



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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General Notice

No. 340

2002

RULES OF THE LAW SOCIETY OF NAMIBIA

Notice is hereby given in terms of section 52(5) of the Legal Practitioners Act, 1995 (Act No. 15 of 1995) that the Law Society of Namibia, with the approval of the Chief Justice, has made the rules set out in the Schedule.

SCHEDULE

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Definitions

1. In these Rules, unless the context otherwise indicates, words or expressions have the meaning defined in the Act, and -

“accountant” means a person who is registered as an accountant and auditor in terms of the Public Accountants’ and Auditors’ Act 1951, and who practises as a public accountant under that Act;

“accounting records” means the records which a firm is required to keep in terms of Rule 17;

“Act” means the Legal Practitioners Act, 1995 (Act 15 of 1995);

“associate” means a legal practitioner in the employ of a firm, which includes a “professional assistant”;

“business account transactions” means transactions in regard to which records are required to be kept in terms of Rule 17;

“Chairperson” and “Vice-Chairperson” means respectively the Chairperson and the Vice-Chairperson of the Society;

“Consultant” means a legal practitioner in the employ of a firm and who has been a legal practitioner for a period of not less than ten (10) years; provided that no such consultant shall be allowed to be employed by, or have an interest in more than one firm simultaneously, except with the prior written consent of Council;

“Council” means the Council of the Society;

“Day” or “days” means calender days;

“Director” means the Director appointed in terms of Rule 12 and shall include any acting, deputy or assistant Director;

“firm” means a member practising for his or her own account or two or more members practising in partnership or a professional company referred to in section 7 of the Act;

“Legal Ethics and Investigatory Committee” means the Committee of the Council referred to in Rule 22;

“member” means a person who is a member of the Society by virtue of section 43 of the Act;

“partner” includes the shareholder of a professional company as defined in the Act;

“person” includes a firm and body corporate;

“private practice” means a legal practitioner who practices for his or her own account or in partnership and who holds a fidelity fund certificate;

“Society” means the Law Society of Namibia;

“subscription” means a subscription in terms of Rule 15;

“touting” means as referred to in Rule 21 (t);

“trust account transactions” means transactions in regard to which records are required to be kept in terms of Rule 18;

“trust banking account” means a banking account kept by a legal practitioner in terms of section 26 (1) of the Act;

“trust cash” means any cash held in trust by a firm other than in a trust banking account or a trust investment account;

“trust creditor” means a person on whose account money is held or received as contemplated in section 26 (1) of the Act or invested as contemplated in section 26 (2) or (3) of the Act;

“trust investment account” means any trust savings or other interest bearing account opened in terms of section 26 (2) or (3) of the Act;

“trust money” means money received or held on account of any person by a legal practitioner as contemplated in section 26 (1) or invested in accordance with section 26 (2) or (3) of the Act;

“trust savings account” means a savings or interest bearing account kept by a legal practitioner in terms of section 26 of the Act;

“year” means the financial year of the Society.

Seat of the Society

2. The seat of the Society shall be Windhoek.

Annual general meetings

3. (1) An annual general meeting of the members of the Society shall be convened by the Council in terms of section 47 (a) of the Act to take place once in every calendar year.
- (2) The notice of an annual general meeting to be given by the Director to members in terms of section 44 (4) of the Act, shall state the time, date and place of the meeting and the business to be transacted thereat, which shall include -
- (a) consideration of the correctness of the minutes of the previous annual general meeting and of any subsequent special general meeting which remain to be confirmed;
 - (b) the election of Councillors;

- (c) consideration of the Chairperson's report for the year and matters arising therefrom;
 - (d) consideration and adoption of the financial statements of the Society for the preceding year;
 - (e) the appointment of an auditor;
 - (f) the consideration and transaction of any special business of which due notice has been given by any member in accordance with subrule 3 (4) and the consideration and transaction of any special business which the Council wishes to submit to the meeting and of which due notice has been given in terms of Section 44 (4) of the Act.
- (3) Not later than seven (7) days before the date fixed for the annual general meeting, the Director shall send to each member -
- (a) a copy of the minutes of the previous annual general meeting and of any subsequent special general meeting which remain to be confirmed by the meeting;
 - (b) a copy of the Chairperson's report for the year;
 - (c) copies of the audited financial statements of the Society for the last completed financial year end;
 - (d) a list of Councillors, indicating the number of meetings attended by each during their term of office;
 - (e) particulars of any special business which any member wishes to be submitted to the meeting pursuant to the notice received of the annual general meeting by the Director in accordance with subrule 3 (4).
- (4) Notice of any special business which a member wishes to be submitted for consideration at an annual general meeting shall be in writing and be delivered or sent by mail or facsimile to reach the Director at least fourteen (14) days before the date of the meeting and shall contain the motion to be proposed by the member.
- (5) The order of the business at an annual general meeting shall, unless varied by the Chairperson with the approval of the meeting, be the order set out in the notice of the meeting.

Special general meetings

4. (1) Special general meetings of the Society may, or shall (as the case may be) be convened as prescribed by Section 44 (3) of the Act.
- (2) The notice of a special general meeting to be given by the Director in terms of section 44 (4) of the Act, shall state the time, date, place and purpose of the meeting.
- (3) No business other than that stated in the notice shall be transacted at the special general meeting, but the Chairperson may permit any other matter to be discussed without being voted upon at the meeting.

Provisions common to general meetings

5. (1) If a quorum for a general meeting, as prescribed by section 44 (5) of the Act, is not present within thirty (30) minutes after the time appointed for the start of the meeting, the meeting -
- (a) if convened upon the requisition of members, shall be dissolved;
 - (b) in any other case, shall stand adjourned to a day to be fixed by the Chairperson, but which shall not be earlier than fourteen (14) days and not later than thirty (30) days after the date of the meeting which is adjourned.
- (2) The Director shall send to each member, not less than seven (7) days before the date to which the meeting has been adjourned in terms of subrule 5 (1) (b), a written notice stating the time, date and place of the adjourned meeting.
- (3) If at such an adjourned meeting a quorum is not present within half-an-hour after the time appointed for the start of the meeting, the members present in person or by proxy shall be a quorum.
- (4) A general meeting at which a quorum is present at its commencement may be adjourned to a time, date and place decided by the meeting, and any decision by members taken in general meeting shall be valid if the required quorum was present at the commencement of the meeting.
- (5) The following rules of debate shall be observed at all general meetings:
- (a) Except with the leave of the Chairperson -
 - (i) no member shall be permitted to speak more than once on the same question, but the mover of any motion may speak in reply;
 - (ii) the mover of a motion shall not speak for more than ten (10) minutes and in reply not more than five (5) minutes and any other member may not speak for more than five (5) minutes;
 - (b) the consideration of any other matter which the Chairperson may allow to be raised for discussion, but no such matter which has not been included in the notice of the meeting shall be voted upon at the meeting.
 - (c) All matters shall be decided by a majority of members voting in person or by proxy delivered to the Director by facsimile or as an original document.
 - (d) Whenever an amendment to a motion has been moved and seconded, no further amendment shall be moved or seconded until the first amendment has been disposed of, and if the amendment is carried, the motion as amended shall take the place of the original motion and shall become the question on which any further amendment may be moved.
 - (e) The Chairperson may call the attention of the meeting to any unbecoming language or a breach of order or discipline on the part of a member and may direct such member to discontinue his or her speech or to leave the meeting.
 - (f) If a member who has given proper notice of a motion is not present and has not withdrawn the motion, any member present may, with the consent of the Chairperson, propose the motion as if the notice had been given by him or her.

- (g) Save as provided for in Rule 6 (8) the vote shall be taken in the manner directed by the Chairperson, unless at least seven (7) members request a secret ballot, in which case it shall be so taken.
 - (h) If the votes are equal the Chairperson shall be entitled to a second or casting vote in addition to his deliberative vote.
- (6) A proxy -
- (a) shall be substantially in the form set out in the First Schedule to these Rules, or such other form as may be approved by the Council, and shall be signed by the member granting the proxy;
 - (b) may not be given to any person other than a member who is entitled to vote at the meeting;
 - (c) shall not be acted upon unless it has been received by the Director, either through delivery or by mail or facsimile, before the commencement of the meeting;
 - (d) shall be valid only for the particular meeting for which it is given and for any adjournment of that meeting.
- (7) The Chairperson, and in his or her absence or inability to act, the Vice-Chairperson, shall preside at a general meeting, and if both of them are absent or unable to act, any Councillor or other member appointed by the meeting, shall be the Chairperson of the meeting.
- (8) The Chairperson shall cause minutes of the meeting to be kept in writing.

