

**CONSTITUTION OF THE SOCIETY OF ADVOCATES
OF NAMIBIA**

(updated until 2017)

PART I

1. NAME

The name of the Society shall be “The Society of Advocates of Namibia”.

(Amended on 30 November 1990 and 13 November 1995)

2. DEFINITIONS

In this Constitution, unless the context indicates otherwise –

“advocate” means any legal practitioner who practises law for his or her own account –

(a) only upon a brief of a lawyer acting on behalf of client; and

(b) in the manner traditionally associated with the conduct and customs of advocates in private legal practice in Namibia;

“Associate Member” means an associate member as contemplated by Article 5.3

(Inserted on 30 November 2001 and *mutatis mutandis* amended in September 2011)

- “Bar Council” means the Bar Council of the Society constituted in terms of clause 11 of this Constitution;
- “Bar of the High and Supreme Court of Namibia” means the Society
- “High Court” means “the High Court of Namibia” established under Article 78(1)(b) of the Namibian Constitution;
- “lawyer” means a legal practitioner or a person who practices law in any other country, but –
- (a) shall, subject to paragraph (b), not include a person who is in the employment of another person who is not a legal practitioner;
 - (b) shall include a legal practitioner in the employ of a law centre, the Registrars of the High Court and Supreme Court of Namibia and any official in the Ministry of Justice of Namibia or in the office of the Attorney-General of Namibia who is authorised to act in legal matters on behalf of the Government of Namibia or any other person;

“legal practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 other than an advocate;

“member” means an advocate who is a member of the Society and shall include an associate member and a pupil member;

(Amended on 30 November 2001)

“pupil member” means any person who intends to practise as an advocate in Namibia and who has been admitted by the Bar Council to serve pupillage at the Bar of the High and Supreme Court of Namibia;

“Society” means “the Society of Advocates of Namibia”;

“Supreme Court” means “the Supreme Court of Namibia” established by Article 78(1)(a) of the Namibian Constitution.

(Amended on 13 November 1995)

3. **OBJECTS**

The objects of the Society are :

- 3.1 The protection of the Namibian Constitution, the fundamental rights and freedoms enshrined therein and the principles of democracy, the rule of law and justice for all;
- 3.2 The establishment and maintenance of an independent pool of specialist forensic experts to render a high standard of professional legal services to all persons requiring legal assistance;
- 3.3 The supervision, maintenance and enhancement of the standards of conduct and ethics of its members and that of legal practitioners;
- 3.4 The consideration and promotion of improvements in the teaching and practice of the law and in the administration of justice;
- 3.5 The promotion and encouragement of co-operation between members and other legal practitioners, the Law Society of Namibia, lawyers, the public, the Government of Namibia, the International Bar Association and other professional bodies representing the interests of lawyers;
- 3.6 The representation and presentation of views of its members in relation to matters falling within the objects of the Society.

(Amended on 13 November 1995)

4. INTERNATIONAL BAR ASSOCIATIONS

- 4.1 The Society and its members shall abide by and conform to the lawful decisions of the Council of the International Bar Association insofar as those decisions are not repugnant to this

Constitution and/or the decisions of this Society and have been ratified by this Society.

(Amended on 20 November 1990 and 29 November 1991)

- 4.2 The Bar Council shall from time to time appoint a representative to represent the Society on the Council of the International Bar Association and may authorise the payment of the reasonable travelling and out of pocket expenses of such representative to attend the meetings of such Council out of the funds of the Society.
- 4.3 The Bar Council may, by resolution, invite a Bar, which not a Bar of the High and Supreme Courts of Namibia, as defined herein, to be admitted as an Associate Bar of the Society.
- 4.4 The Bar Council shall not admit such Bar as an Associate Bar to the Society unless it has first received a written report from the President of the Society to which shall be annexed the constitution of such Bar to be admitted, its code of ethics and conduct, a list of individual members and in which report it is stated that the Bar to which an invitation to become an Associate Bar should be extended –
- (a) adheres to a written code of ethics and conduct that is the same or similar to that of the Society;
 - (b) adheres to the referral principle;
 - (c) is a genuinely independent institution, free of state control or influence and subscribes unreservedly to the principle of the rule of law and an independent judiciary;

(d) is composed of practitioners whose academic qualifications are on par with the academic qualifications to practise law as an individual member of the Society;

(e) provides a systematic induction to the practice of advocacy consistent with and approximating to the practice of the Society's pupillage and advocacy training schemes;

(f) is financially and organisationally sound;

(g) if admitted as an Associate Bar the interests of the Society would thereby not be materially prejudiced.

