



19 August 2018

## **BRIEFING NOTE ON THE LEGAL PRACTICE REGULATIONS, 2014 MADE IN TERMS OF SECTION 109 OF THE LEGAL PRACTICE ACT**

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### **1. INTRODUCTION**

- The Minister of Justice and Correctional Services tabled the Legal Practice Act Regulations in Parliament in July 2018 for approval.
- The Regulations are done in accordance with section 109 of the Legal Practice Act, 2014 and only deal with those specific issues specified in section 109.
- The Regulations deal with the establishment of the Provincial Legal Councils, which must be done before the 31 October 2018, when the National Forum of the Legal Profession (NF), ceases to exist.

### **2. BACKGROUND**

- The Select Committee on Security and Justice adopted the Legal Practice Amendment Bill [B11B – 2017] in November 2017, which amended the Legal Practice Act 28 of 2014 (LPA).
- The Legal Practice Act was amended to *inter alia* provide for the:
  - Further regulation of the duration of the National Forum of the Legal Profession (NF) until 31 October 2018 when its functions would be taken over by the South African Legal Practice Council to (a) be established when Chapter 2 of the LPA comes into operation (to be announced by Proclamation in the Government Gazette;
- Chapter 2 of the LPA provides for the establishment, structure, functions and powers of the South African Legal Practice Council and Provincial Councils.

### **3. MAIN PROVISIONS OF THE REGULATIONS**

- Provides definition of each of the nine provincial councils to be established and the respective high court jurisdictional areas under which they will operate;
- Sets out *inter alia* the (a) election procedure for the establishment of the provincial councils; (b) respective nomination procedures for attorneys and advocates to serve on these councils; and (c) voting procedure.
- Every Provincial Council (a) must (i) establish a Committee comprising two attorneys and two advocates; (ii) determine their powers, duties and functions; (ii) designate members as Chairperson and Deputy Chairperson of the Committee; (b) may (i) dissolve the Committee



or remove any member from serving on the Committee and (ii) determine the meeting procedures of the Committee.

## COMPOSITION

- All the Provincial Councils except Gauteng consist of **10 members** (legal practitioners).
- **Gauteng Provincial Council will consist of 12 members.**
- **Fifty percent** of Provincial Councils must consist of **female members.**
- **In addition, the following demographics must be complied with:**

**Table: Composition of Provincial Councils**

	<u>Eastern Cape Provincial Council</u>	<u>Free State Provincial Council</u>	<u>Gauteng Provincial Council</u>	<u>KwaZulu- Natal Provincial Council</u>	<u>Limpopo Provincial Council</u>	<u>Mpumalanga Provincial Council</u>	<u>Northern Cape Provincial Council</u>	<u>North West Provincial Council</u>	<u>Western Cape Provincial Council</u>
Attorneys – Black	4	4	4	4	4	4	4	4	4
Attorneys - White	2	2	4	2	2	2	2	2	2
Advocates - Black	2	2	2	2	2	2	2	2	2
Advocates - White	2	2	2	2	2	2	2	2	2
Total Legal Practitioners	10	10	12	10	10	10	10	10	10

## POWERS OF PROVINCIAL COUNCILS

- Provincial Councils have the powers to *inter alia* regulate the attorneys and advocates professions (legal practitioners) within their respective jurisdictions, including vocational training, admission and enrolment as legal practitioners; maintaining the rolls of legal practitioners; consideration for exemptions from the requirement to perform community service; cancellation or suspension of enrolment of legal practitioners; consider applications regarding the establishment of legal aid clinics and institute urgent proceedings in the High Court to for example, suspend a legal practitioner from practice.

## 4. CONCLUSION

- The Minister made the Regulations in consultation with National Forum (the 6 months period for making Regulations expired on 30 April 2018).
- There is thus a time-pressure for the approval of the Regulations by Parliament in order to avoid a legislative and regulatory gap in the event that the Provincial Councils are not established before 31 October 2018.
- The Regulations only deal with those issues prescribed in section 109 of the Act, as discussed above.
- It is not possible for Parliament to amend Regulations.
- It is recommended that the Select Committee on Security and Justice approve the Regulations.