

ARRANGEMENT OF SECTIONS

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 87 of the Legal Practitioners Act [*Chapter 27:07*] and after consultation with the Chief Justice and the President of the Law Society of Zimbabwe, made the following regulations:—

Title

1. These regulations may be cited as the Legal Practitioners (Contingency Fee Agreements) Regulations, 2014.

Application

2. These regulations shall apply to all contingency fee agreements that are entered into on or after the date on which these regulations are published.

Interpretation

3. In these regulations—

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- “client” means the person who has instructed a legal practitioner to provide legal services;
- “contingency fee” means the fee due to a legal practitioner in terms of a contingency fee agreement;
- “contingency fee agreement” means an agreement entered into between a registered legal practitioner and his or her client in terms of which no fee, other than court fees or disbursements, is payable by the client for the legal practitioner’s services in connection with any proceedings unless the proceedings result in a decision or settlement in the client’s favour, wholly or partially;
- “expenses” means the disbursements incurred by a legal practitioner, including the cost of obtaining an expert’s report;
- “Law Society of Zimbabwe” means the corporate body referred to in section 51 of the Legal Practitioners Act [Chapter 27:07];
- “legal practitioner” means a legal practitioner who is registered in terms of section 5 of the Legal Practitioners Act [Chapter 27:07];
- “normal fee”, in relation to work performed by a legal practitioner in connection with proceedings, means the fee, excluding expenses, that he or she would reasonably have charged his or her client on a legal practitioner and client basis in the absence of a contingency fee agreement;
- “proceedings” means any proceedings before any court of law, tribunal, arbitrator or any functionary having the powers of a court of law or the power to issue, grant or recommend the issuing of any licence, permit or other authorisation for the performance of any act or the carrying on of any business or other activity, but excludes any criminal proceedings;
- “the Act” means the Legal Practitioners Act [Chapter 27:07].

Contingency fee agreements

4. Subject to the Act and these regulations or any other law, a legal practitioner may enter into a contingency fee agreement with a client regarding the legal services that he or she provides to his or her client in connection with proceedings if in his or her opinion there is a reasonable prospect of success in such proceedings.

Prior information

5. Brief summaries of the following matters shall be provided by the legal practitioner to his or her client in writing before a contingency fee agreement is entered into, and the agreement shall reflect the fact that these summaries have been provided—

- (a) other possible ways of financing or dealing with the client's litigation, for example, through legal aid or trade union representation; and
- (b) the customary procedure for determining the costs payable to the legal practitioner in the absence of a contingency fee agreement; and
- (c) the fact that the fee payable by the client may be higher than the normal fee; and
- (d) the amounts that might be spent on expenses; and
- (e) when expenses become payable; and
- (f) the customary rule that in the event of the client being unsuccessful in the proceedings he or she might become liable to pay the taxed costs of his or her opponent in the proceedings, in accordance with such scale as is fixed by the court.

Requirements

6. (1) A contingency fee agreement shall be recorded in writing in a document which is signed by the legal practitioner and his or her client and a copy shall be given to the client upon signature.

(2) A contingency fee agreement shall specify—

- (a) the proceedings to which the agreement relates;

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- (b) what will constitute either success or partial success in the matter;
- (c) the value of any award that might be made in favour of the client in a matter where the subject of claim brought by or against the client does not sound in money;
- (d) the contingency fee payable by the client in the event of either success or partial success;
- (e) how the client or the legal practitioner may prematurely terminate the effect of the agreement;
- (f) the consequences of premature termination for each of them;
- (g) the basis upon which the legal practitioner's premature termination fee is to be determined;
- (h) the client's right, if any, to make critical decisions regarding how the matter is to be conducted;
- (i) the client's right to withdraw from the agreement within seven days after his or her date of signature thereof, by giving written notice to the legal practitioner, in which event the legal practitioner shall be entitled to recover from the client the contingency fee (if success or partial success has been achieved within the period of seven days) or the fees and expenses incurred in protecting or pursuing the interests of the client during and immediately following such period, such fees being determined on a legal practitioner and client basis (if no such success has been achieved);
- (j) the need for any amendments to or replacements of the agreement to be recorded in writing in a document which is signed by the parties.

(3) A contingency fee which is to be determined on the basis of applying a premium to the normal fee that would be charged by the legal practitioner shall not exceed such normal fee by more than 200 per cent.

(4) A contingency fee which is to be determined on the basis of a percentage of the total amount or value of any award in favour of the client shall not exceed 25 per cent of such amount or value.

Matters not to be included

7. A legal practitioner shall not include in a contingency fee agreement any provision that—

- (a) requires the legal practitioner's consent before a claim may be abandoned, discontinued or settled on the instructions of the client; or
- (b) prevents the client from terminating the effect of the agreement; or
- (c) prevents the client from changing legal practitioners.

Invalidity

8. No part of a contingency fee agreement that fails to comply with the provisions of these regulations shall be valid or enforceable.

Settlement

9. (1) An offer of settlement made to a party who has entered into a contingency fee agreement may only be accepted after the client gives his or her legal practitioner a written instruction to accept the offer, in which he or she acknowledges prior receipt of a certificate from his or her legal practitioner which provides—

- (a) the full terms of the proposed settlement; and
- (b) an estimate of the amount or other relief that might be obtained by taking the matter to trial or finality; and
- (c) an assessment of the client's prospects of success or failure if the matter is taken further; and
- (d) a comparison of the legal practitioner's fees that will be incurred if the matter is settled with his or her fees that would be incurred if the matter were taken further; and
- (e) the reasons why the proposed settlement is recommended, if this is the case.

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(2) Any settlement reached where a contingency fee agreement has been entered into shall be made an order of court if the matter was before a court.

Review of contingency fee agreement by Law Society of Zimbabwe

10. (1) A client may refer a contingency fee agreement or the fee claimed thereunder for review by the Council of the Law Society of Zimbabwe.

(2) On review, the Law Society of Zimbabwe, through its Council may set aside or modify, in whole or in part, any provision of the agreement or any fee claimed thereunder which, in its reasonable opinion, is unconscionable or unreasonable or does not comply with the provisions of these regulations:

Provided that any aggrieved party shall have the right to appeal against or refer the Council's decision for review by a competent court.