



GOVERNMENT GAZETTE

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General Notice

LAW SOCIETY OF NAMIBIA

No. 385 2007

AMENDMENT OF RULES OF LAW SOCIETY OF NAMIBIA: LEGAL PRACTITIONERS' ACT, 1995

The Council of the Law Society of Namibia has, with the approval of the Chief Justice, under section 52 of the Legal Practitioners' Act, 1995 (Act No. 15 of 1995), made the Rules set out in the Schedule.

E. SCHIMMING-CHASE
PRESIDENT
COUNCIL OF THE
LAW SOCIETY OF NAMIBIA

Windhoek, 20 November 2007

SCHEDULE

1. In these rules the "the Rules" means the Rules of the Law Society of Namibia, promulgated under General Notice No. 340 of 4 November 2002, as amended by General Notice No. 251 of 1 November 2004.

Amendment of rule 1 of the Rules**2.** Rule 1 of the Rules is amended -

- (a) by the deletion of the definition of “associate”;
- (b) by the insertion after the definition of “firm” of the following definition:

““GOSP” means the General Office for the Serving of Processes in which the Society provides service of process in terms of a contractual agreement between the Society and a participating party;” and

- (c) by the insertion after the definition of “private practice” of the following definition:

““professional assistant” is a legal practitioner in the employ of a firm, other than a person who practices with a fidelity fund certificate such as a partner, a sole practitioner or a director, and includes an ““associate”;”.

Amendment of rule 6 of the Rules**3.** Rule 6 of the Rules is amended -

- (a) by the substitution for the subrule (7) of the following subrule:

“(7) If the number of candidates duly nominated is equal to the number of vacancies in the Council and such nominations comply with section 45(1) of the Act, the candidates nominated shall be deemed to be duly elected at the conclusion of the annual general meeting.”;

- (b) by the substitution for the introduction to (8) of the following introduction:

“(8) If more candidates than the number of vacancies in the Council are duly nominated and their number includes more than the number of members specified in section 45(1) of the Act, an election shall be held by secret ballot at the annual general meeting as follows:”;

- (c) by the substitution for paragraph (a) of subrule (8) of the following paragraph:

“(a) the ballot paper shall contain the names of the candidates nominated for election in alphabetical order and shall indicate in respect of each candidate whether or not paragraph (a) or (b) of section 45(1) of the Act applies, or, both paragraphs (a) and (b) of that section apply;”;

- (d) by the substitution for paragraph (c) of subrule (8) of the following paragraph:

“(c) a ballot paper shall be considered spoilt and be rejected if the votes recorded thereon are for more than the number of vacancies on the Council;”;

- (e) by the substitution for item (i) of paragraph (f) of subrule (8) of the following item:

“(i) under four distinct headings, namely ‘candidates nominated engaged in private practice’, ‘candidates nominated not engaged in private practice’, ‘candidates nominated under section 45(1)(a) of the Act’ and ‘candidates not nominated under section 45(1)(a) of the Act’, the name of each candidate nominated for election and the total number of votes cast in favour of such candidate in descending numerical order;”;

(f) by the substitution for paragraph (g) of subrule (8) of the following paragraph:

“(g) the Chairperson, upon being satisfied that the report of the scrutineers is complete and regular on the face of it, shall determine and declare the result of the election by selecting the elected members with due regard to section 45(1) and (4) of the Act;”.

Amendment of rule 9 of the Rules

4. Rule 9 of the Rules is amended by the substitution for subrule (3) of the following subrule:

“(3) No resolution for the removal or suspension of a Councillor shall be acted upon unless six Councillors are present at the meeting at which the resolution is voted upon and at least five of those Councillors vote in favour of the resolution.”.

Substitution of rule 13 of the Rules

5. Rule 13 of the Rules is substituted for the following rule:

“**13.** A notice in writing addressed by the Council or by the Director, or any person mandated by the Council or Director, to any firm at the address notified by that firm to the Director, shall be deemed to have been validly given and to have been received by the firm -

- (a) on the fourth day following its dispatch by prepaid post; or
- (b) on physical delivery thereof at such address; or
- (c) on electronic transmission if sent by facsimile or e-mail, during office hours on a business day, otherwise within one hour of commencement of business of the first succeeding business day; or
- (d) where a firm is making use of the GOSP, on the next day after such notification was served on the GOSP.”.

Amendment of rule 19 of the Rules

6. Rule 19 of the Rules is amended -

(a) by the substitution for subrule (3) of the following subrule:

“(3) (a) A member carrying on an investment practice -

- (i) shall comply with either rule 20 or rule 20A, whichever rule is applicable in the circumstances;

- (ii) is required to obtain a certificate from its accountant to the effect that such practice has complied with subparagraph
- (b) The accountant of such investment practice is required to report to the Society on whether the investment practice has complied with paragraph (a)(i).”;
- (b) by the substitution for paragraph (c) of subrule (13) of the following paragraph:
 - “(c) not be required to lodge his or her first annual accountant’s report in terms of subrule (3)(b) until the expiry of three (3) months after the end of the financial period in which the period of grace stipulated in paragraph (a) expires.”.