Election of Councillors

6. (1) No member shall be eligible for election as a member of the Council in terms of section 45 (1) of the Act, unless he or she has been nominated substantially, in the form set out in the Second Schedule to these Rules, by at least two (2) members who are not in terms of any provision of these Rules disqualified from voting at an annual general meeting.
- (2) Each member shall be entitled to nominate not more candidates than there are vacancies for election as Councillors, but with due regard to the provisions of section 45 (1) of the Act.
- (3) A separate nomination form shall be used for the nomination of each candidate.
- (4) The nomination form -
- (a) shall be duly completed and signed by the members making the nomination and by the member who is nominated, signifying his or her acceptance of the nomination; and
 - (b) shall be delivered or be sent by mail or facsimile to reach the Director not less than fourteen (14) days before the date on which the annual general meeting is to be held.
- (5) If the number of candidates duly nominated -
- (a) is less than the number of vacancies for election as councillors; or
 - (b) includes less than the minimum number of members in private practice as required in terms of Section 45 (1) of the Act;

the annual general meeting shall stand adjourned for a period of not less than fourteen (14) days and not more than thirty (30) days for the purpose of nominations to be made anew not later than forty-eight (48) hours before the time fixed for the commencement of the adjourned meeting.

(6) Where a meeting is adjourned in terms of subrule 6 (5), the Chairperson shall fix a time, date and place for the reconstituted meeting, the particulars of which shall be notified by the Director in writing to members not less than seven (7) days before the date so fixed for the meeting.

(7) If the number of candidates duly nominated is equal to the number of vacancies in the Council and includes the minimum number of members who are engaged in private practice, as prescribed by Section 45 (1) of the Act, the candidates nominated shall be deemed to be duly elected at the conclusion of the annual general meeting.

(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 who are engaged in private practice as prescribed by Section 45 (1), an election shall be held by secret ballot at the annual general meeting as follows:

- (a) the ballot voting 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 he or she is engaged in private practice;
- (b) every member receiving a ballot voting paper and entitled to vote shall record his or her choice of candidates thereon by making a cross against the names of the candidates for whom he or she wishes to vote;
- (c) a ballot voting paper shall be considered spoilt and be rejected if the votes recorded thereon are for more than nine (9) candidates;
- (d) the result of the election shall be determined by two (2) members who shall be appointed by the Chairperson at the annual general meeting to act as scrutineers, but who shall not include any member who is a candidate or has nominated a candidate;
- (e) upon completion of the voting at the annual general meeting, the scrutineers shall examine the voting papers, reject those papers that are spoilt papers and count the number of unspoilt votes recorded for each candidate. In the event of uncertainty or a dispute as to whether a ballot paper is spoilt the decision of the Chairperson shall be final;
- (f) after counting the votes the scrutineers shall prepare and render to the Chairperson a report showing -
 - (i) under two distinct headings "*candidates engaged in private practice*" and "*candidates not engaged in private practice*" the name of each of such candidates nominated for election and the total number of votes cast in favour of each candidate in descending numerical order;
 - (ii) the total number of voting papers received;
 - (iii) the number (if any) of voting papers rejected.
- (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 -

- (i) firstly, from the candidates listed under the heading "*candidates engaged in private practice*", such number of candidates required to fill the compliment of candidates engaged in private practice as prescribed in Section 45 (1) of the Act who obtained the most votes in descending numerical order; and
 - (ii) secondly, from the remaining candidates, both those listed under the heading "*candidates engaged in private practice*" and those listed under the heading "*candidates not engaged in private practice*", the number of candidates required to fill the remaining vacancies who obtained the most votes in descending numerical order.
- (h) In the event of an equality of votes, the candidates having an equal number shall draw lots at the annual general meeting, and, in the event of a candidate being absent, the Chairperson or some other person nominated by the Chairperson shall draw the lot of the absent candidate.
- (i) Council may co-opt a maximum of two additional members to ensure due representation of any branch of the profession or group of members, which co-opted members shall not have the right to vote at council meetings.

Vacancy in office of Chairperson or Vice-Chairperson

7. If a vacancy occurs in the office of Chairperson or Vice-Chairperson, the Council shall elect from among its members, including any member appointed in terms of section 46 (2) of the Act, another Chairperson or Vice-Chairperson, as the case may be.

Proceedings of the Council

8. (1) At least eleven (11) ordinary meetings of the Council shall be held in any calendar year.
- (2) Any three (3) Councillors may, by written notice, request the Chairperson to convene a special meeting of the Council to consider any special business, the particulars of which shall be stated in such requisition.
- (3) Notice of a special meeting convened pursuant to subrule 8 (2) shall be sent by the Director to each Councillor at least seven (7) days before the date of the meeting.
- (4) The Chairperson or, if he or she is absent or unable to act, the Vice-Chairperson may call a special meeting of the Council by giving at least twenty-four (24) hours' notice thereof.
- (5) The Director shall send to each Councillor, at least twenty-four (24) hours before the date of an ordinary meeting of the Council and at least four (4) days before the date of a special meeting convened pursuant to subrule 8 (2), an agenda of the business to be conducted at that meeting.
- (6) Except with the leave of the Chairperson, a Councillor shall not be entitled to introduce a matter for discussion at a meeting of the Council, which does not appear on the agenda.
- (7) Subject to Rule 9 (3), five (5) Councillors present at commencement of the meeting shall constitute a quorum.
- (8) In default of a quorum after the lapse of five (5) minutes beyond the time fixed for the commencement of the meeting, the Chairperson may adjourn the meeting to a date and time fixed by him or her.

(9) Subject to Rule 9 (3), all questions discussed at a meeting of the Council shall be decided by a majority of the Councillors present and voting in person, and, in the event of an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.

(10) The Council shall cause accurate minutes to be kept of the proceedings at its meetings.

(11) A Councillor shall not by reason of his or her office be precluded from contracting with the Council provided every Councillor shall be obliged to disclose any interest he or she may have in a contract contemplated by the Council.

(12) The Council may pay allowances as compensation for any travelling, subsistence or other expenses incurred by a Councillor in the discharge of his or her duties on behalf of or in the interests of the Council or the Society.

(13) The Society may pay to Councillors and/or Committee members such honoraria as the Society at the annual general meeting may from time to time approve.

(14) Nothing contained in these rules shall prevent any member of the Society from rendering professional services to the Council or the Society or from being compensated with a reasonable fee therefore.

Vacation of office by Councillors

9. (1) Apart from the circumstances mentioned in section 46 (1) (a) of the Act, a Councillor shall cease to hold office as such -

- (a) upon receipt by the Council of his or her resignation in writing;
- (b) upon his or her suspension from practice or removal from the roll as a legal practitioner;
- (c) upon his or her ceasing to be a member;
- (d) upon the sequestration or surrender of his or her estate as insolvent;
- (e) upon the Council resolving that he or she be removed from office.

(2) The Council may suspend any Councillor from office and may restore to office any Councillor who has been suspended.

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

Committees

10. (1) The Council may constitute, re-constitute or dissolve such standing committees and *ad hoc* committees as it may decide from time to time to assist the Council in any matter, subject or project.

(2) The Council may entrust and/or delegate to a standing or to an *ad hoc* committee such functions of the Council as the Council may determine, and such committee shall, in performing such functions, comply with such conditions and directives as may have been imposed on it by the Council.

(3) Subject to any limitations imposed by the Council, a committee may co-opt additional members.

- (4) The Council may appoint alternates to the members of a committee.
- (5) An alternate may attend meetings of the committee to which he or she is appointed, but may only participate in the deliberations and vote when the member to whom he or she is an alternate is absent from the meeting.

Quorum of committees

- 11. (1) The quorum necessary for the transaction of the business of a committee may be fixed by the Council and unless so fixed shall be two (2) members who are entitled to vote at general meetings of the Society.
- (2) A committee may meet and adjourn as it thinks fit.
- (3) All questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and entitled to vote and, in the event of an equality of votes, the Chairperson of the committee shall have a casting vote in addition to his or her deliberative vote.

Directorate/Secretariat

- 12. (1) The Council may appoint a Director and may employ such other persons as it considers necessary to assist the Council in the performance of its functions.
- (2) All appointments by the Council in terms of Rule 12 (1) shall be upon such terms and conditions as the Council may determine.
- (3) The Director shall be the chief administrative officer of the Society and shall perform his or her functions in accordance with these Rules and the directions of the Council.
- (4) The Director shall -
 - (a) keep a record of all proceedings of the Council and of the Society in a minute book or books;
 - (b) maintain a register of all members of the Society containing their full names and business addresses and a register of firms;
 - (c) be the custodian of all books, documents, papers, records, securities, fixtures, furniture, fittings and other moveable assets belonging to or under the control of the Society;
 - (d) prepare all documents, conduct all correspondence and perform all other functions appertaining to the office of the Society;
 - (e) be in control of all other employees of the Society.
- (5) In addition to his or her other duties, the Director shall be the Treasurer of the Society and he or she shall -
 - (a) cause all moneys received by the Society to be promptly deposited to the credit of an account in the name of the Society at a bank or building society designated by the Council; and
 - (b) cause proper accounts to be kept of the income and expenditure and the assets and liabilities of the Society; and
 - (c) cause the books of account of the Society to be audited annually and cause therein to be reflected the remuneration paid to the auditors and the total of remuneration, compensation, expenses and/or honoraria paid or refunded to Councillors and committee members of the Society; and

- (d) report to the Council on such matters and at such times as Council may require.