4.5 A Bar that accepts an invitation to be admitted as an Associate Bar of the Society shall in writing, declare that it accepts such associate membership on terms that oblige it to subscribe to the Constitution of the Society and to continue to comply with the requirements set out in paragraph 4.4 above and such Associate Bar upon admission, on a date to be determined by the Bar Council, enjoys such rights and obligations as a constituent member, save only, that a representative of an Associate Bar shall not be vested with a vote."

(Amended on 3 December 2004)

PART II

MEMBERS

5. 5.1.1 Any legal practitioner who practises or intends to practise as an advocate in Namibia and who does not practise or intends to practise otherwise than an advocate shall be

eligible to become a member of the Society; Provided that no person shall be admitted as a member of the Society entitled to practise as a legal practitioner unless he or she has completed a period of pupillage of not less than eight months as a pupil of the Society and has sat for and passed the practical and theoretical examinations set by the Bar Council or has been exempted from such pupillage or examinations, either wholly or in part, by the Bar Council.

(Amended on 12 March 1990, 20 November 1990 and 13 November 1995 and subsequently)

- 5.1.2 During the period of pupillage a pupil shall not be entitled to accept briefs or receive any remuneration to accept briefs in the course of such pupillage without the sanction of the Bar Council or to practise on his own account and shall not be liable for the payment of any subscription or dues to the Society.
- 5.1.3 The Bar Council shall frame rules, which may be amended from time to time, governing the practical implementation of the services of such pupil member under pupillage and the duty of practising members of the Society to undertake the training of pupil members assigned to them by the Bar Council and matters incidental thereto.
- 5.2 A General Meeting of the Society may elect to Honorary Membership persons who have achieved distinction in the practice of law or the administration of Justice. Honorary Membership shall not confer any rights under this Constitution.
- 5.2 A Every member in full-time practice shall be required to hold

chambers in a building approved by the Bar Council.

(Adopted in September 2011)

5.3

- 5.3.1 Any person who is duly admitted as a legal practitioner and has been exempted from holding a 'Fidelity Fund Certificate' in terms of Section 76(2) of the Legal Practitioners Act, No 15 of 1995, is entitled to apply for associate membership of the Society, which may, in its discretion, grant such associate membership;
- 5.3.2 No associate member shall be permitted to engage in full-time practice unless he or she practices in a town outside Windhoek;
- 5.3.3 The ordinary rules regarding pupillage and the bar examination will apply to associate members intending to practice on a full-time basis unless such associate member has been exempted from such pupillage or examinations, either wholly or in part, by the Bar Council. These ordinary rules may be relaxed in the case of all other categories of associate members in the sense that such associate members may be permitted to complete their pupillage over a longer period or be exempt from such pupillage or examinations, either wholly or in part as the Bar Council may, in its discretion, decide upon application to it;
- 5.3.4 Associate members will not be required to hold chambers unless in full-time practice;
- 5.3.5 In terms of Article 5.2A read with Article 5.3.2 (and without in any manner derogating from those rules and

merely for the sake of clarification) all associate members in full-time practice outside Windhoek shall be required to hold chambers in a building approved by the Bar Council;

5.3.6 The Secretary-General may appoint an associate member in a legal aid and/or in an amicus curiae matter to handle the defence of an accused;

5.3.7 Associate members will pay such bar dues, levies and other charges as the Bar Council may from time to time determine as being applicable to such members;

5.3.8 Associate members are entitled to use the common room, library and photocopy machine;

5.3.9 Associate members may attend meetings of the Society but shall have only observer status and no voting rights, unless they are in full-time practice in which case they shall have the same rights as ordinary members;

