

competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR070Jul16/SA219Nov18

In the matter between:

The Competition Commission

Applicant

And

The Law Society of the Northern Provinces

Respondent

Panel : N Manoim (Presiding Member)
I Valodia (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 06 March 2019

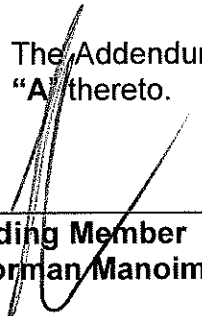
Addendum submitted: 21 June 2019

Decided on : 23 July 2019

Settlement Agreement

The Tribunal hereby confirms:

1. The Settlement Agreement as agreed to and proposed by the Competition Commission and The Law Society of the Northern Provinces dated 15 November 2018.
2. The Addendum to the Settlement Agreement dated 19 June 2019 and Annexure "A" thereto.



Presiding Member
Mr Norman Manoim

23 July 2019
Date

Concurring: Prof. Imraan Valodia and Ms Mondo Mazwai

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT CASE NO: CR070Jul16/SA219Hov18

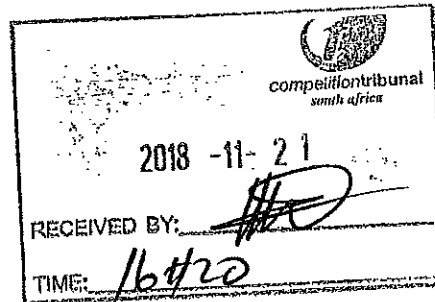
CC CASE NO: 2009May4424

In the matter between:

THE COMPETITION COMMISSION

and

THE LAW SOCIETY OF THE NORTHERN PROVINCES



Applicant

Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
THE LAW SOCIETY OF THE NORTHERN PROVINCES IN RESPECT OF
CONTRAVENTIONS OF SECTIONS 4(1)(b)(i) AND 4(1)(b)(ii) OF THE
COMPETITION ACT NO. 89 OF 1998, AS AMENDED**

PREAMBLE

The Competition Commission ("the Commission") and The Law Society of the Northern Provinces ("the LSNP") hereby agree that an application be made to the Tribunal ("the Tribunal") for confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D of the Competition Act No. 89 of 1998, as amended ("the Act"), in respect of contraventions of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act, on the terms set out below:

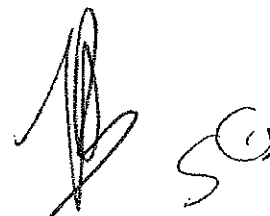
1. DEFINITIONS

For the purposes of this Settlement Agreement the following definitions shall apply:

- 1.1 **"Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at the DTI Campus, Block C: Mulayo Building, 77 Meintjies Street, Sunnyside, Pretoria;
- 1.3 **"Commissioner"** means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;
- 1.4 **"Complaint"** means the complaint that was submitted by Dykes van Heerden Incorporated and its directors to the Commission on 11 May 2009 in terms of section 49B(2)(b) of the Act against the LSNP, under case number 2009May4424, for the alleged contravention of sections 4(1)(a), 4(1)(b)(i) and 4(1)(b)(ii) of the Act;
- 1.5 **"Dykes Inc"** means Dykes van Heerden Incorporated and its directors. Dykes van Heerden Incorporated is a firm of attorneys, conveyancers and notaries public with its principal place of business at 19 Ontdekkers Road, Roodepoort, Gauteng Province;



- 1.6 **“LSNP”** means the Law Society of the Northern Provinces, a statutory body established in terms of section 56 of the Attorneys Act No. 53 of 1979, as amended, with its offices at Procforum Building, 123 Paul Kruger Street, Pretoria;
- 1.7 **“LSSA”** means the Law Society of South Africa, a non-statutory umbrella body which represents the attorneys’ profession in South Africa. Its members include the four constituent statutory provincial law societies, namely the law societies of the Northern Provinces, Cape, KwaZulu Natal and the Free State;
- 1.8 **“Multidisciplinary practices”** means business entities that offer a mixture of legal and non-legal services to consumers;
- 1.9 **“Reserved work”** means those categories of legal work the performance of which is reserved by law to an attorney, notary and conveyancer. Reserved work may include: court work, pleadings and appearances and the specialised work of notaries public, conveyancers, patent attorneys and trade mark attorneys;
- 1.10 **“Settlement Agreement”** means this agreement duly signed and concluded between the Commission and the LSNP;
- 1.11 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 1st Floor, the dti Campus, Building C: Mulayo, 77 Meintjies Street, Sunnyside, Pretoria.

Handwritten signature and initials in black ink, located at the bottom right of the page.

2. BACKGROUND

2.1 This matter involves a complaint made by Dykes Inc on 11 May 2009 to the Commission against the LSNP, as well as an exemption application made by the LSSA in terms of Part A of Schedule 1 of the Act, which was filed with the Commission by the LSSA on 21 July 2004 ("**exemption application**"). The exemption application was brought in respect of the following main categories of the attorneys' professional rules: professional fees; reserved work; organisational forms and multi-disciplinary practices; and advertising, marketing and touting.

2.2 Dykes Inc complaint against the LSNP alleged that some of the LSNP's professional rules, guidelines and professional rulings were in contravention of sections 4(1)(a), 4(1)(b)(i) and 4(1)(b)(ii) of the Act. In its complaint, Dykes Inc alleged, *inter alia*, that:

2.2.1 various LSNP rules were in contravention of sections 4(1)(b)(i) or 4(1)(b)(ii), alternatively section 4(1)(a) of the Act insofar as they restricted the attorneys' ability to engage in procompetitive advertising and marketing activities, as well as bid for any kind of legal work from any existing or potential client;

2.2.2 LSNP's rules which, *inter alia*, prohibit attorneys from accepting remuneration for professional services other than at the tariff prescribed by law amounted to price fixing in contravention of section 4(1)(b)(i);

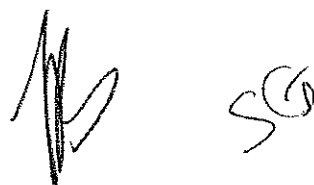
2.2.3 LSNP's council ruling prohibiting an attorney from approaching another attorney's regular client(s) constituted market allocation in contravention of section 4(1)(b)(ii), alternatively section 4(1)(a) of the Act; and

2.2.4 LSNP's rules prohibiting attorneys from sharing professional fees and offices with non-practising attorneys, as well as payments for referral of professional work from non-practising attorneys were in contravention of section 4(1)(a) of the Act.

2.3 The abovementioned LSNP rules were also included in the exemption application. The Commission made its final determination on the exemption application on 10 May 2010, being a year after the Dykes complaint had been filed, and elected to not grant the LSSA the exemption it had sought.

3. THE COMMISSION'S COMPLAINT INVESTIGATION, EXEMPTION ANALYSIS AND FINDINGS

3.1 The reasons for the Commission's decision to not grant the LSSA's exemption application will be addressed first and thereafter the Commission's investigation into the Dyke's Complaint will be described.

Handwritten signature and initials, likely representing the Commission or a relevant authority.

Commission's findings on the LSSA's exemption application

3.2 After assessing the rules that the LSSA applied to be exempted in terms of Schedule 1 of the Act, the Commission decided not to grant an exemption for all the rules contained in their exemption application. The Commission found that the rules had an adverse effect on competition and were not reasonably required to maintain professional standards or the ordinary function of the profession. The Commission also found that the rules were too restrictive and overbroad. In particular, in respect of the rules relating to:

3.2.1 professional fees, the Commission found that to the extent that these rules fix a price to be paid for the services of attorneys, these rules contravene section 4(1)(b)(i), alternatively section 4(1)(a) of the Act. The Commission also found that professional standards or the ordinary function of the profession could still be maintained if legal practitioners compete on service delivery, price and quality as does any other business;

3.2.2 reserved work, the Commission found that restrictions on reserved work have the effect of substantially lessening or preventing competition in a market in that excessive regulation of reserved rights is likely to reduce the supply of service providers, with negative consequences on competition and quality of service;

3.2.3 organisational forms and multi-disciplinary practices, the Commission found that the prohibition on multidisciplinary practices was too wide

and not necessary for the ordinary function of the attorneys' profession. The Commission found that clients may benefit from cost efficiencies, wider choice and convenience by accessing a variety of ancillary services from a "one stop shop"; and

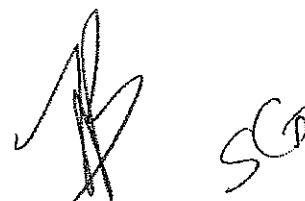
- 3.2.4 advertising, marketing and touting, the Commission found that restrictions that prevent the communication of truthful and non-deceptive information are likely to inhibit competition and frustrate informed consumer choice.

Commission's investigation of the Dyke's Complaint

- 3.3 The Dykes complaint was filed with the Commission following the LSNP launching an application in the North Gauteng High Court, on 14 July 2008, to strike Dykes Inc's directors off the roll of attorneys for contravening certain of the LSNP's professional rules.

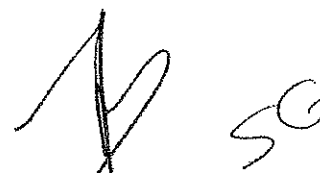
- 3.4 The LSNP alleged *inter alia* that Dykes Inc was:

- 3.4.1 touting for work of a professional nature;
- 3.4.2 sharing offices with persons who were not practising attorneys; and
- 3.4.3 sharing their professional fees with persons other than practising attorneys.

