



# SWAZILAND

## GOVERNMENT GAZETTE

### EXTRAORDINARY

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**VOL. XXV]**

**MBABANE, Wednesday, September 16th., 1987**

**[No. 545**

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**PUBLISHED BY AUTHORITY**

**SUPPLEMENT TO**  
**THE**  
**SWAZILAND GOVERNMENT**  
**GAZETTE**  
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## THE LEGAL PRACTITIONERS (AMENDMENT) BILL, 1987

(Bill No. 11 of 1987)

(To be presented by the Minister for Justice)

## MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to amend the Legal Practitioners Act, 1964 in order to make provision for the improvement of the legal profession and practice generally and particularly in respect of the following matters:-

- (a) to establish a statutory Law Society for the legal profession in Swaziland;
- (b) to prescribe further and better qualifications for the admission of legal practitioners; and
- (c) to provide for the better control and discipline of legal practitioners, and for the protection of clients' funds against loss through malpractice or dishonesty.

D.P. MAKANZA  
*Attorney-General*

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A BILL  
entitled

An Act to amend the Legal Practitioners Act, 1964.

ENACTED by the King and the Parliament of Swaziland.

*Short title.*

1. This Act may be cited as the Legal Practitioners (Amendment) Act, 1987 and shall be read as one with the Legal Practitioners Act, 1964 (hereinafter referred to as "the principal Act").

*Amendment of section 2.*

2. Section 2 of the principal Act is amended by inserting after the definition "court" the following definition—

"Council means the Council of the Law Society established under this Act;

"Law Society" means the Law Society of Swaziland established under this Act;

"Minister" means the Minister responsible for Justice.

*Amendment of section 5.*

3. Section 5 of the principal Act is amended by replacing sub-section (1) with the following—

"(1) Every person who applies to be admitted and enrolled as an advocate shall produce to the satisfaction of the High Court proof that—

- (a) he is a citizen of Swaziland or is ordinarily resident in Swaziland, and is a fit and proper person to be admitted as an advocate; and

- (b) he is of or above the age of twenty-one years; and
- (c) he has satisfied all the requirements for or holds the degree of—
  - (i) Bachelor of Laws of the former University of Botswana, Lesotho and Swaziland or the University of Botswana and Swaziland or the University of Swaziland; or
  - (ii) Bachelor of Laws of any University in Botswana, Lesotho, Zimbabwe, South Africa or Namibia and has also passed the examination in Swaziland statute Law prescribed under this Act;

or

(d) he holds a Bachelor of Laws degree of any university and has been enrolled to practise as an advocate in South Africa, Namibia, Botswana or Lesotho or as a legal practitioner in Zimbabwe and has so practised for at least two years and at the date of such application remains so enrolled and no proceedings to remove or suspend him from practice are pending or contemplated; and

(e) in the case of a person to whom paragraph (d) applies, he has never at any time practised as an attorney in South Africa, Botswana, Lesotho, Swaziland or Namibia while admitted and enrolled as an advocate in any of those countries:

Provided that the Chief Justice may, in any particular case, permit a person who has so practised but is otherwise qualified, to be admitted and enrolled as an advocate; or

(f) he possesses the educational qualifications in legal subjects which will entitle him to be admitted as a barrister in England, Northern Ireland or the Republic of Ireland, or as an advocate in the Court of Session of Scotland and has passed the examinations in Roman-Dutch law and Swaziland statute law prescribed under this Act,

and thereupon the High Court shall, unless cause to the contrary is shown to its satisfaction, admit and enroll that person as an advocate."

#### *Amendment of section 6.*

4. Section 6 of the principal Act is amended by replacing sub-section (1) with the following—

"(1) Every person who applies to be admitted and enrolled as an attorney shall produce to the satisfaction of the High Court proof that—

- (a) he is a citizen of Swaziland or is ordinarily resident in Swaziland and is a fit and proper person to be admitted as an attorney; and
- (b) he is of or above the age of twenty-one years; and
- (c) he has satisfied all the requirements for or holds—
  - (i) a Bachelor of Laws degree of the former University of Botswana, Lesotho and Swaziland, the University of Botswana and Swaziland, the University of Swaziland or any university in Botswana, Lesotho, Zimbabwe, South Africa or Namibia; or
  - (ii) a Bachelor's degree from any university and has served a period of articles and, after such service, passed examinations prescribed under this Act unless he is exempt from serving such articles or passing such examinations; or