5.3.10 Associate members may use the title "Associate Member of the Society of Advocates of Namibia" in all instances in which ordinary members are permitted to use the title, "member of the Society of Advocates of Namibia";

5.3.11 Save as set out in the foregoing provisions, associate members will in all respects be subject to the rules of professional ethics and the constitution and rules of the Society;

5.3.12 The provisions of Articles 6.1 to 6.4 as well as 7 to 10 shall apply mutatis mutandis to associate members."

6. 6.1 Every person described in Clause 5.1.1 who is prepared to accept this Constitution and the obligations imposed thereunder as binding on him and has signed the roll of members referred to in Clause 8 hereof within one month of the coming into operation of this Constitution, shall thereby become a member.

6.2 Thereafter application for membership of the Society, with proof of the Applicant's qualification, shall be made in writing to the Secretary-General of the Society, who shall submit the application to the next meeting of the Bar Council.

(Amended on 29 November 1991)

6.3 In the event of the Bar Council being of the opinion that the applicant possesses the necessary qualifications and is of good character, the Bar Council shall authorise his admission to membership of the Society and the Secretary-General shall forthwith notify the applicant that he may become a member subject to his signing the roll and paying the subscription for the current year as determined by the Society. On complying with such notification, including the signing of the roll of members, the Applicant shall become a member.

(Amended on 29 November 1991)

6.4 No person shall become a member until he has duly signed the roll of members; Provided, however, that where the Applicant has, at any time been admitted as a legal practitioner who practise for personal gain, the Bar Council shall not authorise his admission to membership unless satisfied that he shall have ceased to have any capital invested in the business with which he was previously connected, or to be in any way interested

therein, and provided that he has made a declaration to that effect in his application for admission to membership.

(Amended on 13 November 1995)

7. If the Bar Council decides not to authorise any Applicant's admission the Secretary-General shall forthwith refer it to the Society for a decision by meeting of members, whose decision shall be final.

(Amended on 29 November 1991)

8. The Secretary-General shall open and maintain in Windhoek a roll of members. The roll shall be kept up to date by the Secretary-General by deleting the names of those who have ceased to be members and by permitting other persons to become members in terms of this Constitution. Upon signing the roll of members the signatories shall become bound by the provisions of this Constitution and be deemed to consent to the obligations imposed thereunder. The roll shall be headed :

“We the undersigned, having read the Constitution of the Society of Advocates of Namibia undertake to abide by that Constitution (and any amendments thereof as and when duly made) and by all decisions and actions lawfully taken thereunder.”

(Amended on 30 November 1990 and 29 November 1991)

9. No member shall hold a brief with or act professionally in any way in Namibia with any person who does not, in terms of the applicable legislation, have the right of audience in courts in Namibia and in which persons are entitled by law to legal representation.

(Amended on 13 November 1995 and in September 2011)

10. Membership of the Society shall cease :
- 10.1 Upon resignation duly accepted by the Bar Council;
 - 10.2 Upon expulsion in the manner prescribed by this Constitution;
 - 10.3 If the Bar Council so decides; on the ground that the member is no longer an advocate who normally practises in Namibia;

(Amended on 30 November 1990 and on 13 November 1995)

- 10.4 If the Bar Council decides that the member has lost the necessary qualification for membership prescribed in Clause 5.1.1 hereof.

Provided that in the case of 10.3 and 10.4 the member shall have the same right of appeal (*mutatis mutandis*) as in the case of expulsion; and provided further that cessation of membership shall in no way affect the member's liability for amounts owing to the Society or for any actions or conduct during his membership.

PART III

BAR COUNCIL

- 11. 11.1 The property and management of the affairs of the Society shall be vested in a Bar Council.
- 11.2 The Bar Council shall consist of the President, Vice-President, Secretary-General and Treasurer and such additional member(s) as a meeting of members may from time to time decide.

