GOVERNMENT NOTICE NO. 49

LEGAL EDUCATION AND LEGAL PRACTITIONERS ACT

(ACT NO. 31 OF 2018)

MALAWI LAW SOCIETY (CONTINUING LEGAL EDUCATION) RULES, 2021

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IN EXERCISE of the powers conferred upon the Malawi Law Society by section 73 of the Legal Education and Legal Practitioners' Act, and with the approval of the Annual General Meeting, the Society hereby make the following Rules—

Citation

1. These Rules may be cited as the Malawi Law Society (Continuing Legal Education) Rules, 2021.

Interpretation

2. In these Rules, unless the context otherwise requires—

"accounting and anti-money laundering compliance" means compliance with the Legal Practitioners' Accounts Rules and the Financial Crimes Act; Cap. 7:07

"anti-money laundering compliance partner" means a partner in a law practice designated, from time to time, by the members of the partnership and notified in writing to the Society as the partner responsible for ensuring compliance with requirements of the Financial Crimes Act, provided that where the Society has not been notified of such nomination, "anti-money laundering compliance partner" means each and every partner in such law practice; Cap. 7:07

"compliance partner" means a partner in a law practice who is designated, from time to time, by the members of the partnership and notified in writing to the Society as the partner responsible for compliance with the Legal Practitioners' Accounts Regulations, provided that where the Society has not been so notified "compliance partner" means each and every partner in the law practice;

"continuing professional development or CPD" means further education or training undertaken by a legal practitioner, whether relating to law, management or skills development in professional or regulatory matters intended to develop the legal practitioner's professional knowledge, skills and abilities;

"e-learning" means the provision of education or training that is generated, communicated, processed, recorded, stored or displayed by electronic means or in electronic format;

"group study" means a continuing professional development programme undertaken in a group of three or more persons;

"management and professional development skills" includes education or training in any one or more of the following areas—

(*a*) financial and business management;

(*b*) practice management;

(*c*) personal career development;

(*d*) client care;

(*e*) regulatory matters;

(*f*) communication skills as it relates to the practice of law; and

(*g*) foreign language enhancement as it relates to the practice of law, as may be more particularly defined and specified in the scheme;

"newly admitted practitioner" means a legal practitioner who has been admitted to the Roll for a period of less than twelve months prior to the commencement of a practice year;

"practice year" means the period beginning on 1st February in a calendar year and ending on 31st January in the next calendar year;

"regulatory matters" means matters relating to the regulation of legal practice including—

(*a*) Legal Education and Legal Practitioners Act, and rules or regulations made thereunder;

(*b*) accounting and anti-money laundering compliance;

(*c*) the Society's Guidance Notes for Legal Practitioners on Anti-Money Laundering Obligations;

(*d*) risk management;

(*e*) professional ethics and the maintenance of standards of best practice in complying with regulatory obligations;

(*f*) the processing of disciplinary matters against legal practitioners by the Society or the High Court;

"senior practitioner" means a legal practitioner who has been admitted to the Roll for at least thirty-five years as at the beginning of a practice year;

"scheme" means the scheme of continuing professional development of the Society as provided for under rule 5; and

"written relevant material" means written material of a legal nature that is published in a legal periodical, textbook or other source as may be more particularly defined and specified in the scheme.

Application of Rules

3. These Rules shall apply to all legal practitioners.

Requirement to undertake continuing legal education

4.— (1) A legal practitioner shall undertake a continuing professional development programme (hereinafter referred to as "CPD") during each practice year.

(2) The CPD undertaken under subrule (1) shall comply with the scheme prescribed under rule 5.

5.— (1) The Society shall provide, from time to time, a scheme of CPD ("the scheme") to be undertaken by a legal practitioner during each practice year.

Provision of continuing legal education

(2) The CPD programme under subrule (1) shall comprise a minimum of twenty hours out of which—

(*a*) a minimum of three hours shall be on management and professional development skills; and

(*b*) a minimum of two hours shall be on regulatory matters:

Provided that a legal practitioner who is a sole practitioner, a compliance partner or an anti-money laundering compliance partner shall be required to accumulate at least three hours on regulatory matters of which at least two hours shall be on accounting and anti-money laundering compliance.

(3) A CPD programme may be completed by means of e-learning, group study or production of written relevant material, as may be more particularly prescribed in the scheme.

6.—(1) The Society may accredit any institution to offer a CPD programme or award CPD hours for courses offered by the institution.

Accreditation of CPD programmes offered by other institutions

(2) An application under subrule (1) shall be in writing and shall be filed by—

(*a*) the institution intending to offer the course, prior to registering participants; or

(*b*) a legal practitioner before attending the course or before the expiry of two months from the date the course ended.

(3) An application under subrule (2) shall contain particulars of the course content, copies of relevant course materials, mode of delivery and any other information or supporting documents as would allow the Society to decide on the application.

