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South Africa
Mr V Ramaano: vramaano@parliament.gov.za

RE: LEGAL PRACTICE AMENDMENT BILL – 2017

1. INTRODUCTION

- 1.1. We at Gatsheni Advisory (“**GA**”) would like to take the opportunity to thank Parliament for providing the platform on which as ordinary South Africans, we can publish comments on issues that affect our trade and our society at large. Opportunities such as these should never be taken for granted. We are new to this process, rest assured we plan to participate from here on, it is pointless complaining about the issues of the day if you are not willing to influence those issues by adding your voice.
- 1.2. GA is a Durban based, business and legal advisory company, registered in terms of the laws of South Africa (Registration Number: 2015/382119/07). The description “business and legal advisory company”, raises an immediate question, why a business and legal advisory company, why not a traditional law firm registered with the Law Society? The answer to this question will be addressed in the body of this letter, and will draw on the wisdom and knowledge of a few journal articles from the United States of America (“**USA**”), the United Kingdom (“**UK**”), Australia and South Africa (“**SA**”).

1.3. The services provided by Gatsheni Advisory as well as other information, can be found at www.gatsheniadvisory.co.za. GA models itself on its ability to provide legal advisory services that are accessible, affordable, flexible, easy to action, predictable and value adding. To date the principles mentioned in this paragraph have been used to deliver the following services:

- advised a client on the most appropriate deal structure pursuant to the disposal of various of its shares;
- advised on hospital property leasing arrangement and prepared the required lease agreements;
- advised a client on market and policy dynamics pertaining to a high credit risk industry;
- advised a client on the setting up of a Venture Capital Partnership Fund and prepared the required agreement;
- advised a client on the setting up of a Banking Society Partnership, which is now fully operational. Prepared all the required agreements;
- advised a client on the acquisition of property pursuant to the potential exploration of natural gas and negotiated and prepared the required;
- advised a client on the contractual relationship of a client in the road transport industry;
- advised a client on the opening of a new franchise outlet and prepared the required franchise agreement;
- advised a client on the potential acquisition of a member's interest in a Wimpy Franchise;

- advised a client on a Marketing and Profit Sharing transaction and prepared the required agreements;
- establishing a trademark portfolio for a company in the entertainment and events industries;
- the speedy resolution of a construction materials delivery dispute. The dispute was resolved before it reached a court of law.

1.4. Admittedly, the detail that we have provided above might be cumbersome to the reader, however we believe that the heart of this letter would have no pulse were we not to provide sufficient particularity on who we are as an organization and what we do.

2. **LEGAL PRACTICE BILL – 2017 AND WORK RESERVED FOR PRACTISING ATTORNEYS**

2.1. **Amendment of section 33 of Act 28 of 2014 (“Amendments”)**

(a) *by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “Subject to any other law no person other than a practising legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward—”;* and

(b) *by the substitution for subsection (3) of the following subsection: “(3) No person may in expectation of any fee, commission, gain or reward, directly or indirectly, perform any act or render any service which in terms of any other law may only be done by an advocate, attorney, conveyancer or notary, unless that person is [an] a practising advocate, attorney, conveyancer or notary, as the case may be.”*

2.2. **GA’s concerns with respect to the Amendments**

2.2.1 Save for the drafting of summons, pleadings, conveyancing, and other

work which is done pursuant to or in anticipation of court proceedings,¹ we are unsure precisely which work is reserved for practising Attorneys. To elaborate on this point, section 15 (Memorandum of Incorporation, shareholder agreements and rules of company) of the Companies Act, 2008 does not say that memorandums of incorporations and shareholders agreements must be prepared by practising Attorneys. Yet, there is a perception² in the public domain that only practising Attorneys are permitted to draft such commercial documents. We are also concerned about other commercial agreements such as, partnership agreements, franchise agreements, lease agreements, sale of business, sale of shares agreements, sale of property agreements, subscription of shares agreements, preference share terms, engineering procurement and construction agreements. We are not aware of which laws place any prohibitions on whom may not negotiate and prepare these.

2.2.2 In our respectful view, it would be much more helpful if there were to be more clarity on the exact parameters on who may and may not draft the commercial agreements outlined above. We respectfully submit that, to the extent that certain documents and/or legal tasks are reserved for a certain category of professionals, such as practising Attorneys. Then in that scenario, reasons ought to be shared with the public so that the public can satisfy itself thereof. For example, should Parliament decide that partnership agreements may only be drafted by a practising Attorney, then the public needs an explanation as to why this is so.

3. THE LIMITATIONS CAUSED BY THE PHRASE "PRACTISING ATTORNEY"

3.1. We respectfully submit that the Legal Practice Act 28 of 2014 ("**Act**")

¹ The Legal Practice Act 28 of 2014. Section 33(1)(b).