(d) he holds a Bachelor's degree from any university and is enrolled as an attorney in South Africa, Namibia, Botswana or Lesotho or as a legal practitioner in Zimbabwe and has practised as such for at least two years and at the date of such application he remains so enrolled and no proceedings to remove or suspend him from practice are pending or contemplated; or

(e) having at any time prior to his application for admission as an attorney practised as an advocate in Swaziland, he has not practised as such advocate for a period of three months immediately preceding such application and that he has not at any time been struck off the roll or suspended from practice and has successfully served articles of clerkship and passed any examinations prescribed under this Act if he is not exempt therefrom; or

(f) he is an attorney or solicitor of any of the courts of record in London, Belfast or Dublin, or a writer to the signet or a solicitor or law agent admitted to practise in the Court of Session of Scotland and that he is not under any order of suspension in any such courts respectively and has passed the examinations in Roman-Dutch Law and Swaziland statute law prescribed under this Act,

and thereupon the High Court shall, unless cause to the contrary is shown to its satisfaction, admit and enrol such person as an attorney."

*Repeal of section 7.*

5. Section 7 of the principal Act is repealed.

*Amendment of section 9.*

6. Section 9 of the principal Act is amended by replacing paragraph (b) with the following—

"(b) a certificate to the satisfaction of the Attorney-General that he is a fit and proper person and proof of the academic qualifications referred to in section 6(1)(c)."

*Amendment of section 16.*

7. Section 16 of the principal Act is amended by replacing subsection (3) with the following—

"(3) No attorney, other than the Attorney-General, shall at any time have more than three articulated clerks."

*Amendment of section 21.*

8. Section 21 of the principal Act is replaced with the following—

*"Period of pupillage of public officer to count as articles."*

21. Any period served by a public officer under the Attorney-General or, with the approval of the Attorney-General, partly under the Attorney-General and partly under the Director of Public Prosecutions shall, whether such period relates to any time before or after the commencement of this Act, be deemed, for the purpose of this Act, to be a period of articles of clerkship under an attorney and such articles shall, upon being lodged with the Registrar and with effect from the commencement of that period, have the same force and effect as any other articles lodged with the Registrar under this Act."

*Amendment of section 22.*

## 9. Section 22 of the principal Act is amended—

- (a) by replacing paragraph (a) with the following—

“(a) he is admitted and enrolled to practise as an attorney in Swaziland;” and

- (b) by replacing paragraph (c) with the following—

“(c) either—

- (i) he has been admitted or is entitled to practise as a notary public in South Africa, Namibia, Botswana, Lesotho or Zimbabwe and on the date of the application remains so enrolled and is not under any order of suspension;

or

- (ii) he has passed the examinations for notaries public prescribed under this Act.”

*Amendment of section 23.*

## 10. Section 23 of the principal Act is amended—

- (a) by replacing paragraph (a) with the following—

“(a) he is enrolled to practise as an attorney in Swaziland;” and

- (b) by replacing paragraph (c) with the following—

“(c) either—

- (i) he has been admitted or is entitled to practise as a conveyancer in South Africa, Namibia, Botswana, Lesotho or Zimbabwe and on the date of the application remains so enrolled and is not under any order of suspension;

or

- (ii) he has passed the examinations for conveyancers prescribed under this Act.”

*Amendment of section 24.*

## 11. Section 24 of the principal Act is amended in sub-section (8) by deleting the words “on an application made by the Attorney-General under section 27.”

*Amendment of section 24 ter.*12. Section 24 *ter* of the principal Act is replaced with the following—

“*Books of account to be examined by chartered accountant.*

24 *ter*. Every practising legal practitioner other than an advocate, shall cause his books of account to be examined at his own expense at least once a year by an Auditor registered under the Accountants Act, 1985 and for the purposes of this Act, any reference to a public accountant shall be construed as a reference to a chartered accountant registered under that Act.”

*Amendment of section 24 sext.*13. Section 24 *sext* of the principal Act is amended by deleting the words “on an application made by the Attorney-General under section 27.”

