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COMMITTED TO **BUILDING** A BETTER LEGAL PROFESSION FOR ALL

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## LATEST ON THE LEGAL PRACTICE ACT

The [National Forum](#) (NF) has been in operation since February 2015 and is due to terminate on 31 October 2018, when the Legal Practice Act (LPA) is due to be implemented in full and the four statutory Law Societies are due to be abolished. The following tasks of the NF have been completed:

- A [Code of Conduct](#) for all legal practitioners (LPs), including non-practising LPs, candidate LPs and corporate legal entities was drafted and published. The

Code was gazetted in February 2017 but will only begin to be applied by the new Legal Practice Council (LPC) when it starts to regulate the profession.

- [Rules](#) were finalised by the NF after drafts were published for comment by interested parties. The LSSA submitted comment on the first draft of the rules. The majority of the LSSA's comments were taken into consideration in the latest draft. The NF met on 7 July 2018 to approve the rules required by ss 95(1), 95(3) and 109(2) of the LPA. The final version is due to be gazetted on 20 July 2018.
- Regulations were finalised by the Justice Department after recommendations by the NF and after consultation between the Minister and the NF. The [s 109 Regulations](#) (as settled between the Minister and the NF in June 2018) and the [s 94 Regulations](#) (submitted by the NF to the Minister in January 2018) have to be merged by the Department, approved by Parliament and promulgated before Chapter 2 of the LPA can come into operation and the new LPC can be established.

The following aspects required by the LPA were not dealt with in the draft regulations submitted to the Minister, for the reasons provided:

- Admission and enrolment of foreign legal practitioners: This can only be drafted after the Minister has consulted with the Minister of Trade and Industry and the LPC.
- Community service: This can only be drafted after the Minister has consulted with the LPC to identify the types of appropriate community service.
- Prescribed fees: This can only be drafted after the South African Law Reform Commission has submitted its report to s 35(4). See also item below.

**Download the following documents:**

[Section 109 Regulations](#) (as settled between the Minister and the NF in June 2018).

[Section 94 Regulations](#) (submitted by the NF to the Minister in January 2018).

[Rules](#) in terms of s 95(1) and (3) (approved by the NF on 7 July 2018 and due to be gazetted on 20 July 2018).

[Code of Conduct](#) to s 97(1)(b), gazetted on 10 February 2017.

[Summary of developments](#) by Jan Stemmet, LSSA representative on the NF.

## **TARIFFS ITO S 35(1) AND (2) OF THE LEGAL PRACTICE ACT: CALL FOR COMMENT**

Chapter 3 of the Legal Practice Act 28 of 2014, including s 35 (Fees in respect of legal services), is scheduled to come in operation after the commencement of Chapter 2, on a date to

be proclaimed by the Minister, which in the way things are planned, could be as early as November this year.

In terms of s 35(1) and (2), fees in respect of litigious and non-litigious legal services rendered by legal practitioners must be in accordance with tariffs made by the Rules Board for Courts of Law, pending an investigation on fees by the South African Law Reform Commission. The Rules Board is in the process of creating a tariff and has drafted proposals in that regard.

The Rules Board has issued an invitation to stakeholders to comment on the proposed tariffs. This is an important development with far-reaching implications and practitioners are urged to submit comments on the proposed tariffs.

Practitioners may submit their comments directly to the Rules Board or through the LSSA at [Affairs@lssa.org.za](mailto:Affairs@lssa.org.za). Comments via the LSSA should reach us by 1 August 2018.

It will be appreciated if attorneys also furnish the LSSA with an indication of the field of speciality, hourly rates charged by your firm, area of practice and years of experience, as set out below, to enable the LSSA to furnish the Rules Board with empirical data. Please note that the details of practitioners or firms, provided below, will not be provided to the Rules Board or any other institution.

Kindly provide us with the following information:

1. If applicable, field of speciality
2. Hourly rates
3. Area of practice (urban or rural)
4. Years of experience

[Download the request for comments here](#) or e-mail Kris Devan at [kris@LSSA.org.za](mailto:kris@LSSA.org.za) for a copy.