Handwritten signature and initials, likely representing the Commission or a legal representative.

- 3.5 Dykes Inc contended in its complaint filed with the Commission that the LSNP professional rules which its directors were accused of contravening, were the very same rules that the LSSA, mandated by the LSNP, applied for exemption.
- 3.6 Since the striking-off application was based on some of the professional rules which formed part of the rejected LSSA exemption application and also the subject of Dykes Inc's complaint, on 9 October 2012, the High Court ordered that the LSNP's rules, guidelines and rulings relating to touting, fee-sharing and office-sharing be referred to the Tribunal for determination on the basis of section 65(2)(b) of the Act.
- 3.7 Following the High Court referral of the relevant rules to the Tribunal, the LSNP sought to join the Commission and the LSSA in the section 65(2)(b) proceedings. At the hearing of the joinder application held on 25 February 2016, the Tribunal directed, amongst others, that the Commission, LSNP and Dykes Inc agree on a date by which the Commission would finalise its investigation of the Dykes complaint. Pursuant to the Tribunal's directive, the Commission, LSNP and Dykes agreed that the Commission would finalise its investigation by 15 July 2016. Nevertheless, this agreement, which was directed by the Tribunal, did not in any way affect the previous agreement made in terms of section 50(4)(a) of the Act between the Commission and Dykes on 1 March 2016 to extend the period of the referral to 31 August 2016. The complaint referral was filed on 29 July 2016.

Commission's findings of the Dyke's Complaint

Handwritten signature and initials, possibly 'N' and 'SG', in black ink.

3.8 The Commission investigated Dykes Inc's complaint and found that the following LSNP's rules constitute price fixing, alternatively the fixing of trading conditions, in contravention of section 4(1)(b)(i) of the Act:

3.8.1 LSNP rule 91.1.1.1 (read together with LSNP rule 89.1) which prohibits attorneys from being able to offer or perform professional work for remuneration less than the tariffs of fees fixed by statute, regulation or rule;

3.8.2 LSNP rule 91.1.1.2 (read together with LSNP rule 89.1) which prohibits attorneys from projecting themselves as being prepared to do professional work at less than the tariff of fees;

3.8.3 LSNP rule 72.1.1, only to the extent that it has the effect of fixing the remuneration that an attorney may charge for professional services rendered; and

3.8.4 LSNP Property guideline 3.3 which provides that a conveyancer who undercuts a fee of a colleague with a view to procuring work will be guilty of touting and that undercharging is considering to be a calculated means of attracting clients and is tantamount to touting.

3.9 The Commission also found that LSNP council ruling 13.2.3.1 read together with LSNP council ruling 16.3, which has the effect of prohibiting attorneys from

Handwritten signature and initials, possibly 'SG'.

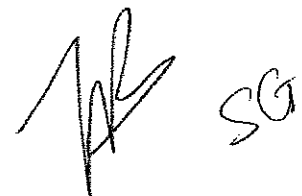
approaching each other's regular clients, constitutes market allocation in contravention in of section 4(1)(b)(ii) of the Act, alternatively the fixing of trading condition in contravention of section 4(1)(b)(i) of the Act.

4. PRELIMINARY SETTLEMENT DISCUSSIONS

4.1 During the time in which the Commission was conducting its investigation into the Complaint and its assessment of the exemption application, the legal profession was in a process of statutory and regulatory reform. The Legal Practice Bill was being drafted, and it was commonly understood that following the adoption of the Legal Practice Bill, the rules of the various law societies would be amended.

4.2 Accordingly, the Commission and the LSSA entered into an agreement in April ("**April 2012 agreement**"). A copy of the press release itemising the salient terms of the April 2012 agreement is annexed hereto marked "**A**". In terms of the April 2012 agreement, the LSSA and its constituent law societies agreed that the competition concerns raised during the exemption application process would be taken into account when the new rules for the legal profession were drafted. The LSSA and law societies also agreed to engage with and consult with the Commission in the development of the new rules.

4.3 Furthermore, the April 2012 agreement stipulated that the below-mentioned law societies' rules for which exemption had been sought, to the extent that they were not in conflict with the Act would remain valid and enforceable. The April

Handwritten signature and initials "SG" in the bottom right corner of the page.

2012 agreement was however subject to the caveat that the rules would be interpreted and applied by the law societies in a manner that complied with the Act. In summary:

- 4.3.1 With respect to the rules relating to professional fees, the existing rules would apply provided that all minimum tariffs would not be enforced. In other words, attorneys could charge fees below the minimum tariffs where those were prescribed.
 - 4.3.2 With respect to touting, the existing rules would apply except any restriction on advertising that conforms with the general advertising standards in that it is truthful and not misleading to the public would be lifted.
 - 4.3.3 With respect to reserved work and multidisciplinary practices, the status quo would continue, pending the promulgation of the new rules.
- 4.4 In the interim, and before the promulgation of the new Legal Practice Bill, the LSSA undertook to engage with the Commission on matters concerning competition issues. If there was doubt whether conduct offended competition law principles, the law societies would consult with the Commission on those cases.

5. THE COMPLAINT REFERRAL

Handwritten initials 'NB' and 'SG' in black ink.

5.1 On 29 July 2016, the Commission referred the Complaint against the LSNP to the Tribunal under case number CR070Jul16.

5.2 The complaint referral is based on the Commission's allegation that from as long as the rules have been in existence until 2015, the LSNP, being an association of firms in a horizontal relationship, has adopted rules which constitute price fixing and market allocation in contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act, alternatively they constitute the fixing of trading conditions in contravention of section 4(1)(b)(i).

5.3 The Commission alleges that the impugned rules referred to in paragraphs 3.8 and 3.9 essentially restrict competition between attorneys in respect of pricing and customers in contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act.

6. SETTLEMENT DISCUSSIONS

6.1 Following the Commission's complaint referral, the Commission and the LSNP engaged in settlement discussions which have culminated in this Settlement Agreement.

6.2 During settlement discussions, the LSNP confirmed that it, together with the other law societies and the LSSA, had reviewed its rules to *inter alia* address the Commission's concerns identified during the exemption application process. On 26 February 2016, the LSSA promulgated new uniform rules for the



attorneys' profession that came into effect on 1 March 2016 (Government Gazette No. 39740).

6.3 The LSNP also confirmed that it had acted in compliance with the April 2012 agreement between the LSSA and the Commission, and had not sought to apply any of the rules contrary to the agreement.

6.4 The litigation proceedings instituted by the LSNP against the directors of Dykes Inc has been concluded, in that the parties have settled the dispute. The settlement agreement between the LSNP and Dykes Inc is attached hereto marked "B". The terms of the settlement agreement are that the LSNP would withdraw its legal proceedings against Dykes Inc and that Dykes Inc would withdraw its complaint against the LSNP that was made to the Commission.

6.5 Dykes Inc subsequently, on or about 30 June 2017, withdrew their complaint against the LSNP. We attach hereto a letter marked "C" reflecting this request.

7. ADMISSION

7.1 Notwithstanding that the rules were not enforced during the period in question and that the LSNP has acted in accordance with the May 2012 agreement, the LSNP admits that the rules set out in clauses 3.8 and 3.9 could be construed as contravening section 4(1)(b)(i) and section 4(1)(b)(ii) of the Act respectively.

8. UNDERTAKINGS

8.1 The LSNP confirms that the following rules have been repealed, and that the following guidelines and rulings are rescinded:

8.1.1 LSNP rule 91.1.1.1 which prohibits attorneys from being able to offer or perform professional work for remuneration less than the tariffs of fees fixed by statute, regulation or rule;

8.1.2 LSNP rule 91.1.1.2 which prohibits attorneys from projecting themselves as being prepared to do professional work at less than the tariff of fees;

8.1.3 LSNP rule 72.1.1 to the extent that it has the effect of fixing the remuneration that an attorney may charge for professional services rendered;

8.1.4 LSNP property guideline 3.3 to the extent that it provides that a conveyancer who undercuts a fee of a colleague with a view to procuring work will be guilty of touting and that undercharging is considering to be a calculated means of attracting clients and is tantamount to touting; and

8.1.5 LSNP council ruling 13.2.3.1 read together with LSNP council ruling 16.3, which has the effect of prohibiting attorneys from approaching each other's regular clients.

8.2 The LSNP undertakes to cease and desist from prosecuting any of its members for the contravention of the abovementioned rules, rulings and guidelines.

8.3 The LSNP agrees and undertakes to:

8.3.1 prepare and circulate a statement summarising the content of this Settlement Agreement to its members and stakeholders within 14 (fourteen) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;

8.3.2 engage with the Commission when considering to amend its rules in an endeavour to prevent:

8.3.2.1 the promulgation of rules and/or the enforcement thereof on its constituent members that may have the effect of facilitating price fixing or fixing of trading conditions between its constituent members in contravention of section 4(1)(b)(i) of the Act;

8.3.2.2 the promulgation of rules and/or the enforcement thereof on its constituent members that may have the effect of facilitating market allocation between its constituent members in contravention of section 4(1)(b)(ii) of the Act;
and

8.3.3 refrain from engaging in any contravention of the Act in future;

8.3.4 develop and implement a competition law compliance programme as part of its corporate governance policy, which is designed to ensure

that the LSNP does not engage in any conduct which constitutes a contravention of the Act, in particular such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act; and

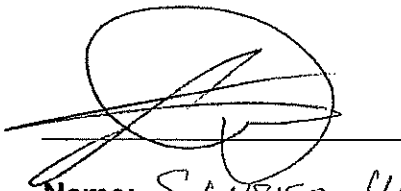
8.3.5 submit a copy of such compliance programme to the Commission within 90 (ninety) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal.