Notices

13. A notice in writing addressed by the Council or by the 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 transmission if sent by facsimile during office hours on a business day, otherwise within one hour of commencement of business of the first succeeding business day; or
 - (d) if by e-mail, within one (1) hour of confirmation of delivery to the Society if during office hours on a business day, otherwise within one (1) hour of commencement of business on the first succeeding business day.

Library

14. (1) Books may be obtained on personal loan from the Society's library by legal practitioners or candidate legal practitioners, attached to a firm as prescribed by the Act, on written consent of the Director for a period not exceeding -
- (a) Seven (7) days in the case of members practising in Windhoek and three (3) days in the case of candidate legal practitioners attached to a firm in Windhoek; and
 - (b) Fourteen (14) days in the case of country members and seven (7) days in the case of candidate legal practitioners attached to a firm outside Windhoek;

but the Director may, upon application, extend such period in a particular case.

(2) The railage or postal charges for forwarding any books on loan to members outside Windhoek shall be defrayed by the Society, but members shall be responsible to return such books at their own cost.

(3) If any book gets lost or damaged while on loan to a member, such member shall be liable to replace it or to pay its replacement costs to the Council within seven (7) days of demand therefore from the Director.

(4) Where a member fails to return a book as provided in Rule 14 (1), the member shall pay to the Society a fine of N\$5,00 per book for every day by which such period is exceeded. These provisions shall also apply where a member or candidate legal practitioner is obliged to replace a book as per Rule 14 (3) for such period until the replacement book is received by the Director.

(5) If a Society library book, borrowed by a legal practitioner or a candidate legal practitioner, is not returned within one (1) month then it shall be deemed to be lost and subrule 14 (3) shall apply.

Annual subscription

15. (1) Every member shall pay to the Society an annual subscription in such amount as may from time to time be fixed by the Society at an annual general meeting on the recommendation of the Council.

- (2) Different amounts may be fixed in respect of the annual subscription for different categories of legal practitioners as may be determined by the Society.
- (3) The annual subscription shall be paid by each member not later than within one (1) month of the financial year-end of the Society each year.
- (4) The Council may upon application in writing, in its discretion, waive any subscription payable by a member in whole or in part or allow payment by way of instalments.
- (5) If a member fails to pay the annual subscription within one (1) month after it has become due, the Director shall by written notice draw his or her attention to the fact, and if the subscription is not paid within twenty-one (21) days from the date of such notice or within such further time as the Council may allow,
 - (i) the subscription payable shall be double the annual subscription payable; and
 - (ii) proceedings for the recovery thereof may be taken by the Council.
- (6) A non-paying member or member whose subscription is in arrears for more than sixty (60) days shall not -
 - (a) be entitled to attend any general meeting of the Society or to vote thereat personally or by proxy; and
 - (b) be eligible for nomination as a candidate for election as a Councillor; and
 - (c) be entitled to nominate a candidate for election as a Councillor.

Allowances

- 16.** (1) No allowance on professional fees charged or chargeable by a legal practitioner shall be given or granted to any person, except -
- (a) in the case of legal practitioners' fees, to another practising legal practitioner, but subject to subrule 16 (2);
 - (b) in the case of conveyancers' fees, to another practising legal practitioner or conveyancer or to a firm of which the legal practitioner or conveyancer is a partner or an employee;
 - (c) in the case of notaries' fees, to another practising legal practitioner or notary or to a firm of which the notary is a partner or an employee.
- (2) The term legal practitioner in 16 (1) (a), (b), and (c) will be deemed to include any person practising law in another country.
- (3) No allowance or reduction shall be made by a lodging conveyancer in respect of -
- (a) the lodging fee; or
 - (b) any fee prescribed in the Deeds Registries Act tariff for attendances at the Deeds Registry.
- (4) A practising member who introduces a client to another practising member and who advises such other member that he or she will not be responsible for the fees and disbursements of the client introduced shall not, in the absence of an agreement to the contrary, be entitled to claim any share of the fees of the member to whom the client was introduced.

- (5) No allowance shall be given on fees in which the tariff of the Legal Aid Board is applied.

Accounting requirements: General

17. (1) The books of account which, in terms of section 25 (1) of the Act, are required to be kept by a firm of legal practitioners referred to in that section, shall be kept in the official language of Namibia in such a manner as to fairly present, in accordance with generally accepted accounting practice, the state of affairs and business of the firm and to explain the transactions and financial position of the firm.
- (2) In determining what is meant by "generally accepted accounting practice" regard shall be had, *inter alia*, to any Rulings of the Council published to members.
- (3) The accounting records shall distinguish in readily discernible form between business account transactions and trust account transactions.
- (4) A firm shall retain its accounting records -
- (a) for at least 5 years from the date of the last entry recorded in each particular book or other document of record;
 - (b) except with the prior written consent of the Council, or when removed therefrom under other lawful authority, at no place other than at its main office or a branch office, but, in the latter case, only insofar as they relate to its practice conducted at that branch office.
- (5) A firm shall regularly and promptly update its accounting records and shall be deemed not to have complied with this Rule, *inter alia*, if its accounting records have not been written up and balanced for more than 30 days or within such shorter period as Council may in any specific situation direct.
- (6) Trust money shall in no circumstances be deposited in or credited to a business banking account, and any money not being trust money at any time found in a trust banking account shall be transferred to a business banking account without undue delay: Provided that a firm which -
- (a) makes transfers from its trust banking account to its business banking account at least once a month; and
 - (b) ensures that each such transfer covers the total amount due to it as at the date of transfer;
- shall be deemed to have complied sufficiently with this Rule.
- (7) When making a transfer from its trust banking account to its business banking account, a firm shall ensure that -
- (a) the amount transferred is identifiable with and does not exceed the amount due to it; and
 - (b) the balance of any amount due to it remaining in its trust banking account is capable of identification with corresponding entries appearing in its trust ledger.
- (8) Every firm shall, within a reasonable time after the completion or earlier termination of any mandate, account to its client in writing, setting out -
- (a) details of all amounts received by it in connection with the matter concerned appropriately explained;

- (b) particulars of all disbursements and other payments made by it in connection with the matter;
- (c) fees and other charges charged to or raised against the client and, where any fee represents an agreed fee, a statement that such fee was agreed;
- (d) the amount due to or by the client;

and the firm shall retain a copy of each such account for not less than five (5) years.

- (9) A firm shall pay any amount due to a client within a reasonable time, unless otherwise instructed.

Accounting requirements: Trust account transactions

18. (1) A firm referred to in Rule 17 (1) shall promptly on the date of its receipt, or the first banking day following its receipt on which it might reasonably be expected that it would be banked, deposit in its trust banking account all money received by it on account of any person.
- (2) Any amount withdrawn by a firm from a trust investment account shall promptly be deposited by it in its trust banking account.
- (3) A firm shall -
- (a) ensure that the total amount of money in its trust banking account, trust investment account and held as trust cash at any date shall not be less than the total amount of the credit balances of the trust creditors shown in its accounting records;
 - (b) ensure that no account of any trust creditor is in debit;
 - (c) employ and maintain a system to ensure that the requirements of paragraphs (a) and (b) are not infringed when amounts are transferred from its trust banking account to its business banking account.
- (4) A firm shall ensure that amounts received in advance to cover a prospective liability for services rendered or to be rendered or disbursements to be made, are deposited forthwith to the credit of its trust banking account.
- (5) A firm shall ensure that withdrawals from its trust banking account are made only -
- (a) to or on behalf of a trust creditor;
 - (b) as transfers to its business banking account, but only in respect of money claimed to be due to the firm.
- (6) A firm shall ensure that -
- (a) any cheque drawn on its trust banking account shall be made payable to or to the order of a payee specifically designated;
 - (b) no transfer from its trust banking account to its business banking account is made in respect of any disbursement or fees of the firm until -
 - (i) the disbursement has actually been made by the firm;
 - (ii) the fee has been correctly debited in its accounting records.

(7) Every firm shall at monthly intervals extract in a clearly legible manner a list of its trust creditors showing the amount then standing to the credit of each in respect of all money held or received by it on account of them and shall total such list and compare the said total with the total of the balance standing to the credit of the firm's trust banking account, trust investment account and amounts held by it as trust cash.

(8) The amount included in respect of each account in the trust creditors' list referred to in subrule 18 (7) shall be noted in some permanent, prominent and clear manner in the particular ledger account from which that amount was extracted.

(9) Every trust creditors' list compiled in accordance with subrule 18 (7) shall be part of the accounting records of the firm to be retained for the five (5) year period referred to in Rule 17 (4) (a).

(10) Every firm shall -

- (a) immediately notify the Director in writing of the name and address of the bank at which its trust banking account is kept and, in the event of any change of banker, notify the Director immediately of such change and of the name and address of the new bank;
- (b) whenever so required by the Council, furnish to the Council within ten (10) days, or such longer period as the Council may stipulate, a signed statement issued by the bank or banks at which it keeps its trust banking account or accounts and trust investment account and a signed statement issued by the bank or building society at which the firm keeps any trust investment account, certifying the amount of the balance of such trust banking account or accounts or trust investment account at such date or dates as may be specified by the Council.

