

## **CONSTITUTION OF THE LAW SOCIETY OF SOUTH AFRICA**

### **PREAMBLE**

We, the representatives of legal practitioners in South Africa, the Black Lawyers Association, the National Association of Democratic Lawyers, the Independent Lawyers Associations from the nine provinces of South Africa as the constituent members of the Law Society of South Africa, in recognising the changes brought about by the Legal Practice Act:

**having** realised the impact of the Legal Practice Act and agreed to the restructuring of the legal profession and its governing bodies and having adopted the principles contained herein,

**having** agreed in principle to the creation of a national voluntary structure with a national executive body to represent the profession,

**having** agreed that the new national structure shall be neither unitary nor federal but could comprise elements of both,

**having** co-operated formally since July 1996 via an agreement between the Black Lawyers Association, the National Association of Democratic Lawyers, the Law Societies of the Free State, KwaZulu-Natal, the Northern Provinces and the Cape Provinces and having decided to further transform the governance and representation of the legal profession in South Africa,

**having** noted that the provincial law societies will fall away, the local associations or circles will form a provincial lawyers' association in each province. These associations shall consist of the Black Lawyers Association, the National Association of Democratic Lawyers and the Independent constituents. The independent attorneys of each of the provincial associations shall nominate a provincial representative to the House of Constituents,

**having** noted that the Legal Practice Act places the regulatory functions with the Legal Practice Council,

**commit** ourselves to building a transformed organised legal profession which is non-racial, non-sexist, democratic, representative, transparent and accountable to all whom it serves and the public at large;

DRAFT

**commit** ourselves to protecting and advancing the rights and interests of our members in relation to the regulatory activities of the Legal Practice Council and other authorities;

**commit** ourselves to influence the transformation of the economic structure in South Africa in order to advance the interest of our members, particularly the previously disadvantaged.

**We hereby agree as follows:**

## **1 NAME AND NATURE**

The name of the Law Society of South Africa shall remain as is, a body corporate established by voluntary association and having perpetual succession.

## **2 DEFINITIONS**

In this Constitution, save where the context indicates otherwise -

- 2.1 **"the Act"** means the Legal Practice Act No 28 of 2014 as amended;
- 2.2 **"the Association of Law Societies"** means the Association of Law Societies of the Republic of South Africa formerly in existence, established as a voluntary association and having as its members the statutory law societies as they existed under the Attorneys Act No 53 of 1979;
- 2.3 **"the Black Lawyers Association"** means the voluntary association of that name established in terms of its constitution;
- 2.4 **"constituent member"** means a participating member of the Law Society, as referred to in clause 3.1, and such further members as may be admitted in terms of clause 3.2;
- 2.5 **"days"** means ordinary days;
- 2.6 **"the Executive Committee"** means a committee as defined and referred to in clause 16 hereof;

DRAFT

- 2.7 **"Executive Director"** means the person appointed in terms of clause 18.1;
- 2.8 **"founding constituent members"** means the initial constituents of the Law Society of South Africa, being the Black Lawyers Association, the Independent Lawyers Association (previously represented by the four statutory provincial Law Societies) and the National Association of Democratic Lawyers;
- 2.9 **"House of Constituents"** means the governing body of the Law Society, constituted in terms of clause 8;
- 2.10 **"Independent Lawyers Association"** means the lawyers in the nine provinces of South Africa who are not members of the Black Lawyers Association or the National Association of Democratic Lawyers and initially includes all the attorneys admitted as such by the High Court of South Africa (formerly known as the statutory members);
- 2.11 **"the Law Society"** means the Law Society of South Africa, functioning in terms of this Constitution;
- 2.12 **"the Lawyers Association of the Eastern Cape Province"** means the lawyers of the Eastern Cape Province;
- 2.13 **"the Lawyers Association of the Free State Province"** means the lawyers of the Free State Province;
- 2.14 **"the Lawyers Association of Gauteng Province"** means the lawyers of the Gauteng Province;
- 2.15 **"the Lawyers Association of KwaZulu-Natal Province"** means the lawyers of the KwaZulu-Natal Province;
- 2.16 **"the Lawyers Association of Limpopo Province"** means the lawyers of the Limpopo Province;
- 2.17 **"the Lawyers Association of Mpumalanga Province"** means the lawyers of the Mpumalanga Province;
- 2.18 **"the Lawyers Association of the Northern Cape Province"** means the lawyers of the Northern Cape Province;

DRAFT

- 2.19 **"the Lawyers Association of the North West Province"** means the lawyers of the North West Province;
- 2.20 **"the Lawyers Association of the Western Cape Province"** means the lawyers of the Western Cape Province;
- 2.21 **"legal practitioner"** or **"candidate legal practitioner"** is as defined in terms of the Legal Practice Act;
- 2.22 **"the National Association of Democratic Lawyers"** means the voluntary association of that name established in terms of its constitution;
- 2.23 **"participating members"** means the founding constituent members or any other member admitted by the founding constituent members;
- 2.24 **"profession"** means the profession of legal practitioner as defined in the Legal Practice Act.