*Addition of Part VIIA.*

14. The principal Act is amended by replacing section 27 with the following—

**“PART VIIA  
DISCIPLINARY PROVISIONS**

*Powers of the High Court.*

27(1) Upon an application by the Law Society, the Chief Justice, or in his absence, a Judge, may, for any reasonable cause shown order the suspension or removal of a legal practitioner from the roll and, in the case of disciplinary proceedings for professional misconduct, he may order suspension or removal or such other lesser penalty as is provided for in section 27 *ter*.

(2) The provision of this Act relating to discipline shall be without prejudice to the inherent powers of a court or other tribunal to deal with any misconduct or an offence by a legal practitioner in the course of or in relation to proceedings before it.

*Disciplinary Tribunal and its procedure.*

27 *bis*. (1) For the purpose of exercising disciplinary control and other powers conferred by this Act, there is hereby established a Disciplinary Tribunal (herein referred to as “the Tribunal”) which shall consist of—

- (a) a Chairman, who shall be a person qualified to be appointed a judge and who shall be appointed by the Chief Justice from time to time;
- (b) two other members selected from time to time by the Chairman of the Tribunal in consultation with the president of the Council from amongst the members of the Law Society.

(2) The procedure of the Tribunal shall be as prescribed under Regulations made by the Chief Justice in consultation with the Chairman of the Tribunal, the Council and the Attorney-General.

*Powers and functions of Tribunal.*

27 *ter*. (1) If after due inquiry the Tribunal decides that—

- (a) a legal practitioner has been guilty of professional misconduct; or
- (d) it would be contrary to the public interest to allow a legal practitioner to continue to practise as such because of any mental or physical disability the Tribunal shall take any of the following steps—
  - (i) direct the Law Society to make an application to the High Court for an order suspending the said legal practitioner from practising as such for a period exceeding three months or removing him from the roll and the Law Society shall comply with any such directive; but no costs shall be awarded against the Law Society unless the High Court is satisfied that the Law Society has acted *mala fide* or unreasonably in bringing the application;
  - (ii) suspend the legal practitioner from practising as a legal practitioner for a period not exceeding three months;
  - (iii) impose on the legal practitioner a penalty not exceeding E1000.00 which amount shall be payable to the Law Society Fidelity Fund established under this Act;

- (iv) impose such conditions as it deems fit subject to which the legal practitioner may continue to practise as such;
  - (v) censure the legal practitioner; or
  - (vi) caution and discharge the legal practitioner either conditionally or unconditionally.
- (2) If the subject matter of an allegation of professional misconduct also constitutes or is likely to constitute grounds for criminal proceedings, the Tribunal may postpone its consideration of or decision on the matter until such criminal proceedings have been finalised.
- (3) No civil or criminal proceedings against a legal practitioner shall be construed as precluding any disciplinary proceedings under this Act.
- (4) The Tribunal shall inform the Attorney-General, the Registrar and the Council within fourteen days of any decision being made by it under this section.

#### *Appeals.*

27 *quat.* Any person who is aggrieved—

- (a) by the order or finding of, or penalty imposed by, the Tribunal under this Part other than a directive to the Law Society in terms of section 27 *ter* (1)(i) may, within thirty days after the date of such order, finding or imposition of penalty appeal to the High Court against the decision of the Tribunal;
- (b) by a decision of the High Court may, within thirty days from the date of such decision appeal to the Court of Appeal.

#### *Manner of lodging complaints against legal practitioner.*

27 *quin.* Where any person has a complaint regarding the professional conduct of a legal practitioner, he shall, in writing, submit the complaint to the Secretary to the Law Society who shall refer such complaint to the Chairman of the Tribunal for appropriate action as the Tribunal may determine.

#### *Other powers, immunities and privileges of Tribunal.*

27 *sext.* In the performance of the functions of the Tribunal a member of the Tribunal and every person carrying out any such functions under the direction of the Tribunal shall have the same powers, privileges and immunities as a Judge of the High Court or, as the case may be, an officer of the High Court and all proceedings before the Tribunal shall be privileged in the same manner and to the same extent as proceedings before the High Court.

#### *Removal from and restoration to the roll and publication of orders.*

27 *oct.* (1) A legal practitioner whose name has been removed from the roll may make application in the same manner as, provided in this Act to have his name restored to the roll.

(2) The Registrar shall, as soon as practicable, publish in the Gazette, any order removing or suspending the name of a legal practitioner from or restoring it to the roll and if the legal practitioner is also registered or enrolled as such in a country other than Swaziland, the Registrar shall, in addition, submit such information to any other authorities with which such practitioner is registered or enrolled in that country.