(11) A member shall not invest funds on behalf of any person in terms of Section 26 (3) of the Act without that person's prior specific or general instructions in accordance with the provisions of section 26 (3) of the Act.

Investment practices

19. (1) A firm shall for the purpose of this Rule be deemed to be carrying on the business of an investment practice if it -

- (a) invests funds on behalf of a client or clients for capital or profitable gain and not as security for the obligation of the client or a third party; or
- (b) controls or manages, whether directly or indirectly, investments of a client or clients by the collection of interest or capital redemption payments on such investments as defined in Rule 19 (1) (a).

(2) This Rule shall not apply to -

- (a) investments made pursuant to section 26 (3) of the Act;
- (b) any investment of a temporary nature made in the course of and incidental to a conveyancing or other matter, including litigation, to which the investing client is a party; or
- (c) investments made by members in their capacities as executors, trustees, curators or in any similar capacities insofar as such investments are governed by any other statutory enactment or regulation.

(3) A member carrying on an investment practice is required to obtain a certificate from its accountant who will be required to report to the Society in terms of Rule 20 to the effect that the firm has complied with this Rule.

(4) A member carrying on an investment practice shall, before investing funds for any client, obtain from that client an investment mandate, substantially in the form as from time to time prescribed by the Council.

(5) Every member carrying on an investment practice shall -

- (a) not later than six (6) months after the financial year end of such member's firm, furnish each investing client; or
- (b) upon the reasonable request of an investing client, furnish such client;

with a schedule reflecting all relevant details of the client's investments.

(6) Every member carrying on an investment practice shall, in addition to his normal accounting records, keep a separate trust account record in respect of each investing client, which shall reflect -

- (a) all amounts entrusted to him or her by the client for investment pursuant to an investment mandate granted by the client in terms of subrule 19 (4);
- (b) payments of all moneys invested by him or her on the client's behalf;
- (c) all amounts, both capital and income, derived from investments and received for the client's account;
- (d) all payments made by him or her to the client in respect of the client's investments; and
- (e) all charges paid to the member in respect of services rendered by him or her to the client pursuant to the client's mandate.

(7) The accounting records referred to in subrule 19 (6), and all supporting documents pertaining to the entries made in such records, shall -

- (a) be retained by the member in such manner as to enable him or her to furnish each client upon request with all current details of the client's investments;
- (b) be maintained in sufficient detail and be cross-referenced to the trust account records retained in respect of each client, in such a way as to provide an adequate and appropriate audit trail which will enable a particular transaction to be identified at any time and traced through the accounting records to the client;
- (c) be properly arranged, filed and indexed so that any particular record can be promptly accessed, and if such accounting records are maintained in the form of data stored on a computer or other mechanical or electronic device, be capable of being reproduced promptly in printed form.

(8) All accounting records required to be retained in terms of subrule 19 (7) and copies of all reports despatched in terms of subrule 19 (5) shall be retained for at least five (5) years, unless there is statutory provision to the contrary, from the date of the last entry recorded in each particular book or other document of record and shall be held at the same office as the member's other accounting records.

(9) No member may syndicate deposits or other money market investments in any manner other than by accepting funds as agent for each participating client and placing such funds with a deposit-taking institution on the money market. The deposit-taking institution shall acknowledge receipt of each deposit or money market investment and such written receipts shall be retained by the member as part of his or her accounting records.

(10) All moneys received by a member for investment with a deposit-taking institution shall be paid to such institution as soon as is reasonably possible after receipt by the member.

(11) For the purpose of this Rule "deposit-taking institution" means any bank, building society and/or unit trust registered under the laws governing such institutions.

(12) A member may not invest on behalf of a client -

- (a) in shares or debentures in any company which is not listed on any recognised stock exchange;
- (b) in money market type investments, other than in the client's name in an institution as defined in subrule 19 (11); or
- (c) in loans unless specifically authorised thereto by his client in writing and unless such loan is secured by mortgage bond or participation bond over immovable property not exceeding the sworn valuation of such property;

and unless the client's written authorization for such investment has first been obtained.

(13) A member who has an existing investment practice at the date of commencement of these Rules, shall -

- (a) in respect of all existing investments, secure compliance with subrules 19 (4), (6), (9) and (12) within 6 months of such date of commencement;
- (b) not be required to commence compliance with subrule 19 (6) until the end of February of the calendar year following the year in which the period of grace stipulated in paragraph (a) expires;
- (c) not be required to lodge his or her first annual accountant's report in terms of subrule 19 (3) 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.

(14) Any member who holds or manages, on the date of commencement of these Rules, an investment which does not comply with subrule 19 (12), shall not later than six (6) months after that date either obtain the client's written consent for such investment or relinquish the management of such investment.

Report by accountant

20. (1) Every firm shall at its expense once in each calendar year, and at such other times as the Council may require, appoint an accountant, subject to subrule 20 (2), to discharge the duties assigned to him or her in terms of subrule 20 (5) to audit the firm's trust accounts for compliance with the Act and the Rules.

(2) A firm shall not in terms of subrule 20 (1) appoint as its accountant any person other than a practising accountant in private practice who is registered as such under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

(3) A firm shall allow an accountant appointed under subrule 20 (1) access to such of its records as the accountant may consider necessary to examine for the purposes of discharging his or her duties under subrule 20 (5) and shall furnish the accountant with any authority which may be required to enable him or her to obtain such information, certificates or other evidence as he or she may reasonably require for such purposes.

(4) A firm shall ensure that the report to be furnished by an accountant in terms of subrule 20 (5) is so furnished within the required time, but the Council may in its discretion and on such conditions as it may stipulate, on written application by a firm relating to a particular report, condone a failure by that firm to comply with this requirement.

(5) Every accountant who has accepted an appointment in terms of subrule 20 (1) shall -

- (a) within 6 months of the annual closing of the accounting records of the firm concerned, or at such other times as the Council may require, furnish the Council with a report on whether the firm has complied with the provisions of the Act and these Rules pertaining to trust accounts;
- (b) without delay report in writing directly to the Council if, at any time during the discharge of his or her functions and duties under this Rule -
 - (i) it comes to his or her notice that at any date the total of the balances shown on trust accounts in the accounting records of the firm exceeded the total amount of the funds in its trust banking account, its trust investment account and its trust cash;
 - (ii) any material queries regarding its accounting records which he or she has raised with the firm have not been dealt with to his or her satisfaction;
 - (iii) any reasonable request made by him or her for access to its records or for any authority referred to in subrule 20 (3) has not been met to his or her satisfaction.

(6) A copy of each report of an accountant under subrule 20 (5) (a) or (b) shall be sent by the accountant to the firm concerned.

(7) If a firm fails to submit the required audit report within 6 months after the firm's financial year-end, the Council of the Law Society may, in the absence of a valid reason and/or extra-ordinary circumstance which gave rise to the late filing, impose a penalty upon such firm which shall not exceed an amount of N\$10 000-00.

Professional standards

21. (1) The Council may from time to time publish to its members guidelines in the form of rulings concerning the professional standards to which it expects members to adhere.

(2) A member acting in his/her professional capacity shall be regarded not to comply with the required professional standards, *inter alia*, if he or she is guilty of a contravention of any of these Rules or of conduct in any of the following respects:

- (a) A breach of faith or trust in relation to his or her client or any estate of which he or she is the executor, administrator, trustee, liquidator, receiver, or curator.

- (b) Withholding the payment of trust money without lawful excuse.
- (c) Failing within a reasonable time to respond to an enquiry from a person to whom he or she owes a duty to reply.
- (d) Failing within a reasonable time to render to his or her client a detailed statement of account after being called upon to do so.
- (e) Failing without good cause to wind up a deceased estate without undue delay.
- (f) Doing or permitting in the carrying on of his or her practice anything which may reasonably be regarded as likely to attract business unfairly.
- (g) Carrying on practice at an office which is not under the direct and personal supervision of a duly qualified legal practitioner: Provided that such requirement of continuous, direct and personal supervision may in its discretion be relaxed or waived by the Council on such conditions as it may determine: Provided further that such relaxation or waiver may in its discretion be revoked by the Council.
- (h) Giving or taking allowances in contravention of these Rules.
- (i) Sharing offices with, or practising in any office which has intercommunication with the offices of a person other than a legal practitioner who is the holder of a fidelity fund certificate or who is exempted under the Act from holding such a certificate.
- (j) Failing to pay within a reasonable time the reasonable fees and disbursements of any legal practitioner, notary or conveyancer in respect of work entrusted to such practitioner by him or her, unless -
 - (i) at the time of giving initial instructions in regard to such work, he or she advised that practitioner that he or she will not be responsible for the payment of such fees and disbursements; or
 - (ii) payment is withheld for a reason which the Council deems good and sufficient.
- (k) Claiming in a letter of demand payment of costs of demand or collection commission unless the debtor is under a legal obligation to pay such costs or commission.
- (l)
 - (i) Seeking to recover by reason of an agreement from a third party fees in an amount greater than the normal and usual fees which would have been reasonably recoverable from his or her own client if there had been no such agreement;
 - (ii) overreaching a client or overreaching the debtor of a client; or charging of a fee which in the view of the Council is unreasonably high, having regard to the circumstances of the matter.
- (m) accepting or agreeing to accept or offering to accept remuneration for professional work at less than the rate or scale of charges fixed by statute or regulation or rule or by resolution of the Council, or does any work gratuitously for any person for the sole reason that such person is a shareholder, partner, director, owner or employee of any firm, business, company or institution: Provided that a legal practitioner is not precluded from acting *pro amico* for any of his or her own employees.