### **LSSA ADVISORY - CYBERCRIME: BUSINESS EMAIL COMPROMISES**

Business email compromises (BECs) are a form of cybercrime where electronic communications are accessed, monitored and, at appropriate times, intercepted and replaced with emails that are so similar to emails that may be expected by the recipient that they deceive the recipient into accepting the trustworthiness and integrity of the email and acting thereon. Whereas attorneys have been victims of this fraud, this advisory is aimed at attorneys ensuring that their clients are aware of the risk of a potential fraud with a view to their not falling victims to the fraud. A warning is suggested to be included in all instances where clients may be required to make payment to an attorney when initially engaging with the client and, wherever appropriate, in subsequent communications (whether by letter or email).

[Read the advisory here.](#)

[Download the advisory here.](#)

Do you have a question? Email your question to [LSSA@LSSA.org.za](mailto:LSSA@LSSA.org.za).

### **PROPOSED AMENDMENTS TO MAGISTRATES' COURTS RULE 9(3): CALL FOR COMMENT**

The Rules Board is currently reviewing the rules of service of processes, notices and other documents. Included in this review is the portion dealing with services of processes on a chosen *domicilium citandi*, contained in paragraph (d) of sub-rule 9(3). The Rules Board proposes that the sub-rule be amended to, among others, read:

'All processes shall, subject to the provisions of this rule, be served upon the person affected thereby by [delivery of] delivering a copy thereof in one or other of the following manners:

(d) if the person so to be served has chosen a *domicilium citandi*, by delivering [or leaving] a copy thereof at the *domicilium* so chosen: Provided that the sheriff shall set out in the return of service the details of the manner and circumstances under which such service was effected.'

Practitioners may submit their comments directly to the Rules Board or through the LSSA at [Affairs@lssa.org.za](mailto:Affairs@lssa.org.za). Comments via the LSSA should reach us by 30 July 2018.

[Download the request for comments here](#) or e-mail Kris Devan at [kris@LSSA.org.za](mailto:kris@LSSA.org.za) for a copy.

### **ROAD ACCIDENT BENEFIT SCHEME (RABS) BILL**

The Parliamentary Portfolio Committee on Transport has declared the Road Accident Benefit Scheme Bill desirable, notwithstanding extensive written and oral submissions by various stakeholders, including the LSSA, raising concerns regarding the proposed scheme.

From 24 July until 4 August 2018, the Portfolio Committee will host public meetings across the country.

This legislation will have far-reaching effects and it is recommended that practitioners attend these meetings to ensure vibrant engagement. [The meeting schedule and a memorandum](#) capturing the salient aspects of the RABS Bill are available from Kris Devan at [kris@LSSA.org.za](mailto:kris@LSSA.org.za).

### **AMENDMENTS TO THE MAGISTRATES' COURTS RULES**

A number of important amendments to the Magistrates' Courts Rules appear in *Government Gazette* 41723, dated 22 June 2018.

These amendments relate to Rule 45 - enquiry into financial position of judgment debtor; Rule 46 - emolument attachment orders;  
Rule 49 - rescission and variation of judgments; and

Rule 55 - applications.

Practitioners are advised to apprise themselves of these provisions, which will come into operation on 1 August 2018. [Download Government Gazette 41723 dated 22 June 2018 here.](#)

### **JURISDICTION OF SMALL CLAIMS COURT**

The Justice Department has requested the LSSA's input on a potential increase of the small claims court's monetary limit, which is currently at R15 000.

Previous increases:

1985 - R1 000

15 September 1995 - 31 March 2004 - R3 000

1 April 2004 - 31 October 2010 - R7 000

1 November 2010 - 31 March 2014 - R12 000

1 April 2014 - to date - R15 000

The LSSA welcomes your views on whether the current limit should be increased and if so, what the monetary limit for the small claims court should be. The LSSA would also appreciate your proposals on the formula that should be adopted for future increases. Please forward your comments on or before 15 August 2018 to Kris Devan at [kris@LSSA.org.za](mailto:kris@LSSA.org.za).