9. FULL AND FINAL SETTLEMENT

9.1 This settlement is entered into in full and final settlement of the Complaint against the LSNP under case number CR070Jul16 and upon confirmation by the Tribunal, concludes the Complaint.

For the Respondent

Dated and signed at Pretoria on the 31st day of October 2018



Name: SIBUSISO William Mavela Gule

Designation: President

For the Commission



Dated and signed at MIDRAND on the 15TH day of
NOVEMBER 2018



TEMBINKOSI BONAKELE
COMMISSIONER



17 April 2012: For immediate release

**OUTCOME OF A HIGH-LEVEL MEETING BETWEEN COMPETITION COMMISSION
AND THE LAW SOCIETY OF SOUTH AFRICA REGARDING AN EXEMPTION
APPLICATION DECISION BY THE COMPETITION COMMISSION**

The Competition Commission ("Commission") and council members of the Law Society of South Africa ("LSSA") met on 2 April 2012 to discuss the implications of the Commission's refusal to grant the LSSA an exemption for the professional Rules of the statutory provincial law societies. Both parties agreed and committed themselves – as far as possible – to resolving all matters concerning the professional Rules governing the attorneys' profession in a manner that will ensure the continued professionalism and integrity of the profession while addressing competition law concerns raised by the Commission.

The parties acknowledged that some confusion might have arisen from the Commission's decision regarding the application of the existing professional Rules and wish to clarify the position to both the legal profession and the general public. It is important to appreciate that while the Commission has decided that certain Rules that restrict competition have not been exempted; such Rules cannot be dispensed with without promulgating new ones, as this will create an untenable vacuum. In addition, change in the Rules requires a change in legislation as the Rules emanate from the Attorneys Act. In view of the above, the parties have agreed that until the ongoing process of finalising the new Legal Practice Bill has been concluded, the existing Rules will be interpreted and applied in a manner that is not offensive to competition law. In this respect the parties have agreed the said Rules will be applied as follows:

- **Professional fees**

The existing Rules apply, provided that all minimum tariffs will not be enforced. In other words attorneys may charge fees below the minimum tariffs where these are prescribed.

- **Touting**

The existing Rules will apply, except that any restriction on advertising that conforms with the general advertising standards in that it is truthful and not misleading to the public are lifted.

MSA

Editor's note:

Background to the Law Society application for exemption to the Competition Commission:

On 4 March 2011, the Competition Commission of South Africa (Commission) gazetted a notice rejecting the application of the Law Society of South Africa (LSSA) for exemption from the provisions of Chapter 2 of the Competition Act, 1998 (the Act). In 2004, the LSSA sought an exemption from the Act in respect of the disciplinary rules of the four provincial statutory law societies relating to

- professional fees,
- reserved work,
- organisational forms and multidisciplinary practises, and
- advertising, marketing and touting.

Since the gazetting of the notice, the LSSA and the Commission agreed to enter into a process of engagement and consultation to resolve the Commission's concerns and to facilitate the continued regulation of the attorney's profession in the interim.

The LSSA and the Commission have met to discuss the reasons behind the rejection of the exemption application and also ways in which the provincial law societies could adapt their rules and practices so as to comply with the Act. The impending Legal Practice Bill will also require the adoption of new rules by the relevant regulatory authority for lawyers. The Commission has been referred to various amendments which are already contemplated in the draft uniform rules presently under discussion by the various law societies.

In October 2011, the LSSA furnished comprehensive written submissions to the Commission, supported by extensive research.

About the LSSA:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 20 700 attorneys and 5 000 candidate attorneys.

M.S. R

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 32233/2008

In the application of:

THE LAW SOCIETY OF THE NORTHERN PROVINCES

Applicant

and

PETER ARTHUR DYKES

1st Respondent

CHERYL RAMSAMY

2nd Respondent

PHASUDI DOCTOR SEGOGOBA

3rd Respondent

JOHAN VAN HEERDEN

4th Respondent

AGREEMENT

1. As:
 - 1.1 the Law Society on 6 July 2008 issued an application for the striking of the names of the first to fourth respondents from the roll of attorneys and ancillary relief ["the Application"];
 - 1.2 the abovementioned application is being opposed by the first to fourth respondents;
 - 1.3 the High Court on 9 October 2012 referred certain Rules, Rulings and Guideline of the Law Society, referred to in the application, to the Competition Tribunal for determination;
 - 1.4 the application has been stayed pending a determination by the Competition Tribunal;
 - 1.5 the first to fourth respondents lodged a complaint against the Law Society with the Competition Commission; and
 - 1.6 the investigation by the Competition Commission has not yet been finalised.

.../2

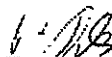
 

2. The Law Society and the first to fourth respondents have reached an agreement on the following terms:
- 2.1 the application will be withdrawn by the Law Society;
 - 2.2 the order of Court dated 9 October 2012 providing for the referral to the Competition Tribunal will be abandoned by the first to fourth respondents;
 - 2.3 the complaint with the Competition Commission will be withdrawn by the first to fourth respondents;
 - 2.4 each party will carry his/her/its own costs relating to all matters referred to above;
 - 2.5 this settlement is in respect of all disputes between the parties as set out above.

Dated and signed at Pretoria on the 26 day of April 2017.



LUTENDO BENEDICT SIGOGO
President of the Law Society of
the Northern Provinces
For and on behalf of the Applicant
being duly authorised hereto.



PETER ARTHUR DYKES
First Respondent



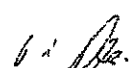
CHERYL RAMSAMY
Second Respondent
For and on behalf of the 2nd
Respondent being duly authorised
hereto.




PHASUDI DOCTOR SEGOGOBA

Third Respondent

For and on behalf of the 3rd
Respondent being duly authorised
hereto.


JOHAN VAN HEERDEN

Fourth Respondent

For and on behalf of the 4th
Respondent being duly authorised
hereto.



ANNEXURE "C"

Dykes, van Heerden Inc

(Registration No: 1996/003913/21)
**ATTORNEYS, CONVEYANCERS AND
ADMINISTRATORS OF DECEASED ESTATES**

Tel: (011) 279-5000
Direct fax: 0865 412 822
E-mail: peter@dvh.za.net
storm@dvh.za.net

P.O. Box 21755
Helderkruin
1733
South Africa



Professionals striving
for excellence

Estates: estates@dvh.za.net
Web-site: <http://www.dvh.law.za>

19 Ontdekkers Road
Roodepoort
1740

Docex 24
Roodepoort
Lodgement no 210 (JHB) 316 (PTA)

Our Reference:
Mr P Dykes/cs

Your reference:

Date:
30 June 2017

COMPETITION COMMISSION

bakhem@compcom.co.za

Dear Bakhe,

Re: COMPLAINT PA DYKES/CHERYL RAMSAMY/DOCTOR SEGOGOBA/JOHAN VAN
HEERDEN

Please find enclosed our previous letter as requested.


Kind regards

PETER DYKES

Directors: P.A. Dykes B.Comm LLB, J. Van Heerden B.Proc, C. Ramsamy B.Proc, P. D. Segogoba B. Proc & C.C. Dykes LLB.
Professional Assistants: G.P. Dykes LLB, T.J. Reyneke B.Iuris LLB & N. Dykes BA Law, LLB.

A level one broad based BEE contributor

Dykes, van Heerden

(Registration No: 1995/003913/21)
**ATTORNEYS, CONVEYANCERS AND
ADMINISTRATORS OF DECEASED ESTATES**

Tel: (011) 279-5000
Fax: (011) 955 4799
E-mail: peter@dvh.za.net
slorn@dvh.za.net

P.O. Box 21755
Helderkruin
1733
South Africa



Estates: estates@dvh.za.net
Web-site: <http://www.dvh.law.za>

19 Ontdekkers Road
Rodepoort
1740

Docex 24
Rodepoort
Lodgement no 210 (JHB) 316 (PTA)

Professionals striving
for excellence

Our References:
MR PA DYKES/cs

Your reference:

Date:
22 JUNE 2017

BAKHE

EMAIL: bakhem@comp.co.za

Dear Bakhe,

Re: **COMPLAINT PA DYKES/CHERYL RAMSAMY/DOCTOR SEGOGOBA/JOHAN VAN HEERDEN**

The various telephone conversations between Peter Dykes and Bakhe of yesterday evening refer.

As requested we annex hereto a copy of our letter dated 9 May 2017 in terms of which we withdrew the entire complaint which we lodged against the Law Society of the Northern Provinces. Insofar as it is necessary we hereby again reiterate that it is the entire complaint which has been withdrawn.

If you require further information or documentation, please do not hesitate to contact me.

Again thank you for all your kind assistance.