(Amended on 29 November 1991)

- 11.3 The Bar Council shall be deemed to be duly constituted notwithstanding any vacancy in the number of its members.
12. The election of members of the Bar Council shall take place in the following manner :
- 12.1 The said office bearers shall be elected at the Annual General Meeting of the Society by the show of hands, subject to 12.2 hereof.
- 12.2 Should any member present at the meeting so demand, the election shall be by secret ballot.
- 12.3 Each person nominated for membership of the Bar Council shall be nominated and seconded by a member of the Society either present at the meeting or by nomination in writing signed by the proposed and seconder and handed to the Secretary-General prior to such meeting.
- (Amended on 29 November 1991)
13. The members of the Bar Council shall retire annually under completion of the election of the incoming Bar Council. All retiring members shall be eligible for the re-election.
14. In the event of the death, resignation or incapacity of any member of the Bar Council, the Bar Council may appoint someone to serve as a member during such incapacity or until the next annual election in due course of the members of the Bar Council.
15. 15.1 The Bar Council shall, subject to any directions that may be given to it by the Society in General Meeting, have the following powers and duties :

- (a) To frame such regulations and give such rulings as are necessary in its opinion for giving effect to the provisions of this Constitution.
- (b) To frame such rules and to give such rulings relating to the members in their professional capacity as it from time to time may deem advisable.
- (c) To represent the members of the Society in any matter of general concern to the Society, to exercise control over all members in matters affecting their professional status, rights, privileges and conduct and subject to the provisions of this Constitution, to take such action as it deems fit.
- (d) To provide guidance to members in respect of fees.

(Amended September 2011)

- (e) To hear and settle disputes between members and other persons as to fees due to any member or as to any other matter affecting their professional relations.
- (f) To regulate and control the finances of the Society.
- (g) To make contracts of behalf of the Society in regard to the Society's affairs and property.
- (h) To appoint sub-committees from members to assist the Bar Council in carrying out the objects of the Society.

- (i) Subject to the provisions of this Constitution to maintain discipline among members and to prescribe and enforce sanctions for breachers of discipline.
- (j) To decide whether a person has the necessary qualification prescribed by this Constitution for admission as a member.
- (k) To represent the Society in Court and in legal proceedings insofar as may be permitted in law, in regard to any matter affecting the Society, and any member.
- (l) To maintain, regulate and control access to and use of a Bar Library and a Bar Common Room.
- (m) To do all such other things as may, in its opinion, further the objects of the Society or are necessary for or incidental to the carrying out of those objects or the abovementioned powers.

15.2 All regulations, rulings and decisions made and actions taken in pursuance of the above powers shall be of force and effect unless and until set aside by a General Meeting of the Society duly convened in terms of this Constitution.

15.3 Nothing in this clause shall be deemed to override the power of the Society in general meeting to exercise any of the functions of the Bar Council or to take any action it may think fit within the scope of the Constitution.

15.3.A (a) Notwithstanding 15.2 and 15.3 above and 28 below, no decision taken by the Bar Council not to confer Silk – and in terms of the rules of the Society and in terms of the powers of the Bar Council set out in

paragraphs 15.1(a), (b) and (c) [read with paragraph 15.1(m) above – shall be subject to any appeal or re-consideration on the merits by the Society in General Meeting on that decision, provided however that the Society in General Meeting shall be entitled, upon written application made by the unsuccessful applicant, to review the decision of the said Bar Council not to confer Silk on him or her.

(b) The remedy that may be granted by the Society in General Meeting, pursuant to an application to review as aforementioned having been made, will be limited to reviewing and setting aside that decision and to refer the applicant's Silk application back to the said Bar Council for reconsideration afresh, subject to such terms or conditions that it may deem meet. Without derogating from the generality of the last-mentioned the Society in General Meeting shall be empowered to direct that a member or members that formed part of the said Bar Council that initially considered the relevant application for Silk, shall not be part of the Bar Council considering the application afresh.

(c) Nothing in this section shall be construed as prohibiting any member of the General Meeting who was a member or participant of the said Bar Council that decided not confer Silk on a particular applicant, to exercise any of their rights to participate in the General Meeting or Special General Meeting (as the case may be) reviewing that decision.