### **3 MEMBERSHIP**

- 3.1 The Black Lawyers Association, the independent lawyers of the Lawyers Association of the Eastern Cape Province, the independent lawyers of the Lawyers Association of the Free State Province, the independent lawyers of the Lawyers Association of Gauteng Province, the independent lawyers of the Lawyers Association of KwaZulu-Natal Province, the independent lawyers of the Lawyers Association of Limpopo Province, the independent lawyers of the Lawyers Association of Mpumalanga Province, the independent lawyers of the Lawyers Association of the Northern Cape Province, the independent lawyers of the Lawyers Association of the North West Province, the independent lawyers of the Lawyers Association of the Western Cape Province, and the National Association of Democratic Lawyers will be the participating members of the Law Society.

DRAFT

- 3.2 The House of Constituents has the power, with the unanimous approval of the founding constituent members, to admit as members of the Law Society other similar associations or legal organisations, upon such terms and with such rights and obligations as may be decided.
- 3.3 The House of Constituents may, with the unanimous approval of the founding constituent members, withdraw the membership or amend the terms of membership of any member holding membership in terms of clause 3.2.

#### **4 UNDERTAKING BY PARTICIPATING MEMBERS**

The founding constituent members agree and undertake that after the signing of this Constitution by all of them and within a reasonable period, each of them will take all steps necessary to give effect to this Constitution. In particular, the founding constituent members bind themselves to the principle of equal constituent representation with no dominance over any founding constituent member, the relative proportions of representatives to accord as far as practicable with the proportions within the House of Constituents.

#### **5 AIMS AND OBJECTIVES**

- 5.1 The Law Society has the following fundamental, enduring and long-term aims and objectives, namely to:
- 5.1.1 promote on a national basis the common interests of members of the profession and the welfare of the profession, having regard at all times to the broader interests of the public whom the profession serves, and to endeavour to reconcile, where they may conflict, the interests of the profession and the public;
  - 5.1.2 safeguard and maintain the independence and integrity of the profession;

DRAFT

- 5.1.3 maintain and enhance the professional standards, objectivity and standing of the profession and of its members both nationally and internationally, which standards shall be reviewed from time to time to take into account the objectives of paragraph 5.1.4;
- 5.1.4 uphold and encourage the practice of law, and to promote and facilitate access to the profession;
- 5.1.5 provide, where it deems it appropriate so to do, voluntary services in the interest of the profession or the public;
- 5.1.6 promote legal aid and the accessibility of all to the law, the courts and any board, tribunal or similar institution;
- 5.1.7 promote legal education and continuing legal education, practical legal training, research in the science of law and in legal practice and in any related science or practice, research in technology as it relates to legal practice, procedure and the administration of justice, and the practical application of technology in those fields;
- 5.1.8 encourage the study and development of customary legal systems and their application in practice, and to seek harmonisation, and where appropriate integration, of those systems with the common and statutory law of the Republic of South Africa;
- 5.1.9 uphold, safeguard and advance the rule of law, the administration of justice, the Constitution and the laws of the Republic of South Africa;
- 5.1.10 initiate, consider, promote, support, oppose or endeavour to improve and strengthen legislation, whether existing or proposed;
- 5.1.11 initiate, consider, promote, support, oppose or endeavour to modify proposed reforms or changes in law, practice, procedure and the administration of justice;

DRAFT

- 5.1.12 secure throughout the Republic of South Africa, in so far as it is practicable, uniformity, simplicity and efficiency in the practice of law, in legal procedure and in the administration of justice;
- 5.1.13 strive towards the achievement of a system of law that is fair, just, equitable, certain and free from unfair discrimination;
- 5.1.14 endeavour to be the unified and representative voice of the legal profession of South Africa;
- 5.1.15 nominate, elect, appoint or delegate persons to represent the profession or any part or division thereof at any conference or meeting or on any commission, advisory body, committee, commission of inquiry or similar body or proceeding established, convened or instituted by any government or other authority, institution or organisation, whether of a public or private character, for the purpose of considering any matter relating to law, practice, procedure or the administration of justice or any other matter of whatever nature, falling within the aims and objectives of the Law Society;
- 5.1.16 co-operate or liaise with any fund or other body established for the purpose of guaranteeing the fidelity of practitioners of the profession;
- 5.1.17 deal with any matters referred to it by the House of Constituents, any of its structures or the governing body of any constituent member; and
- 5.1.18 take up membership of or otherwise co-operate with any other organisation or body, whether within or outside the Republic of South Africa, including organisations or bodies of an international character and, without derogating from the generality of the foregoing, combine, affiliate or

DRAFT

merge with any other organisation or body of similar nature to its own and having objects similar to and reconcilable with its own, whether or not its field of operations extends beyond the borders of the Republic of South Africa as they may from time to time be established.

