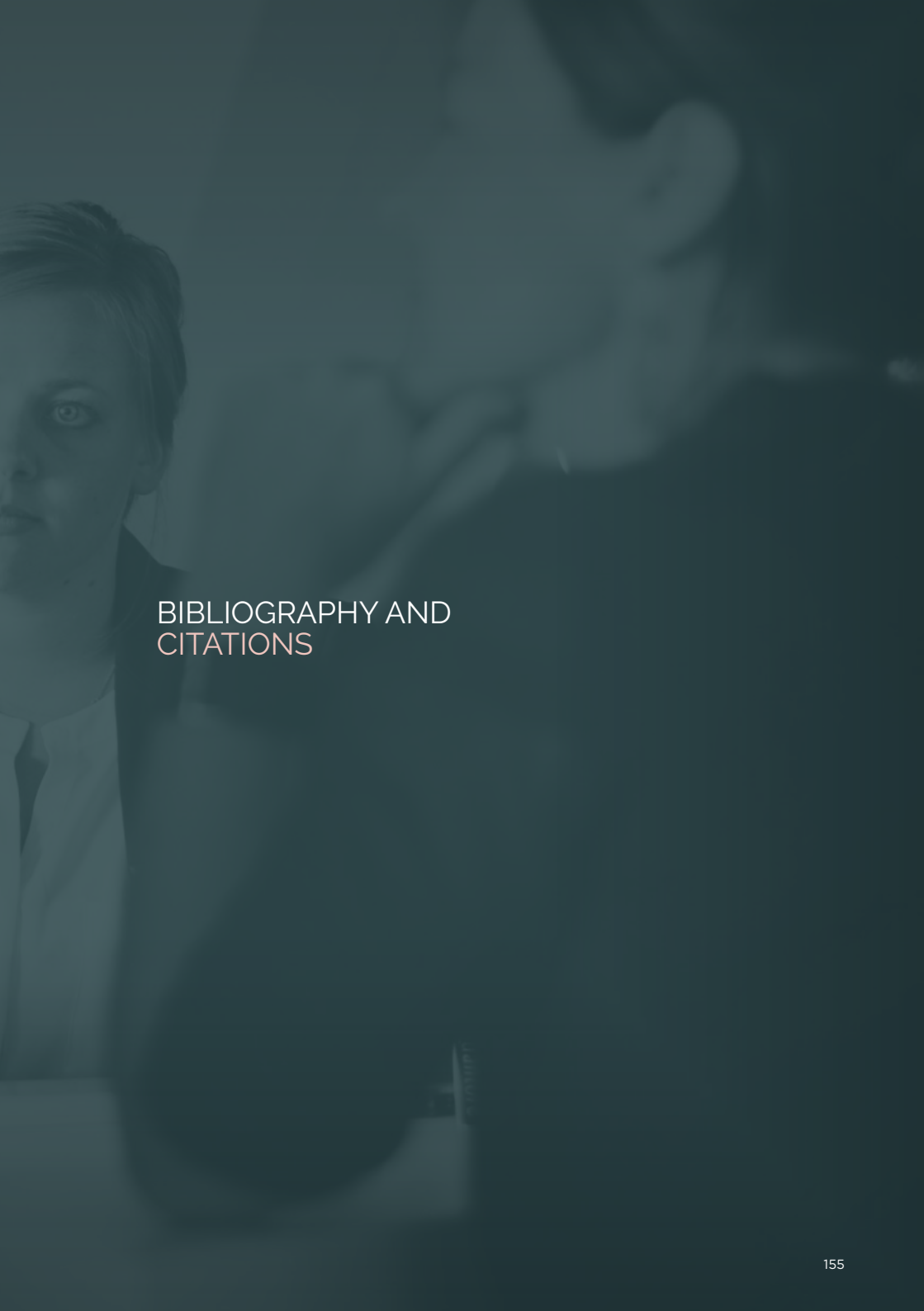
5.3. Bill 181 of 2020 also provides that the Committee must certify that the applicant for the warrant is *"fit and proper"*. While in principle this is a step in the right direction, an attempt should be made to define what *"fit and proper"* means in this context, with the ability for the Committee to interview candidates in order for them to be able to explain any possible past transgressions.

5.4. As has already been outlined in the sections relating to law firms and trainee lawyers, the Committee should keep and make available registers of the above, as well as all warranted lawyers, with contact information relating to such professionals.

PROPOSAL 6:
ONE WARRANT AT A TIME

6. When it comes to the warrant which enables one to partake in the profession, care should be taken to ensure that **a person should only hold one warrant at a time**. The holding of multiple warrants simultaneously is an ethical grey area which can leave the client confused as to the capacity of the professional in a particular situation.

6.1. This is particularly relevant with regards the attorney client privilege found within the legal profession. If one is exercising the warrant of an accountant and a lawyer simultaneously, and the client has a meeting with the professional in the capacity of an accountant, surely professional privilege should not apply. It is however not always clear in what capacity one is acting, and therefore it is crucial that people are not allowed to wear multiple hats in this way.



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