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Advocates Mobilization Procedure

Chapter One

General Provisions

Article 01: Basis

This procedure is enacted pursuant to order No. (215 Volume 01) dated 05 February 2022 of the leadership of the Islamic Emirate of Afghanistan and Clause (5) of Approval No. (10) dated 27 March 2022 of the Cabinet of the Islamic Emirate of Afghanistan.

Article 02: Objectives

The objectives of this procedure are as follows:

- 1- Mobilizing the affairs related to advocates and the manner of their operation;
- 2- Registration, issuance, and renewal of licenses for advocates to practice law;
- 3- Regulating the affairs related to the rights and duties of advocates;
- 4- Supervising the activities of advocates.

Article 03: Terminologies

For the purposes of this procedure, the terms below have the following meaning:

- 1- The term “advocate” means a person who has obtained the license to practice and is entitled to file a lawsuit, defend and represent the rights of his/her client before a court of law and other authorities in accordance with the provisions of this procedure;
- 2- The term “license to practice” means an official document issued by the Ministry of Justice to the applicant in accordance with the provisions of this procedure;
- 3- The term “information form” means a printed sheet that is prepared by the Ministry of Justice and is used to enter the information of the applicant for the license to practice law;

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- 4- The term “registry of contracts and revenue” means a volume of documents prepared by the Ministry of Justice and used by the license holder to record his/her contracts and revenues.

Article 04: Appointing an Advocate

Every person has the right from the time of arrest to appoint an advocate of his/her choice to defend and represent his/her rights.

Article 05: Administration

- (1) The Ministry of Justice shall regulate the affairs related to advocates;
- (2) The Ministry of Justice shall establish the Directorate of Advocates in its structure to regulate affairs of the advocates;
- (3) The directorate of advocates shall have central and provincial offices that operate in accordance with the provisions of this procedure.

Article 06: Monitoring

The Ministry of Justice shall monitor the activities of advocates throughout the country.

Chapter Two

Practicing as an Advocate

Article 07: Entry Requirements to practice law

- (1) To practice law in Afghanistan, a person must comply with the following requirements:
 - 1) Shall be a citizen of Afghanistan;
 - 2) Shall not have been convicted of any criminal offense;
 - 3) Shall have a bachelor's degree in Law or *Sharia* (Islamic Law); or a higher degree from Afghanistan or any other country after the approval of the Ministry of Higher Education;
 - 4) Shall have a graduation certificate from Advocate Stage or the National Legal Training Center;
 - 5) Shall have successfully passed the entrance exam for practicing law;
 - 6) Shall fill out and complete the information form;
- (2) A person who has obtained a license for practicing law before enforcement of this procedure is not obliged to attend the entrance exam for practicing

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law if the conditions set forth in Sub-Clauses (1 to 4) of Clause (1) of this article are met;

- (3) A person who has worked at least for three years as a member of the judiciary, prosecutor's office, or the Ministry of Justice is exempted from the provision set forth in Sub-Clause (1) of Clause (1) of this article;
- (4) A graduate from an official Religious Madrassa (Post Baccalaureate) or its equivalent from inside or outside of the country may practice as an advocate only when, in addition to fulfillment of Sub-Clauses (1, 2, 4 & 5) of Clause (1) of this article, he/she has completed three years of practical work under the supervision of a licensed advocate;
- (5) The Directorate of Advocates shall be obliged to request the information contained in Sub-Clause (2) of Clause (1) of this article from the relevant authorities in accordance with the information form;
- (6) The affairs related to the entrance exam to practice law shall be regulated in accordance with the relevant by-law;
- (7) A foreign national shall be entitled to defend and represent his/her client before a court of law and other authorities of the Islamic Emirate of Afghanistan in cases related to foreign natural and legal persons under the following circumstances:
 - 1) He/she shall have permission to stay in Afghanistan;
 - 2) He/she shall have a license to practice as an advocate from his/her country of origin;
 - 3) He/she shall have cleared his/her tax duties in accordance with the provisions of the law.

