

## CHAPTER 27:20

### ESTATE ADMINISTRATORS ACT

Act 16/1998, 22/2001 (s. 4), 22/2001 (s. 4), 14/2002 (s. 44)

#### ARRANGEMENT OF SECTIONS

##### PART I

###### PRELIMINARY

###### Section

1. Short title.
2. Interpretation.

##### PART II

###### COUNCIL OF ESTATE ADMINISTRATORS

3. Establishment of Council of Estate Administrators.
4. Functions and powers of Council.
5. Membership of Council.
6. Disqualifications for membership of Council.
7. Terms and conditions of office of members of Council.
8. Vacation of office by members of Council.
9. Meetings and procedure of Council.
10. Committees of Council.
11. Minutes of proceedings of Council and committees.
12. Secretary and other staff of Council.
13. Funds of Council.
14. Financial year of Council.
15. Accounts of Council.
16. Validity of decisions and acts of Council and committees.
17. Execution of instruments by Council.
18. Exemption from liability of Council and its members, employees and agents.

##### PART III

###### REGISTRATION OF ESTATE ADMINISTRATORS

19. Register of Estate Administrators.
20. Register to be open to inspection.
21. Qualifications for registration.
22. Application for registration.
23. Registration.
24. Cancellation or suspension of registration.
25. Restoration of registration.

##### PART IV

###### PRACTISING CERTIFICATES

26. Prohibition against practice without practising certificate.
27. Application for practising certificate.
28. Issue or refusal of practising certificate.
29. Period of validity of practising certificates.
30. Terms and conditions of practising certificates.
31. Withdrawal of practising certificate.
32. Surrender of withdrawn or invalid practising certificate.

##### PART V

###### TRUST ACCOUNTS

33. Registered persons to maintain trust accounts.
34. Audit of trust accounts.
35. Trust account moneys excluded from insolvency or attachment.

36. Control of operation of trust account.
37. Rights of bank at which trust account kept.
38. Saving of set-off, etc., against trust account.
39. Circumstances in which trust account need not be kept.
40. Trust account of company or partnership carrying on business of estate administrator.
41. Offences in relation to trust accounts.

## PART VI

### ESTATE ADMINISTRATORS COMPENSATION FUND

42. Establishment of Compensation Fund.
43. Constitution of Compensation Fund.
44. Compensation for loss due to registered person's dishonesty.
45. Subrogation of Council.
46. Contributions may be refunded.
47. Insurance.
48. Investments.
49. Borrowing.
50. Financial year of Compensation Fund.
51. Audit of Compensation Fund.
52. Expenditure from Compensation Fund.
53. Fidelity cover.

## PART VII

### DISCIPLINARY POWERS OF COUNCIL

54. Improper or disgraceful conduct.
55. Disciplinary powers in respect of registered persons.
56. Disciplinary powers in respect of persons associated with registered persons.
57. Exercise of disciplinary powers by Council on conviction of offence.
58. Court to notify Council of certain convictions or conduct.

## PART VIII

### GENERAL

59. Appeals against decisions of Council.
60. Canvassing, touting or advertising.
61. Offences by or in respect of unregistered persons.
62. Special provisions relating to companies or partnerships.
63. Supervision of employees.
64. Information to be notified to secretary of Council.
65. Remuneration not recoverable in certain cases.
66. Rules.
67. Evidence.
68. Amendment of Cap. 6:01.
69. Amendment of Cap. 6:04.
70. Amendment of Cap. 24:03.

## SCHEDULE

Powers of Council.

**AN ACT to establish a council to be known as the Council of Estate Administrators and to provide for its functions and powers; to provide for the registration of estate administrators; to amend the Administration of Estates Act [*Chapter 6:01*], the Insolvency Act [*Chapter 6:04*] and the Companies Act [*Chapter 24:03*]; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement : 1st March, 2000.]

PART I  
PRELIMINARY

**1 Short title**

This Act may be cited as the Estate Administrators Act [*Chapter 27:20*].

**2 Interpretation**

In this Act—

- “appointed member” means a member of the Council other than the Master or the Chief Magistrate of Zimbabwe;
- “certificate of registration” means a certificate issued in terms of subsection (2) of section *twenty-three* or a duplicate certificate of registration issued in terms of rules;
- “Compensation Fund” means the Estate Administrators Compensation Fund established by section *forty-two*;
- “Council” means the Council of Estate Administrators established by section *three*;
- “fixed date” means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act;
- “member” means a member of the Council;
- “Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “practising certificate” means a practising certificate issued in terms of section *twenty-eight* and includes a duplicate practising certificate issued in terms of rules;
- “Register” means the Register of Estate Administrators established in terms of section *nineteen*;
- “registered” means registered in the Register in terms of this Act;
- “rules” means rules made by the Council in terms of section *sixty-six*;
- “secretary of the Council” means the person appointed by or assigned to the Council as its secretary in terms of section *twelve*;
- “work of an estate administrator” means any act performed by a person in a capacity as—
- (a) executor of the estate of a deceased person; or
  - (b) tutor or curator of a person under a legal disability or of such a person’s estate; or
  - (c) trustee or provisional trustee of an insolvent estate; or
  - (d) liquidator or provisional liquidator or judicial manager of a company; or
  - (e) agent of an executor, tutor, curator, trustee, liquidator or judicial manager referred to in paragraphs (a) to (d).

PART II  
COUNCIL OF ESTATE ADMINISTRATORS

**3 Establishment of Council of Estate Administrators**

There is hereby established a council, to be known as the Council of Estate Administrators, which shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of doing anything that bodies corporate may do by law.

**4 Functions and powers of Council**

- (1) Subject to this Act, the functions of the Council shall be—
- (a) to maintain the Register;
  - (b) to consider and determine applications for registration;
  - (c) to conduct examinations to qualify persons for registration as estate administrators;
  - (d) to issue practising certificates to registered persons and, where necessary or appropriate, to cancel or suspend such certificates;
  - (e) to administer the Compensation Fund;
  - (f) to define and enforce ethical practice and discipline among registered persons;
  - (g) to take such steps as the Council considers necessary or desirable to advance the standing and effectiveness of the profession of estate administration.
- (2) Subject to this Act and any other law, the Council shall have power to do anything specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

**5 Membership of Council**

- (1) The Council shall consist of—
- (a) a chairman, who shall be a registered legal practitioner of not less than seven years’ standing, who shall be appointed by the Minister for his knowledge and experience in the administration of estates; and
  - (b) the Master of the High Court referred to in section 3 of the Administration of Estates Act [*Chapter 6:01*]; and

- (c) the Chief Magistrate of Zimbabwe referred to in paragraph (a) of subsection (3) of section 7 of the Magistrates Court Act [Chapter 7:10]; and
- (d) one person appointed by the Minister from a list of not fewer than three names submitted by the Council of the Law Society of Zimbabwe established by the Legal Practitioners Act [Chapter 27:07]; and
- (e) one person appointed by the Minister from a list of not fewer than three names submitted by the Council of the Institute of Chartered Accountants established by the Chartered Accountants Act [Chapter 27:02]; and
- (f) one person appointed by the Minister from a list of not fewer than three names submitted by the Council of the Institute of Chartered Secretaries established by the Chartered Secretaries (Private) Act [Chapter 27:03]; and
- (g) two persons appointed by the Minister from a list of not fewer than six names submitted by one or more organisations which, in the Minister's opinion, represent administrators of estates who are not represented by the bodies referred to in paragraphs (d) to (f); and
- (h) not more than three other members appointed by the Minister, none of whom shall be a person in the full-time employment of the State.