- (n) Agreeing to charge or charging a contingency fee. For purposes of this Rule contingency fee means an agreement to charge a fee only if a matter is partially or entirely successful or otherwise based on the outcome of the matter.
- (o) By conduct directly or indirectly holding himself or herself out or allowing himself or herself to be held out as being prepared to do professional work at less than any prescribed rate or scale of charges.
- (p) Acting on the instructions of any organisation or person, not being a legal practitioner or an assessor acting for a registered insurance company, whose business or part of whose business is to make, support or prosecute claims resulting from death or personal injury or who solicits instructions to make, support or prosecute any such claim in expectation of any payment, gift or benefit in respect thereof, unless the relationship between the member and the person on whose behalf instructions are given to him or her is properly a relationship of legal practitioner and client and -
 - (i) instructions are thereafter received directly from such client; and
 - (ii) the legal practitioner's cost and charges are payable by such client; and
 - (iii) the member's independent professional judgement is exercised on behalf of such client without outside interference or control.
- (q) Keeping the accounts of his or her business as a practicing member in the books of account utilised in connection with any other business in which he or she may be interested jointly with a person not being a practitioner.
- (r) Practising contrary to any condition on which an exemption from holding a fidelity fund certificate was granted to him or her.
- (s) Any material breach of the provisions of the Act or of these Rules.
- (t) Touting, and without derogating from the generality of the prohibition against touting, the following shall be construed as touting:
 - (i) To solicit custom or work directly or indirectly from any person; or
 - (ii) To make unsolicited visits or telephone calls or to send unsolicited letters or printed material to any person except to an existing professional connection with a view to establishing a legal practitioner / client relationship with such person;
 - (iii) To permit, encourage or connive with another person to do any of the foregoing on his or her behalf;
 - (iv) To enter into an arrangement with any person, whether an employee or not, for the introduction of clients to the legal practitioner, practising with a Fidelity Fund Certificate; but this will not apply to -
 - (A) any arrangement between a legal practitioner and another legal practitioner for the referral of work in the normal course of either's practice;

- (B) any arrangement for the introduction to a legal practitioner of other legal practitioners with a view to their instructing him or her on an agency basis.
- (u) Failing or refusing to pay annual subscription timeously.
 - (v) A breach of attorney and client privilege.
 - (w) Allowing any person who is not a legal practitioner exclusively employed by a firm to hold himself or herself out as an associate of that firm.
 - (x) Allowing any person who is not a legal practitioner in the employ of the firm and who has not been a legal practitioner for a period of not less than ten years to hold himself or herself out as being a consultant to that firm.
 - (y) Entering into any agreement, arrangement or scheme of operation, express or tacit, direct or indirect, the result of which is:
 - (i) to secure for the practising member the benefit of professional work solicited by an unqualified person; or
 - (ii) to enable an unqualified person to enjoy, share or participate in fees for professional work; or
 - (iii) knowingly in any way assisting, allowing or enabling an unqualified person to charge, recover or receive any fee, or derive any remuneration for, in respect of, or in connection with the preparation or execution of any document, or the performance of any professional work which only a legal practitioner is qualified by law to prepare, sign, execute, attest or perform, or in any way conniving at any arrangement, agreement or understanding whatsoever whereby any such fee or remuneration as aforesaid is, or shall be, charged, recovered or received by any such unqualified person;
- provided that it will not be unprofessional conduct if a practicing legal practitioner grants to an unqualified person in his or her employ a share of earnings from auctioneering, the sale and letting of immovable property, insurance agency work and building society agency work.
- (aa) Entering into or continuing to be a party to any contract or arrangement with a person not being a practitioner the effect whereof is to place the practicing member under such control on the part of such unqualified person as may interfere with his or her independence as an officer of the Court.
 - (bb) The practising under any name other than -
 - (i) His or her own name, if he or she practises without partners; or
 - (ii) The name of any of or all partners, if his or her practice is conducted in partnership; or
 - (iii) The name of any or all of the past or former owners of or partners in the practice; or
 - (iv) His or her own name and the names of any or all the past or former owners of or partners in the practice; or

- (v) His or her own name and the words "and Company" or "and Co"; or
 - (vi) His or her own name and the words "and Partners" or in the name of any or all of the past or former owners or partners and the words "and Company" or "and Partners" if the practice is conducted in partnership; or
 - (vii) His or her own name and the words "Associates", "In association with" or "Incorporated", where applicable.
 - (viii) His or her own name together with a description of the nature of the office e.g. Attorneys, Legal Practitioners, Law Offices, Lawyers, Law Chambers.
- (cc) Failing whenever so required, or when called upon by Council within fourteen (14) days of receipt of such request, to furnish to Council full information concerning the name, style or firm title under which his or her or their practice is conducted, including the grounds upon which any name or names appearing in the name, style or firm title of the said practice are used.
- (dd) Failing to disclose on the letterheads of his or her practice or a practice in which he or she is a partner, his or her name or the names of all partners if the practice is conducted in partnership.
- (ee) Disclosing on the stationary of his or her practice or a practice in which he or she is a partner, the name of any practitioner employed by him or her or a partnership in which he or she is a partner unless he or she indicates that such employee is not a partner in the said practice by the use of the words "Assisted by", "Associate" or "Consultant" immediately before the name of such practitioner.
- (ff) Holding out to be practising in association with any person of a profession or trade which is not that of a legal practitioner.
- (3) Advertising and Publicity: Legal Practitioners, practising with a fidelity fund certificate shall be entitled to market and / or advertise their services subject to:
- (a) the guidelines set out in Annexure "A" to these Rules; and
 - (b) any variation of and / or additions to the guidelines referred to in 3 (a) above, which Council of its own accord, or on recommendation of its Standing Committee on Advertising, Marketing and Promotion may deem fit to publish from time to time.

Investigation of unsatisfactory conduct

22. (1) There shall be a Standing Committee of the Council to be known as the Legal Ethics and Investigatory Committee, which shall consist of three (3) members of whom at least two shall be in private practice, appointed by the Council.
- (2) The Legal Ethics and Investigatory Committee shall be responsible for advising the Council on all matters of ethics in the practise of law and shall investigate the conduct of any member which in their opinion may require disciplinary action against such a member and shall advise Council of their findings.
- (3) If the Council reasonably believes, either of its own motion or on account of a complaint received, that any member is guilty of unsatisfactory conduct, it may cause an investigation to be made into the alleged conduct of such member in accordance with the provisions of this Rule.

(4) The Council may either itself conduct an investigation referred to in subrule (3) or refer the matter to the Legal Ethics and Investigatory Committee for investigation.

(5) Where a matter is referred to the Legal Ethics and Investigatory Committee, the Council may -

- (a) give directions to the committee with regard to the manner in which the investigation is to be conducted by it; and
- (b) determine any powers and duties which the Legal Ethics and Investigatory Committee shall have in addition to the powers and duties conferred by subrule (6).

(6) For the purpose of conducting an investigation referred to in subrule 22 (3), the Council or the Legal Ethics and Investigatory Committee, as the case may be, -

- (a) where the investigation is to be conducted on account of a complaint received from another legal practitioner, shall require that any complaint received be made in writing on affidavit;
- (b) may take statements from witnesses;
- (c) may require the legal practitioner lodging the complaint to furnish such further evidence, written or oral, documentary or otherwise, as it may require;
- (d) shall, by written notice to the member whose conduct is the subject of the investigation, inform him or her of the complaint and furnish such particulars of the complaint as may be necessary to enable him or her to reply;
- (e) may direct the member concerned to -
 - (i) reply in writing to the Director within a stipulated time;
 - (ii) verify his or her reply by affidavit;
 - (iii) furnish such further evidence, written or oral, documentary or otherwise, as it may require;
- (f) shall have access to all books of accounting, bank statements, client and financial records, files etc. of a firm and may invite any person whom it believes may be able to give any information, or has in his or her custody or under his or her control any document containing information, which may be relevant to the alleged conduct of the member concerned, to disclose such information or produce such document, either by way of a written statement or appearance before the Council or the Legal Ethics and Investigatory Committee as such person may elect;
- (g) approach any judge in chambers or magistrate for a warrant to enter and seize the client records of the member concerned, the financial records of the firm / law practice of the member concerned or any other matters as in their reasonable opinion may be associated with or relate to or evidence the conduct of the member which is being investigated, without the necessity of making written application;
- (h) may grant to any person who of his or her own motion offers to give any information or make available any document as contemplated in paragraph (c) of this subrule 22 (6) an opportunity to disclose such information in a manner referred to in that paragraph;