Article 08: Limitations to Practice Law

The following persons shall not be entitled to practice law:

- (1) Judges, prosecutors, personnel of the Ministry of Defense and the Ministry of Interior Affairs, intelligence officers, personnel of the ministries and entities with security structures, officials of independent commissions, municipalities, Emirate/governmental or mixed enterprises and corporations, and other Emirate/governmental personnel, so long as they are employed as such;
- (2) Any person who has been convicted of a crime or bribery or embezzlement;
- (3) Any person who has been expelled from his/her duty by a court's order;
- (4) Any person prevented from practicing law by a court's order.

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Article 09: Method of Submitting an application

- (1) The applicant shall submit his/her application to the Ministry of Justice to receive a license to practice law;
- (2) The Directorate of Advocates shall review the application for a license to practice law along with other documents contained in Article (07) of this procedure and shall decide to approve or reject it within (15) working days.

Article 10: Refusal of Application

- (1) The Directorate of Advocates may reject the application to receive a license to practice law in the following cases to fix the defects in the documents:
 - 1) Lack of precise completion and filling out of information form;
 - 2) The similarity in the law office's name with one of the registered law offices.
- (2) The applicant is obliged to fix the items contained in Clause (1) of this Article from the date of its refusal within (15) working days and submit it to the Directorate of Advocates; otherwise, the application shall be considered rejected.

Article 11: Registration and Issuance of License to Practice Law

- (1) The Ministry of Justice shall issue a license to practice law to the eligible applicant in accordance with the conditions set forth in Article (7) of this procedure;
- (2) The license to practice law shall have a one-year validity period;
- (3) The fee for the license contained in Clause (1) of this article shall be three thousand (3,000) AFN;
- (4) The license to practice law shall be issued and registered after being signed by the Minister of Justice;
- (5) A sample of the license contained in Clause (1) of this article is attached to Annex No. (1) of this procedure.

Article 12: License to Practice Law for Legal Aid Providers

The Directorate of Advocates shall issue and register the license to practice law to legal aid providers of the Ministry of Justice without receiving the fee contained in Clause (3) of Article (11) of this procedure.

Article 13: Database

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- (1) The Directorate of Advocates shall record the full details of the advocate and the date of issuance of his/her license to practice law in the roster of practicing advocates, respectively;
- (2) The Directorate of Advocates shall establish a relevant database to better implement the provisions of Clause (1) of this article.

Article 14: Renewal of the License

- (1) A person who holds a license to practice law shall be obliged to submit a request for renewal of the relevant license to the Ministry of Justice within thirty days before its expiry date;
- (2) If a person who holds a license to practice law has complied with the provisions of this procedure, the said license shall be renewed in exchange for three thousand (3,000) AFN.
- (3) If a person who holds a license to practice law shall not renew the relevant license within (45) days after its expiration, the Directorate of Advocates shall be obliged to revoke his/her license and remove his/her name from the roster of practicing advocates after clearing his/her tax dues;
- (4) If a person wants to reoperate after being removed from the roster of practicing advocates, he/she shall obtain a license to practice law in accordance with the provisions of this procedure;
- (5) If the license to practice law is not renewed within the specified period, it shall be considered invalid.

Article 15: Resignation from Practicing Law

- (1) A person who holds a license to practice law can resign from the profession of practicing law. In this case, he/she shall be obliged to file an application to the Ministry of Justice;
- (2) The Directorate of Advocates shall be obliged to terminate one's license to practice law after clearing his/her tax duties and non-claim from any person and remove his/her name from the roster of practicing advocates in case of resignation from this profession.

Article 16: Revocation of License to Practice Law

The license to practice law shall be revoked in one of the following circumstances:

- 1- Death of a person holding the license to practice law;

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- 2- The person holding the license to practice law is sentenced to imprisonment of one year or more;
- 3- Repeated violation of the provisions of this procedure more than three times.

Article 17: Introduction of an Advocate

- (1) The Ministry of Justice shall be obliged to introduce the person included in the roster of practicing advocates in writing to the relevant authorities;
- (2) In case of an increase or decrease in the roster of practicing advocates, the issue shall be reported to the relevant authorities on a quarterly basis;
- (3) The Ministry of Justice shall publish the roster of licensed advocates on the relevant website and update it quarterly.