(2) If a body referred to in paragraph (d), (e), (f) or (g) of subsection (1) fails to submit a list of names in terms of the paragraph concerned within a reasonable time after being called upon to do so, the Minister may appoint any person who is a member of the body or profession concerned to fill the vacancy on the Council.

## **6 Disqualifications for membership of Council**

A person shall not be appointed as a member, and no person shall be qualified to hold office as an appointed member, if—

- (a) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (b) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (c) the Council has, in terms of this Act—
  - (i) directed the deletion of his name from the Register; or
  - (ii) ordered his suspension from practice; or
  - (iii) prohibited his registration;
 and his name has not been restored to the Register or the period of his suspension or prohibition has not elapsed, as the case may be;
 

or
- (d) within the period of five years immediately preceding the date of his proposed appointment, he has been sentenced in any country to a term of imprisonment imposed without the option of a fine, whether or not any portion of the sentence has been suspended, and he has not received a free pardon.

## **7 Terms and conditions of office of members of Council**

(1) Subject to subsection (2) and to section *eight*, an appointed member shall hold office for such period, not exceeding three years, as the Minister may fix on his appointment.

(2) On the expiry of an appointed member's term of office, he shall continue to hold office until he has been re-appointed or his successor has been appointed:

Provided that an appointed member shall not hold office in terms of this subsection for more than six months.

(3) An appointed member who resigns or retires shall be eligible for re-appointment.

(4) Members shall hold office on such terms and conditions as the Minister, with the approval of the Minister responsible for finance, may fix.

(5) A member of the Council shall be paid—

- (a) such remuneration, if any, as the Minister, with the approval of the Minister responsible for finance, may fix for members generally;
- (b) such allowances, if any, as the Minister, with the approval of the Minister responsible for finance, may fix to meet any reasonable expenses incurred by the member in connection with the business of the Council.

## **8 Vacation of office by members of Council**

(1) An appointed member shall vacate his office and his office shall become vacant—

- (a) after giving the Minister such period of notice of intention to resign as may be fixed in his terms and conditions of service or, if no such period has been fixed, after the expiry of one month after the date he gives such notice, or after the expiry of such other period of notice as he and the Minister may agree; or
- (b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine in any country; or

- (c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of section *six* to hold office as a member;  
or
- (d) if he is required in terms of subsection (2) to vacate his office.

(2) The Minister, after consulting the Council, may require an appointed member to vacate his office if the member—

- (a) has been guilty of conduct which renders him unsuitable to continue to hold office as a member; or
- (b) has failed to comply with any term or condition of his office fixed in terms of section *seven*; or
- (c) is mentally or physically incapable of efficiently exercising his functions as a member.

(3) The Minister, on the recommendation of the Council, may require an appointed member to vacate his office if the Minister is satisfied that the member has been absent without the permission of the chairman of the Council from three consecutive meetings of the Council, of which he has had notice, and that there was no just cause for the member's absence.

(4) The Master and the Chief Magistrate of Zimbabwe shall cease to hold office as members if they cease to hold office as Master or Chief Magistrate, as the case may be.

(5) On the death of, or the vacation of office by, a member, the Minister shall, subject to section *five*, appoint a person to fill the vacancy.

## **9 Meetings and procedure of Council**

(1) The Council shall hold its first meeting on such date and at such place as the Minister may fix and thereafter, subject to this Act, the Council shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that the Council shall meet at least three times a year.

(2) The chairman of the Council may himself at any time and shall, at the request of not fewer than four members, convene a special meeting of the Council, which meeting shall be convened for a date not sooner than seven days and not later than thirty days after receipt of such request.

(3) Subject to subsection (4), the chairman of the Council shall preside at meetings of the Council.

(4) If the chairman of the Council is absent from a meeting of the Council, the members present may elect one of their number to preside at the meeting as chairman.

(5) A majority of members shall form a quorum at any meeting of the Council.

(6) All acts, matters or things authorized or required to be done by the Council may be decided by a majority vote at a meeting of the Council at which a quorum is present.

(7) At all meetings of the Council each member present shall have one vote on each question before the Council:

Provided that, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(8) Any proposal circulated among all members and agreed to by a majority of them shall be of the same effect as a resolution passed at a duly constituted meeting of the Council:

Provided that, if a member requires that any such proposal be placed before the Council, this subsection shall not apply to the proposal.

## **10 Committees of Council**

(1) For the better exercise of its functions, the Council may establish committees to which it may delegate, either absolutely or subject to conditions, such of its functions as it thinks fit:

Provided that—

- (i) such a delegation shall not prevent the Council from exercising the functions concerned;
- (ii) the Council may amend or withdraw any decision of a committee in the exercise of its delegated functions.

(2) The Council may appoint persons who are not members of the Council to be members of any committee and, with the approval of the Minister, may fix the terms and conditions of office of such persons.

(3) The procedure of any committee shall be as fixed by the Council.

(4) Subject to this section, subsection (5) of section *seven* and subsections (4) to (8) of section *nine* shall apply, *mutatis mutandis*, to committees and members thereof as they apply to the Council and its members.

## **11 Minutes of proceedings of Council and committees**

(1) The Council shall cause minutes of all proceedings of and decisions taken at all meetings of the Council and of committees to be entered in books kept for the purpose.

(2) Any minutes referred to in subsection (1) which purport to be signed by the chairman of the meeting to which the minutes relate or by the chairman of the next following meeting of the Council or of the committee

concerned, as the case may be, shall be accepted for all purposes as *prima facie* evidence of the proceedings of and decisions taken at the meeting concerned.

## **12 Secretary and other staff of Council**

The Council shall appoint a secretary and such members of staff as will enable the Council to carry out its functions in terms of this Act:

Provided that the Minister, with the approval of the Public Service Commission, may assign persons employed in his Ministry to act as the Council's secretary and members of staff.

## **13 Funds of Council**

The funds of the Council shall consist of—

- (a) fees paid for registration and for the issue of practising certificates; and
- (b) any moneys to which the Council may be entitled from time to time, whether by way of fees, gifts or otherwise.

## **14 Financial year of Council**

The Council's financial year shall be the period of twelve months ending on the 31st December in each year.

## **15 Accounts of Council**

(1) The Council shall keep proper books of account and other records relating thereto in respect of all its activities, undertakings and property, including such particular accounts and records as the Minister may direct.

(2) The Council shall prepare and submit to the Minister a statement of accounts in respect of each financial year or such other period as the Minister may direct.

