** 21 July 2017**

**SUBMISSION TO THE PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES ON THE LEGAL PRACTICE AMENDMENT BILL, 2017**

**The National Forum on the Legal Profession wishes to propose the following additional amendments to the Legal Practice Act 2014:**

**To amend the Legal Practice Act, 2014 so as to provide for the Legal Practice Council to acquire jurisdiction to regulate the legal profession when the existing Law Societies are abolished, to further regulate the right of appearance of attorneys in the High Court, Supreme Court of Appeal and the Constitutional Court, to regulate the right of appearance of pupils and to further regulate the liability of shareholders, partners or members of juristic entities for the theft of trust money or assets entrusted to the juristic entity, to provide for the composition of the Board of the Legal Practitioners' Fidelity Fund, to retain the right of appearance of attorneys rand, to clarify the amounts payable by attorneys and advocates referred to in section 34(2)(b) and to provide for matters connected therewith.**

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

**Amendment of Section 4 of Act 28 of 2014**

Section 4 of the principal Act is hereby amended by the substitution of the following section:

"4(1) The South African Legal Practice Council is hereby established as a body corporate with full legal capacity.

(2) The Council shall exercise jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in this Act when section 120(4) comes into operation."

**Motivation:**

This amendment is necessary to avoid conflicting jurisdiction between the new Council and the existing 4 Law Societies when Chapter 2 of the principal Act comes into operation in terms of s120(3) and to ensure a smooth transfer.

The existing Law Societies will continue to regulate the attorneys until s120(4) comes into operation, which should ideally be 6 months after s120(3). In the overlapping period, the new Council can become established. Infrastructure must be put in place, staff and assets allocated from existing Law Societies, Provincial Councils must be elected, functions must be delegated, all regulations and rules must be in place, the database must be finalised an in operation, work in progress must be transferred, etc.

In the meantime, the existing Law Societies can retain jurisdiction to regulate the attorneys until their staff, assets, liabilities and work in progress are transferred when s120(4) comes into operation.

**Amendment of section 25 of Act 28 of 2014**

Section 25 of the principal Act is hereby amended -

1. by the substitution for subsection (3) of the following subsection:

"(3) An attorney may appear in the High Court, the Supreme Court of Appeal and the Constitutional Court if he or she -

(a)(i) has practised as an attorney for a continuous period of not less than three years: Provided that this period may be reduced in accordance with rules made by the Council if the attorney has undergone a trial advocacy training programme approved by the Council as set out in the Rules;

(ii) Is in possession of an LLB degree; and

(iii) has not had his or her name struck of the Roll or has not been suspended from practice."

1. by the deletion of subsection (4);  and
2. by the renumbering of subsection (5) as subsection (4);  and
3. by the addition of the following subsection:

"(5)(a) A pupil is entitled to appear -

1. in any court, other than the High Court, the Supreme Court of Appeal or the Constitutional Court;  and

(ii) before any board, tribunal or similar institution on behalf of any person,

instead of and on behalf of the person under whose supervision he or she is undergoing his or her practical vocational training.

(b) A pupil shall be entitled to be remunerated for any appearance in terms of paragraph (a) as provided for in terms of the rules.”

**Motivation:**

**Section 25(3):**

The amendment of s25(3) is necessary in order to regularise the rights of appearance of attorneys and advocates and to eliminate the unfair discrimination against attorneys, incorporated into the principal Act from the Admission of Legal Practitioners Act 33 of 1995 (which is to be repealed by s119 of the principal Act).

At the same time, the effective administration of the courts are ensured and the rights of the public are promoted by the proposed new s25(3)(a)(i) which requires that the attorney who wishes to appear in the High Court, Supreme Court of Appeal and Constitutional Court, must have practised for a continuous period of not less than three years, unless he or she has undergone a trial advocacy training programme approved by the Council as set out in the Rules. The practical vocational training Rules are still the subject of debate by the National Forum but must be finalised before the Council can start to regulate the legal profession.

**Section 25(5)**

The amendment of s25(5) is necessary to ensure statutory recognition of the right of pupils (candidate legal practitioners who wish to become advocates) to appear in the lower courts and before tribunals on behalf of other persons and to earn fees, in order that:

1. the position of pupils can be regularised in relation to that of candidate attorneys;
2. the pupil can gain relevant experience and enhance his/her skills;
3. the pupil can earn fees whilst appearing in the lower courts and before tribunals, which will enhance the ability of LLB graduates to enter into the profession and will also enable the Council to standardise the periods of practical vocational training of candidate legal practitioners and pupils as far as practicable.

The principal Act currently only provides for the right of appearance of candidate attorneys, in s25(5). Although the principal Act requires the National Forum to make recommendations to the Minister regarding the right of appearance of candidate legal practitioners in court or any other institution (s97(1)(a)(vi) of the principal Act) and for the Council (or the National Forum, in terms of the Amendment Bill) to provide for the remuneration of candidate legal practitioners (s27(2) read with s95(1)(o) of the principal Act), the principal Act does not provide for pupils’ right of appearance.

