

# LEGAL SERVICES ACT 2017

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## Principal Act

<b>Act. No. 2017-15</b>	<i>Commencement (LN.2019/126) exception of the following provisions- ss.5, 6(6), (10)-(16), 8-9, 11, 15, 26-29, 30(3), (4), 31(1), (3), 32(3), (4), 33(3), (4), 35, 38-41, Sch. 1-2, 4-5</i>	1.7.2019
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AN ACT TO REGULATE THE PROVISION OF LEGAL SERVICES IN AND FROM WITHIN GIBRALTAR, TO MAKE PROVISION FOR AND IN CONNECTION WITH THE CREATION, MEMBERSHIP AND FUNCTIONS OF A LEGAL SERVICES REGULATORY AUTHORITY; TO MAKE PROVISION WITH RESPECT TO DISCIPLINARY MATTERS IN RESPECT OF THE CONDUCT OF LAWYERS; TO PROVIDE FOR, AND IN CONNECTION WITH, THE INCORPORATION, MEMBERSHIP AND FUNCTIONS OF THE LAW COUNCIL OF GIBRALTAR; AND FOR PURPOSES CONNECTED THEREWITH.

**PART I  
PRELIMINARY**

**Title and commencement.**

1.(1) This Act may be cited as the Legal Services Act 2017.

(2) This Act shall come into force on a day to be appointed by the Minister by notice in the Gazette and different days may be so appointed for different provisions of this Act.

**Interpretation.**

2.(1) In this Act, unless the context otherwise requires-

“Authorised Person” has the meaning given to it in section 6;

“Barrister” means a Barrister approved, admitted and enrolled under the Supreme Court Act;

“the Board” means the Law Council Board constituted by section 33;

“Court” means the Supreme Court;

“Designated Country” means the United Kingdom, any Member State of the European Union, any British Overseas Territory, any Member State of the Commonwealth and the United States of America or such other country that the Minister may prescribe;

“EEA lawyer” has the same meaning as in Part IVA of the Supreme Court Act;

“exempt person” shall be construed in accordance with section 7;

“existing” means in existence immediately before the commencement of this Act;

“firm” and “law firm” in this Act includes a partnership, a limited liability partnership, a body corporate and a sole practitioner practising as a law firm which is in the

business of providing legal services in or from within Gibraltar or to any person being within Gibraltar;

“foreign lawyer” is a lawyer admitted to practice in a Designated Country other than Gibraltar;

“the former Council” shall be construed in accordance with section 30(2);

“Government” means the Crown in right of Her Majesty’s Government of Gibraltar;

“lawyer”, except in the expressions “EEA lawyer” and “European lawyer”, means a barrister or a solicitor;

“Law Costs Draftsman” means a person who fulfils the criteria set out in Schedule 4 and who is on Part 7 of the Register established under section 6;

“Legal Executive” means a person who is enrolled as a Fellow in the Chartered Institute of Legal Executives and holds a valid practising certificate issued by the said Chartered Institute or fulfils the criteria set out in Schedule 4 and is in either case on either Parts 4 or 6 of the Register established under section 6;

“LSRA” means the Legal Services Regulatory Authority and has the meaning assigned by section 14;

“Minister” means the Minister for Justice;

“person” in this Act means, where the context so permits, reference to individuals or law firms;

“practise law” shall be construed as meaning the provision of legal services in accordance with sections 3 and 4; and

“practising certificate” shall be construed in accordance with the Solicitors (Practising Certificates) Rules 2005 or any other Rules made with respect to practising certificates under section 18;

“Practising Certificate Rules” means the Solicitors (Practising Certificates) Rules 2005 or any other Rules made with respect to practising certificates under section 18;

“Register” means the Register of Authorised Persons established by section 6;

“registered European lawyer” means a European lawyer, as defined in Part VI of the Supreme Court Act, who is registered as provided for in that Act;

“registration fee” means the initial fee to enable registration on the Register established under this Act or the annual fee for the purposes of maintaining registration as an Authorised Person under this Act as the case may be;

“Solicitor” means any person who is approved, admitted and enrolled as a solicitor of the Supreme Court of Gibraltar under the provisions of the Supreme Court Act; and

“statutory authority” means an authority, agency, commission or other body established by statute.

(2) In this Act, any reference to “the Law Council” is a reference to the body corporate constituted by virtue of section 30 and any reference to “the former Council” is a reference to the former body known as the General Council of the Bar.

## PART II THE PROVISION OF LEGAL SERVICES

### **The Provision of Legal Services.**

3. For the purposes of this Act, a person provides legal services if, not being an exempt person in relation to that particular activity—

- (a) he carries on or holds himself out as able to carry on any reserved legal activity as defined in this Act;
- (b) he provides, or holds himself out as able to provide, for reward, any reserved legal activity of any description on Gibraltar law in or from within Gibraltar to members of the public or businesses generally including for the avoidance of doubt in the role of legal executive or in-house Counsel;
- (c) he is a partner, associate, consultant, director or legal executive providing reserved legal activities within or of a firm which provides, or holds itself out as able to provide, for reward, any reserved legal activity of any description on Gibraltar law in or from within Gibraltar to members of the public or businesses generally or to any person being within Gibraltar;
- (d) he is employed by the Government to provide any reserved legal activity of any description to the Government;
- (e) he is employed or contracted on a full-time basis by any business or company to provide any reserved legal activity on Gibraltar law to that business or any associated or subsidiary business, company or entity in or from within Gibraltar;
- (f) he carries on any other activity prescribed by the Minister for the purposes of this Act.

*Reserved legal activities*

**Meaning of “reserved legal activity”.**

4.(1) In this Act “reserved legal activity” means-

- (a) the exercise by any person or the holding himself out as able to exercise, a right of audience before any court or tribunal in Gibraltar;
- (b) the conduct of litigation;
- (c) reserved instrument activities;
- (d) probate activities;
- (e) any other activity which consists of one or both of the following-
  - (i) the provision of legal advice or assistance on Gibraltar law in connection with the application of Gibraltar law or with any form of resolution of legal disputes;
  - (ii) the provision of representation in connection with any matter concerning the application of Gibraltar law or any form of resolution of legal disputes.

(2) For the avoidance of doubt notarial activities as defined in Part B of Schedule 1 and the administration of oaths being activities governed by the Commissioners for Oaths and Public Notaries Act 1953 are not within the meaning of “reserved legal activity”, the practice of law or the provision of legal services under this Act.

(3) Part A of Schedule 1 makes provision about what constitutes each of those activities specified in subsection (1) and as to the categories of persons who may conduct such activities.

(4) “Reserved legal activity” does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator, chairman or member of an inquiry, tribunal or arbitrator) but does include the representation of a party in a, mediation, arbitration, tribunal or inquiry.

(5) For the purposes of subsection (1)(e) “legal dispute” includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person’s legal rights or liabilities.

(6) Section 12 makes provision for adding legal activities to the reserved legal activities.

*Carrying on the activities.*

**Entitlement to carry on a reserved legal activity.**

5.(1) The question whether a person is entitled to carry on an activity which is a reserved legal activity is to be determined solely in accordance with the provisions of this Act and the Supreme Court Act.

(2) No person is entitled to carry on an activity (“the relevant activity”) which is a reserved legal activity unless-

- (a) the person is an Authorised Person in relation to the relevant activity, or
- (b) the person is an exempt person in relation to that activity.

**Authorised Persons, Practising Certificates and Entitlement to Provide Legal Services.**

6.(1) For the purposes of this Act “Authorised Person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means a person registered in Parts 1-9 of the Register provided for under subsection (2) and the holding by such a person of a practising certificate to the extent that this Act or any other Act requires the holding of a practising certificate to undertake the relevant activity.

(2) There shall be a Register of Authorised Persons registered under this Act which shall be composed of such Parts as provided for under subsection (3) and as may be prescribed by the Minister after consultation with the Chief Justice, LSRA and Law Council.

(3) Subject to all other provisions of this Act and the Supreme Court Act, the following classes of persons shall be entitled to be registered under this Act in the following Parts of the Register-

- (a) a person who is approved, admitted and enrolled as a Barrister or Solicitor in Gibraltar under the provisions of the Supreme Court Act and holds a practising certificate under the Practising Certificate Rules and is providing or wishes to provide on registration under this Act legal services in or from within Gibraltar (Part 1); or
- (b) person who is admitted as a Barrister or Solicitor in Gibraltar under the provisions of the Supreme Court Act for the purposes of appearing as Counsel in particular Gibraltar proceedings and is providing or wishes to provide on registration under this Act legal services in or from within Gibraltar for the purposes of those particular proceedings only [Part 2];
- (c) a person who is approved, admitted and enrolled as a Barrister or Solicitor in Gibraltar under the provisions of the Supreme Court Act and is in employment or intends to take up employment with the Government for the proposes of

providing legal services to the Government or is seconded, following employment by the Government, to a statutory authority (Part 3);

(d) a person who is a Legal Executive and who during the course of his employment is providing or will provide legal services in or from within Gibraltar and is employed by a person registered in Part 1 of the Register or a partnership or company whose partners or members are persons registered under Part 1 of the Register and who are in the business of providing legal services in or from within Gibraltar (Part 4);

(e) a person who is a lawyer or a foreign lawyer who is either-

(i) employed or contracted by a company or other body-

(aa) in an in-house capacity, for the purposes of providing legal services to that company or body; or

(bb) in any other capacity in which he provides legal services to that company or body, and

is providing or wishes to provide on registration under this Act legal services in or from within Gibraltar to that company or body; or

(ii) employed or contracted by a Law Firm registered under Part 9 of the Register, who, during the course of their employment or contract provides legal services for and on behalf of the Law Firm in support of a person or persons registered under Part 1 of the Register (Part 5);

(f) a person who is-

(i) employed or contracted by a company or other body as a Legal Executive in an in-house capacity for the purposes of providing legal services to that company or other body; or

(ii) employed or contracted in any other capacity, but during the course of their employment or contract provides legal services to that company or other body, and

is providing or wishes to provide on registration under this Act legal services in or from within Gibraltar to that company or other body (Part 6);

(g) a person who is a Law Costs Draftsman and holds an accredited recognised qualification in that field and intends to offer services in Gibraltar on an employed or self-employed basis for the purposes of the assessment of costs in contentious or non-contentious matters in Gibraltar and matters incidental thereto (Part 7);

- (h) a person who is an EEA lawyer or a registered European lawyer (Part 8).

In accordance with subsection (4) Part 9 of the Register shall include particulars of Law Firms.

(4) Subject to registration as an Authorised Person and compliance with all requirements established under this Act and the Supreme Court Act, Barristers and Solicitors may organise their provision of legal services either as sole practitioners, in partnerships, limited liability partnerships or body corporates (“a Law Firm”) provided that-

- (a) a Law Firm that holds itself out as providing legal services in or from within Gibraltar shall not be permitted to have a partner or shareholder who is not an Authorised Person under this Act, unless the LSRA is satisfied that the ultimate beneficiaries are Authorised Persons under this Act, except-
  - (i) subject to subsection (17), where such shareholder is a trustee of a trust for the benefit of or whose class of beneficiaries is limited to Authorised Persons under this Act; or
  - (ii) in the circumstances provided in the proviso below;
- (b) the Law Firm shall have a permanent place of business within Gibraltar;
- (c) if the Law Firm is a body corporate a majority of its Directors shall be Authorised Persons;
- (d) particulars of the Law Firm and its address shall be provided on an annual basis to the LSRA that shall register the Law Firm in Part 9 of the Register; and
- (e) the partners or shareholders of any firm, partnership, limited liability partnership or body corporate to which this subsection applies shall provide the LSRA annually with a list of its partners or shareholders as the case may be which will be available for public inspection.

Provided that a Law Firm may apply to the LSRA for permission in such manner provided by regulations that no more than 10% of the equity of the Law Firm be held legally or beneficially by a person who is not an Authorised Person under this Act provided that such person may not by virtue of such equity interest provide legal services under this Act without authorisation.

(5) A person entitled to be registered under this Act may apply to be registered as provided for in Part III of this Act.

**(6) No person shall provide legal services unless he is so registered or exempted under the provisions of this Act in relation to that particular legal service.**

(7) The Chief Justice may, after consultation with the Minister, the LSRA and the Law Council, prescribe the fees payable in relation to-

- (a) applications for first registration on the Register established by this Act (“the initial registration fee”);
- (b) annual registration under this Act (“the annual registration fee”);

and different fees may be prescribed-

- (i) in respect of registration under different Parts of the Register;
- (ii) by reference to the length of time applicants have either held practising certificates, or been approved, admitted and enrolled as a Barrister or Solicitor in Gibraltar under the provisions of the Supreme Court Act;
- (iii) in respect of applicants who have been appointed One of Her Majesty’s Counsel.

(8) A person wishing to be registered on the Register or being on the Register and wishing to remain on the Register shall pay such initial registration fee and annual registration fees as may be prescribed.

(9) Subject to compliance with the Practising Certificate Rules, registration on the Register and payment of the registration fee shall entitle the Authorised Person to the issue of a certificate evidencing registration on the particular Part of the Register.

(10) It shall be the duty of Authorised Persons on the Register to ensure compliance with the Code of Conduct established by and under section 16 and all other codes of discipline or conduct issued by the LSRA or rules of law applicable to Authorised Persons.

(11) Subject to the other provisions of this Act, and in particular (a) and (b) below, persons on Parts 4, 5 and 6 shall have no rights of audience in the courts or tribunals in Gibraltar and may not conduct litigation except-

- (a) persons on Part 4 of the Register shall have such rights of audience provided for under paragraph 1(6) of Schedule 2 and may conduct litigation if they are working under the supervision of a person on Part 1 of the Register;
- (b) persons on Part 5 or 6 of the Register may conduct litigation if they are instructing a person registered on Part 1 or 3 of the Register.