5.2 The Law Society has the following further aims and objectives, namely to:

- 5.2.1 promote and encourage unity amongst the constituent members;
- 5.2.2 assist the regulator to implement the Act and promote, advance and assist in the development or amendment of the legislation and urge improvement and acceptance thereof within the legal profession and the public;
- 5.2.3 promote the legal profession in whatever way lawfully possible;
- 5.2.4 ensure that the Legal Practice Council and the Legal Practitioners Fidelity Fund's Board of Control in terms of the Act are democratic, legitimate, representative, responsible, accountable and transparent;
- 5.2.5 influence the composition of the Board of Control of the Legal Practitioners Fidelity Fund, and its decisions, in the interests of the profession and the public;
- 5.2.6 strive to achieve a fully integrated legal profession, based on democratic principles, demographic representation, gender representation and to influence the transformation of the economic structure in South Africa in order to advance the interest of its members, particularly the previously disadvantaged;
- 5.2.7 represent and promote the interests of its members; and

DRAFT

5.2.8 continue to hold, administer and deal with the assets and liabilities of the Law Society, its infrastructure, its agreements and commitments, and all of its projects and activities, in a manner as deemed fit by the House of Constituents of the Law Society.

## **6 POWERS AND FUNCTIONS**

- 6.1 Save as expressly otherwise provided herein, the autonomy of the participating members shall not in any way be altered, abridged or curtailed.
- 6.2 Each constituent member undertakes, insofar as it does not conflict with any statutory duties, obligations and responsibilities imposed on it in terms of the Act or any other law or its own constitution, to observe and to be bound by and to give effect to all decisions of the House of Constituents properly made in terms of this Constitution.
- 6.3 The Law Society shall have the powers conferred on it in this Constitution.
- 6.4 The Law Society will have the following powers:
- 6.4.1 to speak for its members nationally;
  - 6.4.2 to propose to the Minister and Parliament amendments to the Legal Practice Act and other legislation;
  - 6.4.3 to liaise with the State in all matters relating to the legal profession;
  - 6.4.4 to promote uniform rules relating to ethics, marketing and accounting;
  - 6.4.5 to propose, contribute and influence the development and implementation of policy pertaining to the profession;
  - 6.4.6 to co-ordinate and organise practical vocational training for candidate legal practitioners;

DRAFT

- 6.4.7 to co-ordinate and organise post professional development training and any other training;
- 6.4.8 to engage, amongst others, the Council for Higher Education, the South African Qualifications Authority and other education related authorities in the determination and formulation of curricula and syllabi of legal education and other matters pertaining to legal education;
- 6.4.9 to assist in legal practitioner admission examinations;
- 6.4.10 to raise funds to enable it to carry out its functions;
- 6.4.11 to represent and assist members of the constituent members in disciplinary matters before regulatory authorities and with alternative dispute resolution;
- 6.4.12 to influence the policy to be applied to disciplinary hearings before regulatory authorities;
- 6.4.13 to contribute to the making of rules as to -
  - 6.4.13.1 service of candidate legal practitioners or their contracts of service, and the circumstances under and the conditions on which such contracts may be cancelled;
  - 6.4.13.2 conditions relating to conduct and activities on which persons other than practitioners may be employed by practitioners to assist them in their practices; and
  - 6.4.13.3 the aims, objectives and the powers as set out in this Constitution, the content of which shall be binding on its members;
- 6.4.14 to liaise with and make representations to the Legal Services Ombud and other consumer forums;

DRAFT

6.4.15 to assist, train and educate members of the constituent members to be compliant with rules, regulations and codes of conduct of regulatory authorities.

6.5 The Law Society will:

6.5.1 levy subscriptions on members as determined by the House of Constituents from time to time;

6.5.2 keep a register of members and a database of legal practitioners;

6.5.3 organise and assist local associations of lawyers and legal circles;

6.5.4 acquire, control and maintain its own assets;

6.5.5 where required to do so in terms of legal instruments, nominate mediators, arbitrators, receivers, liquidators and other such persons;

6.5.6 introduce programmes to contribute to the wellness of legal practitioners of the constituent members and Law Society staff.