Kind regards,
PETER DYKES

Directors: P.A. Dykes B.Comm LLB; J. Van Heerden B.Proc; C. Ramsamy B.Proc, MBA; P. D. Segogoba B. Proc & C.G. Dykes LLB.
Professional Assistants: G.P. Dykes LLB; T.J. Roynoké B.Juris LLB; N. Dykes BA Law, LLB;
J Noomé LLB, LLM and J Stirling BA, LLB.
A level Seven broad based BEE contributor

Dykes, van Heerden Inc

(Registration No: 1995/003913/21)
**ATTORNEYS, CONVEYANCERS AND
ADMINISTRATORS OF DECEASED ESTATES**

Tel: (011) 279-5000
Direct fax: 0865 412 822
E-mail: peter@dvh.za.net
storm@dvh.za.net

P.O. Box 21755
Helderkruin
1733
South Africa



Estates: estates@dvh.za.net
Web-site: <http://www.dvh.law.za>

19 Ontdekkers Road
Rondepoort
1740

Docex 24
Rondepoort
Lodgement no 210 (JHB) 316 (PTA)

Professionals striving
for excellence

Our Reference:
Mr PA DYKES/cs

Your reference:

Date:
9 MAY 2017

COMPETITION COMMISSION

LEBOGANG MADIKANE AND MULALO SHANDUKANI

LebohangM@compcom.co.za
MulaloS@compcom.co.za

Morning Lebohang and Mulalo,

DYKES VAN HEERDEN INC

An agreement has been concluded between the Law Society of the Northern Provinces on the one hand and Peter Arthur Dykes, Cheryl Ramsamy, Phasudi Doctor Segogoba and Johan van Heerden on the other hand in respect of the application brought by the Law Society of the Northern Provinces in the High Court of South Africa Gauteng Division, Pretoria under case number 32233/2008.

In light of the satisfactory settlement of the matter and in terms of the settlement agreement and more particularly on the basis that the application has been withdrawn and the settlement agreement is in respect of all disputes set out in the settlement agreement, Peter Arthur Dykes, Cheryl Ramsamy, Phasudi Doctor Segogoba and Johan van Heerden hereby withdraw their complaint against the Law Society of the Northern Provinces which has been lodged with the Competition Commission.

Kind regards

PETER DYKES

Directors: P.A. Dykes B.Comm LLB, J. Van Heerden B.Proc, C. Ramsamy B.Proc, P. D. Segogoba B. Proc & G.C. Dykes LLB.
Professional Assistants: G.P. Dykes LLB, T.J. Reyneke B.Luris LLB & N. Dykes BA Law, LLB.
A level one broad based BEE contributor

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD AT PRETORIA)**

CT CASE NO: CR070Jul16

CC CASE NO: 2009Apr4424

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

**THE LAW SOCIETY OF THE NORTHERN
PROVINCES**

Respondent

**ADDENDUM TO THE SETTLEMENT AGREEMENT BETWEEN THE
COMPETITION COMMISSION AND THE LAW SOCIETY OF THE NORTHERN
PROVINCES IN RESPECT OF CONTRAVENTION OF SECTIONS 4(1)(b)(i) AND
4(1)(b)(ii) OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED.**

Handwritten initials

Introduction

1. This is an addendum to the Settlement Agreement concluded between the Competition Commission ("Commission") and the Law Society of the Northern Provinces ("LSNP") (collectively "the parties") on 15 November 2018 in respect of contravention of sections 4(1)(b)(i) and (ii) of the Competition Act no. 89 of 1998, as amended ("the Act").

Recordal

2. On 21 November 2018, the Commission filed an application to the Competition Tribunal ("the Tribunal") to confirm the Settlement Agreement referred to above as an order of the Tribunal in terms of sections 58(1)(a)(iii) and 58(1)(b) of the Act.
3. On 6 March 2019, the Tribunal heard the matter, through oral submissions made by the parties.
4. At the hearing, the Tribunal recommended that the parties consider an addendum to the Settlement Agreement, to address the following issues:
 - 4.1 The Legal Practice Council ("LPC") taking over the undertakings set out in paragraph 8 of the Settlement Agreement; and
 - 4.2 The ability of the Commission to investigate the new rules of the LPC should they fall foul of the Competition Act.



Implementation of the Legal Practice Act

5. The Tribunal's remarks emanated from the fact that the LSNP has been dissolved and replaced by the LPC.¹ This raises the question as to whether the LPC will take over the responsibilities set out in the Settlement Agreement.
6. On 25 September 2018, the National Forum on the Legal Profession ("The National Forum") and the LSNP entered into an agreement in terms of section 97(2) of the Legal Practice Act, 28 of 2014 ("the Transfer Agreement"). In terms of clause 2.4 of the Transfer Agreement, the assets, rights, liabilities, obligations and staff of the LSNP will be transferred to the LPC. The Transfer Agreement is attached as "Annexure A" to this addendum.
7. In addition, in terms of clause 2.5 of the Transfer Agreement, the LPC will commence exercising jurisdiction over legal practitioners and candidate legal practitioners by not later than 31 October 2018. The Transfer Agreement in clause 7.3.3.1 also stipulates that the LSNP will cede all its rights, title and delegates all its obligations of any nature, contractual or otherwise to the LPC.
8. On 31 October 2018, the LSNP was dissolved and replaced by the LPC.²
9. On 1 November 2018, The LPC began regulating the legal profession.³

¹ PROCLAMATION NO. R. 31 OF 2018 R. 31 Legal Practice Act (28/2014): Commencement of certain sections of the Act 42003.

² Ibid.

³ Ibid.



Clauses 1.12, 1.13, 8 and 9 of the Settlement Agreement

10. In line with the above and the Tribunal's recommendations, the parties agree to insert the following clauses in the Settlement Agreement:

10.1. **Clause 1.12** "Legal Practice Council" means the Legal Practice Act, 2014 (No 28 of 2014)

10.2. **Clause 1.13** "Legal Practice Council" means the South African Legal Practice Council established in terms of section 4 of the Act.

10.3. **Clause 1.14** "National Forum" means a National Forum on the Legal Profession.

10.4. **Clause 8.4** to read as follows:

8.4 "In terms of the agreement concluded between the National Forum and the LSNP on 25 September 2018, read together section 97(2) of the Legal Practice Act, the LPC will be responsible for the undertakings set out in paragraph 8 of this Settlement Agreement.

10.5. **Clause 9.1** to read as follows:

9.1 "For the avoidance of doubt, the Commission does not waive its powers to investigate, and where appropriate to refer, any new Rules of the Legal Practice Act that would include the conduct that was subject of this Settlement Agreement.

FOR THE LEGAL PRACTICE COUNCIL:

Dated and signed at Johannesburg on the 11th day of June 2019.



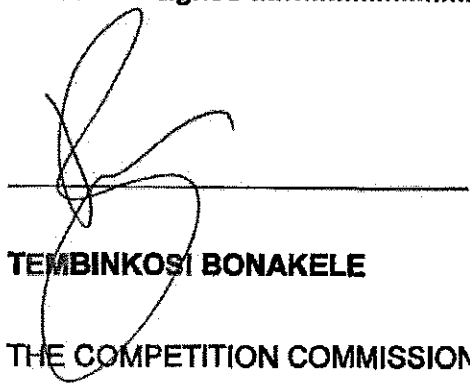


Name: HLALELENI KATHLEEN MATOLO-DLEPU

Designation: CHAIRPERSON

FOR THE COMMISSION:

Dated and signed at TSHWANE on the 19th day of JUNE 2019.



TEMBINKOSI BONAKELE

THE COMPETITION COMMISSIONER

COMPETITION COMMISSION OF SOUTH AFRICA

Agreement

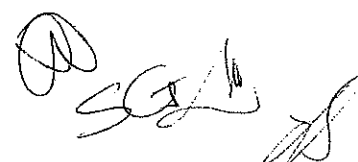
between

**The National Forum on the Legal Profession
(The National Forum)**

and

**The Law Society of the Northern Provinces
(The Law Society)**

pursuant to section 97(2) of the Legal Practice Act

Handwritten signature and initials, possibly reading "D. S. G. L." followed by a flourish.