(3) The Council shall—

- (a) appoint as auditors one or more persons approved by the Minister who are registered as public auditors in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; and
- (b) ensure that the accounts kept in terms of subsection (1) are examined once in each financial year by the auditors, in accordance with such directions as the Minister may give the Council from time to time.

## **16 Validity of decisions and acts of Council and committees**

No decision or act of the Council or any committee shall be invalid solely because, at the time the decision was taken or the act was done or authorized—

- (a) there were one or more vacancies in the membership of the Council or committee, as the case may be; or
- (b) a disqualified person acted as a member of the Council or the committee, as the case may be.

## **17 Execution of instruments by Council**

Any agreement, certificate, notification or instrument approved by the Council may be entered into or executed by any person generally or specially authorized by the Council for that purpose.

## **18 Exemption from liability of Council and its members, employees or agents**

Neither the Council nor any member, employee or agent thereof shall be liable for any loss, injury or damage sustained by a person as a result of the *bona fide* exercise or performance by or on behalf of the Council of a function conferred or imposed upon the Council by or in terms of this Act:

Provided that this section shall not be construed so as to prevent a person from recovering compensation for any such loss, injury or damage caused by negligence or breach of contract.

# **PART III**

## **REGISTRATION OF ESTATE ADMINISTRATORS**

### **19 Register of Estate Administrators**

(1) The Council shall establish a register, to be known as Register of Estate Administrators.

(2) The secretary of the Council shall be responsible, subject to any directions given to him by the Council, for maintaining the Register and ensuring that entries are made in the Register recording—

- (a) the name and such other particulars as may be prescribed of each person whom the Council has directed shall be registered; and
- (b) the fact that a practising certificate has been issued to a registered person, or that any such practising certificate has ceased to be valid; and
- (c) particulars of the cancellation or suspension of any person's registration, and of the restoration of any such cancelled registration or the termination of any such suspension; and
- (e) any necessary corrections or alterations to any particulars or facts referred to in paragraph(a), (b) or (c); and
- (f) any other particulars that may be prescribed or that the Council may determine.

### **20 Register to be open to inspection**

Any person may inspect the Register and make copies of any entry therein at all reasonable times on payment of such fee as may be prescribed:

Provided that no such fee shall be payable by—

- (a) a police officer or member of the Public Service acting in the course of his duty as such; or
- (c) any other person whom the secretary of the Council has authorized to inspect the Register.

## **21 Qualifications for registration**

(1) Subject to subsection (2), a person shall be qualified for registration as an administrator of estates if—

- (a) he is registered as a legal practitioner in terms of the Legal Practitioners Act [*Chapter 27:07*]; or
- (b) he is registered as a public accountant or public auditor in terms of the Public Accountants and Auditors Act [*Chapter 27:12*]; or
- (c) he is a member of the Institute of Chartered Secretaries and Administrators in Zimbabwe established in terms of the Chartered Secretaries (Private) Act [*Chapter 27:03*]; or
- (d) he has passed such examinations set by the Council as may be prescribed; or
- (e) he possesses such qualifications and additionally, or alternatively, has such experience as may be prescribed or as the Council considers qualifies him for registration.

(2) A person shall not be qualified for registration if—

- (a) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
- (b) he has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
- (c) within the period of five years immediately preceding his application for registration—
  - (i) he has been convicted inside or outside Zimbabwe of a criminal offence which, in the opinion of the Council, is of a disgraceful or dishonourable nature; or
  - (ii) he has behaved in a manner which, in the opinion of the Council, is of a disgraceful or dishonourable nature;

or

- (d) he has been certified either inside or outside Zimbabwe to be mentally disordered or intellectually handicapped or of unsound mind in terms of the Mental Health Act, 1996 (No. 15 of 1996), or an equivalent law in a foreign country, and the certification remains in force.

(3) Before reaching a decision as to whether or not a person is disqualified for registration in terms of subsection (2), the Council shall—

- (a) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Council thinks fit; and
- (b) pay due regard to any representations made by him in terms of paragraph (a).

## **22 Application for registration**

Any person who wishes to be registered as an administrator of estates shall submit to the secretary of the Council an application therefor in the form and manner prescribed, together with the prescribed registration fee, and the secretary shall forthwith cause the application to be laid before the Council.

## **23 Registration**

(1) The Council shall consider every application for registration laid before it in terms of section *twenty-two*, and—

- (a) if the Council is satisfied that the applicant is qualified for registration, the Council shall direct the secretary of the Council to register the applicant;
- (b) if the Council is not so satisfied, the Council shall refuse the application and direct the secretary of the Council to notify the applicant in writing of its decision.

(2) Whenever the secretary of the Council registers a person in terms of this section, he shall issue that person with a certificate of registration in the form prescribed.

## **24 Cancellation or suspension of registration**

(1) Subject to subsection (2), the Council shall direct the secretary of the Council to cancel the registration of any registered person who—

- (a) having been qualified for registration in terms of paragraph (a), (b) or (c) of subsection (1) of section *twenty-one*, ceases to be so qualified; or
- (b) has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country; or
- (c) has made an assignment to or arrangement or composition with his creditors in terms of a law in force in any country; or
- (d) is certified either inside or outside Zimbabwe to be mentally disordered or intellectually handicapped or of unsound mind in terms of the Mental Health Act, 1996 (No. 15 of 1996), or an equivalent law in a foreign country.

(2) Before reaching a decision as to whether or not a registered person's registration should be cancelled in terms of subsection (1), the Council shall—

- (a) inform him in writing of the grounds on which it might reach such a decision and afford him a reasonable opportunity to make representations in the matter, in writing or in person as the Council thinks fit; and
- (b) pay due regard to any representations made by him in terms of paragraph (a).

(3) Subject to subsection (2) of section *fifty-five*, the secretary of the Council shall cancel the registration of a registered person or mark his suspension from practice in the Register, as the case may be, when directed to do so by the Council following an inquiry in terms of that section.

(4) Whenever the secretary cancels or suspends a person's registration in terms of this section, he shall—

- (a) notify that person, in writing, of the cancellation or suspension; and
- (b) cause notice of the cancellation or suspension to be published in the *Gazette*.

## **25 Restoration of registration**

(1) A person whose registration has been cancelled in terms of section *twenty-four* may apply for his registration to be restored, and sections *twenty-one* to *twenty-three* shall apply, *mutatis mutandis*, as if he were applying for registration.

## **PART IV**

### **PRACTISING CERTIFICATES**

## **26 Prohibition against practice without practising certificate**

(1) No registered person shall—

- (a) perform the work of an estate administrator; or
- (b) solicit appointment as—

- (i) the executor of the estate of a deceased person; or
- (ii) the tutor or curator of a person under legal disability or of the estate of such a person;

whether directly or indirectly, by himself or in partnership or association with any other person, except in accordance with the terms and conditions of a valid practising certificate.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) Conviction for an offence under subsection (2) shall not be a bar to a further prosecution or conviction if the offence continues.