Chapter Three

High Commission of Advocates

Article 18: Structure of High Commission of Advocates

- (1) To better implement the provisions of this procedure and to address the problems of advocates, the High Commission of Advocates shall be established based on the following structure:
 - 1) Minister of Justice as the Chairman;
 - 2) Deputy of the Supreme Court as a member;
 - 3) Deputy of the Attorney General's Office as a member;
 - 4) Deputy Minister for Security of the Ministry of Interior Affairs as a member;
 - 5) Deputy Minister of Defense as a member;
 - 6) Deputy of the National Directorate of Intelligence as a member;
 - 7) Deputy Head of Office of Prisons Administration as a member;
 - 8) Head of Advocates as a member;
 - 9) Head of the Department of Legal Aid of the Ministry of Justice as a member;
 - 10) Two advocates selected by the relevant Union as members;
- (2) The Secretariat of the Commission shall be headed by the Department of Advocates;
- (3) The High Commission of Advocates is referred to as the Commission in the procedure.

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Article 19: Duties and Authorities of the Commission

The Commission shall have the following duties and authorities:

- (1) Approving guidelines to better regulate affairs related to advocates;
- (2) Taking necessary measures to strengthen coordination and cooperation between relevant authorities;
- (3) Addressing the complaints and problems of advocates and making decisions in this regard;
- (4) Developing training programs to build the capacity of advocates;
- (5) Asking for the cooperation of national and international organizations for financial and technical assistance to the Directorate of Advocates;
- (6) Coordinating advocates related to development programs and projects;
- (7) Deciding on regulating relations of the Directorate of Advocates with the international counterpart organizations;
- (8) Hearing the report on the performance of the Directorate of Advocates and issuing the necessary instructions;
- (9) Proposing to amend the provisions of this procedure.

Article 20: Meetings of the Commission

- (1) Ordinary meetings of the commission shall be held every quarter; extraordinary meetings shall be held at the discretion of the chairman of the commission;
- (2) The quorum of the meetings of the commission shall be completed with the presence of at least two-thirds of its members;
- (3) Meetings shall be chaired by the Chairman of the Commission and, in his absence, by a person authorized by him/her;
- (4) The commission's decisions shall be finalized by a majority vote of the members present at the meeting and recorded in a particular registry. In the event of a tie vote, the party to which the chairman has voted shall be considered the majority;
- (5) The commission may invite representatives of Emirate/governmental and non-Emirate/non-governmental entities and international organizations to meetings if necessary;
- (6) Other issues related to the commission's meetings shall be regulated by a by-law approved by the commission.

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Chapter Four

Rights and Duties of an Advocate

Article 21: Rights of an Advocate

An Advocate shall have the following rights:

- (1) To file a lawsuit, defend, and appeal to the court and other authorities on behalf of the client;
- (2) To defend and represent the rights of his/her clients before a court and other authorities;
- (3) To establish a law office;
- (4) To participate in all phases of detection, investigation, and trial and defend his/her client after having a conversation with him/her;
- (5) To obtain information regarding the detection, investigation, and trial processes of his/her client and the results;
- (6) To examine documents related to his/her client's civil and criminal lawsuits;
- (7) To visit, discuss, correspond and communicate with a client under custody, detention, or in prison in a secure and confidential environment;
- (8) To provide legal advice to legal and natural persons;
- (9) To receive a fee from a client in exchange for providing services and legal advice by the agreement of parties;
- (10) To exercise other rights provided in legislative documents.

Article 22: Protection

The advocate and his/her office shall be protected. No person shall have the right to interfere in his/her affairs or prevent him/her from doing his/her duties unless in accordance with the provisions of the law.

Article 23: Duties of an Advocate

An advocate shall have the following duties:

- (1) To maintain the client's secrets and other information obtained during the performance of his/her duty;
- (2) To practice law with honesty and faith and respect the dignity of persons;
- (3) To respect the orders of a court and other authorities;

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- (4) To attend court hearings;
- (5) To refrain from providing any kind of legal aid to the opposing party;
- (6) To keep the client's documents and return them once the case is concluded;
- (7) To provide a written receipt while receiving and returning any documents;
- (8) To refrain from adverse propaganda against other advocates;
- (9) To refrain from actions that would cause an undue delay in the court's decision and investigation process;
- (10) To avoid lending the name and title of the law office to other persons;
- (11) To inform the competent authorities about any change in the location of his/her office;
- (12) To obtain the registry of contracts and revenues;
- (13) To renew the license in accordance with this procedure;
- (14) To defend three criminal cases that would be introduced and confirmed by the Ministry of Justice for free in a year;
- (15) To observe the code of conduct.