## **7 GENERAL POWERS**

The Law Society shall have the following powers in addition to other powers specifically conferred upon it in terms of this Constitution:

7.1 to purchase, hire, exchange, accept donations of, receive grants and honoraria, or otherwise acquire, sell, let, exchange, mortgage, pledge, donate, or otherwise dispose of movable and immovable property of all kinds or any rights or interests therein or any other asset of any kind;

7.2 to borrow and, if deemed desirable, to secure the repayment of money in such manner as it may deem fit, to guarantee or secure

DRAFT

the acts of and payments due by others, and to lend money against such security, if any, as it may deem fit;

- 7.3 to acquire, encumber, apply or dispose of and generally to deal with any funds in any manner as it may deem fit, but always in accordance with the aims and objectives of the Law Society as set out herein;
- 7.4 to enter into all such contracts and do all such other acts and things as may be necessary or expedient from time to time to achieve the aims and objectives of the Law Society as set out herein;
- 7.5 to institute, conduct, defend, settle or abandon any legal proceedings by or against the Law Society in any manner as it may deem fit, but always so as to achieve the aims and objectives of the Law Society as set out herein;
- 7.6 to open, operate and close savings and other accounts with any financial institution, to buy or sell or otherwise deal with shares or stock or debentures or bonds or any other interest in any company or other body corporate or government agency, and generally to invest the funds and other assets of the Law Society in such manner as it may deem fit, but always in accordance with the aims and objectives of the Law Society as set out herein;
- 7.7 to take all steps necessary to enter and record the name of the Law Society in respect of all assets, liabilities, agreements and commitments, and all projects and activities currently held, undertaken or performed by the Law Society or formerly the Association of Law Societies as the holder of the rights and/or obligations concerned; and
- 7.8 generally, to do all such things as may be necessary or expedient in order to carry out or further any of the aims or objectives of the Law Society.

DRAFT

## **8 HOUSE OF CONSTITUENTS AND CONTROL**

8.1 The control of the Law Society shall vest in a House of Constituents, which shall determine the policy of the Law Society in accordance with its aims and objectives as set out herein, and which shall as far as legally possible carry out the functions of and exercise the powers of the Law Society as set out herein.

8.2 The House of Constituents shall consist of 27 (twenty-seven) practising attorneys of whom:

8.2.1 9 (nine) will be nominated by the Black Lawyers Association on the basis that their representatives will, as far as possible, be geographically spread over the country;

8.2.2 9 (nine) will be nominated by the National Association of Democratic Lawyers on the basis that their representatives will, as far as possible, be geographically spread over the country; and

8.2.3 9 (nine) will be nominated by the Independent Lawyers, which 9 will consist of 1 nominated from the Independent Lawyers Association of each of the nine provinces of South Africa.

8.2.4 1 (one) person from the House of Constituents' representatives will be nominated annually as the President of the Law Society. The power to appoint the President will alternate between the founding constituent members, with the first President to be nominated by the Black Lawyers Association, the second by the Independent Lawyers representatives and the third by the National Association of Democratic Lawyers. Such appointment on a rotational basis shall continue for as long as the Law Society continues to exist.

8.2.5 2 (two) persons from the House of Constituents' representatives will be nominated annually as a Vice-President of the Law Society. The power to appoint the Vice-President will alternate between the founding constituent members, with the initial two

DRAFT

Vice-Presidents to be nominated by the Independent Lawyers representatives and the National Association of Democratic Lawyers, in the next year by the Black Lawyers Association and the National Association of Democratic Lawyers and the year thereafter by the Independent Lawyers representatives and the Black Lawyers Association. Such appointment on a rotational basis shall continue for as long as the Law Society continues to exist.

- 8.3 Persons nominated by the Independent Lawyers in terms of paragraphs 8.2.3 to 8.2.5 will not be members of the Black Lawyers Association and/or the National Association of Democratic Lawyers.
- 8.4 Each founding constituent member will nominate one or more alternates for each House of Constituents' representative nominated by it, who may act as a member of the House of Constituents in the absence of a member holding office in terms hereof.
- 8.5 If the position on the House of Constituents of any legal practitioner holding office in terms hereof becomes vacant during his/her term of office, the vacancy shall be filled by a legal practitioner nominated by the constituent member which nominated such legal practitioner.
- 8.6 The legal practitioners will serve on the House of Constituents at the discretion of their nominating constituent members and can be replaced at any time by the participating member which nominated such legal practitioner.
- 8.7 The House of Constituents shall continue to exist until it is dissolved by a resolution of its constituent members at a duly constituted annual general meeting.
- 8.8 All notices and communications with regard to the meetings of the House of Constituents shall be deemed to have been properly issued to and received by a representative serving in the House of Constituents if despatched by electronic mail to the addresses nominated in writing

DRAFT

by such representative, which nomination shall be made as soon as possible after appointment to the House of Constituents.

## **9 MEETINGS OF HOUSE OF CONSTITUENTS**

9.1 The House of Constituents shall hold an annual general meeting, at such place and at such time as is determined by the House of Constituents from time to time.

9.2 All legal practitioner members of the constituent members in good standing with it shall be invited to attend the annual meeting.