- (i) shall, where a person contemplated in paragraph (e) or (f) of this subrule 22 (6) elects to appear before the Council or the Legal Ethics and Investigatory Committee, as the case may be, inform that person that he or she is entitled to appear before it either personally or by his or her legal practitioner or by any other person acting as his or her representative;
 - (j) may require the member whose conduct is the subject of the investigation to appear before it, in which event the member shall be informed that he or she is entitled to appear either personally or by another member or by any other person acting as his or her representative;
 - (k) shall in the conduct of its investigation not be bound by the rules of evidence applicable in a court of law.
- (7) If the investigation is conducted by the Legal Ethics and Investigatory Committee, that committee shall upon completion of its investigation, compile and submit to the Council a report, setting out -
- (a) details of the alleged unsatisfactory conduct of the member against whom the investigation was made;
 - (b) details of the manner in which the investigation was conducted, including the evidence given or obtained by it from whatever source, either orally, in writing, documentary or otherwise;
 - (c) particulars of the behaviour of the member whose conduct was the subject of the investigation or of any witness or other person in the course of the investigation, and which it considers necessary to bring to the attention of the Council;
 - (d) a summary of the facts which in its opinion are established, with details of the evidence which it considers to be in support of those facts;
 - (e) if in the opinion of the Legal Ethics and Investigatory Committee the facts referred to in paragraph (d) of this subrule 22 (7) show that the member concerned is guilty of unsatisfactory conduct on any ground other than or in addition to those alleged as contemplated in paragraph (a) of this subrule 22 (7), particulars of such conduct of the member.
- (8) After completion of an investigation conducted by the Council or, where applicable, after consideration of the report of the Legal Ethics and Investigatory Committee submitted in terms of subrule 22 (7), the Council shall refer the matter to the Disciplinary Committee established by section 34 of the Act together with its report or the report of the Legal Ethics and Investigatory Committee under subrule 22 (7) and with such recommendations as it may wish to make in relation to the matter.
- (9) The preceding provisions of this Rule shall not be construed as preventing the Council from referring any matter directly to the Disciplinary Committee established by Section 34 of the Act and as imposing on it an obligation first to conduct an investigation in accordance with those provisions.
- (10) Where it appears to the Director that a person referred to in Rule 22 (3) is not able to formulate his or her complaint unaided, or if so requested by such a person, the Director shall give to such person all reasonable assistance to put his or her complaint in writing.

Assessment of fees

23. (1) The Council, or any committee appointed by the Council for that purpose, may at the request of any person or member, assess the fees and disbursements payable by such person or a member in respect of the performance of any work other than litigious work by a member in his capacity as legal practitioner: Provided that the Council or the committee shall not assess fees and disbursements in instances where a state official is empowered to do so or where fees and disbursements for the work in question are prescribed by any statutory tariff, save as in such an instance where an agreement exists between the legal practitioner and his client as far as the fee is concerned.

(2) With a view to affording the member reasonable and adequate remuneration for the services rendered by him or her, the Council or the committee, as the case may be, shall, in making an assessment, allow all such fees and disbursements as appear to it to be reasonable for the performance of the work concerned, and in so doing shall take cognisance of the following -

- (a) the amount and importance of the work done;
- (b) the complexity of the matter or the difficulty or novelty of the work or the questions raised;
- (c) the skill, labour, specialised knowledge and responsibility involved on the part of the member;
- (d) the number and importance of the documents prepared or perused without necessarily having regard to length;
- (e) the place where and circumstances in which the services or any part thereof were rendered;
- (f) the time expended by the member;
- (g) where money or property is involved, its amount or value;
- (h) the importance of the matter to the client;
- (i) the quality of the work done;
- (j) the experience or seniority of the member;
- (k) any tariff of fees approved by the Society for the sole purpose of serving as a guide to members; and
- (l) whether the fees and disbursements have been incurred or increased through overcaution, negligence or mistake on the part of the member.

(3) For the purposes of an assessment of any member's fees and disbursements, the Council or the committee, as the case may be, may call for the production of such books, documents, papers or accounts as in its opinion are necessary to enable it properly to determine any matter arising upon such assessment.

(4) The Council or the committee, as the case may be, shall not proceed to the assessment of the fees and disbursements unless the Director has duly given written notice by prepaid registered post, facsimile or delivery by hand to both the member and the person liable to pay the fees, stating the time and place of such assessment and recording that he or she is entitled to be present and represented thereat, but such notice shall not be necessary if either the member or such person have consented to the assessment in their absence.

(5) At the assessment the member and such person may submit their representations and arguments either orally or in writing and the Council or committee, as the case may be, may reserve its decision.

(6) As soon as the Council or the committee, as the case may be, has arrived at its decision, it shall deliver to both the member and such person, either by registered post, facsimile or delivery by hand, a copy of the fee list submitted for assessment, duly endorsed with the allocatur of the Council or the committee, as the case may be, under the hand of the Director of the Society.

(7) Subject to section 52 (4) of the Act, the fees and disbursements determined in terms of the allocatur shall be deemed to be the reasonable fees and disbursements payable to the member for the services rendered.

(8) The Council or the committee, as the case may be, shall be entitled in its discretion at any time, to depart from any of the provisions of subrule 23 (4) in extraordinary or exceptional cases, where strict adherence to such provisions would be inequitable.

Information required to be furnished by members

24. (1) It shall be the duty of every member -

- (a) within thirty (30) days of becoming a member, to furnish the Director in writing with the following information:
 - (i) his or her full names, date of birth and residential address;
 - (ii) if he or she will be engaged in private practice -
 - (aa) the name, physical address, postal address and telephone and facsimile numbers and e-mail address of the firm where he or she will practise and where applicable, the address and telephone number, facsimile number or e-mail address of the main office and every branch office where the firm will conduct its practice;
 - (bb) the capacity in which he or she will be involved in the firm;
 - (cc) the full names of every other member involved in the firm and the capacities held by them in the firm, whether as partner, shareholder, director or employee;
 - (iii) if he or she will not be engaged in private practice, the nature of the profession which he or she will follow and, if not self-employed, the name and business address of his or her employer;
- (b) who is engaged in private practice and who intends to open any branch office, to notify the Director in writing, before such office is opened -
 - (i) of the physical address, postal address and telephone number facsimile number and e-mail address of such office;
 - (ii) whether a separate trust account and separate accounting records will be kept in respect of such branch office; and
 - (iii) the names of the legal practitioner or legal practitioners who will be supervising the branch office, and the hours that it will be open to the public;

- (c) if a change occurs in regard to any of the information furnished in terms of paragraph (a) or (b), to notify the Director thereof forthwith in writing, giving full details of the change and to furnish such additional particulars thereof as the Director may require.
- (2) In the event of any change occurring in the members comprising a firm, the Council may call upon -
- (a) any member involved in such change, whether practising for his or her own account or in partnership or as a shareholder or director in a professional company -
 - (i) to state in writing what arrangements have been made in relation to any moneys held or to be held on account of any person in terms of section 26 of the Act by the member, partnership or professional company concerned;
 - (ii) to provide the Council with a list of trust creditors of the firm.
 - (b) any member, or the lawful representative of any member or the executor of the estate of any deceased member, to furnish a certificate by an accountant approved by the Council in relation to any matter or thing in connection with the protection of any moneys held or to be held or received by any member on account of any person in terms of section 26 of the Act.
- (3) Any member who intends to apply to the Court for his or her removal from the roll of legal practitioners, shall notify the Council in writing of his or her intention not less than thirty (30) days before the date on which his or her application is to be heard by the Court, and if such member is or has been engaged in private practice, he or she shall, together with such notification or before such other date as the Council may determine: -
- (a) unless exempted by the Council, furnish the Council with a certificate by an accountant approved by the Council, or such other proof as the Council may require, that proper provision has been made for the liquidation, taking over or protection of all trust moneys; and
 - (b) furnish the Council with a statement in writing in which he or she explains the arrangements made by him or her for the discharge of all his or her obligations to his or her clients, in particular the arrangements relating to -
 - (i) the protection of trust moneys or other assets held in trust;
 - (ii) the completion of work on hand; and
 - (iii) the handling of queries; and
- generally any other matters necessary for the orderly winding up of his or her practice or former practice.
- (4) A member who practises for his or her own account and who intends to cease his or her practice, shall not later than the day on which he or she ceases to practise, furnish to the Council a statement as contemplated in paragraph (b) of subrule 24 (3) and, if so required by the Council, with a certificate or other proof as contemplated in paragraph (a) of that subrule, and shall thereafter be required, for as long as he or she remains a member, to inform the Secretary in writing of any change of his or her business, postal or residential address.
- (5) A firm practising at more than one physical address shall indicate on its letterheads the address of its main office and of each of its branch offices, and all correspondence of the firm shall indicate from which address it emanates.

- (6) A branch office may remain open only while it is under the direct and personal supervision of a legal practitioner.
- (7) Where a separate trust banking account is kept by a firm / member in respect of a branch office, the firm / member shall ensure that a separate report by an accountant as required by Rule 20 is lodged with the Council in accordance with that Rule.