*Application of Part VIIA to law officers.*

27 nov. The provisions of this Part shall apply to any person to whom the Law Officers Act, 1966 applies and who is also admitted and enrolled as a legal practitioner."

*Amendment of section 28.*

15. Section 28 of the principal Act is replaced with the following—

*"Petition for admission and enrolment.*

28. Any person who wishes to be admitted and enrolled as a legal practitioner or who wishes to be granted a right of audience in any particular case or matter shall, by written petition, apply to the High Court after serving a copy of such petition upon the Attorney-General and the Secretary of the Law Society as provided by section 30.

*Amendment of section 29.*

16. Section 29 of the principal Act is amended by replacing paragraph (b) with the following—

"(b) if the person was a legal practitioner in any court, that, save for the purpose of complying with section 6(1)(e) and section 20, he has not been struck off the roll of such court or suspended from practice for improper or unprofessional conduct and that no proceedings are pending to strike him off such a roll or to suspend him from practice on any such grounds."

*Amendment of section 30.*

17. Section 30 of the principal Act is replaced with the following—

*"Petition for admission, re-admission or audience to be served on Attorney-General and Law Society.*

30(1) Any person who applies to be admitted or re-admitted as a legal practitioner or for a right of audience shall, at least twenty one days before the date of his application, deliver to the Attorney-General and the Secretary of the Law Society together with his notice of application, a copy of his petition for admission or readmission or right of audience and a copy of all affidavits, certificates and other documents or papers which are referred to or connected with the application.

(2) Upon production to the Attorney-General and the Secretary of the Law Society as provided in sub-section (1), of the notice of application and a copy of the petition, affidavits, certificates, other documents or papers and upon payment of such fees as may be prescribed in terms of section 33(1), the Attorney-General and the Secretary of the Law Society shall if satisfied that the applicant has complied with the provisions of subsection (1), certify on such application that the provisions of this section have been complied with.

(3) Unless certificates have been obtained from the Attorney-General and the Secretary of the Law Society as required by subsection (2), the applicant shall not be entitled to proceed with his application to court.

(4) In the case of an application for the grant of a right of audience, if the High Court is satisfied that such application is of sufficient urgency and that it is appropriate, having regard to all the circumstances, to reduce the period of notice specified in subsection (1) it may reduce such period to not less than two days but only after the applicant has given notice to the Attorney-General and the Secretary to the Law Society of his intention to present his application in terms of this subsection.

(5) The Attorney-General and the Law Society shall be entitled to be represented at the hearing of an application for admission, readmission or right of audience.

*Amendment of section 32.*

18. Section 32 of the principal Act is replaced with the following—

*"Preservation of rights if existing legal practitioners and restrictions on non-resident or non-citizen attorneys.*

32(1) Subject to this Act, a legal practitioner who on the commencement of this Act is entitled to practise as such shall continue to be so entitled:

Provided that the Minister may, in respect of such legal practitioners as are admitted and enrolled on or after the coming into operation of this Act, by notice in the Gazette and with effect from such date as he may determine, specify the categories of legal practitioners in relation to the courts and tribunals in which they may practise.

(2) An attorney who is not a citizen of Swaziland or ordinarily resident or practising as such in Swaziland shall not have a right of audience before the High Court or the Court of Appeal."

*Amendment of section 33.*

19. Section 33 of the principal Act is amended in subsection (2) —

(a) by inserting after the words "two legal practitioners" the words "appointed by the Council";

(b) by replacing paragraphs

(a) to (g) with the following—

"(a) the examinations any person is required to pass before being admitted and enrolled as a legal practitioner or any exemptions he may be granted from such examinations;

(b) the rights, duties and powers of a curator bonis appointed under section 24;

(c) except as otherwise provided in this Act, such other matters relating to service under articles (and for this purpose he may amend the Schedule hereto) and the admission of legal practitioners."

(c) by replacing subsection (4) with the following—

"(4) The Chief Justice may, after consultation with the Attorney-General and the President of the Council, appoint examiners for the purpose of conducting examinations under this Act and may determine the fees to be paid by candidates taking those examinations and the remuneration to be paid to examiners."