(12) Subject to the other provisions of this Act and any other Act, and in particular subsection (11) above, a person who is not otherwise exempt who wishes to undertake

restricted activities specified in paragraphs 2, 3, 4 and 5 of Schedule 1 must hold a valid practising certificate and be registered on Part 1, 3 or 8 of the Register.

Provided that a person on Part 2 of the Register, who holds a valid practising certificate, may exercise a right of audience as described in paragraph 2 of Schedule 1.

(13) Subject to such other provisions of this Act or any other Act and unless the person is otherwise exempt a person wishing to undertake such restricted activities specified in paragraph 6 of Schedule 1 must be registered on Part 1, 2, 3, 4, 5, 6 or 8 of the Register.

(14) A person registered on Part 4 or 6 of the Register may conduct the activities described in paragraphs 4 and 5 of Schedule 1 if employed or contracted by and under the supervision of a person registered on Part 1 or 3 of the Register.

(15) A person registered on Part 7 of the Register may conduct the activities described in paragraphs 2, 3 and 6 of Schedule 1, restricted to costs matters before any court or tribunal, if they are instructed by an Authorised Person registered on Part 1 or 3 of the Register.

(16) Authorised Persons on Parts 1, 2, 3, 4 and 8 of the Register are officers of the Supreme Court and, subject to the provisions of this Act and the Supreme Court Act, the Supreme Court and the Court of Appeal may exercise the same jurisdiction in respect of such persons as any of the superior courts of law or equity in England and Wales might have exercised immediately before the passing of the Supreme Court of Judicature Act 1873 in respect of any solicitor or attorney admitted to practise there.

(17) A trust under subsection (4)(a)(i) is only valid for the purposes of this section if-

- (a) the LSRA authorised, in writing, the setting up of the trust, its terms and the identity of the trustees;
- (b) the trust is registered with the LSRA;
- (c) the trust is available for public inspection in such manner as the LSRA shall approve; and
- (d) no addition, amendment or change is made to the trust without the prior written consent of the LSRA.

### **Exempt persons.**

7. In this Act, “exempt person”, in relation to an activity (“the relevant activity”) which is a reserved legal activity, means a person who, for the purposes of carrying on the relevant activity, is an exempt person by virtue of-

- (a) Schedule 2 (exempt persons); or

- (b) paragraph 8 of Schedule 4 (additional categories of exempt persons during transitional period).

*Offences*

**Offence to carry on a reserved legal activity if not entitled.**

8.(1) It is an offence for a person to carry on an activity (“the relevant activity”) which is a reserved legal activity unless that person is either-

- (a) entitled to carry on the relevant activity, registered in the Register, has paid the requisite registration fees and is the holder of a valid practising certificate as may be required; or
- (b) an exempt person.

(2) In proceedings for an offence under subsection (1), it is a defence for a person to show that he did not know, and could not reasonably have been expected to know, that the offence was being committed.

(3) A person who is guilty of an offence under subsection (1) is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

(4) A person who is guilty of an offence under subsection (1) by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly.

(5) This section shall not extend to-

- (a) any public officer drawing or preparing instruments in the course of his duty; or
- (b) any person employed merely to engross any document.

(6) This section shall be without prejudice to any other disciplinary sanction that may be imposed under the provisions of this Act.

**Offence to pretend to be entitled.**

9.(1) It is an offence for a person-

- (a) to wilfully to pretend to be entitled to carry on any activity which is a reserved legal activity or provide legal services when that person is not so entitled; or
  - (b) with the intention of implying falsely that that person is so entitled, to take or use any name, title or description.
- (2) A person who is guilty of an offence under subsection (1) is liable-
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 4 on the standard scale (or both); and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine ,or both.

*Interpretation*

**Regulatory arrangements.**

10.(1) In this Act references to the “regulatory arrangements” administered by the LSRA are to-

- (a) the arrangements under this Act and under the Supreme Court Act for authorising persons to carry on reserved legal activities;
- (b) the prescribed practice rules;
- (c) conduct rules made under this Act or under the Supreme Court Act;
- (d) disciplinary arrangements in relation to regulated persons (including its discipline rules), made under this Act or the Supreme Court Act;
- (e) the prescribed qualification regulations;
- (f) the prescribed compensation arrangements;
- (g) such systems of control to prevent and detect money laundering and terrorist financing that may be provided for under this Act or any other Act and require compliance by Authorised Persons;
- (h) any other rules or regulations, (however they may be described), and any other arrangements, which apply to or in relation to regulated persons(whether or not those arrangements, rules or regulations are contained in, or made under, an enactment); and
- (i) the prescribed licensing rules, (if any), so far as not within paragraphs (a) to (g).

(2) In this Act-

“compensation arrangements” means arrangements for the purposes of compelling regulated persons to take such action as may be necessary to relieve or mitigate losses or hardship suffered by persons in consequence of their failure to account for money received by them in connection with their activities as regulated persons;

“conduct rules” means any rules or regulations (however they may be described) as to the conduct required of regulated persons;

“discipline rules” means any rules or regulations (however they may be described), as to the disciplining of regulated persons;

“practice rules” means any rules or regulations (however they may be described), which govern the practice of regulated persons;

“qualification regulations” means any rules or regulations relating to-

(i) the education and training which persons must receive; or

(ii) any other requirements which must be met by or in respect of them,

in order for them to be authorised under this Act or the Supreme Court Act to carry on an activity which is a reserved legal activity; and

(iii) any other rules or regulations relating to the education and training which regulated persons must receive or any other requirements which must be met by or in respect of them, (however they may be described).

(3) In this section “regulated persons”, means any class of persons which consists of or includes persons who are authorised under this Act or the Supreme Court Act to provide legal services or carry on an activity which is a reserved legal activity.

**Continuity of existing rights and transitional protection.**

11. Schedule 4 makes provision for the continuity of existing rights and for certain persons to be deemed, during a transitional period, to be authorised to carry on certain activities.

**Alteration and Extension of reserved legal activities.**

12.(1) The Minister may, by Order, amend section 4 or Schedule 1 (reserved legal activities) so as to add any legal activity to the activities which are reserved legal activities for the purposes of this Act.

(2) An Order under subsection (1) may be made only after consultation with the Chief Justice, LSRA and the Law Council.

**Recommendations that activities should cease to be reserved legal activities.**

13.(1) The LSRA, Law Council or Chief Justice may recommend that an activity should cease to be a reserved legal activity.

(2) The Minister must consider any recommendation made by the LSRA, Law Council or Chief Justice for the purposes of this section and determine whether to give effect to such a recommendation and if so may, by Order, amend section 4 or Schedule 1 (reserved legal activities) to such effect.

**PART III****THE LEGAL SERVICES REGULATORY AUTHORITY****Establishment of the Legal Services Regulatory Authority.**

14.(1) There is hereby created a body corporate to be known as the Legal Services Regulatory Authority, (in this Act referred to as the “LSRA”) which shall be capable of exercising all the functions of an incorporated company.

(2) The provisions of Schedule 3 shall have effect with respect to the membership of the LSRA, their terms of appointment, tenure and remuneration.

(3) The validity of anything done by the LSRA shall not be affected by any defect in the appointment of a member.

(4) Neither the LSRA, nor any of its members, officers, servants or any person to whom it has delegated its duties, shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of the LSRA’s functions under this Act unless the act or omission is shown to have been in bad faith.

Save for the definitive finding by a court of bad faith, the LSRA shall indemnify its members, officers, servants or agents in respect of the costs brought by any third party in respect of anything done or alleged to have been done or omitted to be done in the discharge or purported discharge of functions conferred on the LSRA by this Act.

**The general functions of the LSRA.**

15.(1) The LSRA shall be responsible for the regulation of the legal profession in Gibraltar and of the provision of legal services in or from within Gibraltar.

(2) Subject to the provisions of this Act, the functions of the LSRA shall be-

- (a) to set, promote and secure, in the public interest, standards of behaviour and professional performance necessary to ensure that-

- (i) persons to whom legal services are provided by Authorised Persons receive a good service; and
  - (ii) the constitutional principle of the rule of law is upheld; and
- (b) to carry out the regulatory functions set out in subsection (3).
- (3) For the purposes of this section “the regulatory functions” are-
- (a) protecting and promoting the interest of consumers;
  - (b) encouraging an independent, strong, diverse and effective legal profession;
  - (c) promoting and maintaining adherence to the professional principles set out in subsection (4);
  - (d) regulating the provision of legal services under this Act and the Supreme Court Act as provided for herein;
  - (e) recommending the making of rules regulating the admission of barristers and solicitors to practise in the Supreme Court, their professional practice, conduct and discipline (including, where appropriate, the delegation to any two or more barristers or solicitors, any of the powers conferred on the Chief Justice by section 34 of the Supreme Court Act (other than the power of disenrollment));
  - (f) administering such rules in relation to practice, discipline and conduct of Authorised Persons established, made or prescribed under this Act or the Supreme Court Act;
  - (g) administering applications and registrations on, and removals from, the Register;
  - (h) administering the application and issue of Practising Certificates to Authorised Persons;
  - (i) supervising the provision of legal services by Authorised Persons;
  - (j) investigating such matters as to the provision of legal services in Gibraltar that it considers appropriate;
  - (k) making recommendations to the Minister on any matter relevant to the provision of legal services in or from within Gibraltar referred to it by the Minister;
  - (l) working to ensure cooperation with the Law Council and the efficient performance of respective duties under this Act;

- (m) regulating the advertising, marketing or offer of legal services to the public;
  - (n) administering and fostering continuing professional development programmes to Authorised Persons;
  - (o) undertaking any action that it may deem necessary in the performance of or ancillary to its statutory functions; and
  - (p) monitoring the adequacy of systems of control to prevent, detect and report money laundering and terrorist financing by Authorised Persons.
- (4) For the purposes of this section “the professional principles” are that Authorised Persons should–
- (a) act with independence and integrity;
  - (b) maintain proper standards of work;
  - (c) act in the best interests of those being provided legal services;
  - (d) safeguard the confidentiality of those to whom legal services are provided; and
  - (e) maintain proper systems of control to prevent, detect and report money laundering and terrorist financing.
- (5) Without prejudice to the generality of subsections (1) to (4), the LSRA shall be responsible for the enforcement of the code of professional conduct prescribed under this Act.
- (6) The LSRA shall consult with the Law Council in the performance of its functions under subsections (3)(e), (i), (k), (m), (l) and (n).

#### **The Code of Conduct and Other Codes or Rules.**

16.(1) There shall be a Code of Conduct prescribed under this Act in regard to the professional conduct of and provision of legal services by Authorised Persons.

(2) The Code of Conduct referred to in subsection (1) shall be prescribed by the Chief Justice with the concurrence of the LSRA and Law Council. The Code of Conduct may be amended by the Chief Justice with the concurrence of the LSRA and Law Council.

(3) The Chief Justice with the concurrence of the LSRA and after consultation with the Law Council may prescribe such other Codes governing or providing for–

- (a) compensation arrangements;

- (b) investigation of complaints;
- (c) disciplinary arrangements;
- (d) discipline rules;
- (e) practice rules;
- (f) qualification rules;
- (g) the provision of on-site as well as off-site powers of the LSRA to review the effectiveness of the systems of control to prevent, detect and report money-laundering and terrorist financing; and
- (h) such other matters provided for in section 15.

(4) Authorised Persons must comply with the Code of Conduct and such other Codes at all times.

(5) Any breach of the Code of Conduct or other Codes shall be actionable as provided for under the Code of Conduct or such discipline rules made under this Act.

(6) A Code prescribed under subsection (3) may be amended by the Chief Justice with the concurrence of the LSRA and after consultation with the Law Council.

**Functions in relation to admission of barristers and solicitors.**

17. On the coming into force of this section, the functions of the Admissions and Disciplinary Committee under Part II of the Barristers and Solicitors Rules, (relating to admissions and enrolment), shall become functions of the LSRA.

**Functions in relation to practising certificates.**

18.(1) On the coming into force of this section-

- (a) the functions of the Registrar under the Solicitors (Practising Certificates) Rules 2005 made under section 38 of the Supreme Court Act (“the existing Practising Certificate Rules”) shall become functions of the LSRA; and
- (b) the function of making rules with respect to practising certificates shall cease to be a function of rules of court and shall become a function of the Chief Justice after consultation with the LSRA.

(2) Rules made under paragraph (b) of subsection (1) may-

- (a) revoke or vary the provisions of the existing Practising Certificate Rules;

- (b) make transitional provisions consequential on any such revocation or variation.

The existing Practising Certificate Rules shall continue in force subject to any revocation or variation made under this section.

(3) In accordance with subsection (1), applications for practising certificates made after the coming into force of this section shall be made to the LSRA and it shall be a function of the LSRA to ensure that the provisions of section 19(3) are enforced.

(4) On an application for a practising certificate, the LSRA shall ensure that the certificate will not be issued except on payment of the initial registration fee and annual registration fee.

#### **Functions in relation to lawyers' accounts rules.**

19.(1) On the coming into force of this section-

- (a) the functions of the Admissions and Disciplinary Committee under the Solicitors' Accounts Rules made under section 38 of the Supreme Court Act ("the existing Solicitor's Accounts Rules") shall become functions of the LSRA;
- (b) the function of making rules with respect to lawyers' accounts shall cease to be a function of rules of court and shall become a function of the Chief Justice after consultation with the LSRA.

(2) Rules made under paragraph (b) of subsection (1) may-

- (a) revoke or vary the provisions of the existing Solicitor's Accounts Rules;
- (b) make transitional provisions consequential on any such revocation or variation.

The existing Solicitor's Accounts Rules shall continue in force subject to any revocation or variation made under this section.

(3) The LSRA may, for the purpose of carrying out of the functions referred to in subsection (1)(a), and any similar functions under Rules made under subsection (1)(b), appoint a panel of auditors to assist it in carrying out investigations, reviews, examinations and other enquiries.

(4) Each member of the panel referred to in subsection (3) shall be a statutory auditor or member of an audit firm, within the meaning of the Financial Services (Auditors) Act 2009, and shall be paid such fees as may be agreed between the LSRA and the auditors.