Suspension or modification of Rules

25. The Council may, on written application, in such manner as it may determine, and subject to such conditions and directions as it may impose, suspend in whole or in part or modify the application of any rule applicable to any member while such member is employed by or acting to promote or assist the functioning of any body recognised by the Council as a students' legal aid clinic, legal aid body, or other similar organisation of a public or philanthropic nature, which renders legal services in the public interest.

First Schedule**The Law Society of Namibia****PROXY***(Rule 5 (6))*

I

hereby appoint

to act as my proxy at the General Meeting of the Law Society of Namibia
to be held on 20 and at any adjournment thereof, to vote for me
on any matter which may be put to the vote at such meeting as follows:

In favour

Against

Abstain

*Resolution to

*Resolution to

*Resolution to

. Insert details of Resolution

I declare that my proxy and I are members of the Law Society and that I am not in terms
of the Rules disqualified from exercising a vote.

Dated at this 20

As Witnesses:

1.

2.

Note: If no indication is given as to how your proxy is to vote, you will be taken to have
given your proxy a mandate to use his or her discretion as to the manner in which the
vote is to be exercised.

Second Schedule

The Law Society of Namibia

Nomination of Council Member

Nomination:

We

and

being members of the Law Society of Namibia, hereby nominate

.....

as a member of the Council and whose further particulars are as follows.

1. Name of nominee's firm

2. Address of nominee's firm

.....

.....

3. Number of years that nominee is enrolled as a legal practitioner

4. Previous service of nominee as a Councillor:

Number of years (give details of period(s)

.....

Date

Nominator

Date

Nominator

Acceptance:

I

hereby accept nomination for election as a member of the Council of the Law Society of Namibia and declare that I am a member of the Society and that I am not disqualified in terms of Rule 15(6)(b) from being nominated.

Date

Nominee

Third Schedule

CLIENT INVESTMENT MANDATE

I, the undersigned,
.....
of
hereby authorise and empower (firm's name)
.....

to make the following investments as my agent and on my behalf - (tick the appropriate boxes)

- 1. TYPE OF INVESTMENTS
 - (a) Money lending, and/or
 - (b) Money market, and/or
 - (c) Stocks and shares on JSE / NSX
 - (d) Unit Trusts
- 2. TYPE OF MANDATE GIVEN:
 - (a) Discretionary
 - (b) Non-discretionary
- 3. IS FIRM TO KEEP ALL SECURITIES? Yes/No
- 4. IS GENERAL OR SPECIAL POWER OF ATTORNEY ATTACHED?
Gen/Spec/ None
- 5. REPORTING. Nil / Monthly / Quarterly / 6 Monthly/ Annually
- 6. GENERAL.
Any other instructions:
.....
.....

SIGNED AT on 20
.....
Client

ACCEPTED AT on 20
.....
On behalf of firm

Fourth Schedule

Report by Independent Accountant

The Executive Officer
Law Society of Namibia

REPORT OF AN INDEPENDENT ACCOUNTANT IN TERMS OF RULE 20 OF THE RULES OF THE LAW SOCIETY OF NAMIBIA IN RESPECT OF (NAME OF FIRM)

-
1. I/We have performed certain procedures described below on the accounting records and system of bookkeeping employed by the above firm for the year ended on 20
The firm's compliance with the provisions of the Legal Practitioners Act, 1995 (the Act) and the Rules of your Law Society is the responsibility of the sole practitioner/ partners/directors. It is my/our responsibility to carry out the procedures described below and to report on the results thereof. This report is furnished solely for your own use and information and should be used by you solely for that purpose.

 2. I/We audited / examined (*on a test basis), the trust accounting records and trust account transactions of the firm with specific reference to the following provisions of the Act and the following Rules of your Society -
 - (a) Section 25(1) and subsections (1), (2) and (3) of section 26 of the Act;
 - (b) Rules 18(3), 18(4), 18(5), 18(6), 18(7), 18(8), 18(11), 19(3) and 20(5).

I/We report that (Except for the qualification/s set out in the schedule following this report) the firm complied with the abovementioned provisions of the Act and the Rules of your Society in respect of the year ended on 20

 3. I/We have inspected the books on 20
being the date of my/our last inspection, and report that -
 - (a) the books have been written up to 20; and
 - (b) the trial balance was last balanced at 20 ..

 4. I/We have compared (* on a test basis) the list of trust balances shown on the trust accounts in the ledgers of the firm with the respective ledger accounts at the year end
and on 20and -
 - (a) on each of such dates the firm was in compliance with the provisions of Rule 18 and specifically Rule 18(3)(a).
 - (b) after examining the bank statements of the firm for such period as I/we deemed it necessary (being not less than one week) in the light of the circumstances following each of such dates we report that where negotiable instruments which had been deposited in the trust banking account and which had not been met, the circumstances were considered satisfactory.

 5. I/We have extracted the following information from the accounting records of the firm and report that the amount during the period under review which the firm -

- (a) has brought forward in respect of interest earned on moneys deposited in terms of section 26(1) and moneys invested in terms of section 26(2) of the Act from the previous financial year is: N\$
- (b) has earned interest on moneys deposited in trust banking accounts in terms of section 26(1) and moneys invested in trust investment accounts in terms of Section 26(2) of the Act is: N\$
- (c) has deducted in respect of refundable bank charges is: N\$
- (d) has paid over to the Legal Practitioners' Fidelity Fund in terms of section 26(4) of the Act is: N\$; and
- (e) has carried over in respect of interest earned on moneys deposited in terms of section 26(1) and moneys invested in terms of section 26(2) of the Act to the next financial year is: N\$
6. * I/We have been informed that a separate system of accounting for deceased and insolvent estates and trusts is maintained, but have not examined any records or documents relating thereto other than investments made by the firm in terms of section 26(3) of the Act. (If no examination made, state NIL.)
7. I/We certify that to the best of my/our knowledge and belief the firm has/has not, during the period reported on, carried on an investment practice as defined in Rule 19(1), (and has complied with the provisions of Rule 17).
8. * On enquiry made I was/we were informed that the following changes in the composition of the firm occurred during the period covered by this report, namely:
-
-
-
9. A copy of this report is today being sent to the firm.
10. The application for refund of audit fees is in respect of the audit of the trust account examination.

Accountant

Date

Address

* Delete if not applicable

SCHEDULE OF QUALIFICATIONS

(If space is insufficient, this schedule may be continued in a schedule on the accountant/s letterhead to be attached and signed by the independent accountant/s)

Firm's principal place of practice (full street address)

.....

Firm's branch offices are at (full street addresses of branch offices)

.....

.....

ANNEXURE A**GUIDELINES OF THE LAW SOCIETY OF NAMIBIA FOR ADVERTISING AND PUBLICITY****1. INTERPRETATION**

In these guidelines, unless the context indicates otherwise, -

- 1.1 words or expressions shall have the same meaning as attached to them in the Legal Practitioners Act, 15 of 1995 and the Rules of the Law Society of Namibia;
- 1.2 “*advertisement*” shall mean any form of advertisement and includes, *inter alia*, signage, brochures, directory entries, stationery, internet, website, other possible media and press releases promoting a firm’s practice, and “advertising” shall have a corresponding meaning;
- 1.3 “publicity” shall include any direct or indirect reference to a firm, published or disseminated by any written, pictorial or aural means, in any medium including the electronic media and the internet, and “publicise” shall have a corresponding meaning;
- 1.4 any reference to “advertising”, includes “publicity” and vice versa.
- 1.5 “touting” without derogating from the provisions of Rule 21 (1) (t) shall mean directly soliciting work or soliciting work by direct approach.

2. A FIRM MAY ADVERTISE / PUBLICISE ITS PRACTICE

- 2.1 A firm may engage in any advertising, publicity or promotion in connection with its practice, or permit another person to do so on its behalf, provided such advertising, publicity or promotion complies with the provisions of these guidelines and does not in any manner compromise or impair nor is likely to compromise or impair any of the following:
 - 2.1.1 the firm’s independence or integrity;
 - 2.1.2 the client’s freedom to instruct a firm of his or her choice;
 - 2.1.3 the firm’s duty to act in the best interests of the client;
 - 2.1.4 the good repute of the legal profession;
 - 2.1.5 the firm’s proper standard of work.
- 2.2 All publicity must be in good taste with regard to content, prominence and medium, and whether or not publicity is of good taste, shall be determined by the Council. Firms may seek Council’s prior guidance in this regard.
- 2.3 All publicity shall bear the name of the firm.
- 2.4 Publicity may not -
 - 2.4.1 be inaccurate or likely to mislead;
 - 2.4.2 include statements about the firm’s success rate;

- 2.4.3 be so frequent or obtrusive as to cause annoyance to those to whom it is directed;
- 2.4.4 make comparisons with, or criticise, other firm/s or members of any other profession;
- 2.4.5 criticise the quality of, be comparative with, or claim to be superior to the service provided by any other firm or any section of the legal profession.

3. **TOUTING NOT PERMITTED**

Notwithstanding anything contained in these guidelines, touting shall not be permitted.

4. **THE CONTENT OF PUBLICITY**

4.1 **Requirements**

All publicity must comply with the provisions of the Legal Practitioners Act, 15 of 1995, the Rules of the Law Society and the common law.

