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Mr V Ramaano
Portfolio Committee on Justice
and Constitutional Development

BY EMAIL: vramaano@parliament.gov.za

Your reference	Our reference	Date
	AL	27 July 2012

Dear Sir

Webber Wentzel submissions on the Legal Practice Bill

We write in response to the invitation for submissions on the Legal Practice Bill ("the Bill"). By way of introduction, Webber Wentzel is one of the oldest and largest firms in South Africa and our professional staff includes almost 150 partners, and approximately 250 other attorneys. We pride ourselves on being one of the leading corporate law firms in Africa. With offices in Johannesburg and Cape Town, the firm provides high-quality services to meet the multiple and varying needs of a powerful client base that includes many of South Africa's Top 100 companies in mining, banking, insurance, media, property and telecommunications. Work on the African continent represents a growing area of Webber Wentzel's business and the firm is now the South African member of ALN (Africa Legal Network), an established group of Africa's 12 foremost law firms.

In making our submissions, we do not intend repeating the points made by our various colleagues, such as the Law Society of South Africa, the Law Society of the Northern Province, and National Association of Democratic Lawyers, whose views we broadly support. We wish to address only a few key points which are of particular relevance and concern to us, as a large corporate law firm.

Submissions Re The LPB DOCX (4) Docx

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Webber Wentzel is a firm of attorneys and other legal and professional advisers and a member of ALN, a network of independent leading law firms in Africa

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1. Regulation of fees

- 1.1 We are generally supportive of a regime, as proposed by Section 3 of the Bill, that is intended to ensure that fees chargeable by legal practitioners for legal services rendered are affordable and within the reach of the citizenry.
- 1.2 However, we submit that the current wording of Section 35, which is intended to provide a guide as to what a fee structure implemented under the Act should take into account, does not provide for many other important considerations. In our view, similar weight as to what is already provided for should also be given to the experience of the lawyer, the location and the overhead costs of the lawyer.
- 1.3 In addition, our clients, and accordingly the clients of many firms like ours, are usually very sophisticated users of legal services. The Bill does not expressly take into account their power, bargaining position, and their strong ability to keenly regulate and keep fees competitive. We are of the view that provisions allowing parties and in particular, sophisticated users of legal or professional services, to contract out of the fee structure should be included in the Bill.
- 1.4 We feel that it is inevitable that if fees are regulated as is proposed, almost all lawyers will move to charge the maximum capped rate. This will distort competition in the market, and accordingly we do not believe that regulating fees will in fact achieve the desired purpose. We are of the opinion that the market does and should have the freedom to determine and regulate rates.
- 1.5 In the circumstances, we submit that the current wording of the Bill gives the legislator too much control and power, and does not impose sufficient limits on this power by ensuring that all relevant issues are to be considered.

2. Multi-Disciplinary Practices

- 2.1 Section 6(5) provides for the potential for allowing Multi-Disciplinary Practices. It states that the Minister may request the Council to advise it on multi-disciplinary legal practices for the purpose of developing policies and legislative and other interventions in respect of multi-disciplinary legal practices.

- 2.2 Whilst we are appreciative that the issue is on the agenda, it is our submission that the wording in this regard is too speculative. No set time period for this issue to be considered is provided for, and no certainty is given that anything in this regard will be done at all.
- 2.3 For many years professional services firms have been requesting a relaxation of the restrictions in this regard. Furthermore, internationally, particularly in the United Kingdom, visible progress has been made in allowing Multi-Disciplinary Practices. We, and firms like us, compete with many of these Multi-Disciplinary Practice International Firms.
- 2.4 In addition, both corporate and non-corporate clients would benefit from a "one-stop shop", in particular in the tax and related financial services. Precedent for allowing some additional services is already seen with the investment practices of lawyers.

3. Limited Liability Practices

- 3.1 Section 34(9) will empower the Minister, after consultation with the Council and Board, to prescribe for the creation and recognition of limited liability legal practices and the terms and conditions of such practices.
- 3.2 Similar to what we submit above regarding Multi-Disciplinary Practices, it is our view that the current wording of this provision is too speculative. Once again, no time period for the issue to be considered is provided for, and no certainty is given that anything in this regard will be done at all.
- 3.3 We submit that allowing limited liability practices will be of great benefit to the public and should therefore be prioritised. The prohibition on limited liability practices is a barrier to entrepreneurship in the profession and discourages new firms from being established, particularly in badly serviced areas. We do not believe that lifting the restriction on personal liability of practitioners will prejudice the public as there are sufficient control measures in place to protect the public, such as Professional Indemnity and Fidelity Fund insurance, the intervention, investigation, disciplinary and sanction powers of the Councils and Societies, and the ability to restrict rights to practice generally.

4. Continuing Professional Development

- 4.1 Webber Wentzel agrees with and supports the requirement of mandatory continuing professional development (**MCPD**). We note that a considerable amount of work was done by the LSSA during the course of 2010 to formulate a draft proposal for a Continuing Professional Development system for attorneys (**the Draft Proposal**). Webber Wentzel made written submissions to the LSSA on the Draft Proposal.
- 4.2 In this regard, we seek clarity and certainty on what this requirement will entail, to whom it will apply and to what extent the Draft Proposal will be considered and applied by the Council. We had hoped that much of the Draft Proposal could have been included in the Bill, and we do not wish to see the work done be wasted, or repeated.
- 4.3 In particular, we seek clarity on whether it is anticipated that law firms with established internal training programmes may, upon meeting certain criteria, be accredited as training providers. This was proposed under the Draft Proposal and meant that attendance by a firm's lawyers at their in-house training sessions would be credited toward their MCPD requirements. We support this approach as it encourages the larger law firms to invest in the learning and development of their lawyers.

We hope you find these submissions helpful, and we look forward to a new regulatory regime that will pave the way for a stronger and even more highly regarded profession. Please do not hesitate to contact us should you require any further information.

Yours faithfully



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