9.3 The House of Constituents will hold not less than 4 (four) meetings during each year, or at such other place as the House of Constituents may decide.

9.4 Any constituent member shall, by notice in writing to the Executive Director, call for a special meeting, specifying the nature of the business to be considered. The House of Constituents shall, within 4 (four) weeks of receipt of such notice, hold a special meeting at such time and place as may be determined by the President and the Vice-Presidents. No business other than that specified in the aforesaid notice may be considered at such special meeting.

9.5 At each annual general meeting -

9.5.1 The President will present or arrange to be presented -

9.5.1.1 his/her annual report in respect of his/her term of office; and

9.5.1.2 the audited financial statements of the Law Society for the preceding year;

9.5.2 The Chairperson of each standing committee appointed by the House of Constituents shall submit to the House of Constituents a report on the activities of his/her committee during his/her term of office, which shall form part of the President's report; and

DRAFT

9.5.3 The House of Constituents shall appoint, or shall delegate to the Executive Committee, the duty to appoint auditors for the current year.

## **10 PRESIDENT**

The President, or in his/her absence, the first Vice-President, or in his/her absence, the second Vice-President, will preside at all House of Constituents meetings (The first Vice-President is the Vice-President nominated by the constituent who is next in turn to nominate the President).

## **11 QUORUM OF HOUSE OF CONSTITUENTS**

11.1 A quorum at a meeting of the House of Constituents shall consist of 15 (fifteen) House of Constituents members present personally or by teleconference or other similar media. The number of 15 (fifteen) is inclusive of the presiding President or Vice-President at the meeting and comprises of 5 (five) representatives of the Black Lawyers Association and 5 (five) representatives of the National Association of Democratic Lawyers and 5 (five) representatives of the Independent Lawyers Associations. Once a meeting has been validly constituted, it will remain so constituted notwithstanding a change in the number of House of Constituents members present at any time, provided that all constituents are still represented.

11.2 If at the commencement of any House of Constituents meeting a quorum is not present, the meeting shall stand adjourned for a period of 14 (fourteen) days. All House of Constituents members shall be notified of the date, time and venue when and where the meeting shall reconvene, and at the commencement of the reconvened meeting after this period, it shall be considered duly constituted if those present are at least 2 (two) representatives from each of the 3 (three) founding constituent members.

DRAFT

11.3 Notwithstanding the provisions of paragraphs 12.1 and 12.2, decisions taken at a reconvened House of Constituents meeting as contemplated in paragraph 11.2 by a simple majority of votes from each of the founding constituent members represented at the meeting shall be deemed to be decisions by substantial consensus.

## **12 DECISIONS OF HOUSE OF CONSTITUENTS AND EXECUTIVE COMMITTEE**

12.1 Subject to the provisions of paragraph 11.3 and paragraphs 12.3 to 12.7, the participating members declare it to be their intention that all decisions of the House of Constituents and of the Executive Committee shall be taken by substantial consensus, until such time as a democratically elected House of Constituents has been constituted.

12.2 Substantial consensus shall be deemed to have been achieved if a majority of the House of Constituents' representatives from each of the 3 (three) founding constituencies, present at any meeting of the House of Constituents or the Executive Committee, are in agreement on any particular issue.

12.3 Should the Executive Committee at any meeting not be able to reach substantial consensus on any issue, the meeting shall stand adjourned for a period of 7 (seven) days. All Executive Committee members shall be notified of the date, time and venue when and where the meeting shall reconvene. At the reconvened meeting at least 6 (six) representatives should be present for the meeting to proceed.

12.4 Should the House of Constituents be unable to reach substantial consensus on any issue, any representative of the House of Constituents may call for a vote on the issue. If the result of the vote is that a majority of representatives of each of the founding constituencies present is in favour, such resolution is deemed to be adopted.

DRAFT

12.5 In order to avoid the calling of meetings of the House of Constituents or of a committee more often than is necessary, a resolution signed by all representatives of the body concerned, whether it be recorded on one or more documents, shall be regarded in all respects as if it had been formally passed at a meeting of the body concerned, provided that electronic communication, faxed, telegraphic, or telexed approval of such resolutions shall be regarded as equivalent to signature by each member of such body. Such resolution shall be minutes for the next meeting.

### **13 PERSONS WHO MAY BE INVITED TO ATTEND HOUSE OF CONSTITUENTS MEETINGS**

13.1 For deliberative and consultative purposes, the House of Constituents may invite any persons, including representatives of government departments or other bodies, to attend its meetings.