Article 24: Contract of Representation

- (1) The rights and obligations of an advocate and a client shall be determined by a written contract between both parties in accordance with the provisions of this procedure;
- (2) The contract mentioned in Clause (1) of this article shall be prepared into four copies, and one copy shall be handed over to the advocate, one copy to the client, one copy to the Ministry of Justice, and the other copy to the relevant court.

Article 25: Tax Obligation

The licensed advocate is obliged to pay his/her tax duties in accordance with the provisions of the law and provide a copy of the payment receipt to the Directorate of Advocates.

Article 26: Requirements to Establish a Law Office

- (1) To practice law, an advocate shall establish a law office, and he/she shall be obliged to provide the physical address of his/her law office to the Ministry of Justice;

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- (2) The advocate shall be obliged to keep a registry of administrative documents, a registry for clients' documents, and a registry of contracts and revenue in the relevant law office;
- (3) The advocate shall be obliged to arrange the registry of administrative documents and the registry of clients' documents in accordance with the sample provided by the Ministry of Justice;
- (4) The registry of contracts and revenue of the advocate shall be prepared by the Ministry of Justice and distributed to the licensed advocate for One Thousand (1,000) AFN. The pages of the registry of contracts and revenue of the advocate shall be numbered, stamped, and signed by the Directorate of Advocates;
- (5) The legal aid providers of the Ministry of Justice shall be exempted from the provisions of Clauses (1, 2, 3, and 4) of this article.

Article 27: Identity Card (ID Card)

- (1) An advocate shall have an ID Card issued by the Ministry of Justice for Five Hundred (500) AFN;
- (2) The ID Card sample is mentioned in Annex No. (3) of this procedure.

Article 28: Sign and Stamp

- (1) Each law office shall maintain a specific sign that contains the title identified in his/her license;
- (2) A law office shall have a special stamp which shall be prepared upon approval of the Ministry of Justice at the advocate's expense.

Article 29: The Oath

Upon receipt of the license to practice law, an advocate shall take the following oath before the Minister of Justice:

In the name of Allah, the merciful, the compassionate!

"I swear in the name of God Almighty to execute my duty as an advocate with utmost honesty and righteousness, and shall keep its confidentiality, and shall not

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betray my client, respect and observe provisions of the holy religion of Islam, and the enforceable legislative documents of the Islamic Emirate of Afghanistan.”

Article 30: Appointment of a New Advocate

- (1) Once an advocate is given a power of attorney, if he/she is unable to fulfill the commitment that has been made to the client based on a reasonable excuse, the advocate may introduce another advocate to the client with his/her written consent;
- (2) The client may dismiss his/her advocate at any stage of the detection, investigation, or trial;
- (3) In the case of circumstances contained in Clauses (1) and (2) of this Article, both the client and the advocate shall notify the relevant authorities.

Article 31: Limitations on Resignation and Notice of Absence

- (1) An Advocate shall not resign from a case within one week before the beginning of any judicial proceeding;
- (2) If unable to attend a proceeding due to a reasonable excuse, the advocate shall inform the relevant court of his/her absence at least (24) hours before the judicial proceeding.

Article 32: Priority of Presence in Criminal Proceedings

If an advocate is scheduled to attend two or more simultaneous judicial proceedings, his/her presence at the criminal proceeding shall take priority, and if he/she has the right of appointment, the advocate may appoint another advocate to attend the non-criminal proceeding. Otherwise, he/she shall be obliged to notify the relevant court.

Article 33: Uniform of an Advocate

The advocate shall wear a special type of uniform, the sample of which shall be determined by the Ministry of Justice.

Article 34: Prohibition on Transfer of Privileges

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An advocate shall not transfer the stamp or other privileges belonging to his/her law office to someone else, either temporarily or permanently.