The omission in the principal Act cannot be remedied in the Rules by the Council; it cannot confer rights not provided for in the principal Act.

Amendment of section 30 of Act 28 of 2014

Section 30 of the principal Act is hereby amended-

1. by the deletion of paragraph (h) of subsection (3);  and
2. by the numbering of paragraph (i) of subsection (3) as paragraph (h).

**Motivation:**

This amendment is as a result of the proposed amendment of s25(3) of the principal Act above. If the amendment is approved, s30(3)(h) will no longer apply because the Registrar of the High Court will no longer be required to issue certificates in terms of s25(3) as it currently reads.

**Amendment of section 34 of Act 28 of 2014**

Section 34 of the principal Act is hereby amended by the substitution for subsection (7)(c) of the following subsection:

"(c) all present and past shareholders, partners or members, as the case may be, are liable jointly and severally together with the commercial juristic entity for-

1. the debts and liabilities of the commercial juristic entity as are or were contracted during their period of office; and
2. in respect of any theft of trust money or assets entrusted to the juristic entity committed during their period of office.”

**Motivation:**

The amendment is necessary to address an unforeseen but serious consequence of the wording of s34(7) of the principal Act, which renders all shareholders, partners or members of a commercial juristic entity jointly and severally liable for **any** theft committed by another shareholder, partner or member.

It is essential that the subsection should specify that the joint and several liability is restricted to theft of trust money or assets entrusted to the juristic entity.

If the current wording of s34(7) is retained, it will discourage the establishment of commercial juristic entities as forms of legal practice and will discourage participation in such entities, which will affect the ability of newly qualified LPs to gain entry into the legal profession or to gain relevant experience in established law firms.

The current wording of s34(7) will also require all existing commercial juristic entities to amend their partnership agreements and articles of association in order to comply.

Amendment of section 62 of Act 28 of 2014

Section 62 of the principal Act is hereby amended-

1. by the addition in subsection (1) of the following words:

"Subject to the provisions of subsection (3) the Board consists of the following persons:"

1. by the addition of the following subsection:

"(3) The members of the board of control of the Attorneys Fidelity Fund who hold office as members of that board at the date of commencement of Chapter 2 shall remain in office in that capacity as members of the Board for a period of six months after that date or until the members referred to in subsection (1)(a) have been elected, whichever occurs later".

**Motivation:**

The amendment is necessary to ensure a smooth transfer from the Board of Control of the Attorneys Fidelity Fund which will be in existence immediately before Chapter 2 of the Act commences (the “outgoing Board”), to the new Board of the Legal Practitioners’ Board of Control (the “new Board”) which will be constituted after the commencement of Chapter 2, in terms of s62 of the Act.

Unless the outgoing Board remains in control for the interim period, the current wording of the Act will result in a situation where the Fund will not be managed and will able to function, to the serious detriment of the public, legal practitioners and other stakeholders. The outgoing Board will be in the best position to ensure the effective functioning of the Fund until the new Board is constituted.

Amendment of section 85 of Act 28 of 2014

Section 85 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (6) of the following paragraph:

"(c) discharged all liabilities in respect of fees, levies, charges and contributions payable by the legal practitioner concerned in terms of this Act".

**Motivation:**

This amendment is necessary to ensure that a LP pays his/her outstanding subscription and other fees, levies and charges due to the Council before a Fidelity Fund certificate is issued to the LP.

S85(6)(c) currently only provides for the payment of *enrolment* fees, which would have been paid by the LP upon enrolment and would in all likelihood not be outstanding when application is made annually for a Fidelity Fund certificate. In all probability, the drafters of the existing s85(6)(c) intended to refer to *subscription* fees, but there may be other fees, levies and charges also due to the Council.

Amendment of section 114 of Act 28 of 2014

Section 114 of the principal Act is hereby amended by the addition of the following subsection:

"(5) Every attorney who, on the date referred to in section 120(4), has the right of appearance in the High Court, the Supreme Court of Appeal or the Constitutional Court in terms of any law retains that right after the commencement of this Act".

**Motivation:**

This amendment is necessary in order to confirm the existing rights of appearance of attorneys in the High Court, the Supreme Court of Appeal or the Constitutional Court by virtue of the Admission of Legal Practitioners Act 33 of 1995 (which is to be repealed by s119 of the principal Act).

S114 of the principal Act currently does not provide for the recognition of the right attorneys currently have, some with B Proc degrees.

 The National Forum regards the amendments contained in the Legal Practice Amendment Bill 2017 and the additional amendment proposed above essential for the effective implementation of the principal Act and requests an opportunity to address the Portfolio Committee on the proposed amendments.

Yours sincerely

Adv. K Moroka SC

Chairperson: National Forum

Enquiries: Ms Charity Mhlungu

Executive Officer: National Forum

Tel: 0822194637