#### **Intervention in Solicitor's Practice.**

20. On the coming into force of this section the LSRA shall have the powers and duties of the Chief Justice under the Supreme Court (Intervention in Solicitors Practice) Rules 2010.

Provided that the LSRA shall not intervene in a Solicitor's practice, without first making an application to the Chief Justice or a Judge designated by the Chief Justice and obtaining permission to so intervene.

**Functions in relation to education and training.**

21.(1) The LSRA may make provision for courses in professional conduct, continuing professional development and accounting and with respect to the requirements with which a person must comply to be admitted to any such course.

(2) The LSRA may make it a condition of the issue or renewal of a practising certificate that the applicant has attended and satisfactorily completed one or more of the courses referred to in subsection (1).

(3) The LSRA may charge to persons attending any of the courses referred to in subsection (1) such fees as it considers are reasonable.

(4) The LSRA may make it a condition of the initial issue of a practising certificate that the applicant has undertaken such pupillage or other course of training as may be specified by Rules made by the Chief Justice.

**Chief Executive and other staff of the LRA.**

22.(1) The LSRA shall appoint a person as its Chief Executive after consultation with the Law Council.

(2) The LSRA may appoint such other staff as it considers appropriate to assist in the performance of its functions.

(3) The Chief Executive and other staff shall be—

(a) appointed on terms and conditions determined by the LSRA;

(b) paid by the LSRA in accordance with provision made by or under the terms of their appointments.

**Financing of the LSRA**

23.(1) The LSRA shall be financed from the payment of—

(a) 80% of initial registration fees;

(b) 80% of annual registration fees; and

(c) 80% of fees paid in respect of practising certificates.

(2) The Chief Justice may by Order amend any or all of the percentage amounts contained in subsection (1) after consultation with the LSRA and Law Council.

### **Accounts, audit and annual report**

24.(1) The LSRA shall cause proper books of account to be kept of its income and other receipts and expenditure for each financial year and shall cause a statement of its accounts for each financial year to be prepared within three months after the end of that year.

(2) The accounts of the LSRA for each financial year—

(a) shall be audited and certified by a statutory auditor or audit firm, within the meaning of the Financial Services (Auditors) Act 2009, to be appointed annually by the LSRA; and

(b) shall be presented annually to the Minister, Chief Justice and the Law Council.

(3) A copy of the accounts of the LSRA prepared in accordance with subsection (2) shall, on payment of such reasonable fee as the LSRA may require, be furnished to any person on request during normal office hours at the offices of the LSRA.

(4) The financial year of the LSRA shall be such as may be determined by the LSRA.

### **Rules.**

25. Rules made by the Chief Justice under this Part shall be published by notice in the Gazette.

## **PART IV**

### **DISCIPLINARY MATTERS**

#### **Preliminary investigation of complaints, etc.**

26.(1) A complaint made in respect of the conduct of an Authorised Person in the course of his practice in Gibraltar or in the provision of legal services shall be initially investigated by the Chief Executive of the LSRA.

(2) The Chief Executive may, should he consider it appropriate in the case of any Authorised Person, investigate any such conduct as is referred to in subsection (1) or any matter relating to the systems of control to prevent, detect and report money laundering and terrorist financing without having received a complaint.

(3) For the purpose of an investigation under subsection (1) or (2), the Chief Executive may-

- (a) be assisted by such members of the staff of the LSRA or external lawyer as he considers appropriate;
- (b) appoint accountants to inspect books and bank accounts and conduct audits;
- (c) make such enquiries and take such other actions as he thinks necessary for the purpose of the investigation, and, in particular, may require any person to provide such information and documents in his possession or under his control as the Chief Executive believes necessary for the purpose of the investigation; and
- (d) if it appears to the Chief Executive that a person has in his possession or under his control any information or document which is needed for the purpose of the investigation but that that person has failed, after reasonable notice, to provide the information or document in a timely manner, the Chief Executive may apply to the Court for an order under subsection (4).

(4) If, on an application under subsection (3)(d), the Court considers that the person to whom the application relates has in his possession or under his control any information or document which the Chief Executive reasonably requires for the purpose of his investigation, the Court may order that person, within such period as the Court directs, to give that information or produce that document and to take such other action, if any, to assist the Chief Executive as the Court considers appropriate.

(5) If, without reasonable excuse, any person fails to comply with an order under subsection (4), he shall be guilty of contempt of court and liable to be punished accordingly.

**Procedure where conduct requires remedial action and action in respect of unauthorised persons.**

27.(1) If, on an investigation under section 26, the Chief Executive decides that the conduct to which his investigation related may require further action, he shall-

- (a) refer the case to the Disciplinary Tribunal established under section 28; and
- (b) notify his decision to the Authorised Person concerned and, if the investigation follows from a complaint, the complainant.

(2) If, on an investigation under section 26(1), the Chief Executive decides—

- (a) that the complaint is not justified; or
- (b) that the conduct to which the investigation related is not proved or is not such as to require further action,

he shall so inform the complainant and the Authorised Person concerned.

(3) A complainant dissatisfied with the decision of the Chief Executive under subsection (2) may within 14 days of the date thereof request by notice in writing that the Chief Executive's decision be reviewed by the Disciplinary Tribunal.

(4) If, on an investigation under section 26(2), the Chief Executive decides that the conduct to which his investigation related is not proved, or does not require further action, he shall so inform the Authorised Person concerned.

(5) If on the application of the LSRA the Court is satisfied-

- (a) that there is a reasonable likelihood that a person will contravene sections 5, 8 or 9 or the Schedules of this Act or the Supreme Court Act or subsidiary legislation made under this Act or the Supreme Court Act; or
- (b) that a person has contravened any such provision and that steps should be taken to remedy the contravention,

the Court may grant an injunction restraining that person from contravening or further contravening any such provision, or order that person and any other person who it appears to the Court is or was knowingly a party to a contravention to take such steps as the Court may direct to remedy that contravention.

(6) If on the application of the LSRA the Court is satisfied that a person has contravened any provision of this Act or the Supreme Court Act and either-

- (a) that profits have accrued to any person as a result of that contravention; or
- (b) that any client or person to whom legal services have been provided has suffered loss or been otherwise adversely affected as a result of that contravention,

the Court may order that person to pay into Court, or otherwise give security in respect of, such sum as appears to the Court to be just having regard to the extent of any such profit, loss or adverse effect.

(7) Any sum paid into Court pursuant to an order under subsection (6) shall be paid out as the Court may direct to persons who have entered into transactions as a result of which profits have accrued, or to persons who have suffered loss or other adverse effect, as mentioned in that subsection.

### **The Disciplinary Tribunal.**

28.(1) For the purposes of this Part, there shall be established a Disciplinary Tribunal appointed by the LSRA which shall-

- (a) consist of three members of the LSRA, (other than the Chief Executive) as Standing Members and such other members, being no more than nine, as may be appointed by the LSRA as Ordinary Members;
- (b) be a sub-committee of the LSRA and its decisions shall be deemed to be decisions of the LSRA;
- (c) perform its duties in panels of not less than three and no more than seven members.

(2) The members of the Disciplinary Tribunal shall appoint one of their members as Chairman who shall preside over meetings of the Tribunal and its panels. In the event of the Chairman's absence from any meeting, the members present may appoint one of their number to act as Chairman at that meeting.

(3) The Disciplinary Tribunal shall hear all cases referred to it under section 27, and, for the purpose of any such hearing-

- (a) lay persons shall not be in the majority; and
- (b) the quorum of the Tribunal shall be three of whom at least one shall be a Standing Member and one an Ordinary Member of the Tribunal; and
- (c) one member shall be a lay person.

(4) In this section "lay person" has the meaning given in paragraph 2 of Schedule 3.

(5) Any defect in the appointment of a member of the LSRA who takes part in any proceedings of the Tribunal shall not affect the validity of those proceedings.

(6) The members of the Disciplinary Tribunal shall be paid such fees and expenses in respect of their attendance at hearings and other meetings of the Tribunal as may be determined by the LSRA.

### **Hearings, decisions and appeals.**

29.(1) If, for the purpose of hearing a case referred to them under section 27, the Disciplinary Tribunal consider that they need to make a further investigation of the case referred to them-

- (a) they shall have the same powers as the Chief Executive under paragraphs (a) to (c) of section 26(3); and
- (b) if it appears to the Tribunal that a person has in his possession or under his control any information or document which is needed for the purpose of the

further investigation, but that that person has failed, after reasonable notice, to provide the information or document in a timely manner, the Tribunal may request the Chief Executive to apply to the Court for an order under section 26(4),

and for the purpose of an application made by virtue of paragraph (b), section 26(4) shall have effect as if–

- (i) the reference therein to an application under section 26(3)(d) were a reference to the application made by virtue of paragraph (b) above; and
- (ii) any reference therein to the Chief Executive included a reference to the Tribunal.

(2) At the hearing of a case referred to the Tribunal under section 27, the case may be presented by the Chief Executive or a lawyer on his behalf.

(3) If, on being seized of the case and before the hearing of a case referred to them under section 27, the Disciplinary Tribunal consider that action needs to be taken in respect of the Authorised Person's conduct, they may by way of interim measures–

- (a) suspend or impose conditions on the Authorised Person's practising certificate or suspend him from the Register and ban him from providing or undertaking legal services in Gibraltar for such time as it appears to the Tribunal to be appropriate;
- (b) order the Authorised Person to make payment of or towards the cost of the investigation save that notwithstanding anything contained in section 34 of the Supreme Court Act no costs of the hearing shall be recoverable and the costs recoverable under this section in respect of any investigation shall be capped at a figure of £20,000 or such other figure as the Minister may prescribe.

(4) If, on the hearing of a case referred to them under section 27, the Disciplinary Tribunal considers that action needs to be taken in respect of the Authorised Person's conduct, it may take all or any of the following steps by way of an interim or final measure–

- (a) suspend, impose conditions on or revoke the Authorised Person's practising certificate or suspend him from the Register and ban him from providing legal services or undertaking restricted legal activities in Gibraltar indefinitely or for such time as appears to the Tribunal to be appropriate and, in addition, if the Tribunal think fit, may recommend to the Chief Justice that the Authorised Person be struck off the Roll of the Court or removed from the Register established under this Act or both as the case may be;
- (b) impose a fine on the Authorised Person;
- (c) administer any reprimand to the Authorised Person;

- (d) order the Authorised Person to repay or forego any fee;
- (e) order the Authorised Person to make payment of or towards the cost of the investigation or the costs of enforcement of compliance in the event of a finding of misconduct save that notwithstanding anything contained in section 34 of the Supreme Court Act no costs of the hearing shall be recoverable and the costs recoverable under this section in respect of any investigation or enforcement of compliance in the event of a finding of misconduct shall be capped at a figure of £20,000 or such other figure as the Minister may prescribe.

(5) Any fine imposed under subsection (4)(b) and any costs ordered to be paid under subsection (3)(b) or (4)(e) shall be recoverable as a civil debt.

(6) An appeal shall lie to the Chief Justice, or such other Judge designated by the Chief Justice for such purpose, from a decision of the Disciplinary Tribunal, including a decision as to costs. The Chief Justice may prescribe Rules of Court for that purpose.

(7) The Minister may, by Order, set a maximum fine which may be imposed in accordance with subsection (4)(b).

(8) A payment ordered, as an interim measure, in accordance with subsection 3(b) or 4(e), of or towards the cost of an investigation, shall be returned to the Authorised Person in the event that no finding of misconduct is made in respect of him in that case.

## PART V

### THE LAW COUNCIL AND ITS BOARD

#### **Incorporation of the Law Council.**

30.(1) On the coming into force of this section the existing body known as the General Council of the Bar shall by virtue of this Act be constituted as a body corporate under the name of the Law Council of Gibraltar and, as such, shall be capable of exercising all the functions of an incorporated company.

(2) The Law Council shall be limited by subscription. The liability of each member in any year shall be limited to the amount paid or payable by him in that year under this Part.

(3) Except in so far as any provision of this Part otherwise provides, the provisions of the constitution of the former Council shall not apply to the Law Council.

(4) Subject to subsection (5) the constitution of the Law Council shall be as set out in Schedule 5 to this Act.

(5) The constitution of the Law Council may be amended in such manner as provided therein except that no amendment shall be considered or passed that in the opinion of the Law Council Board is contrary to the terms or proper administration of this Act.

#### **Membership of the Law Council.**

31.(1) A person registered in any Part within Parts 1 to 8 of the Register shall to the extent and for such time as they remain on the Register be entitled to hold, and shall automatically hold, membership of the Law Council.

(2) On the commencement of this section, and for the twelve-month period thereafter, any person who was a subscriber of the former Council shall be a member of the Law Council unless his membership is terminated or suspended under section 35.

(3) Without prejudice to subsection (1), the Law Council may in its constitution make provision for different classes of membership of the Law Council for Authorised Persons as well as non-Authorised Persons.

#### **Financing of the Law Council and Voluntary Subscriptions of Non-practising members.**

32.(1) The Law Council shall be financed from the payment of-

- (a) 20% of initial registration fees;
- (b) 20% of annual registration fees; and
- (c) 20% of fees paid in respect of practising certificates.

(2) The Chief Justice may by Order amend any or all of the percentage amounts contained in subsection (1) after consultation with the LSRA and Law Council.

(3) Persons who have been members of the Law Council but have retired or have ceased to practise and are no longer on Parts 1 to 8 of the Register or persons undergoing legal training may still hold membership of the Law Council on payment of a voluntary subscription at such times, in such manner and of such amounts, as may be determined by the Law Council in accordance with its constitution.

(4) Different levels of voluntary subscriptions in relation to different classes of members of the Law Council may be provided for in accordance with its constitution.

#### **The Law Council Board.**

33.(1) The Law Council shall be managed by a governing body, to be known as “the Law Council Board”, which shall be the executive of the Law Council.