(4) No person shall be entitled to maintain an action or suit for the recovery of any fee, reward or reimbursement for or in respect of any act referred to in paragraph (a) of subsection (1) at a time when he was not in possession of a valid practising certificate.

## **27 Application for practising certificate**

(1) A person who wishes to obtain a practising certificate shall apply to the secretary of the Council in the form and manner prescribed, and shall submit with his application—

- (a) subject to subsection (2), such contribution to the Compensation Fund as may be prescribed; and
- (b) such fee, certificates, documents and information as may be prescribed or as the secretary of the Council may reasonably require.

(2) No contribution shall be payable to the Compensation Fund by an applicant who satisfies the secretary of the Council that—

- (a) he is a member of a profession or professional association and, as such, liable to pay contributions to a compensation fund; and
- (b) adequate compensation will be payable from the compensation fund referred to in paragraph (a) to persons who suffer loss arising out of his practice as an administrator of estates; and
- (c) he has fully paid all contributions currently due by him to the compensation fund referred to in paragraph (a).

## **28 Issue or refusal of practising certificate**

(1) On receipt of an application for a practising certificate in terms of section *twenty-seven*, the secretary of the Council shall issue a practising certificate to the applicant if he is satisfied that the applicant—

- (a) is a registered person; and
- (b) the requisite contributions to the Compensation Fund have been submitted with the application;

and, if he is not so satisfied, he shall refuse to issue the practising certificate concerned and shall advise the applicant accordingly.

(2) Any person who is aggrieved by a refusal of the Secretary of the Council to issue him with a practising certificate in terms of subsection (1) may appeal against the refusal to the Council within such period and in such form and manner as may be prescribed.

(3) On an appeal in terms of subsection (2), the Council may give such decision in the matter as it thinks appropriate.

### **29 Period of validity of practising certificates**

(1) Subject to subsection (2), a practising certificate shall remain valid—

(a) for the period of twelve months from the 1st January next following the application therefor; or

(b) if the applicant so requires, from the date of its issue until the 31st December of the year in which it is issued.

(2) A practising certificate issued to a person—

(a) whose name is deleted from the Register; or

(b) who is suspended from practice in terms of this Act;

shall cease to be valid from the date of such deletion or suspension, and the person concerned shall forthwith return the practising certificate to the secretary of the Council for destruction.

### **30 Terms and conditions of practising certificates**

(1) A practising certificate may be issued subject to such terms and conditions as may be prescribed or as the Council may determine.

(2) Any terms and conditions determined in terms of subsection (1) shall be endorsed on the practising certificate concerned.

(3) If, following any disciplinary action against a registered person, conditions are imposed upon his entitlement to practise, he shall forthwith return any practising certificate held by him to the secretary of the Council, who shall endorse the conditions on the certificate.

(4) A practising certificate shall not authorise its holder to practise as an administrator of estates while his registration is suspended in terms of this Act.

### **31 Withdrawal of practising certificate**

If, after due inquiry, the Council is satisfied that a registered person has not complied with any term or condition of a practising certificate held by him, the Council may withdraw the practising certificate and, if it does so, the secretary of the Council shall advise the person concerned accordingly.

### **32 Surrender of withdrawn or invalid practising certificate**

Where a person has been advised in writing by the secretary of the Council that a practising certificate issued to him has been withdrawn or has ceased to be valid, he shall forthwith, and in any event within thirty days after being so advised, return the practising certificate to the secretary for destruction.

## **PART V**

### **TRUST ACCOUNTS**

### **33 Registered persons to maintain trust accounts**

Subject to this Part, a registered person shall—

(a) open and keep a separate trust account at a bank registered in terms of the Banking Act [24:01] in which he shall, within six days of receiving them, deposit all moneys held or received by him on account of any person in the course of his business as an estate administrator.

Provided that, in addition to any trust account referred to in this paragraph, a registered person may open and keep a trust account bearing interest at a bank or building society or with an institution approved by the Council for the purposes of this proviso in which he may, unless otherwise instructed by the person for whom or on whose account the money is held, deposit any such moneys as are not immediately required for any purpose; and

(b) keep proper books of account containing particulars and information as to moneys received, held or paid by him for or on account of any person and as to any interest earned by moneys in an account referred to in the proviso to paragraph (a) which are payable to any such person.

### **34 Audit of trust accounts**

(1) A registered person shall, at least once in every year, cause his trust account and books of that account kept in terms of paragraph (b) of section *thirty-three* to be examined by an auditor who is registered in terms of the Public Accountants and Auditors Act [Chapter 27:12] and shall at such time or times as may be prescribed submit to the Council a report from such auditor in the prescribed form relating to his trust account.

(2) Notwithstanding subsection (1), the Council may at its own expense appoint an auditor registered in terms of the Public Accountants and Auditors Act [Chapter 27:12] to inspect, at any time it thinks fit, the books of account of any registered person in order to ascertain that the requirements of this Part and any relevant rules are being observed:

Provided that—

- (i) such auditor shall report to the Council in such general terms as not to disclose confidential information entrusted to the person whose books of account he has inspected;
- (ii) if it is found from an inspection by an auditor appointed in terms of this subsection that the registered person has not complied with any provision of this Part or of any relevant rules, the Council shall be entitled to recover the cost of the inspection from that person.

### **35 Trust account moneys excluded from insolvency or attachment**

An amount standing to the credit of a trust account kept by a registered person in terms of this Part—

- (a) shall not be regarded as forming part of his assets on his death or insolvency or on the assignment of his estate; and
- (b) shall not be liable to attachment at the instance of any of his creditors:

Provided that any excess remaining after payment of the claims of all persons whose moneys have or should have been deposited in the trust account shall be deemed to form part of his assets and shall be liable to attachment at the instance of any of his creditors.

### **36 Control of operation of trust account**

(1) Upon application made by the Council and upon good cause being shown, the High Court or a judge thereof in chambers may prohibit a registered person from operating in any way on his trust account and may appoint a curator *bonis* to control and administer the trust account with such rights, duties and powers in relation thereto as the High Court or judge, as the case may be, may think fit.

(2) Upon the death or insolvency of a registered person or the assignment of his estate or in the event of his being suspended from practice or having his registration cancelled or being declared by a court of competent jurisdiction to be incapable of managing his own affairs or abandoning his practice, the Master of the High Court may, upon application made by the Council or by any person having an interest in the trust account of such person, appoint a curator *bonis* to control and administer such trust account with such of the prescribed rights, duties and powers as the Master may think fit.

(3) A person aggrieved by a decision of the Master of the High Court under subsection (2) may, within thirty days after the decision became known to him, appeal against that decision to the High Court, and the High Court may confirm or vary the decision of the Master or give such other decision as in its opinion the Master ought to have given.

(4) Nothing in subsection (1) or (2) shall be construed as preventing a registered person who was practising in partnership with a person referred to in subsection (2) from continuing to operate on the trust account of that partnership.