*Addition of Parts IX, X and XI.*

20. The principal Act is amended by adding the following Parts after Part VIII—

**"PART IX — THE LAW SOCIETY OF SWAZILAND.***Establishment of the Law Society of Swaziland.*

34. (1) There is hereby established a society, to be known as the Law Society of Swaziland, which shall be a body corporate with perpetual succession and a common seal and which shall be capable of suing and being sued in its corporate name and of performing such acts as bodies corporate may by law perform including the acquisition, holding and alienating movable and immovable property and other rights:

Provided that on the date of commencement of this Act the Law Society of Swaziland existing immediately before the commencement of this Act shall, unless the Minister otherwise directs, continue as the body corporate established by this section.

- (2) All assets and liabilities and all rights and obligations which belonged or attached to the Law Society referred to in the proviso to subsection (1) shall, on the date of commencement of this Act and without further assurance, vest in the Law Society established by subsection (1).

*Membership of the Society.*

35. (1) Every person admitted and enrolled as an attorney shall be a member of the Law Society.

(2) Any member whose name has been removed from the roll or the register shall cease to be a member of the Law Society and any member who has been suspended from practise shall become disentitled to the rights and privileges of membership during such suspension.

(3) The Law Society may prescribe different categories of members and may also prescribe different rights, duties and privileges in respect of each category.

*Objects and functions of the Law Society.*

36. The objects and functions of the Law Society shall be—

- (a) to maintain and enhance the prestige, status and dignity of the legal profession;
- (b) to regulate the profession;
- (c) to encourage and promote efficiency in and responsibility in relation to the profession;
- (d) to deal with all matters relating to the interests of the profession and to protect those interests;
- (e) to uphold the integrity of legal practitioners;
- (f) to uphold and improve the standards of professional conduct and qualifications of legal practitioners;
- (g) to provide for the effective control of the professional conduct of practitioners;
- (h) to promote uniform practice and discipline among practitioners;

- (i) to encourage the study of law;
- (j) to initiate and promote reforms and improvements in any branch of law, the administration of justice, the practice of law and in the formulation of legislation;
- (k) to represent generally the views of the profession;
- (l) in the interests of the profession, to co-operate with such other societies or bodies of persons as it may deem fit;
- (m) to do all such acts and things as are incidental or conducive to the attainment of the above-mentioned objectives.

*Council of the Law Society.*

37. (1) The Law Society shall have a Council which shall consist of—

- (a) The following persons elected annually by the general annual meeting of the Society—
  - (i) a President;
  - (ii) a Vice-President;
  - (iii) a Secretary;
  - (iv) a Treasurer; and
  - (v) not more than four other persons from among the members of the Society; and
- (b) a law officer who is admitted and enrolled as a legal practitioner, appointed by the Minister.

(2) Notwithstanding subsection (1), the persons holding office in the Law Society existing immediately before the commencement of this Act shall continue to hold such office until the first Council is constituted or until such time as that Society determines and the first elections of the members of the Council shall, if held at any time other than during the general annual meeting, be deemed to have been validly held.

*Management and control of the Law Society.*

38. (1) The management and control of the Law Society shall be vested in the Council which may exercise all such powers and do all such things as may be exercised or done by the Society save for those which are expressly required by this Act to be exercised or done by the Society in general meeting.

(2) The Law Society, the Council and any member of the Council, officer or agent thereof shall not be liable for loss, injury or damage sustained by a person as a result of the *bona fide* exercise of a power or duty conferred or imposed upon the Society or the Council by this Act:

Provided that this section shall not be construed so as to prevent a person from recovering by legal proceedings compensation for any loss, injury or damage sustained by him which was caused by negligence or breach of contract.

*Annual general meetings.*

39. (1) Once in each calendar year there shall be held a general meeting of members of the Law Society to be called the annual general meeting.

(2) Subject to the by-laws made under section 42, the date, venue and time of the annual general meeting shall be determined by resolution of the Council:

Provided that in respect of the first annual general meeting or the first meeting for the purpose of electing members of the Council, such date, venue and time shall be determined by the Law Society existing immediately before the commencement of this Act.

(3) At least twenty-one days prior to the date appointed for the annual general meeting, written notice thereof shall be sent to each member of the Law Society.

(4) The business to be transacted at the annual general meeting shall include—

- (a) the election, in respect of the ensuing year, of the members of the Council or, if the election has taken place prior to the meeting, a declaration of the result of such election; and
- (b) the election of an auditor; and
- (c) the consideration of any business of which due notice has been given in accordance with the by-laws.