(2) On the coming into force of this Part, the Board shall consist of those persons who, immediately before that date, were committee members of the former Council.

(3) The persons referred to in subsection (2) shall, as members of the Board, continue in office, until such time, holding such office and subject to such conditions, as are applicable to them under the constitution of the Law Council.

(4) The constitution of the Law Council shall make provision with respect to-

- (a) the composition of the Board and the election and co-option of the members, the Chairman and other officers and the duration of their appointment;
- (b) the filling of temporary vacancies and appointment of alternates;
- (c) the proceedings of the Board;
- (d) the appointment of committees and sub-committees and the delegation of functions to them;
- (e) the appointment of a secretary and other administrative staff; and
- (f) such other matters relevant to the efficient functioning of the Board as the Board considers appropriate.

**Functions of the Law Council.**

34.(1) The Law Council shall have the following functions-

- (a) to carry out such responsibilities in the co-governance of the legal profession and Authorised Persons provided for in this Act;
- (b) to consider and implement general policy with regard to all matters affecting Authorised Persons and the legal profession;
- (c) to maintain the standards, integrity and independence of Authorised Persons and the legal profession and to promote, preserve and improve the services and functions of Authorised Persons and the legal profession;
- (d) to represent the legal profession generally as well as in its relations with others and also in matters affecting the administration of justice;
- (e) to consider all recommendations and other matters referred to the Board or the Law Council by the LSRA, the Chief Justice, any authority, Authorised Person or member of the public;
- (f) to encourage and promote the study of law and the marketing of legal services;

- (g) to work with the LSRA in respect of standards for the systems of control to prevent, detect and report money laundering and terrorist financing; and
- (h) to work with the LSRA and do everything that is reasonably incidental or conducive to carrying out the above functions.

(2) The Chief Justice after consultation with the Law Council Board may make Regulations with respect to all or any of the matters set out in subsection (1).

### **Termination and suspension of membership.**

35.(1) A person who is a member of the Law Council by virtue of being on the Register shall cease to be a member on the day he ceases to be on the Register unless he transfers, in accordance with the Law Council's constitution, or Regulations made in accordance with section 34(2), to a class of membership which does not require him to be on the Register.

(2) Regulations made in accordance with section 34(2)-

- (a) may make provision for the suspension or termination by the Board of a person's membership of the Law Council in such cases as may be provided in the Regulations, and different provision may be so made in relation to different classes of members;
- (b) may make provision with respect to the giving of notice of an intention to suspend or terminate a person's membership and the hearing of appeals against any such suspension or termination where such suspension or termination is provided for.

### **Accounts, audit and annual report.**

36.(1) The Board shall cause proper books of account to be kept of the Law Council's income and other receipts and expenditure for each financial year and shall cause a statement of the Law Council's accounts for each financial year to be prepared within three months after the end of that year.

(2) The accounts of the Law Council for each financial year shall—

- (a) be audited and certified by a statutory auditor or audit firm, within the meaning of the Financial Services (Auditors) Act 2009, to be appointed annually by the Board; and
- (b) be presented annually to the members of the Law Council at a General Meeting together with an annual report, prepared by the Board, on the activities of the Law Council during the preceding year.

(3) The financial year of the Law Council shall be such as may be determined by the Board.

**Annual and extraordinary general meetings of the Law Council.**

37.(1) An annual general meeting of the members of the Law Council shall be held once in every calendar year on such date and at such time and place as may be determined by the Board.

(2) Upon a request, in writing, made to the Secretary of the Board-

- (a) by no fewer than twenty members of the Law Council, of whom at least fifteen shall hold a practising certificate;
- (b) requesting that an extraordinary general meeting be convened; and
- (c) stating the objects for which such meeting is required,

the Board shall, as soon as reasonably practicable, convene an extraordinary general meeting of the members of the Law Council for the discussion of the objects for which the meeting is required and such other matters as the Board may think fit.

(3) The Board may of its own motion convene an extraordinary general meeting of the members of the Law Council for the discussion of such matters as the Board think fit.

**PART VI**

**SUPPLEMENTARY AND TRANSITIONAL**

**Transitional Provisions regarding the Government Law Offices.**

38.(1) A person who, on the commencement of this section-

- (a) is employed by the Government of Gibraltar, and
- (b) whose employment involves the provision of a reserved legal activity under the supervision of the Attorney General,

shall be deemed to have met the criteria of section 28(1) of the Supreme Court Act.

(2) The Chief Justice shall, upon receiving a Petition under paragraph 1(1) of Part B of Schedule 4 sponsored by the Attorney General from a person referred to in subsection (1), approve, admit and enrol such person pursuant to section 28(1) of the Supreme Court Act.

(3) Paragraphs 1(2), 2 and 3 of Part B of Schedule 4, shall not apply to a person referred to in subsection (1).

(4) The transitional period provided for in paragraph 3 of Part A of Schedule 4 shall apply to the person referred to in subsection (1) as if he had been approved, admitted and enrolled under the Supreme Court Act prior to the commencement of this Act.

**Consequential provisions as to Barristers and Solicitors Rules.**

39.(1) In this section “the 1980 Rules” means the Barristers and Solicitors Rules made under section 38 of the Supreme Court Act.

(2) Subject to subsection (3), the Admissions and Disciplinary Committee established by Part I of the 1980 Rules is dissolved.

(3) The appointment of persons as committee members of the Admissions and Disciplinary Committee established by Part I of the 1980 Rules shall continue for the purpose of the determination of all matters referred to such Committee prior to the commencement of this Act and such Committee shall be deemed a sub-committee of the LSRA and have all the powers of the Disciplinary Tribunal established under this Act.

(4) The provisions contained in Part B of Schedule 4 have effect for the purpose of applications for admission and enrolment. Schedule 4 may be amended or revoked by Rules of Court.

(5) The 1980 Rules are revoked.

**Amendments to Supreme Court Act.**

40.(1) The Supreme Court Act is amended in accordance with this section.

(2) After section 27W(9) insert-

“(10) Notwithstanding anything contained in this Act the Government of Gibraltar shall be an approved establishment for the purpose of undertaking the practical training requirement and completion of a period of no less than 12 months employment within the Government of Gibraltar as a lawyer under the supervision of the Attorney General shall be deemed sufficient to meet the practical training requirement.”

(3) For section 28(1)(d) substitute-

“(d) he intends on admission to practise in Gibraltar to provide legal services in or from within Gibraltar under Part 1, 3 or 5 of the Register of Authorised Persons established by the Legal Services Act 2017.”

(4) Section 28(3) is repealed.

(5) For section 29(1)(c) substitute-

“(c) he intends on admission to practise in Gibraltar to provide legal services in or from within Gibraltar under Part 1, 3 or 5 of the Register of Authorised Persons established by the Legal Services Act 2017.”

(6) For section 32 substitute-

“All barristers shall be at liberty to act also as solicitors and shall be entitled to sue for and recover any fee reward or disbursement on account of, in relation to any act or proceeding done, or taken by them in their professional capacity as such solicitors.”

(7) Section 33 is repealed.

(8) In section 34(1) after paragraph (a) insert--

“(aa) order that the name of a person be removed from the Register established under the Legal Services Act 2017.”

(9) Section 35 is repealed.

## **Amendments to the Solicitors (Practising Certificates) Rules 2005.**

41.(1) The Solicitors (Practising Certificates) Rules 2005 are amended in accordance with this section.

(2) In rule 1(1) for “Solicitors” substitute “Legal Services”.

(3) In rule 2 delete the definition of “Registrar” and insert the following definition-

““Legal Services Regulatory Authority” and “LSRA” mean the Legal Services Regulatory Authority as defined in section 14 of the Legal Services Act 2017.”

(4) References to the “Registrar” shall be replaced by references to the “LSRA”.

(5) In rule 3-

(a) for subrule (1) substitute-

“(1) Subject to payment of the Registration Fee under the Legal Services Act 2017 and to sub-rules (3) and (5) the LSRA shall issue to each solicitor an annually renewable practising certificate which shall be effective from the date of issue to 30 June next following.”

(b) for subrule (2) substitute-

“(2) No solicitor shall practise in Gibraltar unless he holds a current practising certificate and is on Part 1 or 3 of the Register.”

(c) for subrule 3 substitute-

“(3) The LSRA shall not issue a practising certificate to any solicitor on Part 1 of the Register unless he is satisfied that such solicitor has complied with rules 4 and 5.”

(6) After rule 3 insert-

“(3A)The LSRA shall issue a practising certificate in the form prescribed by regulations to any solicitor registered on Part 3 of the Register notwithstanding rules 4 and 5.

(3B) The LSRA shall issue a practising certificate in the form prescribed by regulations to any Barrister registered on Parts 1 or 2 of the Register notwithstanding rules 4 and 5 if such Authorised Person satisfies the LSRA that they hold valid professional indemnity insurance of a limit prescribed and intends to provide and so provides legal services only on the instructions of an Authorised Person registered on Parts 1 or 3 of the Register.

(3C) The LSRA shall issue a practising certificate in the form prescribed by regulations to any Lawyer, Foreign Lawyer, Legal Executive, Law Costs Draftsman, European Lawyer or EEA lawyer registered on Parts 4, 5, 6, 7 or 8 of the Register as the case may be notwithstanding rules 4 and 5 if such Authorised Person satisfies the LSRA that they hold valid professional indemnity insurance of a limit prescribed and intends to provide and so provides legal services in compliance with such other provisions of this Act”.

**SCHEDULE 1**

**PART A - THE RESERVED LEGAL ACTIVITIES**

***Introduction.***

This Schedule makes provision regarding the reserved legal activities.

1. In this Schedule “the appointed day” means the day appointed for the coming into force of section 5 (entitlement to carry on reserved legal activities).

***Rights of audience.***

2.(1) A “right of audience” means the right to appear before and address a court or tribunal, including the right to call and examine witnesses.

(2) But a “right of audience” does not include a right to appear before or address a court, or to call or examine witnesses, in relation to any particular court or in relation to particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to exercise that right.

***Conduct of litigation.***

3.(1) The “conduct of litigation” means-

- (a) the issuing of proceedings before any court or tribunal in Gibraltar,
- (b) the commencement, prosecution and defence of such proceedings, and
- (c) the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions).

(2) But the “conduct of litigation” does not include any activity within paragraphs (a) to (c) of sub-paragraph (1), in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity.

***Reserved instrument activities.***

4.(1) “Reserved instrument activities” means-

- (a) preparing any instrument of transfer or charge for the purposes of the Land Titles Act 2011;
- (b) making an application or lodging a document for registration under that Act;

- (c) preparing any other instrument relating to real or personal estate for the purposes of the law of Gibraltar or instrument relating to court proceedings in Gibraltar;
- (d) making a Statement of Compliance under sections 13(2)(a) and (b) of the Companies Act 2014.

(2) But “reserved instrument activities” does not include the preparation of an instrument relating to any particular court proceedings if, immediately before the appointed day, no restriction was placed on the persons entitled to carry on that activity.

(3) In this paragraph “instrument” includes a contract for the sale or other disposition of land (except a contract to grant a short lease), but does not include-

- (a) a will or other testamentary instrument,
- (b) an agreement not intended to be executed as a deed, other than a contract that is included by virtue of the preceding provisions of this sub-paragraph,
- (c) a letter or power of attorney, or
- (d) a transfer of stock containing no trust or limitation of the transfer.

(4) In this paragraph a “short lease” means a lease such as is referred to in section 3(4) of the Land Titles Act 2011.

***Probate activities.***

5.(1) “Probate activities” means preparing any probate papers for the purposes of the law of Gibraltar or in relation to any proceedings in Gibraltar.

- (2) In this paragraph “probate papers” means papers on which to found or oppose-
- (a) a grant of probate; or
  - (b) a grant of letters of administration.

*General Advice*

6. General advice, assistance and representation within the scope of section 4(1)(e) of this Act.

**PART B – NOTARIAL ACTIVITIES**

7. The following are notarial activities for the purposes of this Act namely any notarial act carried out in Gibraltar by a notary registered under the provisions of the Commissioner for Oaths and Public Notaries Act 1953 and includes-

- (a) the drawing up of a power of attorney;
- (b) the certification, attestation or authentication of deeds, powers of attorney, wills, agreements, transactions or any other document for the purposes of confirming proper execution, validity, originality or authenticity;
- (c) the administering of oaths.

**SCHEDULE 2****EXEMPT PERSONS**

This Schedule has no associated *rights of audience*.

**“Rights of audience”**

1.(1) This paragraph applies to determine whether a person is an exempt person for the purpose of exercising a right of audience before a court in relation to any proceedings (subject to paragraph 7).

(2) The person is exempt if the person-

- (a) is not an Authorised Person in relation to that activity, but
- (b) has a right of audience granted by that court or tribunal in relation to those proceedings.

(3) The person is exempt if the person-

- (a) is not an Authorised Person in relation to that activity, but
- (b) has a right of audience before that court or tribunal in relation to those proceedings granted by or under any enactment.

(4) The person is exempt if the person is the Attorney General and the person has been approved, admitted and enrolled as a Barrister or Solicitor of the Supreme Court of Gibraltar under the provisions of the Supreme Court Act.

(5) The person is exempt if the person-

- (a) is a party to those proceedings, and
- (b) would have a right of audience, in the person's capacity as such a party, if this Act had not been passed.

(6) The person is exempt if-

- (a) the person is an individual whose work includes assisting in the conduct of litigation, and
- (b) the person is assisting in the conduct of litigation-

- (i) under instructions given (either generally or in relation to the proceedings) by an individual on Parts 1 or 3 of the Register, and
- (ii) under the supervision of that individual, and
- (c) the proceedings are being heard in private in the Supreme Court or the Magistrates Court.

***Conduct of litigation.***

2.(1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes the conduct of litigation in relation to any proceedings (subject to paragraph 7).

(2) The person is exempt if the person-

- (a) is not an Authorised Person in relation to that activity, but
- (b) has a right to conduct litigation granted by a court or tribunal in relation to those proceedings.