03/07/2018

1. Definitions and interpretation

1.1 In this agreement, unless otherwise stated or inconsistent with the context in which they appear, words and expressions defined in the Legal Practice Act or in the Attorneys Act or in employment legislation shall have the same meanings as they are so defined, and the following words and expressions shall bear the following meanings:

- | | | |
|-------|-----------------------------|--|
| 1.1.1 | "Assets" | means all assets, movable or immovable, tangible or intangible, of every nature and description, owned by the Law Society at the effective date, without exception, save for the excluded assets; |
| 1.1.2 | "the Attorneys Act" | means the Attorneys Act, 53 of 1979; |
| 1.1.3 | "contracts" | means all contracts, whether oral or in writing, to which the Law Society is a party at the effective date, without exception; |
| 1.1.4 | "the Council" | means the South African Legal Practice Council, to be established in terms of section 4 of the Legal Practice Act; |
| 1.1.5 | "effective date" | means the day immediately prior to the date on which the Law Society is to be dissolved pursuant to section 97(2)(a) of the Legal Practice Act, which latter date is expected to be 31 October 2018; |
| 1.1.6 | "employees or staff" | means all persons who are employed by the Law Society at the effective date; |



03/07/2018

- 1.1.7 **"employment legislation"** means collectively the Labour Relations Act, 66 of 1995, the Basic Conditions of Employment Act, 75 of 1997, the Employment Equity Act, 55 of 1998, the Occupational Health and Safety Act, 85 of 1993, the Compensation for Occupational Injuries and Diseases Act, 130 of 2001, the Skills Development Act , 97 of 1998 and the Skills Development Levies Act, 9 of 1999, the Pension Funds Act, 24 of 1956 and the Unemployment Insurance Act, 63 of 2001;
- 1.1.8 **"excluded assets"** means a cash amount of R50 000 000;
- 1.1.9 **"the immovable property"** means the immovable property owned by the Law Society, situated at 123 Paul Kruger Street, Pretoria and described as the remaining extent of erf 2900 in the township of Pretoria, registration division JR, Gauteng;
- 1.1.10 **"the Labour Relations Act"** means the Labour Relations Act, 66 of 1995;
- 1.1.11 **"the Legal Practice Act"** means the Legal Practice Act, 28 of 2014;
- 1.1.12 **"liabilities"** means all liabilities of whatever nature, actual or contingent, of the Law Society at the effective date, with the exception of any liabilities of the Law Society to the Law Society of South Africa;
- 1.1.13 **"main agreement"** means this agreement;
- 1.1.14 **"obligations"** means all obligations of whatever nature, actual or contingent, of the Law

03/07/2018

Society at the effective date, with the exception of any obligations of the Law Society to the Law Society of South Africa;

1.1.15 "rights"

means all rights of the Law Society at the effective date with the exception of any rights relating to the excluded assets;

1.1.16 "VAT"

means value-added tax as levied in terms of the VAT Act; and

1.1.17 "VAT Act"

means the Value-added Tax Act, 89 of 1991.

2. Introduction

2.1 The National Forum is a statutory body established in terms of section 96(1) of the Legal Practice Act.

2.2 The Law Society is an entity established by statute and continuing in existence in terms of section 56 of the Attorneys Act.

2.3 The Council is an entity established in terms of section 4 of the Legal Practice Act for the purpose, inter alia, of regulating all legal practitioners and all candidate legal practitioners, as contemplated in that Act.

2.4 In terms of section 97(2)(a) of the Legal Practice Act the National Forum is required to negotiate with, and to reach agreement with, the Law Society for the transfer of the assets, rights, liabilities, obligations and staff of the Law Society to the Council, as well as the date on which the Law Society is to be dissolved.

2.5 The date of the Council's coming into existence is uncertain, but the Council will commence exercising jurisdiction over legal practitioners and candidate legal practitioners by not later than 31 October 2018.

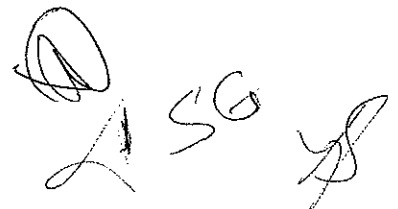
2.6 Despite the Council's coming into existence the Law Society will continue to perform its powers and functions until it is dissolved in terms of section 97(2)(a) of the Legal Practice Act.

03/07/2018

- 2.7 In terms of section 97(3) of the Legal Practice Act, section 197 of the Labour Relations Act applies in respect of the transfer of staff from the Law Society to the Council.
- 2.8 The National Forum is acting in this transaction for and on behalf of the Council, which upon its establishment will accede to this agreement as if it were itself a party to this agreement. The Council will become the transferee for the assets, rights, liabilities, obligations and staff of the Law Society.

3. Condition precedent

- 3.1 This agreement, with the exception of clauses 1, this clause 3, and clauses 8, 10 and 11, all of which shall be of immediate force and effect, is subject to the fulfilment of the suspensive condition that by not later than 16h30 on 30 April 2018 all of the following law societies, namely, The Law Society of the Northern Provinces, The Cape Law Society, The Kwa-Zulu Natal Law Society and The Law Society of the Free State, enter into agreements with the National Forum on substantially the same terms as this agreement (save that the agreement between The Cape Law Society and the National Forum will contain as an additional suspensive condition the approval of its members to the agreements set out in the agreement), and all suspensive conditions to which those agreements are subject will have been fulfilled.
- 3.2 The Law Society shall use its reasonable endeavors to procure the fulfilment of the condition precedent as soon as reasonably possible after the date of signature of this agreement, and shall to the extent that the condition precedent has been fulfilled prior to the expiry of the period referred to in 3.1, furnish the National Forum with documents evidencing the fulfilment of the condition precedent.
- 3.3 If the condition precedent has not been fulfilled by the date for fulfilment set out in 3.1 (or such later date as may be agreed on in writing between the parties), then either party shall be entitled to give notice in writing to the other party that unless the condition precedent is fulfilled within 14 days of the date of issue of the notice (or such additional period as the parties may agree on in writing) (for purposes of this clause 3 referred to as "**the notice period**"), the period for fulfilment of the condition precedent will expire at the end of the notice period.

Handwritten signatures and initials at the bottom right of the page. There are three distinct marks: a circular stamp-like signature, the initials 'SG', and another stylized signature.

03/07/2018

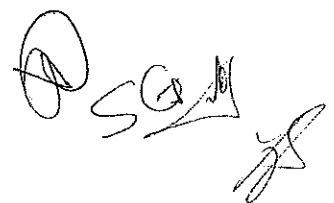
- 3.4 If the condition precedent is not fulfilled before the expiry of the notice period, the provisions of this agreement, save for clause 1, this clause 3 and clauses 8, 10 and 11 (all of which will remain of full force and effect) will never become of any force of effect and the *status quo ante* will be restored as nearly as may be possible, and neither of the parties will have any claim against the other in terms of this agreement or arising from the failure of the condition precedent.

4. Transfer of assets and liabilities

- 4.1 The Law Society agrees to transfer to the Council, on and with effect from the effective date, all of its assets (with the exception of the excluded assets), rights, liabilities, obligations and staff. The National Forum accepts such transfer on behalf of the Council.
- 4.2 The Law Society shall take all such steps as may be necessary to give effect to the transfer referred to in 4.1, and in particular will make delivery to the Council of all corporeal assets and will cede, assign and make over to the Council all its rights and obligations of whatever nature which are in existence at that date.
- 4.3 The transfer of the assets, rights, liabilities and obligations is without consideration.
- 4.4 With effect from the effective date the Law Society shall transfer the excluded assets to the Law Society of South Africa, which assets must be applied towards the performance of functions by the Law Society of South Africa similar to the non-regulatory functions performed by the Law Society prior to the effective date. The provisions of this clause 4.4 constitute a stipulatio alteri in favour of the Law Society of South Africa, the benefits of which the Law Society of South Africa shall be entitled to accept at any time.
- 4.5 The parties agree, in terms of section 97(2)(a), that the Law Society will be dissolved on and with effect from 31 October 2018.

5. Transfer of employees

- 5.1 The terms and conditions of transfer of employees from the Law Society to the Council are contained in the agreement attached to this agreement as **Appendix 1**.



03/07/2018

- 5.2 Schedule 1 of Appendix 1 reflects the employees of the Law Society as at the date of signature of this agreement, and if necessary will be amended as at the effective date to take account of any changes between the date of signature of this agreement and the effective date. Any amendments, which will not be made without the prior written approval of the Council, which approval the Council may not withhold or delay unreasonably, will be identified specifically as such on schedule 1 of Appendix 1.

6. Value-added tax

The Law Society and the Council -

- 6.1 will both be registered as vendors in terms of the VAT Act at the effective date;
- 6.2 record and agree that -
- 6.2.1 save as set out in this agreement, the entire operation and undertaking of the Law Society is transferred as a going concern;
- 6.2.2 the operation and undertaking of the Law Society are capable of separate operations;
- 6.2.3 the operation and undertaking will constitute an income earning activity at the effective date;
- 6.2.4 all assets and rights necessary to carry on the operation and undertaking are being disposed of by the Law Society to the Council in terms of this agreement

and accordingly the transaction recorded in this agreement falls within the ambit of section 11(1)(e) of the VAT Act so that the VAT payable is calculated at zero percent.

7. Delivery

- 7.1 Save in respect of the transfer of the immovable property, to be dealt with in terms of 7.3.1, on or before the effective date representatives of the parties will meet at the offices of the Law Society to complete the transfer and delivery of the operations and undertaking of the Law Society, and do all such things as may be necessary fully and effectively to place the Council in possession, and constitute



03/07/2018

it the owner, of the assets and rights. Delivery shall be effected in any manner permitted by law.

7.2 On the effective date the Law Society shall deliver to the Council -

7.2.1 all documents of title, if any, to the assets and rights which are in its possession or under its control;

7.2.2 the originals (or where these are not in its possession or under its control, copies) of all the contracts;

7.2.3 all records of any nature and in whatever form relating to the activities of the Law Society prior to the effective date and relating to its assets, rights, liabilities and obligations.

7.3 The assets shall be delivered and the rights transferred to the Council in accordance with the following provisions:

7.3.1 **immovable property**

7.3.1.1 It is recorded that the Law Society is the registered owner of the immovable property, which property is disposed of to the Council in terms of this agreement.