### **37 Rights of bank at which trust account kept**

(1) A bank at which a person keeps a trust account in terms of section *thirty-three* shall not, by reason only of the name or style by which the account is distinguished, be deemed to have knowledge that that person is not entitled absolutely to all moneys paid or credited to the said account:

Provided that nothing in this subsection shall relieve a bank from any liability or obligation under which it would be apart from this Act.

(2) Notwithstanding subsection (1), a bank at which a registered person keeps a trust account in terms of this Part shall not, in respect of any liability of that person to the bank, not being a liability arising out of or in connection with the said account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against moneys standing to the credit of the said account.

### **38 Saving of set-off, etc., against trust account**

Nothing in this Part shall be construed so as to—

- (a) deprive a bank of any right existing on the fixed date; or
- (b) take away or affect any just claim, lien, counterclaim, right or set-off or charge of any account which a registered person may under any law have against or upon any moneys held or received by him on account of any person; or
- (c) require that where two or more registered persons have formed a partnership for the purpose of carrying on business as an estate administrators each such registered person shall open a separate trust account.

### **39 Circumstances in which trust account need not be kept**

(1) Notwithstanding any other provision of this Part, a registered person shall not be required to open or keep a trust account in terms of this Part if he satisfies the secretary of the Council that—

- (a) he is a member of a profession or professional association and, as such, is required to open and keep a trust account into which he must deposit all moneys received by him in the course of his business as an estate administrator; and
- (b) he has opened and is keeping a trust account referred to in paragraph (a); and

(c) the trust account referred to in paragraph (a) is subject to supervision equivalent to or greater than that provided for in this Part.

(2) Where a company and its wholly-owned subsidiary, as determined in terms of section 143 of the Companies Act [*Chapter 24:03*], are both carrying on the business of estate administration—

(a) it shall not be necessary for the subsidiary company to open and keep a separate trust account from that opened and kept by the first-mentioned company;

(b) if the subsidiary company does not open and keep a separate trust account, the trust account opened and kept by the first-mentioned company shall be regarded for the purposes of this section as though it were being kept in terms of this Part also by the subsidiary company.

#### **40 Trust account of company or partnership carrying on business of estate administration**

In the case of a company or partnership which is employing a principal in the circumstances referred to in subsection (1) of section *sixty-two*—

(a) the management and operation of the trust account referred to in section *thirty-three* shall be under the control of the principal; and

(b) it shall be the duty of the principal to ensure that the provisions of this Part are complied with by the company or partnership:

Provided that, where the principal ceases to be employed by the company or partnership concerned and his place is taken by another person in terms of subsection (2) of section *sixty-two*—

(a) the management and operation of the trust account shall be placed under the control of, and the duty referred to in paragraph (b) shall devolve upon, that other person; and

(b) the company or partnership concerned shall, immediately on appointing that other person, notify the Council of his appointment and the fact that the trust account has been placed under his control.

#### **41 Offences in relation to trust accounts**

Any person who contravenes any provision of this Part shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001]

### **PART VI**

#### **ESTATE ADMINISTRATORS COMPENSATION FUND**

#### **42 Establishment of Compensation Fund**

(1) There is hereby established a fund to be known as the Estate Administrators Compensation Fund.

(2) The Compensation Fund shall be vested in the Council which, subject to this Act, shall be responsible for administering it.

#### **43 Constitution of Compensation Fund**

The Compensation Fund shall consist of—

(a) all contributions paid to the Compensation Fund under section *twenty-seven*; and

(b) all income accruing from the investment of moneys in the Compensation Fund; and

(c) all moneys borrowed for the purposes of the Compensation Fund; and

(d) all moneys received by the Compensation Fund under any insurance effected on behalf of the Compensation Fund; and

(e) all moneys received by the Compensation Fund under section *forty-five*; and

(f) any other moneys lawfully paid into the Compensation Fund.

#### **44 Compensation for loss due to registered person's dishonesty**

(1) Subject to this Part, where it is proved to the satisfaction of the Council that, as a result of theft or other dishonest act committed by a registered person or by a registered person's employee or agent, any person has suffered—

(a) loss of money or other property held in trust; or

(b) loss of any money collected or received by or on behalf of the registered person in the course of his practice as such;

the Council shall make a grant out of the Compensation Fund to the person who suffered loss for the purpose of making good his loss:

Provided that—

(i) no such grant need be made unless the person who suffered loss applies for the grant and gave the Council notice of his loss in such manner and within such period as may be prescribed;

(ii) no such grant shall be made—

A. if compensation is payable from another compensation fund such as is referred to in subsection (2) of section *twenty-seven*; or

B. if the act of dishonesty occurred before the fixed date.

(2) Before considering an application for a grant under this section, the Council may in its discretion require an applicant to exhaust all legal remedies available to him in respect of the loss to which the application relates.

(3) A grant shall be made under this section whether or not the registered person was in possession of a valid practising certificate when the act of dishonesty was committed and notwithstanding that he has since died or ceased to practise or has been suspended from practice or his registration has been cancelled.

(4) If, during any financial year of the Compensation Fund, the Council becomes liable in terms of subsection (1) to pay any single or aggregate amount exceeding fifty thousand dollars, the Council may pay *pro rata* the amount of any grants thereafter in such instalments and at such intervals as it thinks fit:

Provided that the period within which any individual loss is to be made good shall not, without the approval of the Minister, exceed five years.

#### **45 Subrogation of Council**

(1) On the making of a grant under section *forty-four* to a person in respect of a loss—

- (a) the Council shall to the amount of that grant be subrogated to any rights and remedies in respect of that loss of the person to whom the grant is made or of the registered person, employee or agent who committed the act of dishonesty;
- (b) the person to whom the grant is made shall have no right under insolvency, other legal proceedings or otherwise to receive any sum out of the assets of the registered person, agent or employee in respect of the loss until the Council has been reimbursed the full amount of the grant.

(2) Any reference in subsection (1) to the person to whom the grant is made or to the registered person, agent or employee shall include, in the event of his death, insolvency or other disability, a reference to his personal representative or any other person having authority to administer his estate.

#### **46 Contributions may be refunded**

The Council may in its discretion refund to a registered person or his estate the whole or part of his contributions to the Compensation Fund.

[Section amended by section 44 of Act 14 of 2002]

#### **47 Insurance**

The Council may enter into a contract with an insurer registered under the Insurance Act [*Chapter 24:07*], whereby the Compensation Fund will be indemnified to the extent and in the manner provided by such contract against the making of grants under this Act.

#### **48 Investments**

Any moneys in the Compensation Fund, which are not immediately required for the purposes thereof, shall be invested in such securities as the Council may determine.

#### **49 Borrowing**

The Council may borrow moneys for the purposes of the Compensation Fund and may charge any investments of the Compensation Fund by way of security for such loan:

Provided that the aggregate sum owing at any one time in respect of any such loan or loans shall not exceed such limit as may be prescribed.

#### **50 Financial year of Compensation Fund**

The financial year of the Compensation Fund shall be the period of twelve months ending on the 31st December in each year or on such other date as may be prescribed.