Amendment of rule 20 of the Rules

- 7. Rule 20 of the Rules is amended -
 - (a) by the substitution for subrule (2) of the following subrule:
 - “(2) Subject to rule 20A, a firm shall, in terms of subrule (1), only appoint as its accountant a person who is a practicing accountant in private practice and who is registered as such under the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951).”;
 - (b) by the substitution for item (i) of paragraph (b) of subrule (5) of the following item:
 - “(i) it comes to his or her attention that at any date the total of the balance shown on the trust account in the accounting records of the firm exceeds the total amount of the funds in its trust banking account, its trust investment account or its trust cash account and further report the reason for such discrepancy;”.

Insertion of rule 20A in the Rules

- 8. The following rule is inserted after rule 20:

“Exemption from application of rule 20

- 20A.** (1) A firm may apply to the Council for exemption from the application of rule 20.
- (2) The Council may grant an application referred to in subrule (1) and may further determine conditions for such exemption.
 - (3) In order for the Council to grant an application referred to in subrule (1), a firm must accept the conditions determined by the Council under subrule (2).
 - (4) The Council may limit the granting of exemption from the application of rule 20 on the basis of its capacity to administer the conditions determined by it under subrule (2).”.

Amendment of rule 21 of the Rules

- 9.** Rule 21 of the Rules is amended -
- (a) by the substitution for paragraph (g) of subrule (2) of the following paragraph:
- “(g) Carrying on practice at an office, including a branch office, which is not under the direct and personal supervision of a duly qualified legal practitioner: Provided that -
- (i) such requirement of continuous, direct and personal supervision may be relaxed or waived by the Council on such conditions as it may determine;
- (ii) the Council may also revoke such relaxation or waiver referred to in item (i);”;
- (b) by the substitution for paragraph (u) of subrule (2) of the following paragraph:
- “(u) Failing or refusing to -
- (i) keep the Society informed of the current postal and physical address at which a member can be reached;
- (ii) pay annual subscription timeously.”.
- (c) by the substitution for paragraph (w) of subrule (2) of the following paragraph:
- “(w) Allowing a person who is not a legal practitioner and who is employed at a firm to present himself or herself as a professional assistant of that firm.”; and
- (d) by the insertion after paragraph (ff) of subrule (2) of the following paragraph:
- “(gg) On the detection of a shortfall on the trust account not immediately informing the Society of the amount of the shortfall, the reasons for such shortfall and the steps taken to rectify such shortfall.”.

Amendment of rule 22 of the Rules

- 10.** Rule 22 of the Rules is amended -
- (a) by the substitution for subrule (1) of the following subrule:
- “(1) There shall be a Standing Committee of the Council to be known as the ‘Legal Ethics and Investigatory Committee’ which shall consist of at least three members of whom at least two shall be in private practice appointed by the Council.”;
- (b) by the substitution for subrule (2) of the following subrule:

“(2) The Legal Ethics and Investigatory Committee shall be responsible for advising the Council on all matters of ethics in the practice of law and such committee, or any two or more of its members to whom the committee may delegate its powers, shall investigate the conduct of any member which in their opinion may require disciplinary action against such a member and shall advise the Council of their findings.”;

- (c) by the substitution for paragraph (a) of subrule (6) of the following paragraph:

“(a) where an investigation is to be conducted on account of a complaint received from a complainant, may require that such complaint be made in writing on affidavit;”;

- (d) by the substitution for paragraph (c) of subrule (6) of the following paragraph:

“(c) may require the complainant to furnish such further evidence, written or oral, documentary or otherwise, as it may require;”.

Amendment of rule 24 of the Rules

- 11.** Rule 24 of the Rules is amended -

- (a) by the substitution for item (i) of paragraph (a) of subrule (1) of the following item:

“(i) his or her full names, date of birth, residential address and postal address;”;

- (b) by the insertion after item (iii) of paragraph (a) of subrule (1) of the following item:

“(iv) to inform the Society of any change of his or her residential address or postal address while such person remains a member of the Society;”;

- (c) by the substitution for subrule (7) of the following subrule:

“(7) Where a separate trust banking account is kept by a firm or a member in respect of a branch office, the firm or the member shall ensure that a separate report by an accountant as required by rule 20 or rule 20A is lodged with the Council in accordance with such rule, unless the keeping of the books of accounts pertaining to such separate trust account is centralized at the main office of that firm or member.”.