(3) The person is exempt if the person-

- (a) is not an Authorised Person in relation to that activity, but
- (b) has a right to conduct litigation in relation to those proceedings granted by or under any enactment.

(4) The person is exempt if the person-

- (a) is a party to those proceedings, and
- (b) would have a right to conduct the litigation, in the person's capacity as such a party, if this Act had not been passed.

***Reserved instrument activities.***

3.(1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes reserved instrument activities (subject to paragraph 7).

(2) The person is exempt if the person prepares the instruments or applications in the course of the person's duty as a public officer.

(3) The person ("E") is exempt if-

- (a) E is an individual,

- (b) E carries on the activity at the direction and under the supervision of another individual (“P”),
  - (c) when E does so, P and E are connected, and
  - (d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (9).
- (4) For the purposes of sub-paragraph (3), P and E are connected if-
- (a) P is E's employer or a partner, director or shareholder in the firm or company which employs E,
  - (b) P is a fellow employee of E,
- (5) The person is exempt to the extent that the activity consists of the preparation of any instrument which relates to an existing tenancy which is, or which the person believes on reasonable grounds to be, such a tenancy.
- (6) The person is exempt to the extent that the activity carried on by the person is also a reserved legal activity within sub-paragraph (7) and the person is-
- (a) authorised to carry on that activity by the LSRA in relation to the activity,
  - (b) an exempt person in relation to that activity by virtue of paragraph 1 or 2 of this Schedule.
- (7) The activities are-
- (a) the exercise of a right of audience;
  - (b) the conduct of litigation.
- (8) The person is exempt if the person is employed merely to engross the instrument or application.
- (9) The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.
- (10) The person is exempt if the person-
- (a) is an officer or an employee of a trustee licensed by the Gibraltar Financial Services Commission, and

- (b) is drawing up instruments relating to the real or personal estate of a trust under its management, or of a company ultimately owned by such a trust,

provided that such instruments do not relate to the assignment, conveyance, transfer or disposition of real property in Gibraltar or of an interest therein.

***Probate activities.***

4.(1) This paragraph applies to determine whether a person is an exempt person for the purpose of carrying on any activity which constitutes probate activities (subject to paragraph 7).

(2) The person (“E”) is an exempt person if-

- (a) E is an individual-
- (b) E provides the probate activities at the direction and under the supervision of another individual (“P”),
- (c) when E does so, P and E are connected, and
- (d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (4).

(3) For the purposes of sub-paragraph (2), P and E are connected if-

- (a) P is E's employer or a partner, director or shareholder in the firm or company which employs E,
- (b) P is a fellow employee of E,

(4) The person is exempt if the person is an individual who is entitled to apply for a grant under Rules of Court.

***General Advice.***

5. *Notwithstanding any other provision of this Act the following persons may provide general advice within the scope of section 4(1)(e) of the Act to the extent set out herein-*

- (1) Foreign legal Counsel instructed by an Authorised Person on Parts 1 or 3 of the Register may provide general advice within the scope of section 4(1)(e)(i) of the Act notwithstanding that they may not be registered under the Act but may not undertake any other restricted activity including for the avoidance of doubt the settling of pleadings for the purpose of Gibraltar proceedings without being so registered;

- (2) Persons employed by the Government or statutory authority whose function includes the provision of advice or assistance or services to the public;
- (3) Persons who are licensed or regulated under the provisions of any other Act or in the employ of companies, entities or bodies that are licensed or regulated under the provisions of any other Act;
- (4) Independent Accountants (being a person who is a member of a recognised accountancy body of an EEA State or being a member of ICAS, ACCA or ICAEW) and Qualified Tax Professionals being a member of the Chartered Institute of Taxation who are in employment or practice in and from business premises in Gibraltar in respect of matters related to their normal course of business and specifically in relation to accounting services, tax, finance or insolvency;
- (5) Such other persons as the Chief Justice after consultation with the LSRA and Law Council may prescribe;
- (6) The person (“E”) is an exempt person if-
  - (a) E is an individual,
  - (b) E provides the legal advice at the direction and under the supervision of another individual (“P”),
  - (c) when E does so, P and E are connected, and
  - (d) P is entitled to carry on the activity, otherwise than by virtue of sub-paragraph (6) and/or by virtue of sub-paragraphs (1) to (5).
- (7) For the purposes of sub-paragraph (6), P and E are connected if-
  - (a) P is E's employer or a partner, director or shareholder in the firm or company which employs E,
  - (b) P is a fellow employee of E,
- (8) The person is exempt if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward.

***Employers etc acting through exempt person.***

6.(1)..This paragraph applies where-

- (a) a person (“P”) carries on an activity (“the relevant activity”) which is a reserved legal activity,

(b) P carries on the relevant activity by virtue of an employee of P (“E”) carrying it on in E's capacity as such an employee, and

(c) E is an exempt person in relation to the relevant activity.

(2) P is an exempt person in relation to the relevant activity to the extent that P carries on that activity by virtue of E so carrying it on.

(3) This paragraph does not apply where E-

(a) carries on the relevant activity at the direction and under the supervision of an Authorised Person in relation to that activity, and

(b) is exempt in relation to that activity by virtue of paragraph 1(6), 3(3) or 4(2).

(4) If P is a body, in this paragraph references to an employee of P include references to a manager of P.

*Further exempt persons.*

7.(1) The Minister may after consultation with the Chief Justice, LSRA and Law Council, by order, amend this Schedule so as to provide-

(a) for persons to be exempt persons in relation to any activity which is a reserved legal activity (including any activity which is a reserved legal activity by virtue of an order under section 12 (extension of reserved legal activities)),

(b) for persons to cease to be such persons, or

(c) for the amendment of any provision made in respect of an exempt person.

(2) The Minister may make an order under sub-paragraph (1) only on the recommendation of the Chief justice or the LSRA.

(3) Persons undertaking the academic course, practical training requirement or professional skills course under sections 27W and 27X of the Supreme Court Act shall for such time that they are so doing and working under the supervision of an Authorised Person registered on Parts 1 or 3 of the Register be deemed to be an exempt person for the purposes of this Schedule in so far as the conduct of litigation, the undertaking of reserved instrument activities, probate duties and general advice.

**SCHEDULE 3****THE LEGAL SERVICES REGULATORY AUTHORITY***Membership*

1.(1) The LSRA shall consist of the following members-

- (a) a chairman and vice-chairman appointed by the Chief Justice;
- (b) two persons appointed by the Chief Justice on the advice of the Judicial Service Commission of whom one shall be a lay person;
- (c) the Chairman of the Law Council and two other persons appointed by the Chief Justice on the advice of the Chairman of the Law Council one of whom shall be a lay person;
- (d) the Attorney General; and
- (e) the Chief Executive of the LSRA, who shall be appointed by a majority of the persons appointed under subparagraphs (a) to (c).

(2) Notwithstanding any temporary vacancy in the members appointed under either or both of subparagraph (1)(b) and subparagraph (1)(c), the LSRA may act so long as, of the members appointed under those subparagraphs, there remain at least one lay member and one other.

(3) A member of the staff of the LSRA may not be appointed as a member of the LSRA.

(4) The Chief Justice may disregard the advice of the Judicial Service Commission or the Chairman of the Law Council only in such case where he judges that compliance with that advice would prejudice the regulation of legal services in Gibraltar.

2.(1) The chairman shall be appointed from among the body of Her Majesty's Counsel for Gibraltar but shall not be a serving member of the Law Council.

(2) The vice-chairman shall be a lay person.

(3) In this Schedule a "lay person" means a person-

- (a) who does not hold and, during the five years preceding his appointment, has not held a practising certificate in Gibraltar or has ceased to practise law;
- (b) against whom, whether before or after the passing of this Act, no disciplinary action has been taken, other than a reprimand or the foregoing or repayment of

fees or contributing to the costs or making a payment towards the cost of an investigation; and

(c) who is not and never has been an EEA lawyer or a registered European lawyer.

3. In appointing members of the LSRA, the Judicial Service Commission and the Law Council shall have regard to the desirability of securing that the LSRA includes members who (between them) have experience in or knowledge of –

(a) the provision of legal services;

(b) legal education and legal training;

(c) consumer affairs;

(d) civil or criminal proceedings and the working of the courts;

(e) the maintenance of the professional standards of persons who provide legal services;

(g) the handling of complaints.

*Terms of appointment and tenure of members*

4. In the following provisions of this Schedule “member” means a member of the LSRA, other than the chairman and the Chief Executive.

5.(1) Subject to the following provisions, a member shall hold and vacate his office in accordance with the terms and conditions of his appointment.

(2) Each member shall be appointed for a fixed period.

(3) The period for which a member is appointed must not exceed 5 years; but a person who has held office as a member may be re-appointed, once only, for a further period (whether consecutive or not) not exceeding 5 years.

6. If a member who, at the time of his appointment, was a lay person ceases to be a lay person, he shall forthwith cease to be a member; but without prejudice to his being appointed a member in another capacity.

7.(1) The chairman may–

(a) at any time resign from office by giving notice to the Chief Justice;

(b) be removed from office on notice in writing given to him by the Chief Justice;

but the removal of the chairman from office under paragraph (b) shall not affect any rights he may have by virtue of the terms of his appointment.

(2) A member may at any time—

- (a) resign from office by giving notice to the Commission or Council which appointed him;
- (b) be removed from office by notice in writing given to him by the Commission or Council which appointed him.

(3) The Chief Justice may not remove the chairman under subparagraph (1)(b) and the Judicial Service Commission or the Law Council, as the case may require, may not remove a member under subparagraph (2)(b) unless the Chief Justice or the Commission or Council concerned is satisfied that the chairman or member—

- (a) has failed without reasonable excuse to discharge the functions of the office for a continuous period of at least six months ending immediately before the giving of the notice under that subparagraph;
- (b) has been convicted of an offence in respect of which a term of imprisonment has been imposed,
- (c) is an undischarged bankrupt, or
- (d) is otherwise unfit to hold the office or unable to discharge its functions.

(4) Where a person ceases to be employed as Chief Executive, he shall forthwith cease to be a member of the LSRA.

**SCHEDULE 4  
AUTHORISED PERSONS**

**PART A  
Continuity of rights and Transitional Arrangements**

**Rights of audience and conduct of litigation.**

1.(1) For the purposes of section 6 (Authorised Persons), in the case of a person who is authorised by the LSRA or, prior to the commencement of this Act, under the Supreme Court Act as the case may be-

- (a) to exercise a right of audience before a court or tribunal in relation to any proceedings, or
- (b) to conduct litigation in relation to any proceedings,

it is irrelevant whether the person's authorisation was granted before or on or after the appointed day.

**The transitional period.**

2.(1) In this Part of this Schedule references to “the transitional period” are to the period which-

- (a) begins with the appointed day (within the meaning given by paragraph 9), and
- (b) ends with the day appointed by the Minister by order for the purposes of this paragraph.

(2) Different days may be appointed under sub-paragraph (1)(b) for different purposes.

(3) An order may be made under sub-paragraph (1)(b) only on the recommendation of the Board.

**Lawyers and Foreign Lawyers.**

3.(1) Subject to sub-paragraph (6) during the transitional period, every barrister or solicitor who was approved, admitted and enrolled under the Supreme Court Act and who either holds a practising certificate under the Practising Certificate Rules or is in the employment of the Crown in right of Gibraltar is deemed to be authorised by the LSRA to carry on the activities in sub-paragraph (2) and eligible for registration in Parts 1 or 3 of the Register as the case may be.

(2) Those activities are-

- (a) the exercise of a right of audience before every court in relation to all proceedings;
- (b) the conduct of litigation;
- (c) reserved instrument activities;
- (c) probate activities;
- (d) the provision of advice and representation as described in section 4(1)(e).

(3) The authority conferred on a barrister or solicitor by this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the LSRA.

(4) Subject to sub-paragraph (6) during the transitional period any barrister or solicitor who had been approved, admitted and enrolled under the Supreme Court Act for the purpose of specific court proceedings in Gibraltar only is deemed to be authorised by the LSRA to carry on the activities in sub-paragraph (2) limited to those proceedings in respect of which he had been approved, admitted and enrolled and eligible for registration on Part 2 of the Register.

(5) Subject to sub-paragraph (6) during the transitional period any person who was either a lawyer or a foreign lawyer and in both cases was in employment for a company, business, trades union, entity or statutory authority in an in-house capacity for the purposes of providing legal services to that company, business, trades union, entity or statutory authority or is employed in any other capacity but during the course of their employment provides legal services to that company, business, trades union, entity or statutory authority in or from within Gibraltar to that company, business, trades union, entity or statutory authority is deemed to be authorised by the LSRA to carry on such activities as if they had been authorised under Part 5 of the Register and eligible for registration on Part 5 of the Register.

(6) All Barristers and Solicitors and other persons to which this paragraph applies who wish to benefit from these transitional arrangements and maintain registration under this Act shall, within a period of 90 days from commencement of this Act, pay the initial registration fee to the LSRA.

### **European Lawyers.**

4.(1) During the transitional period, every registered European lawyer registered with the Supreme Court is deemed to be authorised by the LSRA to carry on activities which-

- (a) are within paragraph 4(2), and
- (b) the registered European lawyer is entitled to carry on under his home professional title by virtue of the Supreme Court Act.

(2) The authority conferred on a registered European lawyer by virtue of this paragraph is exercisable in accordance with, and subject to, the regulatory arrangements of the LSRA (as they apply to the registered European lawyer by virtue of the European regulations).

(3) In this paragraph-

“home professional title” and “registered European lawyer” have the same meaning as in the Supreme Court Act.