### **FINANCIAL INTELLIGENCE CENTRE AMENDMENT ACT: COMPLIANCE**

Practitioners are reminded that the provisions of the Financial Intelligence Centre Amendment Act 1 of 2017 (the Amendment Act) are fully operational since October 2017. The Amendment Act introduced a number of new concepts and approaches to the implementation of the Financial Intelligence Centre Act 38 of 2001 (FICA), which attorneys (as accountable institutions) must comply with. All accountable institutions are now required to, among other things, apply a risk-based approach when implementing customer due diligence measures. Attorneys are strongly encouraged to review the FIC's [Guidance Note 7 on the Implementation of Various Aspects of the FIC Act](#) with the aim of ensuring compliance with the provisions of FICA.

[Download the FIC's Guidance Note 7 on the Implementation of Various Aspects of the FIC Act here.](#)

### **PROTECTION OF PERSONAL INFORMATION AND ACCESS TO INFORMATION**

The Protection of Personal Information Act 4 of 2013 is expected to come into operation within the next few months. It is important for attorneys to ensure that suitable measures are in place to protect the personal information entrusted to them. The LSSA has published the [Protection of Personal Information Guidelines for South African Law Firms](#) which

should be used as a tool to assist attorneys in familiarising themselves with their obligations to lawfully process personal information in terms of the Act.

Attorneys are also encouraged to consider the publication of manuals, as envisaged in terms of s 51 of the Promotion of Access to Information Act 2 of 2002 (PAIA), even though certain private bodies are exempted from complying with this obligation until 31 December 2020. (The LSSA's PAIA manual is accessible on its [website](#).)

[Download the Protection of Personal Information for South African Law Firms - LSSA Guidelines \(January 2018\) here](#)

[Download the Information Security for South African Law Firms - LSSA Guidelines \(January 2018\) here](#).

### **LEGAL AID SOUTH AFRICA - CONFLICTS OF INTEREST**

The LSSA's Legal Aid Committee has, since its inception, regularly engaged with representatives from Legal Aid SA. The LSSA has frequently expressed concerns regarding matters in which Legal Aid SA represented more than one accused in a matter. In its updated [Legal Aid Manual 2017](#), Legal Aid SA provides that:

'A legal practitioner who receives a single legal aid instruction for more than one legal aid applicant must ensure, from the start of the case, that no conflict of interest exists between her/his clients.'

The Manual further provides that:

'If a single practitioner discovers a conflict of interest, the legal aid instruction must be returned to the [Justice Centre Executive] with an appropriate letter so that separate legal aid instructions may be issued to other legal practitioners.'

Attorneys rendering legal services within this framework are encouraged to review the Manual and to ensure that they comply with the ethical standards applicable in this context.

[Download the Legal Aid Manual 2017 here](#).

### **V BRICS LEGAL FORUM 2018 CONFERENCE | CAPE TOWN | YOU ARE INVITED**

The LSSA is honoured to be hosting the prestigious 5th BRICS Legal Forum Conference which takes place from 23 to 24 August 2018. The conference will be held at the Cape Town International Convention Centre.

By registering for the conference, you have the opportunity to join lawyers, academics, and other important stakeholders representing the five BRICS nations. Pre-eminent legal speakers will address a range of contemporary BRICS themes such as arbitration; contracts and company law, finance and taxation; and the processes and functioning of the BRICS Dispute Resolution Centres. In addition, there will be

networking opportunities with colleagues from different jurisdictions where you can exchange experiences and build relationships.

The BRICS Legal Forum conferences are high-level dialogue platforms aimed at enhancing mutual understanding and communication among legal circles while promoting practical legal cooperation and advancing the rule of law. There is much focus on improving the discourse and decision-making powers of the developing countries and working towards the establishment of a more justified international order and system.

It is important to register as soon as possible as participation is limited to 400 delegates.

Participants: Brazilian Bar Association; Association of Lawyers of Russia; Bar Association of India; China Law Society; Law Society of South Africa; General Council of the Bar; University of Cape Town.