7.3.1.2 The registration of transfer of ownership of the immovable property shall be effected by conveyancers nominated by the Council as soon as possible after the commencement of chapter 2 of the Legal Practice Act, notwithstanding that the effective date may not yet have arrived at the date of transfer.

7.3.1.3 The Council shall be liable for all rates, taxes and other imposts in respect of the immovable property from the effective date.

7.3.1.4 Between the date of registration of transfer of the immovable property and the effective date the Law Society shall be entitled to occupy the immovable property at its own risk on and free of occupational rent.

7.3.1.5 The Law Society shall be obliged to maintain insurance against damage or destruction to the immovable property until the transfer date. The Council shall obtain and maintain insurance against damage or destruction to the immovable property from the transfer date.

03/07/2018

7.3.1.6 The National Forum has entered into this contract as agent on behalf of the Council, and upon its establishment the Council will adopt and ratify the transaction relating to the immovable property.

7.3.2 **cash**

The Law Society shall transfer all cash held by it or on its behalf at the effective date (save for the excluded assets) to the bank account nominated in writing by the Council so as to be received in the Council's bank account for value on the effective date.

7.3.3 **contracts**

7.3.3.1 The Law Society cedes to the Council, on and with effect from the effective date, all its rights, title and interest in and to, and on and with effect from the effective date, the Law Society delegates to the Council all its obligations of any nature, contractual or otherwise, which cession and delegation are accepted by the Council.

7.3.3.2 To the extent that the benefit or burden of any contractual arrangement cannot effectively be assigned to the Council except with the consent of the other party to the contractual arrangement, the Law Society undertakes to use all reasonable endeavors to procure the written consent to such assignment on or prior to the effective date.

7.3.4 **intellectual property**

The Law Society cedes to the Council all its rights, title and interest in all intellectual property owned by the Law Society at the effective date. On that date the Law Society shall deliver to the Council all documentation and other materials embodying, depicting, containing, underlying or relating to such intellectual property, including all existing documents of title to the intellectual property, by placing such documentation and materials under the control and possession of the Council.

7.3.5 **debtors**

The Law Society cedes to the Council, with effect from the effective date, all its rights, title and interest in and to, the claims of the Law Society



03/07/2018

against all its debtors as at the effective date, which cession is accepted by the National Forum on behalf of the Council.

7.3.6 **benevolent fund**

The Council will take over the assets and liabilities of the benevolent fund of the Law Society with effect from the effective date, from which date the management of the benevolent fund will be under the control of the Council.

8. **Dispute resolution**

8.1 **separate, divisible agreement**

This clause is a separate, divisible agreement from the rest of this agreement and shall -

8.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the agreement and not to this clause. The parties intend that all disputes, including the issues set forth above, be and remain subject to mediation and arbitration in terms of this clause; and

8.1.2 remain in effect even if the agreement expires or terminates for any reason whatsoever.

8.2 **disputes subject to mediation and arbitration**

8.2.1 Any dispute arising out of or in connection with this agreement or the subject matter of this agreement, including without limitation, any dispute concerning:

8.2.1.1 the interpretation, application and effect of any provisions in the agreement;

8.2.1.2 the parties' respective rights or obligations under the agreement;

8.2.1.3 the rectification of the agreement;

- 8.2.1.4 any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating to or in any way connected with the agreement or any part or portion thereof;
- 8.2.1.5 the breach, expiry, termination or cancellation of the agreement or any matter arising out of the breach, expiry, termination or cancellation; and
- 8.2.1.6 any claims in delict, compensation for unjust enrichment or any other claim,

whether or not the rest of the agreement apart from this clause is valid and enforceable, shall be referred, in the first instance, to mediation as set out in clause 8.3, failing which to arbitration as set out in clause 8.4.

8.3 mediation

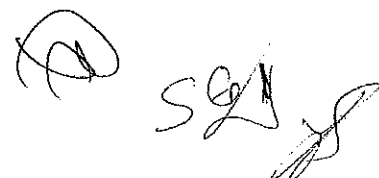
If the parties to the dispute are unable to agree on a mediator or to resolve any dispute by way of mediation within 14 days of any party to the dispute in writing requesting that the dispute be resolved by mediation, then the dispute shall be submitted at the instance of any party to and decided by arbitration as set out in clause 8.4.

8.4 arbitration

All disputes which cannot be settled by mediation as described in clause 8.3 shall be finally settled by arbitration in accordance with the provisions of the Arbitration Act, 42 of 1965 without recourse to the ordinary courts of law, except as explicitly provided for in clause 8.8.

8.5 appointment of arbitrator

- 8.5.1 The parties shall agree on the arbitrator, who shall be an attorney or senior advocate (with at least 10 years' experience in legal practice). If agreement is not reached within 14 days after any party calls in writing for such agreement, the arbitrator shall be an attorney or senior advocate (with at least 10 years' experience in legal practice) nominated by the chairperson of the Arbitration Foundation of Southern Africa for the time being.

Handwritten signatures and initials, including a large 'S' and 'G' and a stylized signature.

03/07/2018

- 8.5.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first party.

8.6 venue and period for completion of arbitration

The arbitration shall be held in Johannesburg and the parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

8.7 binding nature of arbitration

The parties irrevocably agree that, the decision of the arbitrator:

- 8.7.1 shall be binding on them;
- 8.7.2 shall be carried into effect; and
- 8.7.3 may be made an order of any court of competent jurisdiction.

8.8 application to court for urgent interim relief

Nothing contained in this clause 8 shall prohibit a party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

9. Disclosures

- 9.1 The Law Society makes the disclosures set out in clause 9.2 to the Council. The Law Society acknowledges that the Transferee has entered into this agreement on the strength of those disclosures.

- 9.2 The Law Society makes the following disclosures, all of which are made on the basis that they are true and correct to the best of the Law Society's knowledge and belief save to the extent that disclosures are made to the National Forum in writing prior to the date of signature of this agreement:

- 9.2.1 that it is the sole beneficial owner of its entire operation and undertaking, and is entitled to transfer the assets and rights to the Council;



03/07/2018

- 9.2.2 that save as may specifically be set out in this agreement, none of the assets or rights is, or at the effective date will be, subject to any lien, hypothec or encumbrance, and that the Law Society is able to give free and unfettered title to those assets and rights to the Council;
- 9.2.3 that the Law Society is not, and at the effective date will not be, in default of any material obligations affecting its operation and undertaking;
- 9.2.4 that between the signature date and the effective date the Law Society will not enter into any agreement, other than in the ordinary and regular course of its activities, which will adversely affect the rights of the Council under this agreement;
- 9.2.5 that it has disclosed to the National Forum, acting on behalf of the Council, all facts and circumstances which are or might be material to the Council in relation to the subject matter of this transaction.

10. Addresses and notices

For purposes of this agreement, including the giving of notices and serving of legal process (as applicable), the parties choose the following physical addresses as their *domicilia citandi et executandi*:

10.1 in the case of the Council to:

address: care of the National Forum on the Legal Profession
Spooral Park Building (ground floor)
2007 Lenchen Avenue South
Centurion

email: cmhlungu@justice.gov.za

and is marked for the attention of the chairperson; and

10.2 in the case of the Law Society to:

address: Procforum Building
123 Paul Kruger Street
Pretoria
0002

03/07/2018

fax no: 012 321 7733

email: director@lsnp.org.za

and is marked for the attention of the Director.

10.3 The notice shall be deemed to have been duly given:

10.3.1 on delivery, if delivered to the party's physical address in terms of either clause 10.1 or 10.2 before 17h00 on a business day, or if delivered on a business day but after 17h00 on that business day, or on any day other than a business day, it will be deemed to have been given at 08h30 on the first business day after it was delivered;

10.3.2 on dispatch, if sent to the party's then fax number or email address before 17h00 on a business day, or if sent on a business day but after 17h00 on that business day, or on any day other than a business day, it will be deemed to have been given at 08h30 on the first business day after it was sent.

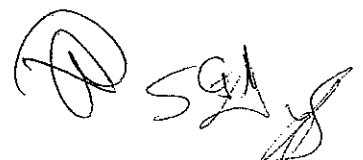
10.4 A party may change that party's address, fax number or email address for this purpose, by notice in writing to the other party such change to be effective only on and with effect from the 14th day after the giving of such notice.

10.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate service of such written notice or communication to that party notwithstanding that the notice or communication was not sent to or delivered or served at that party's chosen address in this clause 10.

11. General

11.1 entire contract

This agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement, and supersedes and novates in its entirety any previous understandings or agreements among the parties in respect thereof; and the parties waive the right to rely on any alleged provision not expressly contained in this agreement.

A handwritten signature in black ink, appearing to be 'D. S. G. J.', located at the bottom right of the page.

03/07/2018

11.2 no representations

A party may not rely on any representation which allegedly induced that party to enter into this agreement, unless the representation is recorded in this agreement.

11.3 variation, cancellation and waiver

No variation, addition to, deletion from or cancellation of this agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

11.4 indulgences

The grant of any indulgence, extension of any time or relaxation of any provision by a party under this agreement shall not constitute a waiver of any right by the grantor or prevent or limit or adversely affect the exercise by the grantor of any existing or future right of the grantor.

