**Memorandum in respect of proposed amendments of the Legal Practice Act as proposed by the Board of Trustees of the Fidelity Fund.**

The Board of trustees of the ATTORNEYS Fidelity Fund has considered certain section of the Act and hereby wishes to make representations for the amendment thereof in order to ensure that there be a smooth transition from the current Board as constituted through the provisions of the Attorneys Act to the new Board that will be elected in terms of the Legal Practice Act.

The Board foresees a problem if there is no transitional period accommodated in the Act in that some of the activities of the Legal Practice Act have to be carried out in consultation with the Board. In this regard the following is but one of a number of areas of consultation:

**Section 62 provides.** (1) The Board consists of the following persons:

1. Five legal practitioners, one of whom must be an advocate referred to in section 34(2) *(b)*, elected in accordance with a procedure determined in the rules by the Council in consultation with the Board.

The effect of this section is that consultation with the Legal Practitioners Fidelity Fund would be required in the determination and finalization of the procedure for election and with no Board in place that would not be possible.

Were the Act to come into full operation on date determined by the Minister with no transitional Board in office it would actually render the Fund leaderless at Board level and when one looks at the Act it clear that the Board still retains the power of the determination of the acceptance or repudiation of claims and as such this would halt the operations of the Fund and impede service delivery until a new Board has been constituted through election which in itself might be a process that takes time. The current Board cannot usurp the power of the next Board for instance by delegating that determination to management because it is constituted in terms of the current Act and only the new Board can delegate such determination to management.

Bearing in mind the definition of “Legal Practitioner” in the Act, this provision may potentially have the effect that the Legal Practitioner component of the Board might even consist only of advocates including one holding FFC’s. The Fund’s view is that this component of the Board should consist of 4 attorneys and 1 advocate and that an amendment of the Act should be sought to address this issue. It is the Board’s view that it could never have been envisaged that Advocates other than one holding a fidelity fund certificate should be members of the Board and if this is also not addressed as an amendment now, It can be done later with the Board still in office to cure what it sees as never having been intended at all.

There are other pressing matters that could as well be attended to by the transitional Board amongst which are the determination of the methodology that would be used to calculate the annual appropriation that the Fund would be making to the Council in order to deal with the sustainability of both institutions. There is the question of the determination of the rules of inspection that are undertaken by the Fund and making sure they are published in the Government Gazette timeously and such cannot be done except by a Board as constituted in terms of the Legal Practice Act hence the request of the amendment of section 62 in particular.

It is in the light of these and other issues that the Board must deal with like the determination of fees for fidelity fund certificates that it is respectfully requested that the amendments sought be supported and effected by the Ministry.

Motlatsi Molefe

Chief Executive Officer

2nd June 2017.