[www.bricslegalforum2018.org](http://www.bricslegalforum2018.org)

[Register online here.](#)

### **19TH SADCLA ANNUAL CONFERENCE AND GENERAL MEETING: MAPUTO**

The SADC Lawyers' Association (SADCLA) and Ordem dos Advogados de Mozambique (OAM) are proud to announce the 19th SADCLA Annual Conference and General Meeting (ACGM). The ACGM will be held at the Joaquim Chissano International Conference Centre, Maputo on 16 and 17 August 2018.

[Registration](#) | [Accommodation](#) | [Excursions](#) | [Programme](#)

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[nyamanhindi@yahoo.com](mailto:nyamanhindi@yahoo.com); [info@oam.org.mz](mailto:info@oam.org.mz)

## **LEAD: CATCH UP ON THE LATEST DEVELOPMENTS ON THE NATIONAL CREDIT ACT AND ON DEBT COLLECTION**

**LEAD's National Credit Act (NCA) seminar** will highlight important court decisions over the past few years.

Johannesburg: 3 August; Pretoria: 13 August; Bloemfontein: 17 August; Cape Town: 24 August; Durban: 27 August; East London: 3 September; Port Elizabeth: 4 September.

[Download the brochure and registration form here.](#)

**LEAD's debt collection seminar** will focus on the latest

cases, new and proposed legislative changes (particularly the changes to the Magistrates' Courts Act relating to debt collections) and the effect of the *University of Stellenbosch Law Clinic* Constitutional Court case. Bloemfontein: 9 October; Pretoria: 16 October; Johannesburg: 17 October; East London: 24 October; Port Elizabeth: 25 October; Durban: 30 October; Cape Town: 2 November.

[Download the brochure and registration form here.](#)

[View the full LEAD training calendar for legal practitioners here.](#)

[View the LEAD training calendar for support staff here.](#)

### **JULY RISK ALERT BULLETIN: CHANGES TO THE AIIF POLICIES FOR THE 2018/19 YEAR**

The July issue of the Attorneys Insurance Indemnity Fund's *Risk Alert Bulletin* includes the new professional indemnity and executor bond policies which came into effect on 1 July 2018. There are some changes in the new policy, which may affect the way in which attorneys run their practices and/or that may necessitate attorneys buying insurance cover for specific areas of their practices.

[Download the July Risk Alert Bulletin here.](#)

### **NOMINATE A SOUTH AFRICAN UNSUNG HERO OF THE LEGAL PROFESSION TO BE RECOGNISED WITH NEW IBA JURIST AWARD**

A new International Bar Association (IBA) award, the *IBA Jurist Award*, has been launched to celebrate the 'unsung heroes' of the legal profession: jurists who exemplify personal sacrifice and commitment to justice. Nominees can include, for example, lawyers undertaking cases pro bono in the pursuit of justice or judges who rule appropriately on landmark cases despite systemic or societal pressures. The IBA's global search for these individuals is supported by [Ashoka](#), the largest global network of leading social entrepreneurs working towards achieving social justice.

Nominations must be received by the IBA by midnight (GMT) Friday, 31 August 2018. Nominations received after this time will not be considered. Submissions must be sent to the IBA to e-mail: [IBAJuristAward@int-bar.org](mailto:IBAJuristAward@int-bar.org)

The award comprises

- publication of an article in the IBA's flagship magazine, IBA Global Insight and e-publication IBA e-News;



- creation of a short video of the lawyer and his/her achievement for inclusion on the IBA website;
- IBA recognition at an event to be determined; and
- a cash sum of USD 1 000.

[Read more on the award, including the terms for the nomination, here.](#)



Did you miss the July issue of *De Rebus*? Highlights from the July issue:

- Diplomatic immunity: Its nature, effects and implications
- Time's up for employers hiding from sexual harassment settlements
- Equality for all religions and cultures in the South African legal system
- Share buy-backs and waiver of mandatory offers in terms of the Companies Act
- Bringing advancing technology in litigation - time to explore electronic discovery
- Discrimination: The unfortunate tale of an 'affirmative action' candidate

And lots more of the usual law reports, recent labour law judgments and news from the profession.

[View the July issue here.](#)

Download the FREE De Rebus app from the [AppStore](#) or [Googleplay](#).



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