



GOVERNMENT GAZETTE

OF THE

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 123

1997

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 4 of 1997: Legal Practitioners Amendment Act, 1997.

Act No. 4, 1997

LEGAL PRACTITIONERS AMENDMENT ACT, 1997**EXPLANATORY NOTE:**

_____ Words underlined with solid line indicate insertions in existing enactments.

[] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Legal Practitioners Act, 1995 so as to make further provision in relation to the documents to be taken into account by the Board for Legal Education for the purpose of making recommendations to the Minister in relation to a foreign degree or equivalent qualification which is being considered to be prescribed; to provide for an exception on the provision prohibiting an unqualified person from representing another person in a court of law; to provide that the prohibition relating to the preparation of certain contracts by unqualified persons for reward shall not apply with respect to commission earned by an agent who brings about a transaction to which the contract relates; to make provision for a general restriction on the liability of the Legal Practitioners' Fidelity Fund for theft committed by legal practitioners, candidate legal practitioners or persons employed by legal practitioners; to empower the Council to impose conditions when granting a legal practitioner exemption from the requirement to hold a fidelity fund certificate; and to provide for matters incidental thereto.

(Signed by the President on 11 June 1997)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

Amendment of section 11 of Act 15 of 1995

1. Section 11 of the Legal Practitioners Act, 1995 (hereafter referred to as the principal Act) is amended -

(a) by the substitution for subsection (2) of the following subsection:

"(2) Where, for the purpose of making a recommendation to the Minister in terms of section 5(4), the Board is required to consider how a particular degree or equivalent qualification in law obtained outside Namibia compares with a degree in law obtained from the University of Namibia, the Board shall cause to be lodged with it originals or authenticated copies of certificates and of official transcripts issued by the competent authority of the relevant university or educational institution, or where such university or institution no longer exists, a verification by any other competent authority in the country where such university or institution was situated as to the certificates and official transcripts issued by the university or institution in question: Provided that if, in the case of a degree or qualification obtained before 21 March 1990, the Board is satisfied that neither the original or an authenticated copy of

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the certificate and the official transcripts can be provided for reasons which the Board considers sufficient and credible in the particular case, the Board may allow duplicates thereof to be lodged for the purpose of this subsection."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) The certificates and official transcripts lodged with the Board in terms of subsection (2), whether originals or authenticated copies or, where allowed, duplicates, shall be accepted as sufficient information to enable the Board to make its recommendation to the Minister."

Amendment of section 21 of Act 15 of 1995

2. Section 21 of the principal Act is amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) issue out any summons or process or commence, carry on or defend any action, suit or other proceedings in any court of law in the name of or on behalf of any other person, except in so far as it is authorised by any other law; or".

Substitution of section 22 of Act 15 of 1995

3. The following section is substituted for section 22 of the principal Act:

"Unqualified persons not to prepare certain documents or instruments

22. (1) Any person, not being a legal practitioner, who prepares or draws up for or on behalf of any other person any of the following documents, namely -

- (a) a will or other testamentary instrument;
- (b) any contract, deed or instrument relating to the creation or dissolution of a partnership or a variation of the terms thereof;
- (c) any contract, deed or instrument for the acquisition, disposal, exchange or lease of immovable property or a right relating to immovable property, other than a contract for the lease of immovable property for a period less than five years;
- (d) the memorandum or articles of association or prospectus of a company,

and who charges, demands or receives any fee or reward, whether in cash or in any other form, or knowingly permits any other person to charge, demand or receive any such fee or reward, for the service rendered by him or her in connection with the preparation or drawing up of such document, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment.

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- (2) The provisions of subsection (1) shall not apply to -
- (a) any person in the employment of a legal practitioner preparing or drawing up any of the documents concerned in the course of his or her employment and on behalf of his or her employer;
 - (b) a person in the employment of the State or any body corporate established by any law, preparing or drawing up any of the documents or instruments concerned in the course of his or her official duties;
 - (c) a person acting in the capacity of trustee of an insolvent estate or executor, administrator or curator, or liquidator or judicial manager of a company or close corporation, or deputy-sheriff or messenger of the court by virtue of an appointment by a competent authority in terms of any law, drawing up or preparing any of the documents concerned in the course of his or her statutory duties and receiving such fees as may be allowed by law; or
 - (d) a registered accountant and auditor who is a member of the Institute of Chartered Accountants of Namibia drawing up or preparing the memorandum or articles of association or prospectus of any company.
- (3) No document or instrument referred to in subsection (1) shall be invalid by reason only of the fact that it has been drawn up or prepared in contravention of the provisions of that subsection."

Amendment of section 54 of Act 15 of 1995

4. Section 54 of the principal Act is amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) The Fund shall not be applied to reimburse any person as contemplated in subsection (1), unless, in the case of a theft committed by -

- (a) a legal practitioner, the legal practitioner was at the time of the theft the holder of a fidelity fund certificate or an exemption granted by the Council under section 67(2);
- (b) a candidate legal practitioner, the candidate legal practitioner was at the time of the theft attached to a legal practitioner contemplated in paragraph (a); or
- (c) a person employed by a legal practitioner, the legal practitioner by whom such person was employed at the time of the theft was a legal practitioner contemplated in paragraph (a)."

Amendment of section 67 of Act 15 of 1995

5. Section 67 of the principal Act is amended by the addition of the following subsection:

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"(4) An exemption contemplated in subsection (2) may be granted by the Council to a legal practitioner subject to such conditions as the Council may determine, including a condition requiring the legal practitioner to furnish the Council with a guarantee of fidelity in favour of the fund, in a form and by a person approved by the Council, guaranteeing the fidelity of such legal practitioner to an amount determined by the Council."

Amendment of section 72 of Act 15 of 1995

6. Section 72 of the principal Act is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) by a person as a result of theft committed by a legal practitioner while the legal practitioner is in the employment of a person who is not a legal practitioner, whether such theft was committed in the course of his or her employment or in the course of any private practice carried on by him or her on his or her own account outside such employment, except if he or she, at the time of the theft, held in respect of such practice a fidelity fund certificate or an exemption granted by the Council under section 67(2)."

Amendment of section 87 of Act 15 of 1995

7. Section 87 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

"(1) A Legal practitioner shall not present any document for registration in a deeds registry or for attestation or execution by the registrar of deeds in terms of any law, unless he or she holds a certificate as having passed an examination in conveyancing set and held by the Board under section 11(1)(d) or is, in terms of subsection (2) of this section, deemed to be the holder of such a certificate, but a legal practitioner appointed or deemed to have been appointed as a notary public in terms of section 86 shall not be precluded from so presenting for registration or attestation or execution any notarial deed."

Short title and commencement

8. This Act shall be called the Legal Practitioners Amendment Act, 1997.