4.2 **Naming clients**

- 4.2.1 A firm may refer to the name of a client in the public media only with the client's consent. However, reference may not be made to the name of a client in any publicity by the firm.
- 4.2.2 When advertising property for sale or to let on a client's behalf, a firm may name the client, with the client's consent.
- 4.2.3 Paragraph 4.2.1 shall not be construed as prohibiting the naming of a firm in the publicity of a client, or from being identified as the client's legal practitioner in the publicity of another person concerning the client's business, subject always to the Rules of the Law Society applicable from time to time.

4.3 **Categories of work**

- 4.3.1 Publicity about a firm's practice may only state or imply that it undertakes a particular category of work if that firm is in fact able and qualified to handle that work competently. In particular, a firm may not state that it undertakes conveyancing or notarial or patent, design or trade mark work unless the practicing member or one or more of the partners, or an employee exclusively in his / her / their employ has been admitted as a conveyancer or notary, or patent legal practitioner or patent or trade mark agent, as the case may be.
- 4.3.2 A firm may hold itself out as a specialist or expert in any branch of the law. A statement that a firm prefers to practise in any branch of the law shall be deemed not to be a claim by such firm to specialise in that preferred branch of the law. The Council may, by notice in writing to a firm, require that firm to cease to hold itself out as a specialist or expert in any branch of the law if the Council is of the opinion that the firm does not have the requisite expertise in that particular branch of the law.

Cautionary notes

- 4.3.2.1 Firms are advised that the standard of expertise, care and skill required by a firm holding itself out as a specialist or expert in a branch of law, must of necessity be higher than that of a firm which does not do so. Accordingly, a breach of the standard of expertise, care and skill required of a firm renders the firm more readily liable for damages for professional negligence in relation to the speciality than a firm which does not claim any speciality.

4.3.2.2 If a firm holds itself out as a specialist, the claim of speciality may render the legal practitioners who are partners or members of the firm liable to be disciplined for unprofessional, dishonourable or unworthy conduct, if the firm's action in so holding itself out is not justified.

4.3.2.3 Although a statement by a firm that it prefers to practise in a particular branch of the Law does not place that firm in the same category as one claiming to be a specialist, it may nevertheless indicate that a higher standard of care and skill will be required from such a firm than from one which does not hold itself out to have a preferred area of practice. A firm which expresses a preferred area of practice may, therefore, also render itself more readily liable to a claim for damages on the basis set out in 4.3.2.1 above.

5. **STATEMENTS AS TO CHARGES**

5.1 **Clarity**

5.1.1 Save for work not reserved for legal practitioners in terms of the Legal Practitioner's Act, 15 of 1995, no publicity shall contain a statement that specific kinds of work shall be undertaken for a specific charge.

5.1.2 Publicity may contain the basis on which work shall be charged for, but such publicity must be clearly expressed. It must be stated what services will be provided for that basis of charging. Any circumstances in which the basis may be altered must be stated. It must be clear whether disbursements and VAT are included.

5.2 **Comparisons and criticisms of charges**

Publicity may not compare a firm's charges with those of any other firm; neither may it criticise the charges of any other firm.

6. **DIRECTORY HEADINGS**

In a directory or other listing which includes the services of persons other than legal practitioners, a firm's entry or advertisement may appear under a classification other than "*legal practitioners*" provided that:

6.1 the appearance under that classification is not misleading;

6.2 the firm is described in the entry or advertisement as a legal practitioner; and

6.3 the classification does not require a specific qualification which the legal practitioner does not have.

7. **DESIGNATION OF A FIRM'S PRACTICE**

7.1 A firm's practice may be designated only as that of a legal practitioner(s). In addition the use of the designations "*notary*", "*conveyancer*", "*patent attorney or agent*", "*trade-mark practitioner or agent*", "*administrator of estates*", "*appraiser*", "*sworn translator*" and "*estate agent*", is permitted but only where at least one legal practitioner in the firm or an employee in the exclusive employment of the firm is entitled to be described as such;

7.2 It is permissible to cite the academic qualifications, conferred on a legal practitioner by a university, on stationary, brochures, internet and websites.

8. **GROUP ADVERTISING**

It is permissible for independent firms to act together in a group to publicise their services under a group name or group logo. Any group advertising/publicity shall conform to the provisions of these guidelines.

9. **PROFESSIONAL ANNOUNCEMENTS, ADVERTISEMENTS FOR STAFF AND THE LIKE**

Any professional announcement, advertisement or marketing by a firm (including any advertisement in the *De Rebus*) must comply with the provisions of these guidelines.

10. **INTERNATIONAL ASPECTS OF PUBLICITY**

No publicity for a firm may be conducted in a jurisdiction other than in areas which are subject to the jurisdiction of the Law Society of Namibia in any manner that would contravene either -

10.1 the provisions of these guidelines; or

10.2 any restrictions in force in that other jurisdiction concerning lawyers' publicity. For the purposes of this paragraph, publicity shall be deemed to be conducted in the jurisdiction in which it is received. However, publicity will not be regarded as being conducted in a jurisdiction in which that publicity would be improper if it is conducted for the purpose of reaching persons in a jurisdiction where that publicity is permitted and its reception in the former jurisdiction is incidental.

11. **SPECIFIC GUIDELINES REGARDING MARKETING**

11.1 **Brochures, Internet and Websites**

11.1.1 A firm may display in its reception area brochures containing details about the practice and the nature of the services offered. Such details and the nature of the services offered may also be made known on the internet and on websites. The brochure, internet and websites may not, however:

11.1.1.1 contain information which is false in any respect;

11.1.1.2 contain information which is misleading or deceptive or which is likely to mislead or deceive;

11.1.1.3 contain material which is vulgar, sensational, or otherwise is such as would bring or be likely to bring the firm or the legal profession into disrepute;

11.1.1.4 claim or imply superiority of the firm over any other legal practitioners;

11.1.1.5 contain any testimonials or endorsements concerning the firm, or refer to any of its clients by name or in any other manner which will make them identifiable.

11.1.2 Such brochures, internet and websites may also be sent or be made available to existing or former clients, except former clients whom the firm should reasonably know are not likely to return to it as clients. The brochures, internet and websites may include guidance on how clients can assist the firm to deal properly with its business, for example, by completing a questionnaire.

11.1.3 A prospective client who asks for information about the firm may be sent or given a brochure, internet and websites.

- 11.1.4 The brochure, internet and websites may contain an offer to give an estimate of charges in relation to any proposed mandate.

11.2 **Radio and television broadcasts, conferences, seminars, lectures and articles in the lay press**

The following principles apply to firms who take part in radio or television broadcasts, or who give talks or lectures to lay audiences, or who give interviews to the press, or who contribute articles to the lay press, on legal or non-legal subjects:

11.2.1 **Consent of the Council**

The consent of the Council is not required by a firm intending to take part in any of these activities. However, it is the responsibility of the firm that the respective legal practitioner is properly qualified to speak or write on the topic at issue, and that the presentation and/or the content of the speech/lecture/writing does not amount to touting.

11.2.2 **Designations**

Legal practitioners may be identified by name, by firm name (if desired) and by profession (if desired).

11.2.3 **Generally in relation to broadcasts, lectures and press articles**

A firm shall not be permitted to publish anything identifying or likely to identify clients for whom it acts or has acted unless in connection with a specific matter and then only if the client's prior written permission has been obtained.

11.3 **Telephone / electronic directories, law directories and the yellow pages**

- 11.3.1 It is permissible for a firm to insert its name in bold print in directories.

- 11.3.2 It is permissible for a firm to insert its name in a law directory or in the yellow pages and in so doing to indicate the kind of work which it undertakes or, in which it claims to have expertise (subject to the cautionary notes contained herein).

11.4 **Information to clients regarding developments in the law**

A firm may (and indeed is encouraged to) communicate with its clients either verbally or in writing to advise them of the latest developments in the law or in regard to a specified area of the law and to obtain instructions for professional business in relation to those developments, provided that:

- 11.4.1 the content and nature of any material, whether submitted, printed, spoken or otherwise, used by the firm in the course of the communication complies with these guidelines;
- 11.4.2 the form of the communication does not derogate from the dignity of the legal profession;
- 11.4.3 the communication does not involve undue influence, coercion, duress, harassment or nuisance.

12. THE LEGAL PRACTITIONER'S RESPONSIBILITY FOR PUBLICITY

It is the responsibility of a firm to ensure that all publicity, which is carried out by any other person on its behalf, complies with the provisions of these guidelines and such responsibility may not be delegated. Where a firm becomes aware of any impropriety in any publicity appearing on its behalf or concerning it, it shall forthwith do all such things and take all such steps as may be reasonable in the circumstances, to have the publicity rectified or withdrawn.

13. GENERAL

13.1 The Council may by notice in writing to a firm -

- 13.1.1 order the alteration, withdrawal or discontinuance of an advertisement or publicity;
- 13.1.2 order the alteration or discontinuance of the use of statement in any advertisement, publicity or marketing material;
- 13.1.3 order the firm to discontinue its participation in any lectures, talks, public appearances or publications,

if in its opinion any of these guidelines have been or are being contravened.