Article 35: Limitations on Testimony

- (1) After dismissal from, resignation, or conclusion of a case, an advocate shall not provide legal counsel, legal representation, or act as a witness for any opposing party in the same case;
- (2) When defending or giving written advice in a case, an advocate shall not serve as a witness in the same case.

Article 36: No Rights to Work as an Advocate

- (1) If an advocate or his/her spouse has blood or an in-law relationship (third-degree relative) with any judge of a court, he/she shall not work as an advocate in a case before that judge;
- (2) An advocate shall not take a case for which he/she has previously served as a judge, prosecutor, investigator, arbitrator, or expert.

Chapter Five

Disciplinary Provisions

Article 37: Hearing Complaints Filed Against an Advocate

- (1) Any complaint against an advocate proposed by a client shall be submitted to the Ministry of Justice;
- (2) If the Ministry of Justice deems the complaint against an advocate to be unreasonable or doesn't deem the advocate to disciplinary action, it shall decide whether to reject the complaint or not impose disciplinary action against the advocate;
- (3) When a complaint against the advocate is found to be justifiable, and the advocate is found subject to disciplinary action based on the available documents and evidence, the Ministry of Justice may take the following disciplinary measures:

- 1- Reprimand;

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- 2- Warning;
 - 3- Suspension of the advocate and closure of the advocate's office for up to one year;
 - 4- Ban the renewal of advocate licenses for up to five years.
- (4) Disciplinary decisions against advocates, except reprimand, shall be notified in writing;
 - (5) If the case is considered a criminal case, the Ministry of Justice shall refer it to the relevant authority;
 - (6) If the licensed advocate violates the provisions stated in this procedure, he/she shall be disciplined in accordance with the Sub-clauses (1 to 4) of Clause (3) of this article.

Article 38: Request for Compensation of Damages from an Advocate by a Client

- (1) An advocate shall be held responsible if he/she abuses his/her legal duties, is reckless in his/her affairs, or he/she deliberately causes a loss to his/her client;
- (2) If a client suffers a loss due to a deliberate act of the advocate, the client may file a case to the relevant court and request compensation.

Article 39: Prohibition of Misusing the Name and Privileges of an Advocate by others

Anyone who misuses the name and privileges of an advocate shall be prosecuted according to the provisions of the law.

Chapter Six

Final Provisions

Article 40: Obligations of the Directorate of Advocates

In case of an advocate's death, the Directorate of Advocates shall be obliged to submit the papers and documents related to the client under the supervision of

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the appointed delegation in the presence of the advocate's heir and obtain a receipt.

Article 41: The Right to Practice without a License

(1) To be able to defend and represent the rights of a relative - such as (a father, grandfather [third-degree relative], children, mother, grandmother, brother, nephew, niece, spouse, aunts, uncles, and their blood children up to second degree relative, father-in-law, brother-in-law, sister-in-law and mother-in-law) - or a partner in a partnership, the advocate shall not be obliged to hold a valid license to practice law;

(2) For the purposes of Clause (1) of this article, advocates shall be appointed by a power of attorney.

Article 42: Appointment of an Advocate in Criminal Cases

(1) The advocate in criminal cases shall be appointed in accordance with the (*form for appointing an advocate in criminal cases*) mentioned in Annex No. (3) of this procedure;

(2) The form stated in Clause (1) of this article shall be prepared by the Ministry of Justice and shall be provided to the advocate for Fifty (50) AFN stamped by the Directorate of Advocates.

Article 43: Appointment of an Advocate by Power of Attorney

In civil cases and civil aspects of criminal cases in which the rights of individuals are involved, an advocate shall be appointed by a power of attorney.

Article 44: Prohibition of Establishing a Branch of Law Office

An advocate shall be prohibited from establishing a branch of his/her law office.

Article 45: Prohibition on Transfer of an Advocate's Privileges

The right to practice law shall not be transferred to another individual if his/her legal competence is revoked or he/she abandons the job or is incapacitated.