(Amended on 21 November 2014)

- 15.4 No member of the Bar Council shall be liable in damages or otherwise, for any loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office, or in relation thereto or arising therefrom and every such member, shall be indemnified out of the funds of the Society against all liability, loss or expense incurred by him as such.
16. The Bar Council may in all matters of common concern to the Society and that of the Law Society of Namibia or any other Society of advocates, attorneys, barristers, solicitors or legal practitioners, co-operate with the Council thereof and for such purpose arrange joint meetings and take joint action in relation to such matters.

(Amended on 13 November 1995)

17. The Bar Council may delegate any of its functions to a Committee of no less than two of the members of such Council but the Bar Council may at any time terminate or modify such delegation.
18. The Bar Council shall meet from time to time as it may decide. The President, or in his absence, the Vice-President, or in his absence, the Senior member present shall, preside.

(Amended on 29 November 1991)

The quorum for all meetings shall be three, and the President shall have a deliberative as well as a casting vote.

(Amended on 29 November 1991)

Minutes of all meetings shall be kept and such minutes shall be available for inspection by members.

PART IV

MEETINGS OF MEMBERS

19. Meetings of members of the Society shall be held :
- (a) Once a year during the months of November or December or such date as the Bar Council shall decide, such meeting being the Annual General Meeting, or
 - (b) When so ordered by the Bar Council, or
 - (c) On a requisition signed by not less than three (3) members and handed in to the Secretary-General and stating the purpose for which the meeting is required, on a date to be fixed by the Bar Council.

(Amended on 29 November 1991)

20. At all meetings every member present shall be entitled to vote, and the President (or in his absence the Vice-President) (or in his absence the Senior member present) shall preside and have a deliberative and casting vote. The quorum shall be one half plus one of the number of members.

(Amended on 29 November 1991)

21. The business of any meeting shall be only such business as is specially mentioned in the notice convening the meeting and such other business as the President may allow having due regard to the notice convening the meeting.

(Amended on 29 November 1991)

22. At least seven days clear notice shall be given of every meeting of members provided that in case of urgency and if the matter to be considered is not a proposed amendment of this Constitution, shorter notice may be given subject to the approval of two members of the Bar Council. All such notices shall not be invalidated by the mere fact that such notice has not been received by any member.

PART V

DISCIPLINE

23. **23.1 Professional misconduct**

23.1.1 The Bar Council, or any one or more of its members to whom it may delegate its functions in that regard shall inquire into the professional conduct of any member whenever it is in the opinion of the Bar Council desirable to do so.

23.1.2 The procedure to be followed in such an investigation shall, in each case, be determined by the Bar Council or the member or members thereof conducting the inquiry, in accordance with the nature of the matter to be investigated.

23.1.3 If the Bar Council, having conducted an inquiry into the professional conduct of a member, or having received a report from its member or members to whom its functions in that regard were delegated, decided that the member has been guilty of conduct which in its opinion is professional misconduct, it may admonish, fine, suspend or expel such member provided that no members be suspended or expelled unless not less than three members of the Bar Council shall vote in favour thereof

and provided further that any such member will have the right to appeal to the Society.

(Amended on 30 November 1990)

23.1.4 No member of the Bar Council shall be disqualified from taking part in any such investigation or decision referred to in this Clause by reason merely of the fact that he has received information otherwise than in the course of the investigation, about any matter forming the subject matter of the investigation.

23.1.5 It shall be the duty of every member to furnish the Bar Council or a member or members thereof to whom the functions have been delegated under sub-clause 23.1 hereof, all such information as he may be called upon to furnish, and to produce to the Bar Council or such member or members thereof all such books, documents or other records as he may be called upon to produce.

23.1.6 No member shall be relieved of his obligations under sub-clause 23.1.5 hereof, by reason of the fact that the information, books, documents or records called for will or may relate to his own conduct in respect of which no charge has yet been formulated.