#### **51 Audit of Compensation Fund**

The accounts of the Compensation Fund shall be audited once at least in each calendar year by an auditor registered in terms of the Public Accountants and Auditors Act [*Chapter 27:12*] appointed by the Council.

#### **52 Expenditure from Compensation Fund**

Subject to this Act, there shall be payable from the Compensation Fund all or any of the following—

- (a) payment of any costs, charges and expenses of establishing, maintaining, administering and applying the Compensation Fund;
- (b) payment of any grant under section *forty-four*;
- (c) payment of any costs, charges and expenses incurred by the Council in an inquiry for the purposes of this Act;
- (d) a refund of contributions under section *forty-six*;
- (e) payment of premiums on insurance effected on behalf of the Compensation Fund;
- (f) repayment of moneys borrowed for the purposes of the Compensation Fund and payment of any interest thereon;
- (g) payment for any other matter approved by the Minister.

### 53 Fidelity cover

(1) If at any time the moneys of the Compensation Fund fall below a level that the Council considers to be sufficient for the purposes of the Fund, it shall inform the Minister in writing to that effect and the Minister may, by notice in the *Gazette*, declare that no registered person shall, after three months from the date specified in the notice, perform any act referred to in subsection (1) of section *sixty-one* unless he is in possession of a valid fidelity bond in the form prescribed, or of a valid fidelity insurance policy issued by a person approved by the Council, for such amount as may be prescribed in the notice.

(2) The Minister shall revoke any notice in terms of subsection (1) if at any time after its publication the Council informs him in writing that it considers the moneys of the Compensation Fund to be sufficient for the purposes of the Fund.

## PART VII

### DISCIPLINARY POWERS OF COUNCIL

### 54 Improper or disgraceful conduct

(1) Improper or disgraceful conduct on the part of a registered estate administrator shall include the commission of any of the following acts—

- (a) touting;
- (b) except as may be permitted in rules, advertising in any manner whatsoever, whether directly or indirectly, his services as an estate administrator:

Provided that this paragraph shall not apply to advertising by a person who is a registered legal practitioner, public accountant or public auditor or a member of the Institute of Chartered Secretaries, where the advertisement is permitted in terms of the Legal Practitioners Act [*Chapter 27:07*], the Chartered Accountants Act [*Chapter 27:02*], the Public Accountants and Auditors Act [*Chapter 27:12*] or the Chartered Secretaries (Private) Act [*Chapter 27:03*], as the case may be;

- (c) contravening any provision of this Act or any rules;
- (d) withholding the payment of trust money without lawful cause;
- (d) in any way, assisting, allowing or enabling an unregistered person to charge, recover or receive any fee or derive any remuneration in respect of or in connection with the work of an estate administrator, or in any way conniving at any arrangement or understanding whatsoever whereby any such fee or remuneration is charged, recovered or received by any such unregistered person;
- (e) opening or maintaining any office or branch at which the work of an estate administrator is conducted but which is not under the continuous personal supervision of a registered estate administrator;
- (f) keeping the accounts of his practice as an estate administrator in the books of accounts utilised in connection with any other business in which he may be interested jointly with an unregistered person:

Provided that this paragraph shall not prevent a registered legal practitioner, public accountant or public auditor or a member of the Institute of Chartered Secretaries from keeping the accounts of his practice as an estate administrator in the same books as the accounts of his practice as a legal practitioner, public accountant, public auditor or chartered secretary, as the case may be;

- (g) assisting an unregistered person to recover charges for services rendered by including such charges in any bill of costs or memorandum of charges rendered by him as an estate administrator, without disclosing the fact in such bill or memorandum.
- (2) Subsection (1) shall not—
- (a) preclude the Council from prescribing in rules further acts which shall constitute improper or disgraceful conduct on the part of a registered estate administrator; or
  - (b) limit the discretion of the Council or a court in determining whether or not any act or omission, which is not specified in subsection (1) or in rules, constitutes improper or disgraceful conduct on the part of a registered estate administrator.

### 55 Disciplinary powers in respect of registered persons

(1) If, after due inquiry, the Council finds that a registered person—

- (a) is not a suitable person to remain registered; or
- (b) has been guilty of—

- (i) improper or disgraceful conduct; or
- (ii) negligence in his practice as an estate administrator;

the Council may do one or more of the following—

- (i) direct that his registration be cancelled or that he be suspended from practice as an estate administrator for a period determined by the Council;
- (ii) order him to pay the expenses of holding the inquiry and any expenses incidental to the inquiry or any part of those expenses;

- (iii) impose a fine not exceeding a penalty not exceeding an amount equivalent to a fine of level six, which penalty shall be payable to the Council;

[Paragraph amended by section 4 of Act 22 of 2001]

- (iv) censure him;
- (v) caution him;

and the secretary of the Council shall give notice of the decision and of the reasons for it to the person concerned.

(2) If a registered person who has been notified of a direction referred to in subparagraph (i) of subsection (1) fails to lodge notice with the secretary of the Council of his intention to appeal to the Administrative Court in terms of section *fifty-nine* or, having lodged such notice, withdraws it or abandons his appeal, the Registrar shall in terms of section *twenty-four* cancel his registration or, as the case may be, mark his suspension from practice in the Register for the period determined by the Council.

## **56 Disciplinary powers in respect of persons associated with registered persons**

(1) If, after due inquiry, the Council decides that a person who is not a registered person but who is a partner in a partnership carrying on business as an estate administrator or is employed by a person practising or carrying on business as an estate administrator—

- (a) is not a suitable person to perform the work of an estate administrator or to be associated with the business of estate administration; or
- (b) has been guilty of conduct which would have constituted improper or disgraceful conduct or negligence if he had been a registered person;

the Council may order that such person shall not in any capacity participate in or have any financial interest in any estate administration business or be employed in any such business for such period as the Council may determine, and the secretary of the Council shall give notice of the decision and of the reasons for it to the person concerned and the registered person, if any, by whom the person concerned is employed or with whom he is associated at the time of the order.

(2) Any person in respect of whom an order has been made in terms of subsection (1) and who, during the period in which the order is in force—

- (a) is employed by any registered person; or
- (b) holds, or attempts to obtain, any financial interest in any estate administration practice;

shall be guilty of an offence unless he shows that he was not aware of the existence of the order.

(3) Any registered person who, during the period in which an order in terms of subsection (1) is in force—

- (a) employs in any capacity the person in respect of whom the order was made; or
- (b) permits the person in respect of whom the order was made to obtain or hold any financial interest in his business or practice of estate administration;

shall be guilty of an offence unless he shows that he was not aware of the existence of the order or that it referred to the person employed by him or permitted to obtain or hold the financial interest, as the case may be.

(4) Any person who is guilty of an offence in terms of this section shall be liable to a fine not exceeding level eight or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **57 Exercise of disciplinary powers by Council on conviction of offence**

(1) A registered person, or any person referred to in subsection (1) of section *fifty-six* who has been convicted, inside or outside Zimbabwe, of an offence by a court of law shall be liable to be dealt with by the Council in accordance with this Part if the Council is of the opinion that the offence constitutes improper or disgraceful conduct.