² We engaged senior legal counsel who are employed in organizations that are listed on the Johannesburg Stock Exchange, private legal practice as well as other Government institutions.

discriminates horribly against non-practising Attorneys³ in that it grants next to no recognition of this class of professionals. Many practising Attorneys either practise as in-house counsel, change careers completely or practise as legal consultants and advisors once they have left private legal practice. In doing so, these professionals serve corporations and by necessary implication, the public at large. We are therefore unable to understand why next to no attention has been given to these professionals and would welcome any such reasons. Bizarrely, the Legal Practice Code of Conduct⁴ introduces rules on the conduct of professionals not in private practice. We call this "bizarre" because the Act is to the best of our understanding as close to silent as can be, on the issue of legal practitioners not in private practice.

- 3.2. There are a few points that we wish to stress, and they fall under the general quality of non-practising Attorneys who have formed legal consultancy businesses. Many of these Attorneys carry additional qualifications to their LLBs⁵ and as such are well positioned to deliver services that match and even surpass those that are offered by traditional lawyers carrying nothing more than an LLB Law Degree. Legal Consultants are featuring prominently in the South African legal services market, to say that they are carving-out a niche is anything but inaccurate.⁶ Another interesting observation is that many Founders of legal

³ See section 30(3)(a) and section 114(3).

⁴ Government Gazette (10 February 2017) Notice 81 of 2017, "*The Code of Conduct For Legal Practitioners, Candidate Legal Practitioners and Juristic Entities*". Part VII (Conduct of legal practitioners not in private practice).

⁵ I start with myself, Steven Ndlovu, I carry a Masters in Business Law which I acquired from the University of Kwa-Zulu-Natal. Furthermore I am a few months from acquiring an Executive Development Certificate from the University of Stellenbosch. Many other legal consultants carry Masters in Law, MBAs, Masters in Tax, Environmental, CA SA, Arbitration and Mediation and many other diverse qualifications.

⁶https://www.google.co.za/search?q=legal+consultants+south+africa&rlz=1C1CHZL_enZA687ZA687&oq=legal+consultants&aqs=chrome.1.69i57j35i39j0l4.9014j0j4&sourceid=chrome&ie=UTF-8. A simple google search using the terms, "*legal consultants south africa*", reveals 11 different legal consultancy businesses.

consultancy businesses had all or most of their training in either, one of South Africa's "big law firms"⁷ or reputable corporates, or both a big law firm and a reputable corporate. These observations are significant, in that they demonstrate an appealing well-roundedness that is possessed by many legal consultants. The observations made also illustrate (be it in limited fashion), that there is a growing trend towards legal consultants who are setting-up and competing for market share.

4. **CONCLUSION AND REQUESTS**

4.1. Unfortunately, time does not permit to indulge further in what is a thrilling discussion on the development of the law and the packaging of legal services. We only have a few humble requests:

4.1.1 the preservation and reservation of certain legal services needs to be carefully considered, understood and crafted. It remains our view that what work is reserved for who remains unclear. A situation where work is arbitrarily reserved based on outdated perceptions and intellectual laziness must be avoided at all costs. The law must be crafted to take into account that the *genus* legal practice, has changed considerably over the years. Personally, I have evolved in a corporate setting far more than what I did in private legal practice. I can draft today, a wider variety of legal agreements than what I was able to in private practice. I dread a situation where the law says that, as an example, "*only practicing Attorneys may draft shareholders agreements, memorandums of incorporations, partnership agreements and any other such legal agreements*". This I dread because many legal consultants similar to us, would have wasted many years acquiring niche skills;

⁷ These are law firms that compete for South Africa's biggest corporate transactions. In no order, these are generally known to be, Cliffe Dekker Hofmeyr, ENS Africa, Webber Wentzel and Bowman Gilfillan.

- 4.1.2 it is our respectful view that the Act must be amended to recognize legal consultants. A failure to amend the Act on this basis will render the Act incomplete, and out of kilter with international legal developments pertaining to different models of legal services businesses⁸;
- 4.1.3 it is further our respectful view that the interpretation of “practising Attorney” as being an Attorney who practices the law and generally resides in a private practice or law firm is artificial and outdated. Corporate counsel in corporations are often exposed to more legal drafting and other legal work than even practicing Attorneys. So why make a distinction between the two, if the distinction does not always find application? Why not include all corporate counsel and legal consultants under the umbrella of “practicing Attorney”, because, many of our functions and services overlap? Save for the drafting of pleadings and other court papers, court appearances, conveyancing, notarial practice and so-on.

We thank you for the opportunity provided, may we all find solutions that will benefit the public at large.

⁸ See <http://www.lawsociety.org.uk>. “The Future of Legal Services”. The Law Society of England and Wales. January 2016.

Kind Regards



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