## **Legal Executives.**

6.(1) Subject to the provisions of this Act on the coming into effect of this Act any person who-

- (a) was employed in a capacity as a Legal Executive; and
- (b) has been in the employ in Gibraltar of a person, or partnership of persons who are, either barristers and/or solicitors approved, admitted and enrolled under the provisions of the Supreme Court Act and who held a practising certificate or practising certificates as the case may be on the date of commencement of this Act,

may on production of the necessary proof of the employment referred to in paragraphs (a) and (b) above apply for and be registered in Parts 4 or 6 of the Register established under this Act as the case may be provided that such person will lose the entitlement of annual registration if such registration is not maintained on an annual basis hereafter and may only then regain such status on completion of the requirements set out in sub-paragraph (2) below

(2) From the date of commencement of this Act and unless the person seeking registration as an Authorised Person on Parts 4 or 6 of the Register is entitled to registration by virtue of paragraph 6(1) above such person must hold-

- (a) a formal professional qualification as a Legal Executive from an approved establishment and;
- (b) successfully complete the Approved Academic Course in Gibraltar Law as defined by the Supreme Court Act;
- (c) such other requirements as may be established by the Chief Justice.

(3) All Legal Executives to which sub-paragraph (1) applies who wish to benefit from these transitional arrangements and maintain registration under this Act shall, within a period of 90 days from commencement of this Act, pay the initial registration fee to the LSRA.

## **Law costs draftsmen.**

This version is out of date

7.(1) Subject to the provisions of this Act on the coming into effect of this Act any person who-

- (a) was employed in Gibraltar or offering services in Gibraltar in a capacity as a Law Costs Draftsman; and
- (b) is certified by the Registrar of the Supreme Court as having provided services in Gibraltar before the commencement of this Act,

may on production of the necessary proof of the employment and certification referred to in paragraphs (a) and (b) above apply for and be registered in Part 7 of the Register established under this Act provided that such person will lose the entitlement of annual registration if such registration is not maintained on an annual basis hereafter and may only then regain such status on completion of the requirements set out in sub-paragraph (2) below.

(2) From the date of commencement of this Act and unless the person seeking registration as an Authorised Person on Part 7 of the Register is entitled to registration by virtue of paragraph 7(1) above such person must hold-

- (a) a formal professional qualification as a Law Costs Draftsman from an approved establishment; and
- (b) such other requirements as may be established by the LSRA.

(3) All Law Costs Draftsmen to which sub-paragraph (1) applies who wish to benefit from these transitional arrangements and maintain registration under this Act shall, within a period of 90 days from commencement of this Act, pay the initial registration fee to the LSRA.

### **Interpretation.**

8. In this Schedule-

“the appointed day” means the day appointed for the coming into force of section 5 (entitlement to carry on a reserved legal activity);

## **PART B**

### **Continuation of provisions relating to admission of barristers and solicitors**

#### **Part I**

##### *Applications for admission and enrolment*

1.(1) An application to be enrolled as a barrister under section 28 of the Supreme Court Act or as a solicitor under section 30 of that Act shall be made by petition, which shall be substantially in the form in Part II of this Schedule, shall be verified by oath or statutory

declaration and shall be filed in the Registry of the Supreme Court with two recent testimonials to the character of the applicant.

(2) Every person applying to be admitted as a barrister or solicitor shall deliver to the Registry a notice intimating that he has so applied, which notice shall (unless the Chief Justice shall otherwise allow) be posted and continue to be posted in the Supreme Court for twenty-one days before any order is made on the petition.

*Examination*

2.(1) Every person applying to be admitted as a barrister or solicitor shall before the hearing of his petition appear before the LSRA who shall interview the petitioner and satisfy themselves and report to the Chief Justice whether or not, in their opinion, the petitioner is a fit and proper person to be admitted as a barrister or solicitor in Gibraltar,

(2) Where the LSRA submits an unfavourable report on a petitioner, the LSRA shall furnish the petitioner with a copy thereof.

(3) On receiving an unfavourable report from the LSRA, the Chief Justice may, after hearing the petitioner if the petitioner so desires, if he thinks fit by order in writing stay further proceedings on the petitioner’s application.

*Exemption*

3. Subject to the provisions of the Supreme Court Act the Chief Justice may in his discretion exempt any person from the provisions of paragraphs 1(2) and 2(1) upon such terms and conditions as he may think fit.

**Part II**

**Form of Petition**

To the Honourable the Chief Justice

In the Matter of the Schedule to the Legal Services Act 2016

- and -

In the Matter of C.D., a barrister/solicitor

THE PETITION OF .....

SHEWETH

That your petitioner was admitted as a barrister/solicitor in



**SCHEDULE 5**

The Constitution of the Law Council

**PREAMBLE**

The Law Council’s mission is to:

- uphold the rule of law and the interests of justice
- further, promote and safeguard the interests of the legal profession
- discharge its statutory functions and role in the co-governance of the legal profession
- maintain the standards, honour and independence of the legal profession
- promote, preserve and improve legal services in Gibraltar
- encourage and promote the study of law and the market of legal services
- act in the interests of its members and the public interest

**PART I**

**INTRODUCTION**

**DEFINITIONS**

In this Constitution of the Law Council of Gibraltar, unless the context otherwise requires “the Act” means the Legal Services Act 2017 and:

“Law Council of Gibraltar (“the Law Council”)” means the Law Council of Gibraltar as constituted under section 30 of the Act and shall for the purposes of this Constitution include the Bar Council as it existed, had been elected and was constituted under the provisions of the Bar Council Constitution on the day prior to the commencement of this Act.

“The Chairperson”, and “Vice-Chairperson”, means the Chairperson, and Vice-Chairperson, of the Law Council elected pursuant to the provisions of the Law Council Constitution.

“The Treasurer” means the Treasurer of the Law Council elected pursuant to the provisions of the Law Council Constitution.

“The Officers” shall mean the Chairperson, the Vice-Chairperson and the Treasurer of the Law Council.

“Authorised Person” shall mean a person registered under section 6 of the Act in Parts 1-9 of the Register established under the Act.

“The Legal Profession” means all Authorised Persons who are duly registered under the provisions of the Act and providing legal services in accordance with the Act.

“The Finance Committee” means the standing committee of the Law Council described in section 2.8.2 of the Constitution.

“The Law Reform Committee<sup>2</sup> means the standing committee of the Law Council described in section 2.8.2 of the Constitution.

“The Education, Communication and Member Services Committee” means the standing committee of the Law Council described in section 2.8.2 of the Constitution.

“The Committee for Non-Contentious work” means the standing committee of the Law Council described in section 2.8.2 of the Constitution.

“The Court-Users and Professional Conduct Committee” means the standing committee of the Law Council described in section 2.8.2 of the Constitution.

“The Secretary” means the person for the time being appointed to such position pursuant to the provisions of Section 2.13 of the Law Council Constitution.

“Extraordinary Resolution” means a resolution passed by a majority of not less than 75% of all Lawyers at a General Meeting of which notice specifying the intention to propose the resolution as an Extraordinary Resolution.

“Legal Services” has the meaning set out in the Act.

“LSRA” means the Legal Services Regulatory Authority established under the Act.

“Law Firm”, “Lawyer” and “Foreign Lawyer” have the meanings set out in the Act.

“Register” or references to a “Part” or “Parts” of the Register mean the Register established by the Act.

“Standing” when used in this Constitution in connection with a period of time means the period of time that the Authorised Person has been called to the Bar or Admitted as a solicitor in Gibraltar or maintained their registration under the Act as the case may be.

Any expression not defined in this Constitution which is defined in the Act has the meaning set out in the Act.

The masculine shall include the feminine gender.

The plural shall include the singular and vice versa.

**PART II**

**ELIGIBILITY TO MEMBERSHIP OF LAW COUNCIL**

1. The following shall be eligible for and hold membership of the Law Council:

1. Authorised Persons – being Authorised Persons on Part 1-8 of the Register for such time as they remain so authorised and maintain their registration and do not opt out of membership as provided for in this constitution;
2. Law Firms – being Law Firms on Part 9 of the Register for such time that they remain registered except that without prejudice to any voting rights that individual Authorised Persons may have under the provisions of this Constitution Law Firms shall only exercise one single vote for the purposes of such voting rights as may be bestowed on members by virtue of this Constitution;
3. Retired Members – being such persons who having previously been an Authorised Person are no longer providing legal services in Gibraltar and are on the Retired Members Register established under the provisions of this Constitution having paid the Retired Members Fee;
4. Student Members – being such persons who are ordinarily resident in Gibraltar and are undertaking undergraduate or postgraduate education with a view to becoming a Lawyer or Authorised Person or are undertaking the Certificate in Gibraltar Law course provided by the University of Gibraltar and are on the Student Member Register established under the provisions of this Constitution having paid the Student Fee.

**FUNCTIONS AND POWERS OF THE LAW COUNCIL**

2.1 The Law Council is established to discharge the following functions:-

- (a) to maintain the standards, honour and independence of Authorised Persons and the profession and to promote, preserve and improve the services and functions of Authorised Persons and the profession
- (b) to carry out such responsibilities in the co-governance of the legal profession and Authorised Persons provided for in this Act;
- (c) to consider, lay down and implement general policy with regard to all matters affecting Authorised Persons and the profession;
- (d) to represent and act for Authorised Persons generally as well as in their relations with others and also in matters affecting the administration of justice;

- (e) to consider all recommendations and other matters referred to the Board or the Law Council by the LSRA, the Chief Justice, any authority, Authorised Person or member of the public;
- (f) to encourage and promote the study of law and the market of legal services;
- (g) to work with the LSRA in respect of standards for the systems of control to prevent, detect and report money laundering and terrorist financing and
- (h) to work with the LSRA and do everything that is reasonably incidental or conducive to carrying out the above functions

For the purposes aforesaid the Law Council shall have all appropriate powers and jurisdiction, including (without prejudice to the generality of the foregoing) power to raise funds for its general purposes.

#### **COMPOSITION OF THE LAW COUNCIL BOARD**

2.2 In accordance with section 33 of the Act, the Law Council shall be managed by a governing body known as “the Law Council Board” which will consist of 15 Members and be made up as follows:

2.2.1 Three Officers comprising:

- (i) The Chairperson
- (ii) The Vice-Chairperson
- (iii) The Treasurer

The Chairperson and the Vice-Chairperson shall be Authorised Persons who on the day on which they are to take their place as members of the Law Council Board, are of more than fifteen years standing.

The Chairperson shall be elected as set out in Clause 2.6 of this Constitution.

The Vice-Chairperson and Treasurer shall be appointed by the Law Council Board from among its elected members.

2.2.2 The elected members of the Law Council Board comprising a total of fifteen will be made up as follows:-

- (i) Five Authorised Persons, of which at least three are on Part 1 of the Register and who on the day on which they are to take their place as members of the Law Council Board, are of more than fifteen years standing who have been nominated for election in accordance with Clause 2.3.1 and duly elected by secret ballot of Authorised Persons at an Annual or Extraordinary General Meeting of Authorised Persons;
- (ii) Three Authorised Persons, of which at least two are on Part 1 of the Register and not being Authorised Persons, who are of more than fifteen years standing, who on the day on which they are to take their place as members of the Law Council Board, are of more than seven years standing, who have been nominated for election in accordance with Clause 2.3.1 and duly elected by secret ballot of the Authorised Persons at an Annual General Meeting of the Authorised Persons;
- (iii) Four Authorised Persons of which at least two are on Part 1 of the Register and who on the day on which they are to take their place as members of the Law Council Board, are of less than seven years standing, who have been nominated for election in accordance with Clause 2.3.1 and duly elected by secret ballot of the Authorised Persons at an Annual General Meeting of Authorised Persons;
- (iv) Three Authorised Persons who on the day on which they are to take their place as members of the Law Council Board are and have been on either Part 3, 4, 5 or 6 of the Register and who have been nominated for election in accordance with Clause 2.3.1 and duly elected by secret ballot of the Authorised Persons at an Annual General Meeting of Authorised Persons.

2.2.3 Such Authorised Persons not being more than two as may have been co-opted for a specific purpose or generally who shall serve until the next Annual General Meeting.

## **ELECTION OF MEMBERS AND DURATION OF MEMBERSHIP**

2.3.1 The following shall be the procedure for election to the Law Council Board:

- (i) The Secretary will convene the Annual General Meeting ("the Meeting") of Authorised Persons by giving Authorised Persons one month's notice of the Meeting;
- (ii) Nomination forms proposed by one Authorised Person and seconded by another proposing an Authorised Person for election to the Law Council Board shall be delivered to the Treasurer fourteen days prior to the date fixed for calling the Annual General Meeting. The maximum number of Authorised Persons s being

partners, associates, consultants, members or employees of the same Law Firm eligible for nomination shall be three.

- (iii) The Meeting will elect the members of the Law Council Board by secret ballot of Authorised Persons each Authorised Person having the same number of votes as equate with the number of vacancies in the Law Council Board at the time of the election.
- (iv) Those members of the Law Council Board elected by the Meeting shall be members of the Law Council Board until they are due to retire pursuant to the provisions of Section 2.3.2 of this Constitution.

2.3.2 The following shall be the procedure for the retirement of members of the Law Council Board:

- (i) At the inaugural 2018 Annual General Meeting all members of the former Bar Council, as well as any member of the Law Council Board, will be eligible to stand for election as members of the Law Council Board.
- (ii) At the 2019 Annual General Meeting (and thereafter annually) seven members of the Law Council Board will retire from office.
- (iii) At the 2020 Annual General Meeting (and thereafter annually) the remaining members of the Law Council Board will retire from office.
- (iv) The longest serving members of the Law Council Board will retire first but as between members of the Board who became members of the Board at the same date (unless they agree between them) the person to first retire will be determined by lot.
- (v) Retiring members of the Law Council Board will be eligible for re-election.

2.3.3 Further provisions concerning the election of members of the Law Council are set out in Part III of this Constitution.

2.3.4 A person co-opted to membership of the Law Council Board shall retire immediately before the Annual General Meeting following his co-option, but shall then be eligible for election, or co-option (as the case may be) to the Law Council Board.