23.2 **Undisciplined Conduct**

23.2.1 The Bar Council or any one or more of its members to whom it may delegate its functions in that regard shall inquire into the undisciplined conduct of any member whenever it is in the opinion of the Bar Council desirable to do so and for the purposes of such enquiry the

provisions of clauses 23.1.2 up to and including 23.1.6 shall *mutatis mutandis* apply.

23.2.2 Without derogation of the generality of the meaning of the expression “undisciplined conduct” a member shall be deemed to be guilty of undisciplined conduct if he or she—

- (a) Fails to pay his or her subscription fees or any other moneys due to the Society after demand has been made that such fees or moneys be paid within 7 days from the date of demand;
- (b) Fails to comply with or commits any breach of the provisions of this Constitution, the provisions contained in the uniform code of ethics or any other rules of the Society;
- (c) Acts contrary to any decision, ruling or instruction of the General Meeting of the Society or the Bar Council.

(Paragraph 23.2 inserted on 29 November 1991)

PART VI

FINANCE

24. 24.1 The Treasurer shall open and maintain a Banking Account or Building Society Account in the name of the Society of Advocates of Namibia or Bar Council shall determine, which shall also decide as to how the Banking Account shall be operated on.

(Amended on 30 November 1990)

- 24.2 All subscriptions and other monies received on behalf of the Society shall be paid into this account as soon as possible.
25. The Treasurer shall present annually at the Annual General Meeting a statement reflecting the income and disbursements of the Society during the past year.
26. The Society shall be able to obtain property including fixed property and the ownership of such property shall vest in the Society.
27. 27.1 The Society shall have the right to appoint personnel, including typists and messengers and pay their salaries.
- 27.2 The Treasurer shall be responsible for the personnel management, payment of the salaries of such personnel and the handling of problems of members with the personnel and *vice versa*.
- 27.A. The Society is not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been establish.

(Amended on 21 November 2014)

28. **APPEALS**

- 28.1.1 Any member against whom a decision has been made by the Bar Council may by notice in writing to the Secretary-General within 7 days after notification of such decision, appeal against the decision.

(Amended on 29 November 1991)

28.1.2 Upon receipt of such notice of appeal by the Secretary-General, the Bar Council shall then within 7 days call for a meeting of members to hear the appeal.

(Amended on 29 January 1991)

PART VII

GENERAL

29. Notice of any matter affecting the Bar or any member or other Advocate or other legal practitioner in Namibia may be brought before the Bar Council in writing by any person, and the Bar Council may, subject to the provisions of this Constitution, take such action thereon as it shall deem fit.

(Amended on 13 November 1995)

30. At the Annual General Meeting the President shall present to the members a Report dealing with matters affecting the Bar.

(Amended on 29 November 1991)

31. Any notice of the Society sent to a member's Chambers shall be deemed to have been duly sent for the purposes of this Constitution. For the purpose of this provision it shall suffice to place such notice in the allocated pigeonhole of members.

32. This Constitution shall come into force immediately and may be amended by a decision of the Society of a two-thirds majority at a General Meeting duly convened in terms of this Constitution.

33. All decisions, rules, regulations, Bar Council rulings and instructions heretofore binding members prior to this Constitution or from time to time adopted or laid down by the Bar Council of Namibia shall *mutatis mutandis* remain in operation and binding on members as though made under this Constitution except insofar as they are at variance with this Constitution and until rescinded in terms of this Constitution.
34. All the decisions, rules, regulations and rulings of the General Council of the Bar of South Africa which were binding on the members immediately prior to the date of which the membership of the Society to the said General Council has been terminated, shall remain in operation and binding on members as though they were made by the Bar Council except insofar as they are at variance with this Constitution and until rescinded in terms of this Constitution.
35. Upon the winding-up or liquidation of the Society it is obliged to give or transfer its assets remaining after satisfaction of its liabilities to some other company, society or association with objects similar to those of the Society.

(Amended on 21 November 2014)

This Constitution has been accepted by all the members of the Bar Council of Namibia at a General Meeting of members on 13 November 1995 subject to such amendments as effected thereafter.

PRESIDENT

SECRETARY-GENERAL