13.2 Those attending in terms of paragraph 13.1 shall not be entitled to vote.

### **14 NOTICES OF MOTION OR SPECIAL BUSINESS**

Notice in writing of any motion or special business shall be given by any representative of the House of Constituents to the Executive Director at least 14 (fourteen) days before the day on which the meeting of the House of Constituents is to be held. Such notice of motion or notice of special business shall contain the terms of any resolution to be proposed. Non-observance of the provisions of this paragraph can be condoned only by a resolution of the House of Constituents taken prior to or at the meeting at which the motion or the special business is discussed or is to be discussed.

### **15 OFFICES**

The offices of the Law Society shall be at such place or places as shall from time to time be determined by the House of Constituents.

DRAFT

## 16 EXECUTIVE COMMITTEE

16.1 The Executive Committee will be the following 9 (nine) persons:

- (a) the President of the Law Society;
- (b) the Vice-Presidents nominated by the 2 (two) founding constituent members who for that term do not nominate the President;
- (c) 2 (two) additional representatives of the House of Constituents nominated by each founding constituent member;

which shall:

16.1.1 advise the President and the Vice-Presidents of any Law Society matters on which they may seek its advice;

16.1.2 perform such tasks as the House of Constituents may entrust to it; and

16.1.3 act on behalf of the House of Constituents between House of Constituents meetings on such matters as the President and Vice-Presidents may determine.

16.2 The Executive Committee must meet as often as it deems it necessary to give effect to its powers and duties. A quorum for the Executive Committee will be at least 2 (two) representatives of each of the founding constituent members present personally or by teleconference or other similar media.

16.3 Once a meeting has been validly constituted, it will remain so constituted notwithstanding a change in the number of House of Constituents' representatives present at any time, provided that all constituents are still represented.

DRAFT

**17 MANAGEMENT**

17.1 The full-time management of the Law Society shall manage the business of the Law Society in accordance with the strategy and policy of the Law Society as determined from time to time by the House of Constituents and subject to such directives as may from time to time be issued to it by the House of Constituents.

17.2 Without derogating from the generality of paragraph 17.1, the functions of the management shall include supervision of the implementation of decisions of the House of Constituents and the initiation and supervision of actions taken within the strategy and policy guidelines laid down by the House of Constituents.

17.3 The management shall liaise with the chairpersons of committees appointed by the House of Constituents or by the President to assist him/her in co-ordinating the work of, defining the priorities and establishing goals for the committees.

17.4 The management shall be responsible for managing the financial affairs of the Law Society within the limits of its approved budget, and for the keeping of proper books and records of all financial business of the Law Society. The Executive Director shall submit audited financial statements for each year to the House of Constituents at the annual general meeting during the succeeding year, and interim financial statements whenever required by the House of Constituents.

DRAFT

**18 APPOINTMENT OF EXECUTIVE DIRECTOR AND STAFF**

18.1 The House of Constituents shall have the power from time to time to appoint an Executive Director of the Law Society who shall perform such duties as are assigned to him/her by this Constitution and as may be assigned to him/her by the House of Constituents, the President or the Executive Committee.

18.2 The House of Constituents shall have the power to appoint from time to time such additional executive officers and such other officials and staff as it may deem fit.

18.3 Appointments made by the House of Constituents in terms of this clause shall be at such remuneration and on such further terms and conditions as the House of Constituents may deem fit in each case.

## **19 COMMITTEES APPOINTED BY THE HOUSE OF CONSTITUENTS**

19.1 The House of Constituents or, between meetings of the House of Constituents in regard to ad hoc matters which in the opinion of the President require urgent attention, the President in consultation with his/her Vice-Presidents may appoint committees not necessarily from among representatives of the House of Constituents, and, save to the extent that the House of Constituents, or the President where he/she have appointed the committee, may expressly limit the powers of any committee.

19.2 A committee shall have power on behalf of the Law Society to take such action in the name of the Law Society as falls within its terms of reference. Committees appointed with executive powers shall consist exclusively of legal practitioners, whereas advisory committees may also include experts who are not legal practitioners.

19.3 In the event of any doubt or dispute as to the extent of the powers of a committee, such dispute shall be determined by the executive committee unless the House of Constituents is in session at the time that such dispute arises, in which event it shall be determined by the House of Constituents.

19.4 Unless a committee decides for good reason that its deliberations are confidential, any representative of the House of Constituents may attend, as an observer, with the right to speak but without the right to vote, at any meeting of such a committee.

DRAFT

19.5 The House of Constituents may rescind or amend any decision taken by any of its committees.

## **20 FINANCE**

20.1 The House of Constituents of the Law Society should strive to raise funds from the Legal Practice Council, the Provincial Councils, the Legal Practitioners Fidelity Fund and similar structures.

20.2 No part of the funds of the Law Society shall be utilised other than in accordance with the powers or for the objects of the Law Society.

20.3 The Law Society shall, upon its winding up or liquidation, and where it has no legal successor in title, be obliged to distribute and transfer its assets remaining after the satisfaction of its liabilities to a legal practitioners' entity that has similar aims and objectives as the Law Society or its founding constituent members on equal basis.