## **CESSATION OF MEMBERSHIP**

2.4.1 A person shall cease to be a member of the Law Council Board forthwith if:

- 2.4.1.1 he ceases to be an Authorised Person and is not a Retired Member

2.4.1.2 he ceases to be a Retired Member or Student Member and is not an Authorised Member

2.4.1.3 by notice in writing to the Secretary he resigns his membership of the Law Council

2.4.1.4 he absents himself from 3 consecutive meetings of the Law Council Board or of any committee or sub-committee of the Law Council of which he is a member or absents himself in any year from one-half in number of the meetings of the Law Council Board or of any standing committee of the Law Council of which he is a member.

2.4.1.5 the Law Council Board resolves that he ceases to be a member of the Board.

2.4.2 If under Section 2.4.1 of this Constitution a person ceases to be a member of the Law Council Board, the Law Council Board Members may appoint in his place some other person similarly qualified, who shall retire from the Law Council Board on the date when the person whose place he has taken would have retired.

2.4.3 A person shall cease to be a member of the Law Council forthwith if:

2.4.1.1 he ceases to be an Authorised Person and is not a Retired Member

2.4.1.2 he ceases to be a Retired Member or Student Member and is not an Authorised Member

2.4.1.3 by notice in writing to the Secretary he resigns his membership of the Law Council

## 2.5 ALTERNATES

2.5 Any member of the Law Council may appoint another member of the Law Council of a similar right or qualification as his own, as an alternate to act and vote in his place at any meeting of the Law Council. Such appointments shall be in writing and shall be produced at the commencement of the meeting at which they are to be used. Notwithstanding the provisions of this Section a member who attends a meeting only through his alternate will be deemed to have absented himself from that meeting for the purposes of Section 2.4.1.4.

## 2.6 OFFICERS

2.6.1 The following shall be the procedure for election of the Chairperson:-

- (i) Nomination forms proposed by one Authorised Person and seconded by another Authorised Person and accompanied by a statement by the person proposed of his or her willingness to accept office if elected proposing an Authorised Person, who on the day on which he will take his place as a member of the Law Council

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Board, is of more than fifteen years standing, for election as Chairperson of the Law Council shall be delivered to the Treasurer fourteen days prior to the next Annual General Meeting.

- (ii) The Meeting will elect the Chairperson by secret ballot of Authorised Persons from amongst those Authorised Persons of more than fifteen years standing nominated in accordance with Clause 2.6.1(i) who have been elected as members of the Law Council Board in accordance with Clause 2.3.1 of this Constitution.

2.6.2 The Vice-Chairperson and Treasurer shall be elected by the Law Council Board at its First Meeting held immediately after the 1st June in each year. Candidates for election as Vice-Chairperson and Treasurer must be proposed and seconded by persons who are members of the Law Council Board at the time of election. Proposals for the election to these offices must be by notice in writing signed by both a proposer and a seconder and accompanied by a statement by the person proposed of his willingness to accept office if elected.

2.6.3 The Chairperson and the Vice-Chairperson and Treasurer shall retire at the Annual General Meeting following the date of their election or appointment (as the case may be).

2.6.4 The Chairperson and the Vice-Chairperson and Treasurer shall at the time of election each be and throughout their term of office each remain a member of the Law Council and shall cease to hold office if s/he shall cease to be an Authorised Person or shall cease to be a member of the Law Council.

2.6.5 The Chairperson and the Vice-Chairperson and Treasurer shall be eligible for re-election for a second and third annual term but thereafter shall retire from the office which he has held for three successive terms for at least 12 months before becoming eligible for re-election to the same office. Nothing herein contained will preclude an officer from election to an office other than that held for three immediately preceding successive annual terms.

2.6.6 The Law Council Board may elect some eligible person to fill a casual vacancy caused by an Officer ceasing to be eligible to hold office or for any other reason. Any person elected to a casual vacancy shall hold office until the next Annual General Meeting.

## **2.7 PROCEEDINGS OF THE LAW COUNCIL BOARD**

2.7.1 Save and subject as elsewhere expressly provided in this Constitution, the Law Council Board may hold meetings and adjourn and otherwise regulate its meetings as it thinks fit.

2.7.2 Meeting of and ballots of the Law Council Board shall be conducted in accordance with the provisions set out in Part III hereof.

2.7.3 The Law Council Board shall cause proper minutes to be kept of the proceedings of all meetings of the Law Council Board and all business transacted at such meetings, and any such minutes of any meeting, if purporting to be signed by the Chairperson of such meeting or by the Chairperson of the next succeeding meeting, shall be sufficient evidence without further proof of the facts therein stated.

2.7.4 The continuing members of the Law Council Board may act notwithstanding any vacancy in their body; provided always that in case the members of the Law Council Board shall at any time be reduced in number to less than 5 they may act as a Law Council Board for the purpose of filling up vacancies in their body up to that number but not for any other purpose.

2.7.5 All acts done by the Law Council Board shall notwithstanding that it is afterwards discovered that there was some defect in the election or appointment of any of its members be as valid as if every person had been duly appointed.

## **2.8 COMMITTEES OF THE LAW COUNCIL**

2.8.1 The Law Council Board may delegate any of its functions and powers to any committee, and at any time revoke any such delegation.

2.8.2 Without prejudice to the generality of Section 2.8.1 there shall be four committees of the Law Council which shall be called the Finance Committee, the Law Reform Committee, the Education, Communication and Member Services and Representation Committee, the Committee for Non-Contentious work and the Court Users and Professional Conduct Committee each of which shall have, among others, the powers and functions conferred in or under the Constitution.

2.8.3 The Law Council Board may, at any time, resolve to exercise some or all of the powers and functions of the Standing Committees referred to in Section 2.8.2 in place of such Committees or any of them and it may at any time delegate the exercise of any of such powers and functions to some other committee or committees of the Law Council.

## **2.9 STANDING ORDERS**

Save and except as elsewhere expressly provided in these Regulations the composition functions and powers of the committees and sub-committees of the Law Council (including the power to establish sub-committees and the power to co-opt and to appoint alternates), and the appointment of the officers and conduct of the proceedings of such committees and sub-committees shall be in accordance with such standing orders as the Law Council shall from time to time determine.

## **2.10 ANNUAL GENERAL MEETING OF THE LAW COUNCIL**

2.10.1 An Annual General Meeting of the Law Council shall be held once in every year in the month of April (or so soon thereafter as possible provided it is no later than the 21 May)

on such day at such time and place as the Law Council Board shall determine. At the Annual General Meeting the Law Council Board shall present its annual report and accounts. Every Authorised Person shall be entitled to attend the Annual General Meeting.

2.10.2 The Annual General Meeting of Authorised Persons and ballots of the Authorised Persons shall be conducted in accordance with the provisions set out in Part IV hereto.

## **2.11 EXTRAORDINARY GENERAL MEETINGS AND BALLOTS OF THE LAW COUNCIL**

2.11.1 Upon a request made to the Secretary in writing by not less than twenty Authorised Persons of whom at least fifteen are on Parts 1 or 3 of the Register and stating the objects for which the meeting is required, the Law Council Board shall as soon as reasonably practicable convene a meeting of Authorised Persons for the discussion of the objects for which the meeting is required and such other matters as the Law Council Board may think fit.

2.11.2 The Law Council Board may convene such meetings or conduct such ballots as it may think fit.

2.11.3 A meeting convened pursuant to this Constitution shall be called an Extraordinary General Meeting.

2.11.4 If the Law Council Board pursuant to Section 2.11.1 or Section 2.11.2 of this Constitution calls an Extraordinary General Meeting or holds a ballot, the provisions set out in Part IV shall apply.

## **2.12 RESOLUTIONS OF ANNUAL AND EXTRAORDINARY GENERAL MEETINGS**

The Law Council Board and its Officers shall have regard to but shall not be bound to give effect to any resolution of any Annual or Extraordinary General Meeting (and whether passed on a show of hands or upon a ballot) and it shall not be competent for any Annual or Extraordinary General Meeting to exercise, or to attempt to exercise, any function or power which by this Constitution is exercisable by the Law Council Board or by any person committee or sub-committee to which in accordance with this Constitution, the exercise of such function or power has for the time being been delegated.

## **2.13 THE SECRETARY AND OTHER ADMINISTRATIVE STAFF OF THE LAW COUNCIL BOARD**

2.13.1 The Law Council Board shall appoint a Secretary or other principal administrative officer and such other administrative officers for such periods and on such terms as to remuneration and otherwise as it thinks fit. Such administrative officers shall discharge all such duties as the Law Council Board shall assign to them respectively. The services of such administrative officers shall be freely available to the Law Council Board and its committees and sub-committees.

2.13.2 Anything required to be done and any discretions required to be exercised by, and any notice required to be given to the Secretary may be done or exercised by, or given to, any deputy for the Secretary authorised by the Chairperson or Vice-Chairperson to act in the latter's place (either prospectively or retrospectively and either generally or for a particular purpose).

## **2.14 INVESTMENT AND BORROWING**

Moneys not required for current purposes may be placed on deposit or invested in gilt-edged investments and any investments shall be held solely in the name of the Law Council.

2.14.1 The Law Council Board shall have power at any time and from time to time to borrow and secure any moneys borrowed, provided always that the aggregate amount of any borrowing for the time being outstanding shall not then exceed one half of the market value of the investments then held by the Law Council Board.

2.14.2 The powers of investment and borrowing may be exercised on behalf of the Law Council Board by the Finance Committee.

## **2.16 ACCOUNTS AND BOOKS OF ACCOUNT**

2.16.1 The Law Council Board shall cause proper books of account to be kept at its offices (if any) or at any such other place or places as the Law Council Board shall think fit. The books of account shall always be open to the inspection of the members of the Law Council.

2.16.2 The Law Council shall each year prepare accounts which shall be duly audited and shall annually present such accounts to the Authorised Persons in the Annual General Meeting.

## **2.17 NOTICES**

2.17.1 A notice, ballot paper or other document required by the Constitution to be given to any person may be given to him:

2.17.1.1 by delivering it to him personally; or

2.17.1.2 by leaving it or sending it by e-mail or through the post addressed to him at his professional address.

2.17.2 Any document sent by e-mail shall be deemed to have been received by the person to whom it is addressed and so duly given to him on the day that it was sent and if posted, shall

be deemed to have been received by and so duly given to, such person on the third day after the day on which the envelope or package containing it is put into the post.

2.17.3 No proceedings of any general meeting of the Law Council shall be invalidated notwithstanding that it be afterwards discovered that notice was not duly given to any person or persons entitled thereto or that any person not entitled to such notice was present at or voted at such meeting.

2.17.4 Any notice, written request or other document which by this Constitution is to be served on or given to the Law Council Board or the Secretary shall be sufficiently served or given by being addressed to the Law Council Board or Secretary (as the case may be) and deposited at the offices of the Law Council Board (if any) or otherwise the Chambers or Office of the Secretary.

## **2.18 ALTERATION OF THIS CONSTITUTION**

2.18.1 This Constitution may be altered by Extraordinary Resolution of the Law Council provided that no alteration may be made which is contrary to the provisions of the Act.

2.18.2 The terms of any alteration to this Constitution shall be notified to all members of the Law Council by notice signed by or on behalf of the Secretary given in accordance with Section 2.17 hereof within 14 days of the passing of the Extraordinary Resolution.

## **2.19 COMMENCEMENT AND TRANSITIONAL PROVISION**

This Constitution shall take effect on and from the commencement of the Act.

### **PART III**

#### **Meetings and Ballots of the Law Council Board**

3.1 On the request of the Chairperson or of not less than three members of the Law Council Board the Secretary shall at any time summon a meeting of the Law Council Board. Four clear days' notice at least of each such meeting shall be given unless the Chairperson in any case of emergency shall otherwise direct.

3.2 Notice of any matters to be placed on the agenda for a meeting of the Law Council Board shall be sent to the Secretary, with the name of the sender. The Chairperson shall not be bound to include any matter on the agenda of any meeting unless notice thereof pursuant to this paragraph shall have been received by the Secretary at least eight clear days before the date of the meeting.

3.3 Unless those present at the meeting otherwise resolve, no business except that appearing on the agenda shall be brought before a meeting of the Law Council Board.

3.4 Five members of the Law Council Board shall constitute a quorum.

3.5 The Chairperson shall preside at all meetings of the Law Council Board at which s/he shall be present, but if there be no Chairperson, or if s/he be absent, then the Vice-Chairperson shall so preside, but if there be no Vice-Chairperson, or if s/he be absent, then the members present shall choose one of their number to be Chairperson of that meeting.

3.6 The Law Council Board may at any time invite any person to attend in an advisory capacity at any of its meeting(s).

3.7 Subject as hereinafter provided questions arising at any meeting shall be decided by a majority of votes of those present and voting. Each member of the Law Council Board shall have one vote but in the case of an equality of votes the Chairperson of the meeting shall have a second or casting vote.

3.8 If the question be put as an Extraordinary Resolution the requisite number shall be (a) two-thirds of those members of the Law Council Board who are present and vote at a meeting of the Law Council Board of which not less than four clear days' notice specifying the intention to propose the resolution as an Extraordinary Resolution has been duly given; or (b) if voting is by ballot, two-thirds of those members of the Law Council who vote in the ballot on the question.

3.9 If a ballot is demanded by at least one-quarter of those present and voting or by 5 of them (whichever number be the less) the question shall be determined upon a ballot which shall be held (subject as hereinafter provided) in such manner as the Law Council Board may determine so as best to ensure that every member shall have the opportunity of voting.

3.10 Unless the Law Council board otherwise directs, a ballot of members of the Law Council Board shall be taken in accordance with the following provisions:

3.10.1 Within seven days after the date of the meeting at which the ballot is demanded the Secretary shall send to each member of the Law Council Board a ballot paper setting out the resolution in respect of which the ballot has been demanded. The ballot paper shall contain instructions as to voting and shall be in such form generally as, subject to any directions of the Law Council Board, the Secretary considers appropriate.