(2) The Council may, if it thinks fit, on proof before it of a conviction referred to in subsection (1) and without hearing further evidence, deal with the convicted person in accordance with this Part:

Provided that the convicted person shall be afforded an opportunity of tendering in writing or in person, as he may elect, an explanation to the Council in extenuation of his conduct.

## **58 Court to notify Council of certain convictions or conduct**

(1) Whenever, after the termination of proceedings before a court in Zimbabwe, it appears to the court that there is *prima facie* evidence of improper or disgraceful conduct on the part of a registered person, or any person referred to in subsection (1) of section *fifty-six*, the court shall direct that a copy of the record of the proceedings or a copy of such portion of the proceedings as is material to the issue shall be transmitted to the Council.

(2) Whenever a court in Zimbabwe—

- (a) removes a registered person from his position as—
  - (i) executor of a deceased estate; or
  - (ii) tutor or curator of a person under a legal disability or of such a person's estate; or
  - (iii) trustee of an insolvent estate; or
  - (iv) liquidator or judicial manager of a company;

or

- (b) declares a registered person disqualified or incapable of being appointed or elected as such an executor, tutor, curator, trustee or liquidator;

the court shall cause the Council to be notified of the removal and of the reasons therefor.

## PART VIII

### GENERAL

#### 59 Appeals against decisions of Council

(1) Any person who is aggrieved at any decision of the Council in terms of this Act may, within thirty days after being notified of the decision, appeal against it to the High Court in such manner as may be prescribed in rules of court.

(2) In an appeal in terms of subsection (1), the High Court may—

- (a) confirm, vary or set aside the decision appealed against; or  
(b) remit the matter to the Council for further consideration;

and may make such other order, whether as to costs or otherwise, as it thinks just.

(3) The noting of an appeal in terms of subsection (1) against a decision of the Council under section *thirty-one* to withdraw a practising certificate shall not suspend the decision appealed against unless—

- (a) the Council, by written notice to the registered person concerned, agrees otherwise; or  
(b) the High Court on application directs otherwise;

in which event the Council shall return the practising certificate to the appellant pending the outcome of the appeal.

#### 60 Canvassing, touting or advertising

(1) Subject to subsection (2), no person shall by any means whatsoever, directly or indirectly—

- (a) canvass or tout for business, whether for himself or for another person, in regard to the work of an estate administrator; or  
(b) advertise or make known his or another person's preparedness to do the work of an estate administrator.

(2) Subsection (1) shall not apply to—

- (a) any conduct by or on behalf of a registered person or his agent or a company or partnership referred to in subsection (1) of section *sixty-two*—  
(i) to the extent that such conduct is permitted in rules; or  
(ii) where the registered person is a registered legal practitioner, public accountant or public auditor or a member of the Chartered Institute of Secretaries and Administrators in Zimbabwe, to the extent that such conduct is permitted in terms of the Legal Practitioners Act [*Chapter 27:07*], the Chartered Accountants Act [*Chapter 27:02*], the Public Accountants and Auditors Act [*Chapter 27:12*] or the Chartered Secretaries (Private) Act [*Chapter 27:03*], as the case may be;

or

- (b) any person who, in reply to a direct inquiry voluntarily made to him by someone else, makes known his or some other person's preparedness to do the work of an estate administrator; or  
(c) any conduct done in compliance with any other law.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

#### 61 Offences by or in respect of unregistered persons

(1) Subject to this Act, no person other than a registered person shall, after the expiry of three months from the fixed date—

- (a) for gain, do anything that constitutes the work of an estate administrator; or  
(b) solicit appointment as—  
(i) the executor of the estate of a deceased person; or  
(ii) the tutor or curator of a person under legal disability or of the estate of such a person; or  
(iii) the trustee or provisional trustee of an insolvent estate; or  
(iv) the liquidator or provisional liquidator or judicial manager of a company;

or

- (c) pretend or, by any means whatsoever, hold himself out to be a registered person.

(2) Paragraph (a) of subsection (1) shall not apply to anything done by a person in his capacity as—

- (a) testamentary executor, tutor or curator; or  
(b) executor appointed under foreign letters of administration recognised in terms of section 34 of the Administration of Estates Act [*Chapter 6:01*].

- (3) Subsection (1) shall not apply to—
- (a) any person who does the work of an estate administrator in the course of his duties as an employee of the State; or
  - (b) a person in the *bona fide* employment of a registered person whilst he is working under the direction and control of a registered person who is employed full-time in that capacity at the premises where that first-mentioned person is employed; or
  - (c) a person in the *bona fide* employment of a company or partnership referred to in section *sixty-two* whilst he is working under the direction and control of a principal or assistant referred to in paragraph (a) or (b), respectively, of subsection (1) of that section or a person taking the place of such principal or assistant, as the case may be, in terms of subsection (2) of that section, who is employed full-time in that capacity at the premises where that first-mentioned person is employed; or
  - (d) such other class of persons as may be prescribed.

(4) No company or partnership which is permitted by section *sixty-two* to do the work of an estate administrator shall do such work under any personal name which is not the name of a registered person who is or was a principal, assistant or working partner of the company or partnership concerned:

Provided that the Council may exempt any company or partnership from the requirements of this subsection on good cause shown.

(5) No person doing the work of an estate administrator shall employ in any capacity whatsoever any person—

- (a) whose registration has been cancelled in terms of this Act; or
- (b) whose registration has been suspended in terms of this Act, while his registration is so suspended;

except with the written consent of the Council, which may be given for such period and subject to such conditions as the Council thinks fit.

(6) Any person who contravenes subsection (1), (4) or (5) shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(7) On conviction of any person on a charge of contravening subsection (1), (4) or (5) the court may, in addition to any penalty which may be imposed therefor in terms of subsection (6), order the convicted person to pay a fine not exceeding the amount of any commission or remuneration paid in respect of any transaction which was the subject of the charge, and for that purpose a magistrates court shall, notwithstanding anything to the contrary contained in any other enactment, have jurisdiction to order any such payment.

(8) A conviction for a contravention of subsection (1), (4) or (5) shall not be a bar to a further prosecution or prosecutions for any continuance of the offence.

## **62 Special provisions relating to companies and partnerships**

(1) Notwithstanding section *sixty-one*, a company or partnership may do the work of an estate administrator or describe itself or hold itself out or allow itself to be held out as an estate administrator if—

- (a) in the case of a company, all its directors are registered persons; and
- (b) the business of the company or partnership, in so far as it relates to the work of an estate administrator, is under the direct control and management of a principal who—
  - (i) is a registered person; and
  - (ii) does not act at the same time in a similar capacity for any other company or partnership or on his own behalf; and
  - (iii) is an executive director, in the case of a company, or a working partner, in the case of a partnership;

and

- (c) in every premises where any business referred to in paragraph (b) is not done personally by the principal referred to in that paragraph, the business is done, under the direction of that principal, by an assistant who is a registered person.