(4) The Society shall approve or reject the application based on the following factors—

(*a*) whether the programme is an educational programme;

(*b*) whether the objective of the programme is to improve the professional competence of legal practitioners or, if open to various professions, whether the programme deals with a subject matter that is directly relevant to the practice of law;

(*c*) whether the duration of the course and the mode of delivery meet the minimum standards set out in the scheme under rule 5;

(*d*) if the course is examinable, whether the applicant passed the examinations or not;

(*e*) the course content and quality of course materials delivered;

(*f*) qualifications and expertise of course facilitators;

(*g*) whether the institution applying for accreditation has the expertise and resources necessary for achieving the goals of the CPD programme;

(*h*) whether the method of content delivery sought to be utilised or utilised is appropriate for dissemination of the relevant skills and knowledge to participants;

(*i*) whether the infrastructure to be used or used is appropriate and conducive for delivery of the CPD programme;

(*j*) whether the institution applying for accreditation has complied with terms and conditions of previous accreditations; and

(*k*) any other matter as may appear relevant to the Society.

(5) The Society shall issue a letter of accreditation upon approval of any CPD programme and shall allocate CPD hours to the programme.

Award of participation certificates

7. The Society or accredited institution shall issue a certificate of participation to every participant who successfully completes a CPD programme.

Maintenance of records

8.—(1) The Society and every accredited CPD programme provider shall keep a record of participants in a CPD programme showing, for each participant, whether the participant successfully completed the programme.

(2) The Society shall maintain a register of CPD programmes accredited in each practice year and the institution that delivered each programme.

(3) An accredited CPD programme provider shall, within thirty days of completing an accredited CPD programme, file a return with the Society containing such details as the Society may prescribe.

Proof of compliance

9.— (1) A legal practitioner shall maintain a written record of the CPD hours undertaken by him or her (including written verification thereof) in such format as shall be prescribed by the scheme.

(2) A legal practitioner shall, upon being requested by an officer of the Society, produce a record of his or her CPD hours and the appropriate supporting documents for verification.

(3) Every application for an annual legal practitioner's licence shall be accompanied by proof that the applicant complied with these Rules during the previous practice year.

Modification of CPD requirements

10. The requirements in rule 5 (2) shall be modified in the manner provided in this rule with respect to the specified categories of legal practitioners—

(*a*) a newly admitted legal practitioner, the prescribed period shall be reduced *pro-rata* as specified in the scheme;

(*b*) a senior practitioner, the prescribed period shall be reduced to three hours in each practice year;

(*c*) a legal practitioner who, on health grounds or any other justifiable grounds, is unable to attend CPD sessions or practice for any period in excess of one month, the prescribed period shall be reduced *pro-rata* as specified in the scheme;

(*d*) a legal practitioner who holds a licence for part only of a practice year, the fact of which is certified by the Society, the prescribed period shall be reduced *pro-rata* as specified in the scheme; and

(*e*) a legal practitioner who engages in part-time practice in the course of a practice year, the fact of which is certified by the Society, the prescribed period shall be reduced *pro-rata* as specified in the scheme.

Fees for CPDs

11. The Society may prescribe a fee payable by participants in a CPD programme and, in the case of a CPD programme conducted by an accredited CPD programme provider, the Society shall approve the fees levied by the provider.

Breach of Rules to be misconduct

12.—(1) A breach of these Rules shall be a misconduct within the meaning of section 89 (2) (r) of the Act.

(2) The Executive Committee of the Society may investigate a breach of these Rules by a legal practitioner and in so doing shall have power to—

(*a*) require the legal practitioner to submit a written explanation of his conduct;

(*b*) call the legal practitioner to a meeting to discuss the alleged breach;

(*c*) give directions to the legal practitioner on how to remedy the breach; or

(*d*) direct that the matter be referred to the Disciplinary Committee of the Society.

(3) Where a legal practitioner under investigation refuses, neglects or otherwise fails, without reasonable cause, to respond or respond appropriately and in a timely manner to directions of the Executive Committee of the Society under paragraphs (*a*), (*b*) or (*c*) of subrule (2) and the Society incurs costs consequent upon the refusal, neglect or failure, the Society may require the legal practitioner to pay to the Society a sum of money not exceeding K500,000 as a contribution towards the cost of the proceedings.

(4) A determination under subrule (3) shall not be made by the Society unless the legal practitioner has been duly notified by the Executive Committee of the Society in writing that such a determination might subsequently be made if the legal practitioner continues to refuse, neglect or otherwise fail, without reasonable cause, to respond appropriately and in a timely manner to the written request or direction of the Executive Committee of the Society.

(5) The Society may recover from the legal practitioner any sum determined under subrule (3) as a liquidated debt payable to the Society.

Modification of Rules in exceptional circumstances

13.— (1) The Society may, in exceptional circumstances and subject to such conditions as the Executive Committee of the Society shall deem appropriate, modify any requirement or provision of these Rules.

(2) Where the Executive Committee of the Society determines that exceptional circumstances exist justifying application of subrule (1), the Executive Committee of the Society shall, by notice under the hand of the

Secretary of the Committee, waive any requirement prescribed under these Rules other than rule 4 (1).

Made on the 31st day of August, 2021.

C. C. NGUNDE
Secretary

P. G. MPAKA
Chairperson