*Special general meetings.*

40. A special general meeting of members shall be held when convoked—

- (a) by a majority of members of the Council or
- (b) by the president; or
- (c) by the secretary in response to a requisition for such meeting signed by not less than twelve members of the Society.

*Quorum at general meetings.*

41. Unless otherwise provided by-laws, the quorum necessary for the transaction of the business of any annual or special general meeting shall be not less than half of the members of the Law Society.

*Law Society may make by-laws.*

42. (1) The Law Society may make by-laws adopted by a majority of members present personally at a general meeting of the Society.

(2) By-laws made in terms of subsection (1) may provide for any or all the following purposes—

- (a) general meetings of members, the quorum necessary for the transaction of business, the conduct and place of meetings, and the method of voting;
- (b) meetings of the Council, the quorum necessary for the transaction of its business, the conduct of and voting at meetings thereof and the method of appointment of members to represent absent members;
- (c) the allocation of a defined number of seats on the Council to particular areas or towns;
- (d) the procedure to be adopted in the election of members of the Council and of an auditor or auditors;
- (e) annual subscriptions to be paid by members and the amount thereof and the date when such subscriptions shall become due;
- (f) the powers and duties of the president, vice-president, secretary, treasurer and other officers of the Law Society and of the Council;
- (g) the registers and other records to be kept;

(h) the circumstances in which payments may be made to the secretary and other officers of the Society and to members of the Council for travelling and other expenses and for the performance of any function on behalf of the Society;

(i) the procedure to be followed and the requirements to be satisfied by any member who wishes to obtain the recommendation of the Law Society for his appointment as Senior Counsel;

(j) the method or the investigation of complaints against members in their capacity as members of the Law Society;

(k) defining acts or omissions which constitute unprofessional, dishonourable or unworthy conduct on the part of members;

(l) prescribing a tariff of charges and commissions or minimum or maximum charges and commissions for services rendered by legal practitioners in matters not provided for by the rules of the High Court or of magistrates' courts:

Provided that no by-laws made in terms of this paragraph shall prohibit any legal practitioner from acting in any proper case or matter without making any charge therefor;

(m) the appointment of staff;

(n) the place where the records, books and documents of the Society shall be kept and where the office of the Society shall be situated;

(o) the power of the Council to decide and act as it may think proper in matters not provided for by the by-laws and to make rules respecting the use by members and other persons of the property of the Society;

(p) the appointment of honorary members;

(q) the requirement by members to notify the Society or any officer thereof of particulars of their names and addresses and those of their partners and of any change in such particulars;

(r) the imposition by the Council of a penalty recoverable by the Council which shall not exceed fifty Emalangeni for each week of default, for failing to notify any particulars required in terms of by-laws made under paragraph (q);

(s) providing generally for the furtherance of the objects and powers of the Law Society.

(3) All by-laws made under this section shall be subject to the approval of the Minister and shall come into force only after publication thereof in the Gazette.

## PART X — LAW SOCIETY FIDELITY FUND

### *Establishment of Fidelity Fund.*

43. (1) There is hereby established a fund to be known as the Law Society Fund (herein referred to as "the Fund").

(2) The Fund shall be administered, maintained and managed by or on behalf the Law Society for enabling the Law Society to make such disbursements therefrom as are in the opinion of the Law Society necessary to meet expenses incurred by the Fund and to pay for loss sustained by any person in consequence of an act of dishonesty by a legal practitioner as such or his employee in the course of employment.

(3) Money in the Fund shall, pending the investment or application thereof in terms of this Act, be paid into an account at a financial institution recognised as such under the Financial Institutions Order, 1975 to the credit of an account to be known as "The Law Society Fidelity Fund".

(4) The Law Society may enter into a contract with any person carrying on the business of insurance for the purpose of ensuring that—

- (a) the Fund shall be indemnified against any loss or claim arising from any act of dishonesty or prejudice committed by a member of the Law Society or of his employee in the course of employment; and
- (b) if a member of the Law Society has duly paid the premium for such policy, he shall be indemnified under an insurance policy in respect of liability arising from or in the course of legal practice whether such liability arises from his own act or that of his agent or employee.

(5) A claimant against the Fund shall not have—

- (a) any right of action against any person with whom a contract of indemnity has been entered into in terms of this Act in respect of such contract; or
- (b) any right to any money paid by the insurer in accordance with such contract;

(6) Money paid by the insurer in accordance with a contract of indemnity with the Fund shall be paid into the Fund for the benefit of the Law Society.