[Paragraph amended by section 44 of Act 14 of 2002]

(2) If any principal referred to in paragraph (a) of subsection (1) ceases to be an executive director or working partner, as the case may be, or if any assistant referred to in paragraph (c) of subsection (1) ceases to be employed by the company or partnership concerned, his place may be taken by a person who is not a registered person for a period not exceeding one month or for such longer period, not exceeding twelve months, as the Council may for good cause permit and subject to such conditions as the Council may impose.

(3) If for any reason whatsoever any principal or assistant referred to in paragraph (a) or (b) of subsection (1) is or intends to be absent for a continuous period of forty-five days from the premises where he ordinarily works, the company or partnership concerned shall notify the Council immediately of such absence or intended absence, and subsection (2) shall apply in respect of that company or partnership as if the absentee principal or assistant

had ceased to be an executive director or working partner, or had ceased to be employed, as the case may be, for the period of his absence.

(4) Where a company does the work of an estate administrator, every principal or assistant referred to in paragraph (a) or (b) of subsection (1) who is employed by the company or is a director of the company shall be personally liable for any loss sustained by any person in consequence of any dishonesty or negligence on his part or on the part of any other such principal or assistant.

### **63 Supervision of employees**

A registered person—

- (a) who employs any person who is not registered to do the work of an estate administrator; or
- (b) who, as a principal referred to in section *sixty-two*, is responsible for the control and management of the work of an estate administrator done by a person who is not registered;

shall supervise the work of that unregistered person and, if an order in terms of subsection (1) of section *fifty-six* is made in respect of that unregistered person, the registered person concerned shall be deemed to be guilty of gross negligence in his capacity as an estate administrator unless he proves that—

- (i) he did not connive at the unsuitability of the unregistered person; or
- (ii) he took all reasonable steps to prevent the conduct of the unregistered person;

as the case may be, in respect of which the order was based.

### **64 Information to be notified to secretary of Council**

(1) Any person doing the work of an estate administrator for gain shall, in accordance with subsection (2), give notice to the secretary of the Council in writing—

- (a) of the fact that he is doing so; and
- (b) of the name or style under which he is doing such work; and
- (c) of the address or addresses, as the case may be, where such work is being done; and
- (d) in the case of a company, of the names and residential addresses of all directors; and
- (e) where appropriate, of—
  - (i) the names of all registered persons who are directors, partners or employees of the practice or business; and
  - (ii) the name of the principal or assistant appointed in terms of paragraph (a) or (b), respectively, of subsection (1) of section *sixty-two*;
  - (iii) the names of all employees and the functions performed by them.

(2) The notification required by subsection (1) shall be communicated to the secretary of the Council within thirty days of any person commencing to do the work of an estate administrator and thereafter annually at such time as may be prescribed.

(3) Any person referred to in subsection (1) shall give notice to the secretary of the Council in writing of any change of information which has been given to the secretary in terms of subsection (1) within fourteen days of such change.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001 and by section 44 of Act 14 of 2002]

### **65 Remuneration not recoverable in certain cases**

No remuneration of any description shall be recoverable in any court of law in respect of any act pertaining to the work of an estate administrator when performed by a person—

- (a) who was not registered at the time; or
- (b) whose employment was prohibited in terms of this Act at the time; or
- (c) who was not in possession of a valid practising certificate at the time.

### **66 Rules**

(1) Subject to subsection (3), the Council may make rules prescribing anything which by this Act is required or permitted to be prescribed or which, in the Council's opinion, is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Rules made in terms of subsection (1) may provide for—

- (a) fees and subscriptions payable to the Council by registered persons;
- (b) the conduct of examinations for the purposes of registration under this Act.
- (c) the issue of duplicate, corrected or amended registration certificates, practising certificates and other documents for the purposes of this Act;
- (d) the cancellation of certificates issued for the purposes of this Act, and the return of such certificates to the Council for the purposes of amendment or cancellation;
- (e) the form of the Register and the circumstances in which it may be inspected by members of the public;

- (f) the deletion from the Register of entries made in error or through fraudulent representations or concealment of material facts or in circumstances not authorized by law;
- (g) the form of certificates and other documents issued under or used for the purposes of this Act;
- (h) the management of the Compensation Fund and all matters connected therewith;
- (i) rules of conduct to be observed by registered persons, including the acts and omissions which shall be treated as improper or disgraceful conduct;
- (j) a minimum or maximum scale of fees to be charged by registered persons in regard to the work of an estate administrator;
- (k) the management of trust accounts by registered persons, and information to be supplied to the Council in connection therewith;
- (l) fees and charges for applications made, certificates issued and other things done under this Act.

(3) Rules made in terms of subsection (1) shall not have effect until they have been approved by the Minister and published in the *Gazette*.

## **67 Evidence**

(1) The Register shall be *prima facie* proof of all matters directed or authorized by or under this Act to be noted therein.

(2) A certificate purporting to be signed by the secretary of the Council to the effect that—

- (a) the name of a person appears in the Register, shall be *prima facie* proof that the person is registered;
- (b) the name of a person has been deleted or removed from or does not appear in the Register, shall be *prima facie* proof that the person is not registered.
- (c) a registered person has been suspended from practice for a specified period, shall be *prima facie* proof that the person has been suspended for that period;
- (d) a registered person is or is not the holder of a practising certificate, shall be *prima facie* proof of that fact;
- (e) any terms or conditions were endorsed on any practising certificate, shall be *prima facie* proof of those terms and conditions.

(3) A certificate referred to in subsection (2) or a copy of an entry in the Register or of a document in the custody of the secretary of the Council, or an extract from the Register or from any such document shall, if it purports to be certified by the secretary of the Council, be admitted in evidence in any court on its production by any person without further proof or production of the original.

## **SCHEDULE (SECTION 4)**

### POWERS OF COUNCIL

1. To purchase, hire or otherwise acquire immovable property and to construct buildings.
2. To buy, take in exchange, hire or otherwise acquire movable property necessary or convenient for the exercise of the Council's functions.
3. To maintain, alter or improve its property.
4. To sell, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with any property which is not required for the Council's purposes, for such consideration, if any, as the Council may determine.
5. To raise or borrow money in such manner as the Council thinks fit.
6. To invest, in such manner and on such security, if any, as the Council may determine, any of its funds which are not immediately required and to vary or realise any investments so made.
7. To insure against losses, damages, risks and liabilities which the Council may incur.
8. To fix the conditions of service of its employees appointed under section *twelve*, to pay them such remuneration and allowances and grant them such leave of absence and to make them such gifts, bonuses and the like as the Council thinks fit and, where the Council considers it appropriate, to suspend or discharge them.
9. To provide benefits for its employees and their dependants on the employees' retirement, resignation, discharge or other termination of service or in the event of their sickness or injury, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as the Council thinks necessary to secure for the employees and their dependants the benefits referred to in this paragraph.
10. Generally, to do all things that are calculated to facilitate or are incidental or conducive to the performance of the Council's functions under this Act or any other enactment.