



LAW SOCIETY  
OF SOUTH AFRICA

## UPDATE ON THE LEGAL PRACTICE ACT AND NATIONAL FORUM

### THE NATIONAL FORUM

The National Forum on the Legal Profession (NF) was established in terms of Chapter 10 of the Legal Practice Act 28 of 2014 (the Act) as a transitional body to oversee the transformation of the governing structures of the Attorneys' and Advocates' branches of the legal profession in South Africa into a new Legal Practice Council.

The NF has been in operation since February 2015 and is due to terminate on 31 October 2018, when the Act is due to be implemented in full and the 4 statutory Law Societies are due to be abolished. The following tasks of the NF have been completed or are nearing completion:

- 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 legal profession.
- **Regulations** were finalised by the Department of Justice after recommendations by the NF and after consultation between the Minister and the NF. The Regulations will be promulgated after approval by Parliament.
- **Rules** were finalised by the NF after drafts were published for comment by interested parties. The final version will be gazetted in July 2018.
- **Transfer agreements** have been concluded with the 4 statutory Law Societies, providing for the transfer of assets, rights, liabilities, obligations and staff to the LPC and the Provincial Councils (PCs). The parties agreed that R50 million of the money to be transferred to the LPC, will be transferred to the LSSA.
- **Transitional arrangements** are being attended to by the NF's Transitional Arrangements Committee (TAC) to ensure a smooth transfer of regulatory functions of the existing Law Societies and Advocates' structures to the new LPC and the 9 PCs. Please refer to p4 and p5 for details of the Committee's tasks.
- **Election** of the 10 Attorneys and 6 Advocates to serve on the first LPC is intended to be conducted in August 2018 by an election service provider under supervision of the NF. An Election Committee was appointed by the NF for this purpose. Three additional members are due to be appointed to the LPC by the Minister, 2 by the Law Teachers and 1 each by the Fidelity Fund and Legal Aid South Africa. The LPs to serve on the 9 PCs are due to be elected under supervision of the LPC. In terms of the election Regulations and Rules, the composition of the LPC and PCs is due to reflect the demographics of the country.

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The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

Tel +27 (12) 366 8800 Fax +27 (12) 362 0969 [www.lssa.org.za](http://www.lssa.org.za) PO Box 36626 Menlo Park 0102 Docex 82 Pretoria  
304 Brooks Street Menlo Park Pretoria

- **Buildings and infrastructure** of the LPC and PCs will be required as soon as Chapter 2 of the Act comes into operation (intended to happen by 1 August 2018) but acquisition can only be made once the Regulations and Rules are in place. The Act requires the Regulations to be promulgated before Chapter 2 comes into operation and the Rules will also need to be gazetted by that time, in order that the rolls of LPs can be established, the election of the PCs can be conducted etc.

## **REGULATIONS**

The draft Regulations to be tabled for approval by Parliament, include the following:

- An election procedure for purposes of constituting the LPC.
- The establishment of the Provincial PCs and their areas of jurisdiction. The office of the KZN PC will be in Pietermaritzburg, but the LPC has to consider transferring the office to Durban.
- The composition, powers and functions of the PCs.
- The practical vocational training (PVT) requirements that **Candidate Attorneys** (CAs) must comply with. A person with a LLB degree has 3 routes to admission as an Attorney:
  - 24 months PVT & 150 hours course work (during the 24 months PVT or within 12 months thereafter) & pass the prescribed examination; or
  - 12 months PVT after 400 hours course work & pass the prescribed examination; or
  - A CA who has entered into a 24 months PVT contract, may apply for admission after 12 months if he/she has completed the 400 hours course work after hours & passed the prescribed examination.
- The practical vocational training (PVT) requirements that **Pupils** must comply with. A person with a LLB degree who wants to be admitted as an Advocate, must serve under a PVT contract for 12 months & complete 400 hours course work before or during the 12 months PVT & pass the prescribed examination.
- The right of appearance of Pupils in lower courts or any other institution. (The right of appearance of CAs is dealt with in s25 of the Act.)
- A mechanism to wind up the affairs of the NF. (The NF is due to cease to exist on 31 October 2018.)
- The accreditation of training institutions
- Empowerment of historically disadvantaged LPs and Candidate LPs
- The appropriate relevant experience required of Attorneys who wish to appear in the High Court etc.

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

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

## RULES

The Rules drafted by the NF were published in the Gazette for comment and the final version is due to be gazetted in July 2018, after approval at a plenary meeting of the NF. The Rules are based on the Attorneys' Uniform Rules with amendments to accommodate the Advocates and the requirements of the Act.

The Rules include the following:

- The **subscriptions** to be levied on admitted and enrolled LPs by the LPC and the administrative fees payable for certificates etc.
  - As a transitional measure, the NF arranged with the Law Societies to levy their existing membership fees on practising Attorneys for the 12 months ending on 30 June 2019, despite the fact that the Law Societies are due to be dissolved by 31 October 2018. The surpluses will be transferred to the LPC.
  - Practising Advocates will pay subscriptions of R2 500 including VAT per year (except LPs admitted and enrolled for less than 12 months, who will pay R1 500 including VAT per year). The first subscriptions, calculated *pro rata*, are due to be levied by the LPC from 1 November 2018 to 30 June 2019.
  - Unless the LPC amends the Rule relating to subscriptions (after input from LPs), the subscriptions payable by all practising LPs from 1 July 2019 onward will be R2 500 per year (except LPs admitted and enrolled for less than 12 months, who will pay R1 500 including VAT per year).
  - All non-practising Attorneys and Advocates will pay subscriptions of R800 including VAT per year. The first subscriptions, calculated *pro rata*, are due to be levied by the LPC from 1 November 2018.
- The election procedure for purposes of constituting the PCs
- Admission and enrolment: a person admitted by the High Court as a LP (as an Attorney, referral Advocate or trust account Advocate) is automatically enrolled by the LPC (on the practising or non-practising roll) and is then subject to regulation by the LPC. Only a LP (ie admitted and enrolled) may hold him/herself out as a LP, in terms of s33(2) of the Act.
- Education and training – registration, practical vocational training of CAs and Pupils, assessment and the practice management course. The minimum remuneration of CAs and Pupils will be determined by the LPC from time to time.
- Keeping of rolls and conversion of enrolment.
  - An Attorney who wishes to convert his/her enrolment to that of an Advocate, will need to have the right of appearance in the High Court and to have undergone the training in advocacy required by Pupils for admission as Advocates.
  - An Advocate who wishes to convert his/her enrolment to that of an Attorney will need to have passed the accounting exam and to have attended the practice management course required by Attorneys. In addition, he/she will need to have been enrolled for as an Advocate for at least 12 months or at least 3 years if he/she did not undergo pupillage or successfully complete a training course approved by the GCB.
- The rendering of legal services. This includes the legal services which may be rendered by trust account Advocates, the briefing of Advocates and the instruction of Attorneys.
- Law Clinics
- Disciplinary matters:

- All pending investigations against Attorneys and unaffiliated Advocates will be transferred to the LPC. Investigations against Advocates who are members of the GCB-AFT and the NBCSA will be completed by the respective bodies in terms of their constitutions.
- Pending applications for striking or suspension of Attorneys and Advocates from practice will also be transferred to the LPC, but the LPC may contract with the GCB-AFT and the NBCSA to complete their pending applications.
- Alternative dispute resolution was added as an optional procedure for less serious transgressions.
- Legal Practitioners Fidelity Fund – election of Board members, applications for Fidelity Fund certificates, contributions to the Fund and compliance inspections by the Fund.
- Accounting Rules
- Investment Practice Rules
- Schedules to the Rules.

## **TRANSITIONAL ARRANGEMENTS**

A Transitional Arrangements Committee has been established to attend to all transitional aspects. The Committee, consisting of members of the NF and representatives of the Law Societies, are attending to the following, in co-operation with the Pre-Transitional Committees of the Law Societies. The *effective date* for the transfer is intended to be 31 October 2018.

- The transfer of staff from the Law Societies to the LPC & PCs, as provided in the transfer agreements.
- The secondment of key personnel from the Law Societies to carry out the priority functions of the LPC & PCs until the *effective date*.
- Phasing out of the staff service benefits of the existing Law Societies which will not be offered by the LPC. It was agreed with the Law Societies that they should pay their employees certain amounts relating to leave pay, bonuses and long service awards.
- Preparing for the transfer of movable assets excluding cash from the Law Societies to the LPC & PCs, by:
  - Preparing asset registers of the 4 Law Societies
  - Determining the take-over value of the assets
  - Determining the assets that need to be relocated and making the necessary arrangements
  - Arranging insurance cover for the assets to become effective upon transfer.
- The transferring of the cash reserves held by the Law Societies by taking over their bank accounts on the *effective date*.
- Arrange for the payment of interest on trust banking accounts by Attorneys over the transitional period to the Law Societies until the effective date, whereafter the money will be transferred to the Fidelity Fund.
- Arrange for an audit of the financial records of the Law Societies for the period from 1 July 2018 to the *effective date*.
- Prepare for the transfer of work in progress from the Law Societies to the LPC and PCs.
- Prepare for the transfer of regulatory work in progress from Advocates structures to the LPC & PCs.
- Evaluate and consider the Law Societies' existing agreements with their service providers.
- Conclusion of new agreements by the LPC with service providers.

- Arrange for the handing over by the Law Societies of:
  - Documents of title to the assets and rights which are in their possession or under their control;
  - The originals (or copies) of all their contracts;
  - Records relating to the activities of the Law Societies prior to the effective date and relating to its assets, rights, liabilities and obligations.
- Standardise the operational and financial procedures and systems currently in place at the various Law Societies and aligning such procedures with the rules and regulations of the Legal Practice Council (e.g. disciplinary procedures).
- Take steps to urgently deal with existing backlogs, to ensure a smooth transition of the operational functions of the Law Societies to the Legal Practice Council.
- Arrange for the transfer of the immovable properties of the Law Societies of the Northern Provinces, KwaZulu-Natal and the Free State, to the LPC.
- Arrange for the continuation of the Benevolent Funds of the Law Societies after the effective date.
- Arrange for the LPC to take over the pending court cases in which the Law Societies and Advocates structures are involved.
- Sourcing premises for the LPC and LPCs. The PCs must be able to function from the *effective date*.
- Infrastructure must be sourced for the LPC and PCs.
- Compiling a database of all admitted LPs, including unaffiliated Advocates.
- Communication by the NF with the Minister, the Law Teachers, the Fidelity Fund and Legal Aid SA to arrange for the appointment of the non-elected designates to the LPC.
- Arrange final meeting of the NF with the LPC before the NF is dissolved.

The events listed above are the culmination of many years of dedicated work by many role-players. These are historical achievements which will pave the way for the establishment of a single unified statutory Council to regulate the affairs of all legal practitioners, candidate legal practitioners and juristic entities, for the first time in the history of South Africa.

Documents relating to the NF and other reports can be downloaded from [www.lssa.org.za](http://www.lssa.org.za) .

**JAN STEMMETT**  
**MEMBER OF THE NATIONAL FORUM**

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