(7) The Law Society may invest the moneys in the Fund in such manner as it thinks fit.

(8) Every member of the Law Society other than a member who is a full-time employee in the public service or such other service as the Law Society may specify, shall pay such contribution to the Fund as the Law Society may determine.

(9) (a) A legal practitioner practising on his own account or in partnership and any legal practitioner intending to practise shall apply in the prescribed form to the Secretary to the Law Society concerned for a Fidelity Fund certificate.

(b) An application referred to in paragraph (a) shall be accompanied by the contribution payable in terms of this section.

(c) (i) Upon receipt of the application referred to in paragraph (a), the Secretary of the Law Society shall, if he is satisfied that the applicant has discharged all his liabilities to the Law Society in respect of membership dues and of his contribution and that he has complied with any other lawful requirements of the Law Society, forthwith issue to the Applicant a Fidelity Fund certificate in the prescribed form.

(ii) A Fidelity Fund certificate shall be valid until 31st December of the year in respect of which it is issued.

(iii) Any document purporting to be a Fidelity Fund certificate which has been issued contrary to the provisions of this Act shall be null and void and shall on demand be returned to the Law Society.

(10) (a) A legal practitioner shall not practise or act as a legal practitioner on his own account or in partnership unless he is in possession of a Fidelity Fund certificate.

(b) Any legal practitioner who practises or acts in contravention of paragraph (a) shall not be entitled to any fee, reward or disbursement in respect of anything done by him while so practising or acting.



*Compensation for loss through dishonesty.*

44. (1) Where it is proved to the satisfaction of the Council that any person has sustained loss in consequence of theft, fraud, forgery or other dishonesty committed by a legal practitioner or by an employee of a legal practitioner in connection with—

- (a) the practice by that legal practitioner or his profession; or
- (b) any money or property entrusted to that legal practitioner or his employee in the course of his practice as a legal practitioner or whilst he is acting as executor or administrator in the estate of a deceased person or as trustee in an insolvent estate or in a similar capacity;

the Council may, subject to the provisions of this Act, make a grant to that person out of the Fund for the purpose of relieving or mitigating that loss.

(2) Before considering an application for a grant in terms of this section the Council may require the applicant to exhaust all legal remedies available to him in respect of the loss to which the application relates.

(3) A grant may be made in terms of this section whether or not the legal practitioner concerned was in possession of a valid compensation fund certificate when the theft, fraud, forgery or other dishonesty which gave rise to the loss was committed, and notwithstanding that subsequent to the commission of the theft, fraud, forgery or other dishonesty the legal practitioner concerned has died or ceased to practise or has been suspended from practice or his name has been struck off the roll.

(4) No grant shall be made in terms of this section in respect of any loss unless notice of the loss is given by the person who sustained it in such manner and within such time after the loss first came to his knowledge as may be prescribed.

(5) In inquiring into any allegation of theft, fraud, forgery or other dishonesty that is the subject of an application for a grant in terms of this section, the Council shall have the same powers and privileges as are conferred upon commissioners by the Commissions of Inquiry Act, 1963.

*Subrogation of Law Society.*

45. (1) On the making of any grant in terms of section 45 to any person in respect of any loss—

(a) the Council shall, to the amount of that grant, be subrogated to any rights and remedies in respect of that loss which are vested in or available to—

- (i) the person to whom the grant is made; or
- (ii) the legal practitioner or employee whose theft, fraud, forgery or other dishonesty gave rise to the loss;

(b) the person to whom the grant is made shall have no right under insolvency, other legal proceedings or otherwise to received any sum in respect of the loss out of the assets of the legal practitioner or employee whose theft, fraud, forgery or other dishonesty gave rise to the loss until the Council has been reimbursed the full amount of the grant.

(2) In subsection (1), any reference to the person to whom the grant is made or the legal practitioner or employee shall include, in the event of his death, insolvency or other disability, a reference to his personal representative or any other person who has authority to administer his estate.



PART XI — OTHER PROVISIONS

*Conferment of honour and dignity of King's Counsel.*

46. The King may, on the recommendation of the Chief Justice, confer the honour and dignity of King's Counsel to persons who have rendered distinguished service in the legal profession in Swaziland."