11.5 applicable law

This agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

11.6 jurisdiction of South African courts

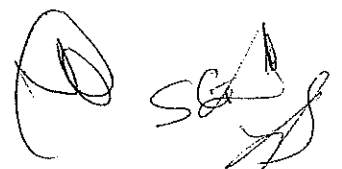
Subject to clause 8, the parties consent to the non-exclusive jurisdiction of the High Court of South Africa (North Gauteng Division, Pretoria), for any proceedings arising out of or in connection with this agreement.

11.7 costs

The costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this agreement shall be borne by the National Forum.

11.8 signature in counterparts

This agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

Handwritten signatures and initials in black ink, including a large circular signature and the initials 'SG' followed by a stylized signature.

03/07/2018

11.9 co-operation

Each of the parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.

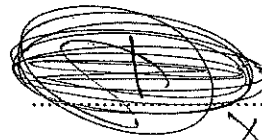
Signed at JOHANNESBURG

on 25 SEPTEMBER 2018.

Witnesses:

for **The National Forum on the Legal Profession:**

NORBERTO C. Ndzara.



X.M. BORWANA

Phisoa Y. Matlala.

DEPUTY
Chairperson, duly authorised

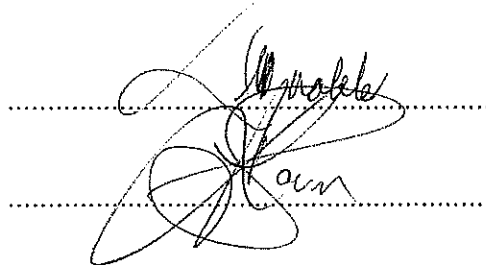
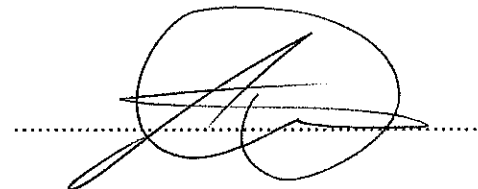
acting in terms of the powers granted to the National Forum in terms of section 97(2)(a) of the Legal Practice Act.

Signed at TRETORIA

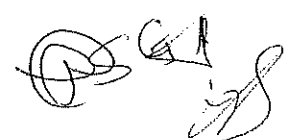
on 13 SEPTEMBER 2018.

Witnesses:

for **The Law Society of the Northern Provinces**

President, duly authorised



03/07/2018

Appendix 1

Agreement contemplated by Section 197(7) of the Labour Relations Act

(Transfer of employees of the Law Society)

1. The Parties

The parties to this agreement are -

1.1 The National Forum on the Legal Profession

(The National Forum)

acting on behalf of

The South African Legal Practice Council

(the Council)

established in terms of the Legal Practice Act 28 of 2014 and which will accede to this agreement as if it were a party to this agreement

and

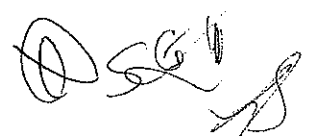
1.2 The Law Society of the Northern Provinces

(Transferor)

2. Interpretation

2.1 In this agreement and in the annexures to this agreement:-

2.1.1 clause headings are for convenience and are not to be used in its interpretation;

A handwritten signature in black ink, appearing to be 'D. S. G.' followed by a flourish.

03/07/2018

2.1.2 unless the context indicates a contrary intention an expression which denotes -

2.1.2.1 any gender includes the other genders;

2.1.2.2 a natural person includes a juristic person and vice versa;

2.1.2.3 the singular includes the plural and vice versa.

3. Definitions

In this agreement, unless otherwise stated or inconsistent with the context in which they appear, words and expressions defined in the Legal Practice Act or in the Attorneys Act or in employment legislation, or in the main agreement to which this agreement is an appendix, will bear the same meanings as they are there defined, and the following words and expressions shall bear the following meanings:

3.1 **"employees"** means all persons who are employed by the Transferor at the effective date;

3.2 **"employment legislation"** means collectively the Labour Relations Act, the Basic Conditions of Employment Act, 75 of 1997, the Employment Equity Act, 55 of 1998, the Occupational Health and Safety Act, 85 of 1993, the Compensation for Occupational Injuries and Diseases Act, 130 of 2001, the Skills Development Act, 97 of 1998, the Skills Development Levies Act, 9 of 1999, the Pension Funds Act, 24 of 1956 and the Unemployment Insurance Act, 63 of 2001;

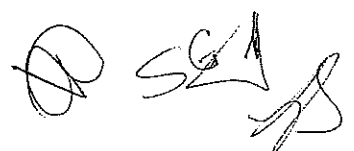
3.3 **"the Labour Relations Act"** means the Labour Relations Act, 66 of 1995;

3.4 **"medical aid schemes"** means the medical aid schemes of which the transferred employees are members by virtue of their employment with the Transferor;

- 3.5 **"provident fund"** means the Legal Provident Fund of which the transferred employees are members by virtue of their employment with the Transferor;
- 3.6 **"retirement fund"** means the retirement fund established or arranged by the Transferor for the benefit of the transferred employees, including in particular the Legal Provident Fund;
- 3.7 **"risk benefits"** means group life assurance, disability, funeral and group personal accident insurance benefits provided or arranged by or through the Transferor or the Transferor's retirement fund for employees of the Transferor;
- 3.8 **"signature date"** means the date of signature of the main agreement to which this is an appendix by the party signing it last in time;
- 3.9 **"transferred employees"** means all employees of the Transferor, all of whom are identified in schedule 1 to this Appendix as at the effective date.

4. **Transfer of employees**

- 4.1 The parties agree that, as the whole of the operation and undertaking of the Transferor (with the exception of certain excluded assets) is being transferred as a going concern as contemplated in section 197 of the Labour Relations Act -
- 4.1.1 the Transferee will be substituted in the place of the Transferor in respect of the contracts of employment of the transferred employees as at the effective date;
- 4.1.2 all the rights and obligations between the Transferor and each of the transferred employees at the effective date will, subject to the provisions of clause 6, continue in force as if they were rights and obligations between the Transferee and each transferred employee;

Handwritten signatures and initials, including a circular stamp and the letters 'SGA'.

03/07/2018

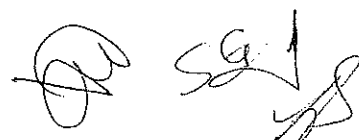
- 4.1.3 anything done before the effective date by or in relation to the Transferor will be considered to have been done by or in relation to the Transferee;
- 4.1.4 the transfer of employment will not interrupt the continuity of employment of any transferred employee and that employment will continue with the Transferee as if he or she is employed by the Transferor; and
- 4.1.5 the Transferee will become the employer of the transferred employees on the effective date.
- 4.2 The parties shall at all times use their best endeavours to ensure that a transfer of the contracts of employment of the transferred employees in terms of section 197 of the Labour Relations Act takes place with effect from the effective date.
- 4.3 By the effective date the Transferee must have made its own arrangements for risk benefits, and acknowledges that none of the risk benefits available to transferred employees as employees of the Transferor or as members of the Transferor's provident funds will be available to them from that date. The risk benefits made available by the Transferee shall on the whole be no less favourable to the transferred employees than the risk benefits made available by the Transferor.

5. Non-transferred employees

By virtue of section 97(2)(a) of the Legal Practice Act the Transferor shall be dissolved on the day immediately following the effective date. Accordingly, the Transferee shall discharge all of the Transferee's obligations in respect of those employees, if any, who are not transferred employees as if it were the Transferor.

6. Terms and conditions of employment

- 6.1 The general terms and conditions of employment of the transferred employees are as set out in their individual employment contracts or letters of appointment, if any, and in the human resources policies of the Transferor, all of which have been disclosed to the Transferee prior to the signature date.



03/07/2018

6.2 The terms and conditions of employment which are contained in the documents referred to in clause 6.1 above are supplemented by the further terms and conditions contained in this clause, provided that on the whole they are no less favourable to the transferred employees than those on which they are employed by the Transferor. In the event that the terms and conditions referred to in clause 6.1 conflict with the terms and conditions contained under this clause the terms and conditions contained in this clause shall supersede those referred to in clause 6.1, namely -

6.2.1 Inherent requirements of a job

Employees will not be declared redundant by the Council or by a Provincial Council on the basis that they are not suitably qualified or experienced to perform work of the Council or a Provincial Council. Affected employees shall be given training as in-service training or training towards achievement of qualification to enable them to perform different work required in terms of the Legal Practice Act or the inherent requirements of the work of the Council or Provincial Council.

6.2.2 Annual leave

6.2.2.1 The transferred employees are entitled to 21 days' annual leave which leave must be taken not later than six months after the end of the annual leave cycle. It is recorded that the Council intends to adopt new policies with regard to the management of leave cycles of employees, in terms of which a uniform system of leave cycles will be adopted in the place of individual leave cycles.

6.2.2.2 The annual leave shall include the period between Christmas day and New Year's day.

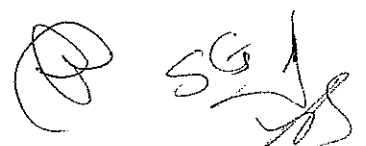
6.2.3 Paternity, maternity and family responsibility leave

Transferred employees shall be entitled to -

6.2.3.1 paid paternity leave of 14 days in the case of male staff;

6.2.3.2 paid maternity leave of four months in the case of female staff.; and

6.2.3.3 paid family responsibility leave (as provided for in section 27 of the Basic Conditions of Employment Act, 75 of 1997) of five days in any



03/07/2018

year, provided that transferred employees shall not be entitled to both paternity or maternity leave (as the case may be) and family responsibility leave in the case of the birth of a child.