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Article 46: A Lawsuit Arising from Dispute over Advocates' Fees

- (1) A lawsuit arising from a fee dispute between a client and an advocate shall not be heard after one year from the termination of the representation. A justifiable excuse shall be an exception to this provision;
- (2) The authority to resolve the dispute mentioned in Clause (1) of this article shall be the competent court.

Article 47: Access to Documents and Papers

If an advocate needs documents and papers of a case, the relevant authority must make the mentioned documents available at the advocate's request.

Article 48: Seeking the Expert Opinion

The advocate can seek the opinion of experts during the lawsuit.

Article 49: Observing the Order of the Court Sessions

The advocate shall be obliged to maintain the order of the court sessions.

Article 50: Renewal of the Previous License

- (1) The advocates who have obtained an advocate license before the enforcement of this procedure shall be required to obtain an advocate license within six months in accordance with the provisions of this procedure.
- (2) If the persons mentioned in Clause (1) of this article do not meet the conditions set forth in this procedure, after clearing their tax duties, they shall be obliged to submit the relevant license to the Ministry of Justice within (7) days before the expiration of its validity period.
- (3) The Ministry of Interior and Municipalities in the capital and provinces are obliged, at the discretion of the Ministry of Justice, to cooperate in closing out unauthorized offices of advocates.

Article 51: Duplicate of the Advocate's License

If the advocate's license is lost or on fire, a duplicate will be issued after the announcement through the mass media in exchange for a payment of Three Thousand (3,000) AFN for the remaining period.

Article 52: Payment of Money

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- (1) To pay the amounts mentioned in Articles 11, 23, 24, 39, and 48 of this procedure to a unique Emirate/government account, the Ministry of Justice shall be obliged to prepare the payment sheet and make it available to the applicant.
- (2) The applicant shall be obliged to pay the amounts mentioned in Clause (1) of this article to the bank and submit its receipt to the Ministry of Justice.

Article 53: Recruitment of Professional and Administrative Staff

An advocate may recruit Law and Shari Graduates or Law and Shari Students and Graduates of the Fourteenth Grade of Religious Schools or equivalent for the purpose of practical work and professional training in the relevant law office and shall submit their details in writing to the Ministry of Justice.

Article 54: Assistant of an Advocate

To perform the relevant issues and observe the provisions of Article 31 of this procedure, an advocate may hire a person as an assistant.

Article 55: Conducting Stage Program

The Ministry of Justice shall conduct the advocate Stage program in accordance with the relevant procedure.

Article 56: Establishment of Union

In order to secure their material and intellectual rights, the advocates may establish a union in accordance with the provisions of the relevant legislative documents.

Article 57: Transfer of Assets

- (1) The movable and immovable assets of the Afghanistan Independent Bar Association (AIBA) shall be transferred to the Ministry of Justice.
- (2) Emirate/governmental entities in the capital and provinces shall be obliged to cooperate with the Ministry of Justice to transfer the assets of the Afghanistan Independent Bar Association (AIBA).

Article 58: Enforcement

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This Procedure shall be enforceable from the date of approval of the Cabinet of the Islamic Emirate of Afghanistan.

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Islamic Emirate of Afghanistan
Ministry of Justice
Directorate of Advocates
Form for Appointing an Advocate in Cases



Client's Details							
(Suspect and accused or legal representative of the suspect and accused child)							
Name	F/Name	Grandfather Name	Sex	Permanent Address	Current Address	Tazkira No.	Telephone No#

Advocate's Details							
Name	F/Name	Grandfather Name	Sex	Permanent Address	Current Address	Telephone No#	License No.

I (), whose details are mentioned above, while I have my own legal capacity, appoint Mr./Mrs./Ms. () as my advocate to dismiss the accusation of () till () in () to defend my rights in exchange for () AFN or free of charges in accordance with the provisions of procedure.

Signature and Thumbprint of the client ()

Date:

I (), whose details are mentioned above, have my own legal capacity, and I have accepted Mr./Miss/Mrs. ()'s representation in exchange for () AFN or without fee (free of charge), and I promise to defend my client's rights with utmost honesty, trustworthiness, and observance of the provisions of procedure.

Signature and Thumbprint of the advocate ()

Date:

Confirmation and approval of the relevant authorities

Police () Prosecutor () Court ()