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Government Notice

OFFICE OF THE PRIME MINISTER

No. 235

2002

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. 22 of 2002: Legal Practitioners Second Amendment Act, 2002.

Act No. 22, 2002

**LEGAL PRACTITIONERS SECOND
AMENDMENT ACT, 2002**

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

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

ACT

To amend the Legal Practitioners Act, 1995 so as to prohibit candidate legal practitioners to accept, receive or hold moneys for or on account of another person; to make provision that the High Court may on application of the Law Society grant an order for the temporary suspension of a legal practitioner pending the determination of a complaint of unprofessional or dishonourable or unworthy conduct by the Disciplinary Committee; to extend from one year to two years the period for which members of the Council of the Law Society shall hold office; to exclude liability of the Legal Practitioners' Fidelity Fund in the case of theft of moneys entrusted to or controlled by a legal practitioner in the course of an investment practice; to abolish the conferment of senior counsel status to legal practitioners; and to provide for matters connected therewith.

(Signed by the President on 23 December 2002)

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

Amendment of section 1 of Act 15 of 1995

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

(a) by the insertion after the definition of "fund" of the following definition:

“ ‘investment practice’, in relation to a legal practitioner, means the investment of funds by the legal practitioner on behalf of another person, or the control or management, whether directly or indirectly, of such an investment or the collection of interest or capital redemption payments on such investment on behalf of such person, excluding -

- (a) an investment of a temporary nature that is made in the course of and is incidental to the rendering of a service of a legal nature by the legal practitioner to such person; or
- (b) an investment made by a legal practitioner in the capacity of executor, trustee, curator or any other *ex officio* capacity insofar as such investment is required and is governed by any other law;” and

(b) by the insertion after the definition of "professional company" of the following definition:

“ ‘racially advantaged legal practitioner’ means a legal practitioner who belongs to a racial or ethnic group which was, or is, directly or indirectly,

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AMENDMENT ACT, 2002**

advantaged as a consequence of social, economic, or educational programmes implemented as the result of racially discriminatory laws or practices before the independence of Namibia; and 'racially disadvantaged legal practitioner' has the opposite meaning;".

Amendment of section 21 of Act 15 of 1995 as amended by section 2 of Act 4 of 1997

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

"(2) A candidate legal practitioner shall not accept, hold or receive moneys for or on account of another person in the course of his or her training or attachment to a legal practitioner, or in the course of the conduct of the practice of the legal practitioner to whom he or she is attached.

(3) A person who contravenes any of the provisions of subsection (1) or (2) shall be guilty of an offence and liable on conviction -

(a) in the case of a contravention of subsection (1), to a fine not exceeding N\$100 000,00 or to imprisonment for a period not exceeding 5 years or to both such fine and such imprisonment; or

(b) in the case of a contravention of subsection (2), to a fine not exceeding N\$50 000,00 or to imprisonment for a period not exceeding 30 months or to both such fine and such imprisonment."

Amendment of section 32 of Act 15 of 1995

3. Section 32 of the principal Act is amended by the addition of the following subsections:

"(3) Notwithstanding subsections (1) and (2), if a complaint has been lodged with the Disciplinary Committee against a legal practitioner in accordance with section 35(1), the Court may, on application of the Law Society, make an order for the temporary suspension of that legal practitioner from practice pending the determination of the complaint, if the Court is satisfied -

(a) that there are reasonable grounds to believe that the legal practitioner is guilty of unprofessional or dishonourable or unworthy conduct; and

(b) that the alleged conduct of the legal practitioner is of such serious nature that it is in the public interest or the interest of the legal practitioner's clients that the legal practitioner should be prevented from carrying on his or her practice until the disciplinary proceedings against the legal practitioner have been finalised or until further order.

(4) The Court may grant an order of temporary suspension under subsection (3) subject to such conditions as the Court may consider appropriate.

(5) An order of temporary suspension lapses upon expiry of a period of 30 days from the date on which the order was granted, but the Court may, upon application by the Law Society and upon good cause shown, extend that period for a further period not exceeding 30 days."

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Substitution of section 45 of Act 15 of 1995

4. The following section is substituted for section 45 of the principal Act:

"Council of Law Society

45. (1) For the proper and effective management of the affairs of the Law Society there shall be an executive committee, to be known as the Council, consisting of eight members elected by the Law Society, subject to subsection (3), in an annual general meeting from among its members in the prescribed manner, of whom -

- (a) at least four shall be racially disadvantaged legal practitioners; and
- (b) at least four shall be legal practitioners who are in private practice.

(2) As soon after the election of members of the Council as it is practicable to do so, the Council shall elect from among its members a chairperson and a vice-chairperson: Provided that -

- (a) the chairpersonship shall consecutively rotate between a racially disadvantaged legal practitioner and a racially advantaged legal practitioner; and
- (b) if a racially disadvantaged legal practitioner is elected chairperson, the vice-chairperson shall be a racially advantaged person and *vice versa*.

(3) Notwithstanding subsection (1) the Law Society shall convene a general meeting of the Law Society to take place not later than 30 days after the date of commencement of the Legal Practitioners Second Amendment Act, 2002, or such later date as the Minister may approve, for the purpose of an election of members of the Council in accordance with subsections (1) and (2), and until that election is completed, the persons who immediately before such date of commencement or such later date, as the case may be, held office as members shall continue to hold office as members of the Council as if that Act had not been passed.

(4) The persons elected at the general meeting referred to in subsection (3) hold office until the close of the annual general meeting of the Law Society to be held in 2003, and with effect from that annual general meeting, members of the Council hold office for a period of 2 years: Provided that in the case of members elected at that meeting -

- (a) four members determined by lot shall hold office for 2 years; and
- (b) the other four members shall hold office for one year,

whereafter all members hold office for 2 years.

(5) A member of the Council whose term of office expires is eligible for re-election.

(6) If for any reason the Law Society fails to elect a successor for a member of the Council whose term of office expires, that member shall continue in office until his or her successor is elected."

**LEGAL PRACTITIONERS SECOND
AMENDMENT ACT, 2002****Amendment of section 52 of Act 15 of 1995**

5. Section 52 of the principal Act is amended by the deletion of paragraph (e) of subsection (1).

Amendment of section 72 of Act 15 of 1995, as amended by section 6 of Act 4 of 1997

6. Section 72 of the principal Act is amended by the insertion after paragraph (e) of subsection (1) of the following paragraph:

“(eA) by a person as a result of theft committed by a legal practitioner, whether or not such legal practitioner is the holder of a fidelity fund certificate or an exemption granted under section 67(2), or by a candidate legal practitioner attached to such legal practitioner, or by an employee of such legal practitioner, of any moneys received, invested, controlled, or managed, including any interest or capital redemption payments collected, in connection with an investment practice;”.

Repeal of section 79 of Act 15 of 1995

7. Section 79 of the principal Act is repealed.

Repeal of Act 6 of 1999

8. The Legal Practitioners Amendment Act, 1999 (Act No. 6 of 1999) is repealed.

Short title

9. (1) This Act is called the Legal Practitioners Second Amendment Act, 2002 and comes into operation on a date fixed by the Minister of Justice by notice in the *Gazette*.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.