SG

03/07/2018

6.2.4 **Retrenchment severance pay**

All the transferred employees whose employment may be terminated for operational requirements or whose contracts of employment are terminated in terms of section 38 of the Insolvency Act, 24 of 1936, shall be entitled to two week's severance pay for every completed year of service or part thereof.

6.2.5 **Payment of bonuses**

Transferred employees shall be entitled to an annual 13th cheque paid on the last day of the month on which they celebrate their birthdays.

6.2.6 **Salary and salary increment**

6.2.6.1 Employees are transferred to the Transferee on the basis of the same salary as they would be earning in respect of their employment contract and addenda thereto with the Transferor on the effective date.

6.2.6.2 All future salary increments shall be in terms of this agreement until such time as it is replaced by an agreement to be entered into by and between the Council and the employees or their representatives.

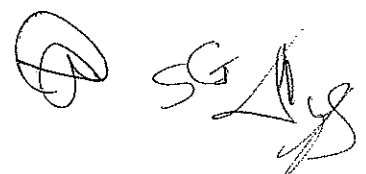
6.2.6.3 In awarding annual salary increases (if any) the Council will be guided by increases in the consumer price index (CPI) plus a performance increase to a maximum of 3% based on the following scorecard, namely, 1 to 59% = 0%, 60 to 69% = 1%, 70 to 79% = 2% and 80 to 100% = 3%.

6.2.7 **Promotion**

Transferred employees shall be entitled to promotion from one post level to another or from one position to another on the basis of a procedure which is open and transparent, and all qualifying employees who apply for a position shall be considered.

6.2.8 **Retirement date**

Unless otherwise agreed with the Council, all transferred employees will retire on the last day of the month during which they reach 65 years of age.



03/07/2018

6.2.9 Risk benefits

The Transferee will provide every transferred employee, at the cost of the Transferee, with the following risk benefits -

disability cover: 75% of the employee's gross salary at the date of disablement, payable up to the date of normal retirement, whereafter the employee will be entitled to normal retirement benefits;

life cover: 6.65 x annual salary at the date of death of the employee;

funeral cover: R30 000. This cover will apply to the employee and his or her immediate family, being a spouse and children.

6.3 Recordal

The Transferor records that there are no material terms and conditions of employment, including terms relating to retrenchments or benefits payable on termination of employment, which are applicable to the transferred employees other than those set out in the documents and policies referred to in clause 6.1 and those mentioned in clause 6.2 above.

6.4 Miscellaneous

All other benefits of employment of the transferred employees which are not catered for in either the transferred employee's employment contract or policies of the Transferor or this agreement shall be determined by the Basic Conditions of Employment Act or any other employment legislation.

7. Disclosure of the agreement in terms of section 197(7)(c) of the LRA

7.1 The Transferor undertakes to disclose the terms of this agreement to each transferred employee who is transferred to the Transferee.

7.2 Schedule 1 of this Appendix is a list of all transferred employees who do not accept that the terms and conditions under which they will be employed by the Transferee are on the whole no less favourable to them than on which they are



03/07/2018

currently employed by the Transferor. They reserve the right to enter into negotiations with the Transferee, during a period of twelve months after the effective date, to renegotiate the terms of their employment with the Transferee.

8. Liabilities in respect of past service

8.1 The Transferor shall provide fully in its accounting records for, and Transferee shall assume responsibility after the effective date for -

8.1.1 accrued and accumulated annual leave pay, including but not limited to any pay due in respect of long service leave as regulated by the Transferor's leave policies, of the transferred employees as at the effective date;

8.1.2 the value of the severance pay, as at the effective date, that would have been payable to the transferred employees in the event of a dismissal by reason of the Transferor's operational requirements;

8.1.3 the value of any bonus due or accruing to any transferred employees in respect of the year ending 31 October 2018;

8.1.4 any loan made by the Transferor to any of the transferred employees together with interest, if any, accruing thereon and outstanding as at the effective date; and

8.1.5 any other amounts that have accrued to the transferred employees but have not been paid to the transferred employees as at the effective date.

8.2 The Transferor and the Transferee will, on or after the date of signature but before the effective date, agree upon a valuation of severance pay that would have been payable to the transferred employees had they been dismissed on the effective date by reason of the Transferor's operational requirements. The valuation will be calculated in accordance with the policies and procedures of the Transferor.

8.3 A valuation of the amounts referred to in clause 8.1 as at the effective date shall be calculated in accordance with the policies and procedures of the Transferor in force on the signature date.

03/07/2018

8.4 In view of the fact that, in accordance with the Legal Practice Act, the Transferor will be dissolved on the day immediately following the effective date and that all of the Transferor's assets (save for certain excluded assets) shall be transferred, in terms of the main agreement, to the Transferee, the Transferee shall be liable for paying any amount referred to in clauses 8.1, 8.2 and 8.3 if any such amount becomes payable to any transferred employees. If any such payment is required to be paid within 12 months from the effective date payment of same shall be made in terms of the Transferor's policies and the terms of employment between the Transferor and the affected transferred employee.

8.5 After the expiry of 12 months from the effective date accumulated annual leave and severance pay shall be paid in terms of the policies and procedures to be determined by the Council.

9. **Transfer of transferred employees from transferor provident fund**

9.1 The parties record that the employees' retirement benefits are covered under the Legal Provident Fund.

9.2 The Transferor records that at the effective date the benefits of employees of the Transferor in the Legal Provident Fund will be fully funded.

9.3 It is recorded that the National Forum has requested the trustees of the Legal Provident Fund to recognize and accept the Transferee as an employer under the provisions of the rules of that Fund and that the trustees of the Transferor provident fund have agreed that the transferred employees will remain and continue as members of the Legal Provident Fund. The Transferee's contribution to a transferred employee's retirement funding shall on the whole be no less favourable to the transferred employees than the contribution made by the Transferor.

9.4 The Council in consultation with the Legal Provident Fund will determine the mechanism through which the legal profession will be represented on the board of trustees of the Legal Provident Fund.

03/07/2018

10. Medical aid benefits

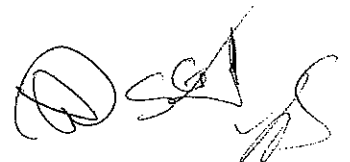
The Transferee shall from the effective date make the same contributions to the medical aid schemes as were made by the Transferor prior to the effective date, subject to the rules of those schemes and in terms of the contracts of employment of the transferred employees.

11. General benefit recordal and indemnities

- 11.1 The Transferor records that, as at the effective date, all contributions payable by the Transferor and the transferred employees to the provident fund and the medical aid schemes shall have been paid.
- 11.2 The Transferee undertakes to discharge fully its obligations to the transferred employees from the effective date and hereby irrevocably indemnifies and holds the Transferor harmless against any loss, liability, damage or expense of any nature whatsoever which the transferred employees may suffer as a result of, or which may be attributable to any claim of any transferred employee or trade union pursuant to the Transferee's failure to comply with the provisions of the relevant employment legislation.
- 11.3 The Transferor records that it and the provident fund do not have any liabilities, whether actual or contingent, to any of the transferred employees for any post-retirement medical aid contributions or costs and that none of the transferred employees has any claim, whether based upon contract, practice, equity or otherwise to a subsidy paid by the Transferor towards the transferred employees' post-retirement medical aid costs.

12. Loans and guarantees in relation to employees

Details of all loans made by the Transferor to any of the transferred employees as at the signature date are set out in the **Loan Schedule** attached hereto.



03/07/2018

Signed at JOHANNESBURG on 25 SEPTEMBER 2018.

For the Transferee



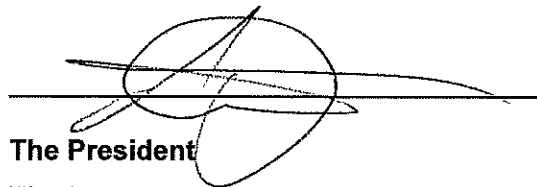
M. BOQWANA
The Chairperson

National Forum on the Legal Profession

acting in terms of the powers granted to the National Forum in terms of section 97(2)(a) of the Legal Practices Act.

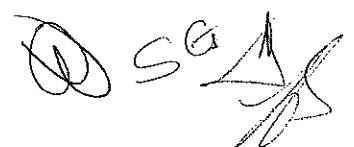
Signed at PRETORIA on 13 SEPTEMBER 2018.

For the Transferor



The President

The Law Society of the Northern Provinces



03/07/2018

Schedule 1

(Appendix 1)

List of employees who do not accept the terms of employment

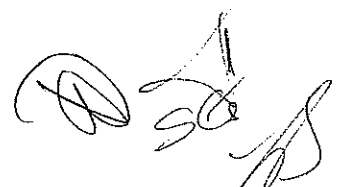
[The content of this section is crossed out with a large diagonal line.]

[Handwritten signature and initials, including "SG"]

03/07/2018

Loan Schedule

(See clause 12)

Handwritten signature and initials in black ink, located at the bottom right of the page. The signature appears to be 'D. S. A.' followed by a stylized flourish.