20.4 The Law Society may:

20.4.1 continue to operate any bank account already in existence in its name;

20.4.2 open additional banking accounts in the name of the Law Society in which all its funds shall be deposited. This account shall be operated upon such terms and conditions and in such manner as may from time to time be decided upon by the House of Constituents.

20.5 The Executive Director shall be responsible for the keeping of proper books and records of all the financial business of the Law Society and shall submit audited financial statements for each financial year to the House of Constituents at the next annual meeting and interim financial statements whenever required by the House of Constituents.

20.6 When special funds are required for promoting or opposing legislation or for promoting any of the objects of the Law Society, each of the

DRAFT

constituent members may be called upon by the House of Constituents for a special contribution to defray expenditure incurred or to be incurred in connection therewith, provided that such contribution shall first be unanimously approved by the constituent members.

## **21 AMENDMENT OF CONSTITUTION**

The House of Constituents may, with the consent of all of the founding constituent members, from time to time amend this Constitution, provided always that at least 2 (two) months' written notice has been given to each founding constituent member of the proposed amendment. Founding constituent members may waive such notice or accept a shorter period.

## **22 INTERPRETATION**

This Constitution must be interpreted with recognition of the governance principles set out in annexure 1. Where any conflict exists between the provisions of annexure 1 and the provisions of this Constitution, the spirit or intention of the annexure takes precedence.

## **23 TRANSITIONAL ARRANGEMENT**

The Council as constituted immediately before the effective date will continue to function on behalf of the Black Lawyers Association, the National Association of Democratic Lawyers and the independent constituents until the House of Constituents has been constituted.

The existing committees, as constituted on the effective date, will continue to function until they are reconstituted as may be required by the House of Constituents.

DRAFT

**24 EFFECTIVE DATE**

This Constitution became operative and binding on the signatories hereto on the 16th day of March 1998.

The amended Constitution will take effect on the day the provincial Law Societies under the Attorneys Act 53 of 1979 cease to exist or on 1 November 2018, whichever occurs last.

DRAFT

**ANNEXURE I**

STATEMENT OF GOVERNANCE PRINCIPLES AGREED ON IN THE PROCESS LEADING UP TO THE 2018 AMENDMENT OF THE LAW SOCIETY OF SOUTH AFRICA:

1. The House of Constituents would comprise 27 representatives in the ratio 9:9:9 where each of the following constituents would elect 9 members - BLA, NADEL, Statutory.
2. The Statutory constituent would be referred to as the Independents constituent and defined as non-BLA and non-NADEL members.
3. All actions and decisions of the House of Constituents and the organisation must be done via consensus.
4. The LSSA Constitution would be simplified to display this and clearly state that there would be no dominance over any one constituency.
5. The Independent constituents' component would vote in the provinces of South Africa to determine their representatives.
6. The Executive Committee would comprise 9 members on the ratio 3:3:3 where each of the following constituents would elect 2 members - BLA, NADEL, Independents and the President and two Vice Presidents, being the third member of each constituent.
7. The President of the organisation would alternate between the three organisations (e.g. year 1 - BLA, year 2 – Independents, year 3 – NADEL).

DRAFT

8. The constituents that do not appoint the President would, for that year, each appoint a Vice President
9. All actions and decisions of the Executive Committee must be done via consensus so that there would be no dominance over a constituent.
10. The organisation would adopt a progressive principle of governance, which would include amongst others, demographics, women leadership, geographic spread and youth, which shall ultimately be based on 'one person one vote'.

The 'no dominance over a constituency' principle would be carried forward into any new structure that may be created and would remain until the 'one practitioner one vote' system was instituted/introduced.

*The original LSSA constitution was signed at Cape Town on 27 July 1996.*

**Adv. J Poswa - SC President, BLA**

**Mr S Nkanunu - President, Nadel**

**Mr A.M.J. Pinnock - President, ALS**

**Mr A.J. Landman - President, Law Society of the Cape of Good Hope**

**Mrs E.D. duPlessis - President Law Society of the Transvaal**

**Mr F. Sithole - President, Natal Law Society**

**Mr R.D.B. Bekker - President, Law Society of the Orange Free State**

**The Amended LSSA Constitution Signed at Johannesburg on**

\_\_\_\_\_20\_\_.

