
11 July 2024

Notice to Legal Practitioners

Legal Sector Code

In April 2020 the LPC initiated the development of the Legal Sector Code (“LSC”). A Steering Committee consisting of stakeholders in the legal profession was constituted, including Nadel, BLA, GCB and Legal Aid, amongst others. Officials from the Department of Trade, Industry and Competition (“DTIC”) and the Department of Justice and Constitutional Development (“DoJ”) also formed part of the Steering Committee.

Countrywide in person consultative meetings were held in the latter part of 2020. Stakeholders were also given an opportunity to submit written responses from November 2020 to March 2021. One virtual meeting was held in December 2020. The Steering Committee met several times and considered contributions from the in-person consultations as well as the written submissions from stakeholders, and it incorporated comments where appropriate and amended the draft LSC.

In accordance with the Guidelines contained in Statement 003, the amended draft was submitted to the DTIC Minister Ebrahim Patel in August 2021 to issue it for public comments. There was a considerable delay on the Minister’s part, and he only published the draft on 22 July 2022. The period for comment was 60 days which ended on 10 October 2023. The guidelines require that after receipt of public comments, the DTIC should set up a committee comprising members of the Steering Committee, DoJ and DTIC to consider the comments. There was also a delay in the DTIC constituting this committee (“the Technical Committee”). The Technical Committee was only constituted in March 2023 and comments forwarded to it by the DTIC in April 2023. The Technical Committee met several times to consider the comments and amended the LSC further, based on the comments and further deliberations.

The Technical Committee completed this process in August 2023 and submitted the draft LSC to the Steering Committee for approval. The Steering Committee considered the amendments and approved the draft LSC on 14 September 2023. Thereafter it was submitted to the Minister of Justice and Constitutional Development with

supporting documentation on 22 September 2023. The Minister of Justice and Constitutional Development approved the LSC and submitted it to the Minister of the DTIC on 11 October 2023 for gazetting.

Nothing further was heard despite enquiries from the Steering Committee. The LPC is aware that Nadel, BLA, PABASA and BCA (the organisations) also sent enquiries to the Minister and due to the absence of a response to their correspondence, the organisations filed an application at the end of February 2024 in the North Gauteng High Court to compel the Minister of the DTI to gazette the LSC. The respondents are the Minister of the DTIC, the Minister of Justice, the Solicitor-General and the LPC.

The Minister of the DTIC has opposed the action and only after the filing of the application wrote to the Steering Committee to consult regarding concerns he had. A meeting was then belatedly held on 7 June 2024. The Steering Committee reiterated its views that the Minister's concerns were not valid as all due processes had been followed and Statement 003 had been complied with. He requested some minor amendments to the LSC for clarification purposes, which the Steering Committee agreed to and resubmitted the LSC to the Minister on Wednesday 19 June 2024.

It was hoped that he could approve it for gazetting prior to his departure, but this has not happened. The Steering Committee has undertaken to continue to communicate with the DTIC to secure the gazetting of the LSC.

KIND REGARDS

LEGAL PRACTICE COUNCIL