3.10.2 Each member of the Law Council Board wishing to vote in the ballot shall complete his ballot paper and return it to the office of the Law Council so as to be received there not more than fourteen days after the date of the meeting at which the ballot was demanded and any ballot paper not so received shall not be counted in determining the result of the ballot.

3.10.3 On a ballot, the chairperson of the meeting at which the ballot was demanded shall not have a casting vote, and, in the event of a tie, the resolution balloted (if

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it is on a question to be decided by a majority of those voting) shall not be carried.

3.10.4 The accidental omission to send a ballot paper to any person, or the failure of any person to receive a ballot paper, shall not invalidate the ballot.

3.10.5 The result of any ballot shall be made known to the members of the Law Council Board in such manner as the Chairperson shall direct.

#### **PART IV**

#### **Annual General Meetings and Ballots of Authorised Persons/Members of Law Council**

4.1 Not less than one month's notice of an Annual General Meeting shall be given by giving notice individually to every person who is entitled to attend. Such notices shall specify the place, the day and the hour of the meeting, and the general nature of any matter which is to be brought forward for discussion. The accidental omission to give such notice in manner provided to any person entitled to same shall not invalidate the proceedings of any meeting.

4.2 Any member of the Law Council shall be at liberty to bring forward any resolution (not disallowable under Section 4.7 of this Part) for discussion and decision to any Annual General Meeting provided that prior notice of his intention to do so shall have been given in writing to the Secretary not less than 14 clear days before the day of the meeting and provided that the resolution is seconded by another Authorised Person. The Secretary shall thereupon give notice of all such resolutions in the manner prescribed under Paragraph 1 of this Part not less than 7 clear days before the day of the meeting. Notwithstanding any failure to comply with all or any of these requirements the chairperson of the meeting may at his or her discretion allow a resolution to be brought forward for discussion and decision upon such terms as he considers reasonable.

4.3 No business shall be transacted at an Annual General Meeting unless a quorum is present at the time when the meeting proceeds to business and, save as hereinafter otherwise provided, 20 members of the Law Council personally present shall constitute a quorum.

4.4 If within thirty minutes from the time appointed for an Annual General Meeting a quorum be not present the meeting shall stand adjourned to the same day in the next week at the same time and place or at some other time and place as the chairperson of the meeting shall appoint; and if at such adjourned meeting a quorum be not present within a quarter of an hour from the time appointed for the meeting, those persons who are present shall constitute a quorum.

4.5 The chairperson of any Annual General Meeting may, if a quorum was present at the time when the meeting proceeded to business, adjourn the meeting with its consent to another time or another place, but -

4.5.1 no business shall be transacted at any adjourned meeting other than business which might have been transacted at the meeting from which the adjournment took place;

4.5.2 if the meeting is adjourned for 21 days or more, not less than 14 clear days' notice of the adjourned meeting shall be given in any manner and form sufficient for the original meeting; and

4.5.3 if the meeting is adjourned for less than 21 days, it shall not be necessary to give any notice of the adjourned meeting.

4.6 The Chairperson or such other person as s/he nominates, or in the absence of the Chairperson and any such nominated alternate, the Vice-Chairperson shall preside as Chairperson at every Annual General Meeting. If at any Annual General Meeting neither the Chairperson (or, as the case may be, his nominated alternate) nor the Vice-Chairperson is present within ten minutes after the time appointed for holding the same, the persons present shall choose some member of the Law Council Board, or if no such member be present and willing to take the chair, a member of the Law Council to preside.

4.7 The chairperson of an Annual General Meeting may, at any time during the meeting, by refusing to accept, to allow discussion of, or to put to the meeting, reject:-

4.7.1 any resolution contrary to or inconsistent with this Constitution;

4.7.2 any amendment to a resolution which has not been seconded by another.

4.8 A member of the Law Council who has given notice of a resolution pursuant to Section 4.2 of this Part may, without the consent of the meeting, withdraw the resolution at any time before speaking to it. Thereafter s/he may withdraw it only with the leave of the chairperson of the meeting which shall not be given if any member of the Law Council present objects, and before giving such leave the chairperson of the meeting shall ask the meeting if there is any such objection.

4.9 No member of the Law Council shall be permitted without the consent of the chairperson of the meeting to speak more than once or for more than five minutes on the same matter.

4.10 At any Annual General Meeting any resolution put to the vote of the meeting shall be decided on a show of hands by a majority of those who, being entitled to attend, are present in person at the meeting, unless a ballot of the members of the Law Council is upon declaration of the result of the show of hands required by the chairperson of the meeting or by 10 persons present and entitled to vote on the resolution, but:

4.10.1 if the resolution affects only a class of member of the Law Council or any section thereof, only members of the class or section shall be entitled to vote and the references to a ballot in this Schedule shall be read as referring to a ballot of that class or section;

4.10.2 for the purposes of Section 4.10.1 of this Paragraph, a resolution shall be regarded as affecting a class or section only of members of the Law Council if (and only if):

4.10.2.1 the Law Council so resolves - or

4.10.2.2 the Law Council having earlier neither so resolved nor resolved to the contrary, the chairperson of the meeting at which the resolution is to be put so determines, except that if at the meeting, before a vote is taken on the resolution, the Law Council's determination is demanded orally or in writing by at least one-half of those present in person or by 10 of them (whichever the less) the determination of the chairperson of the meeting shall be of no effect in respect of that resolution (unless it is upheld by the Law Council) and the chairperson of the meeting may then provisionally take such votes as he may think fit or may adjourn the meeting (or proceed to other business and then adjourn the meeting) so as to enable a vote to be taken on the resolution after the Law Council's determination;

4.10.3 a ballot shall not be capable of being required by persons entitled to vote at the meeting other than the chairperson of the meeting if the chairperson of the meeting declares that the subject matter of the resolution has recently been the subject of a ballot.

4.11 No ballot shall ever be required on any question of adjournment of any such meeting.

4.12 No resolution shall be passed if there are less than 10 members entitled to vote present when the vote is taken.

4.13 In the event of an equality of votes on a show of hands, the chairperson of the Annual General Meeting shall be entitled to a second or casting vote, but on a ballot there shall be no casting vote and in the event of a tie, the resolution balloted shall not be carried.

4.14 Unless the Law Council otherwise directs, a ballot on a resolution put at an Annual General Meeting of members of the Law Council shall be taken in accordance with the following provisions:

4.14.1 Within 10 days after the date on which the resolution was put to the meeting the Secretary shall send to each member of the Law Council to be balloted a

ballot paper setting out the resolution in respect of which the Ballot has been demanded. The ballot paper shall contain instructions as to voting and be in such form generally as, subject to any directions of the Law Council, the Secretary considers appropriate.

4.14.2 Each member of the Law Council entitled and wishing to vote in the ballot shall complete his ballot paper and return it to the office of the Law Council so as to be received there not more than thirty-five days after the date on which the resolution was put to the meeting, and any ballot paper not so received shall not be counted in determining the result of the ballot.

4.14.3 The accidental omission to send a ballot paper to any person, or the failure of any person to receive a ballot paper, shall not invalidate the ballot.

4.14.4 The result of any ballot shall be deemed to be the resolution of the Annual General Meeting at which the ballot was demanded, and shall be made known to the members of the Law Council in such manner as the Chairperson shall direct.

## **PART V**

### **RETIRED MEMBER AND STUDENT MEMBER REGISTERS**

5.1 The Law Council Board shall maintain a Retired Member Register and a Student Member Register of such persons eligible for membership under section 2A of this Constitution who pay the respective fee set by the Law Council Board under the provisions of section 5.2

5.2 The Law Council Board shall in its discretion set an annual membership fee for Retired Members and Students.

5.3 Payment of the annual membership fee under section 5.2 will entitle eligible persons to be placed on the Retired Members or Student Members Register as the case may be and to be entitled to the privileges of membership of the Law Council under the terms of this Constitution.

## **LAW COUNCIL**

### **STANDING ORDER FOR COMMITTEES AND SUB-COMMITTEES OF THE LAW COUNCIL COMMITTEE STRUCTURE**

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#### **COMMITTEES**

1. There shall be the following Main Committees which shall be standing committees of, and shall report to, the Law Council-

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- (a) The Law Reform Committee;
- (b) Finance Committee.
- (c) Education, Communication and Member Services Committee.
- (d) Committee for non-contentious work.
- (e) Court Users Committee.

### **MAIN COMMITTEES**

#### **Law Reform Committee (“LRC”)**

2. The membership of the Law Reform Committee shall be-

- (a) One Queen's Counsel;
- (b) Not more than four other Authorised Persons.

3. The terms of reference of the LRC shall be-

- (a) To develop and consider proposals for law reform and to submit views to the Law Council Board, Government and others as requested by the Law Council Board .
- (b) To maintain and develop the work of the legal profession.
- (c) To consider and make representations and give guidelines on:-
  - (i) Lawyers’ remuneration;
  - (ii) Legal services;
  - (iii) The organisation and conditions of the work of Authorised Persons in Gibraltar;
  - (iv) Matters of particular concern to young Authorised Persons or Student Members;
  - (v) Legal aid and assistance;
  - (vi) Any matter of proposed law reform referred to the Committee by the Chairperson of the Law Council Board.

4. The Committee will govern its own procedure and liaise with the Law Council Board and any other Committee thereof as might be appropriate.

**Finance Committee (“FC”).**

5. The membership of the Finance Committee shall be-

- (a) a chairperson who shall be the person elected as Treasurer to the Law Council;
- (b) Four other Authorised Persons.

6. The terms of reference of the FC shall be-

- (a) Ensure compliance with section 36 of the Act.
- (b) Such matters as are allotted to it under the Constitution of the Law Council;
- (c) The annual budget; borrowing and lending; insurance; investments; accounts; financial control;
- (d) The administration of trust funds of the Law Council;
- (e) Procedural matters and the organisation of the Law Council's business as a whole;
- (f) Staff policy; rates of pay and conditions of service; appointment and direction of staff.

**The Education, Communication and Member Services Committee (“ECMSC”)**

7. The membership of the Education, Communication and Member Services Committee shall be four Authorised Persons one of whom should be of at least fifteen years' standing.

8. The terms of reference of the Services and Representation Committee shall be:

- a. Issues pertaining to the Gibraltar Law qualification.
- b. Continuing Professional Development.
- c. Qualifying as a lawyer in Gibraltar and getting called to the Bar or admitted as a solicitor in Gibraltar.
- d. Review and updating the Law Council's website.
- e. Monitoring and communications (especially via social media) of the Law Council.

**The Committee for Non-Contentious Work (“CNCW”)**

9. The membership of the Committee for Non-Contentious Work shall be five Authorised Persons.

10. The terms of reference of the CNCW shall be to-

- (a) advise the Law Council Board on such matters concerning non-contentious private client work, property and commercial matters as the Board should refer to the Committee;
- (b) To advise and assist the Law Council Board in any matter in respect to financial services, the development of Gibraltar as a finance centre, business, trade, consumer affairs, electronic business or the gaming industry.

**Court Users and Professional Conduct Committee (“CUPCC”)**

11. The membership of the Court Users Committee shall be five Authorised Persons.

12. The terms of reference of the CUPCP shall be to advise and assist the Law Council Board on matters concerning:

- (a) professional conduct, etiquette and behaviour;
- (b) the administration of justice;
- (c) the use of court resources (technical, human, financial, administrative);
- (d) practice and procedure of courts and tribunals;
- (e) mediation and arbitration;
- (f) any review or amendment of Codes of Conduct, practice rules, admission rules or protocols or other codes applicable to Authorised Persons
- (g) court fees.

**PROCEEDINGS OF COMMITTEES****Term of office**

13. The chairpersons and members of the committees defined in these Standing Orders shall be appointed by the Law Council Board from among the body of Authorised Persons

following nomination by the Chairperson of the Law Council Board. All persons holding the position of chairperson of any committee or sub-committee shall hold the appointment, unless s/he resigns, notwithstanding that s/he may cease to be qualified, until his successor is appointed. Chairpersons if still qualified, shall be eligible for re-appointment to their respective offices.

## **Chairperson limits**

14. No person may be a chairperson of more than one Committee at any time.

## **Additional members**

15. Committees of the Law Council may appoint additional members in accordance with their Terms of Reference as set out in these Standing Orders. Where arrangements for appointing additional members are not specified, there shall be a general power of committees and sub-committees to appoint additional members at their discretion, providing the number of additional member shall not exceed two unless the Law Council agree otherwise.

## **Quorum**

16. No business shall be transacted at an meeting of any committee, sub-committee or subsidiary body unless three of its members are present.

## **General.**

17. Committees may act in matters within their terms of reference, within their budget as approved by the Law Council Board, and shall promote such policies as may be laid down by the Law Council Board. The Committees shall make periodic reports to the Law Council Board. Sub-committees shall make periodic reports to the Standing committee by which they are appointed.

18. Matters requiring a vote in committees shall be decided by a simple majority. The persons presiding at a meeting of a committee, sub-committee or subsidiary body shall have a second or casting vote.

19. Between meetings the chairperson of a committee, sub-committee or subsidiary body may take action on their behalf on matters which are of a routine character or will not admit of delay, and may act similarly on minor or specially urgent matters. In addition, a chairperson may deal with such other matters within a committee's terms of reference and the approved budget as the committee may from time to time determine. All such action is to be recorded, and reported to the next committee meeting.

20.. The chairperson of each committee or, in his or her absence, the vice-chairperson of the committee shall take the chair at every meeting of such committee. In the absence of the

chairperson and the vice-chairperson the members actually present shall proceed to elect a chairperson from among their members.

21. Any committee may appoint a sub-committee or other subsidiary body in order to delegate to it a part of its terms of reference. The appointing committee shall state the membership and terms of reference for any sub-committee or subsidiary body.

22. All acts done in good faith by any committee shall, notwithstanding that there was some defect in the appointment of any of its members, or any error in its composition, be as valid as if there was no such defect or error.

23. Subject as herein before expressly provided each committee shall meet and regulate its business in such manner as its members shall think fit.