**????????????? – Co-Chairs of the Law Society of South Africa**

DRAFT

???????????? - President, Black Lawyers Association

???????????? - President National Association of Democratic Lawyers

???????????? - President, Cape Law Society

???????????? - President Law Society of the Northern Provinces

???????????? - President, KwaZulu-Natal Law Society

???????????? - President, Free State Law Society

???????????? - for the Independent Lawyers Association of the Eastern Cape Province

???????????? - for the Independent Lawyers Association of the Free State Province,

???????????? - for the Independent Lawyers Association of the Gauteng Province

???????????? - for the Independent Lawyers Association of the KwaZulu-Natal Province

???????????? - for the Independent Lawyers Association of the Limpopo Province

???????????? - for the Independent Lawyers Association of the Mpumalanga Province

???????????? - for the Independent Lawyers Association of the Northern Cape Province

???????????? - for the Independent Lawyers Association of the North West Province

???????????? - for the Independent Lawyers Association of the Western Cape Province

DRAFT

**ANNEXURE II****AMENDMENT OF THE CONSTITUTION OF THE LAW SOCIETY OF SOUTH AFRICA****As:**

- The Statutory Law Societies in terms of the Attorneys Act will cease to exist when the Legal Practice Act is fully operational;
- they together with the Black Lawyers Association and the National Association of Democratic Lawyers have agreed to transform the Law Society of South Africa to represent South African legal practitioners; and
- have duly authorised their respective Presidents and leaders to execute this document;

**Therefore it is agreed as follows:**

1 The Constitution of the Law Society of South Africa is hereby amended to read as set out above.

2 The constituent societies shall continue to function as constituent members of the law Society of South Africa until 31 October 2018 or as soon as they will be replaced as founding constituent members by the Independent Lawyers Associations from the Nine Provinces of South Africa as set out above.

3. The current appointed House of Constituents of the law society will remain in office from the date of signature of the amended Constitution until the House of Constituents has been appointed. The House of Constituents will

DRAFT

have as its main objective, the election and proper setting up of the House of  
Constituents.

**The Amended LSSA Constitution Signed at Johannesburg on  
\_\_\_\_\_20\_\_.**

**????????????? – Co-Chairs of the Law Society of South Africa**

**????????????? - President, Black Lawyers Association**

**????????????? – President National Association of Democratic Lawyers**

**????????????? - President, Cape Law Society**

**????????????? - President Law Society of the Northern Provinces**

**????????????? - President, KwaZulu-Natal Law Society**

**????????????? - President, Free State Law Society**

**????????????? – for the Independent Lawyers Association of the  
Eastern Cape Province**

**????????????? – for the Independent Lawyers Association of the Free  
State Province**

**????????????? – for the Independent Lawyers Association of the  
Gauteng Province**

**????????????? – for the Independent Lawyers Association of the  
KwaZulu-Natal Province**

**????????????? – for the Independent Lawyers Association of the  
Limpopo Province**

**????????????? – for the Independent Lawyers Association of the  
Mpumalanga Province**

**????????????? – for the Independent Lawyers Association of the  
Northern Cape Province**

**????????????? – for the Independent Lawyers Association of the North  
West Province**

**????????????? – for the Independent Lawyers Association of the  
Western Cape Province**

DRAFT

**ANNEXURE III**

**ADOPTION OF THE AMENDED CONSTITUTION OF THE LAW SOCIETY OF SOUTH AFRICA**

**As**

1 The Black Lawyers Association, the Cape Law, the Free State Law Society, the KwaZulu-Natal Law Society, the Law Society of the Northern Provinces, the National Association of Democratic Lawyers, and the Independent Lawyer leaders from each of the nine South African Provinces, being the participating members of the Law Society of South Africa, have agreed to transform the LSSA into an organization representing South African legal practitioners

2 It is recorded that the attached amended Constitution was adopted on ?????????2018

3 The Constitution of the Law Society of South Africa, annexed hereto, is adopted as the Constitution of the new national voluntary representative structure and the participating members undertake to co-operate in accordance with the provisions of this Constitution, to give effect to our provisions.

DRAFT

**The Amended LSSA Constitution Signed at Johannesburg on \_\_\_\_\_20\_\_.**

**?????????????? - Co-Chairs of the Law Society of South Africa**

**?????????????? - President, Black Lawyers Association**

**?????????????? - President National Association of Democratic Lawyers**

**?????????????? - President, Cape Law Society**

**?????????????? - President Law Society of the Northern Provinces**

???????????? - President, KwaZulu-Natal Law Society

???????????? - President, Free State Law Society

???????????? - for the Independent Lawyers Association of the Eastern Cape Province

???????????? - for the Independent Lawyers Association of the Free State Province

???????????? - for the Independent Lawyers Association of the Gauteng Province

???????????? - for the Independent Lawyers Association of the KwaZulu-Natal Province

???????????? - for the Independent Lawyers Association of the Limpopo Province

???????????? - for the Independent Lawyers Association of the Mpumalanga Province

???????????? - for the Independent Lawyers Association of the Northern Cape Province

???????????? - for the Independent Lawyers Association of the North West Province,

???????????? - for the Independent Lawyers Association of the Western Cape Province

DRAFT