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THE LEGAL PROFESSION ACT

THE GENERAL LEGAL COUNCIL'S COMPENSATION FUND RULES

In exercise of the powers conferred on the General Legal Council (hereinafter referred to as the GLC) by section 42(1) of the Legal Profession Act and every other power hereunto enabling, the following Rules are hereby made:—

These Rules shall be known as the General Legal Council's Compensation Fund Rules.

Rule 1: *Interpretation*

1.1 Unless the context otherwise requires:

- (a) all italicised terms shall be defined; and
- (b) terms shall be interpreted,

in accordance with the Interpretation Act.

Part 2: *The Fund*

Rule 2: *Maintenance of and contributions to the Fund*

- 2.1 The GLC hereby establishes and shall maintain and administer a fund called the General Legal Council's Compensation Fund ("the Fund") for making ex gratia grants to compensate persons pursuant to section 42(1) of the Legal Profession Act. The GLC shall appoint a Committee to supervise and make recommendation to the GLC concerning the affairs of the Fund.
- 2.2 The initial investment in the Fund shall be Four Million Dollars (JA\$4,000,000).
- 2.3 The GLC may hold monies raised for the purposes of the Fund in a specific single fund, and may distribute any monies out of such fund, pursuant to the provisions of the Legal Profession Act, any accompanying regulations and these rules.
- 2.4 The GLC shall make contributions to the Fund in such amounts, at such times and in such circumstances, as it may determine from time to time.
- 2.5 The GLC may invest any money which forms part of the Fund in any investments recommended by the Committee.
- 2.6 The Fund may be applied by the GLC for the following purposes (in addition to the making of grants in respect of compensation claims under the Legal Profession Act):
 - (a) payment of any costs, charges or expenses incurred by the GLC in establishing, maintaining, protecting, administering or applying the Fund;
 - (b) payment of any costs, charges or expenses incurred by the GLC in exercising its powers of intervention;
 - (c) payment of any costs or damages incurred by the GLC, their employees or agents as a result of proceedings against any or either of them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of such powers.

Part 3: *Grants and applications*

Rule 3: *Grants which may be made from the Fund*

- 3.1 The primary object of the Fund is to compensate applicants for loss of property which an Attorney-at-law or an employee of an Attorney-at-law has misappropriated or otherwise failed to account for. The applicant need not necessarily be or have been the Attorney-at-law's client.
- 3.2 The only claims that will be considered are those claims that emanate from losses that result from the actions or defaults after the Fund has been established.
- 3.3 A grant out of the Fund is made wholly at the discretion of the GLC. No person has a legally enforceable right to a grant.

3.4 For any grant to be made from the Fund an applicant must satisfy the GLC that:—

- (a) he has suffered loss in consequence of the dishonesty of an Attorney-at-law or the employee of an Attorney-at-Law; or
- (b) he has suffered loss in consequence of a failure to account for money which has come into the hands of an Attorney-at-law, which may include the failure by an Attorney-at-law to complete work for which he was paid;

in the course of an activity of a kind which is part of the usual business of an Attorney-at-law and the act or default arose in the course of performance of that activity.

3.5 A grant may, at the sole discretion of the GLC, be made as an interim measure.

Rule 4: *Grants in respect of only Attorneys with Practising Certificates*

4.1 A grant will only be made if the relevant Attorney-at-law had a practising certificate in force at the date of the retainer.

Rule 5: *Losses outside the remit of the Fund*

5.1 For the avoidance of doubt, grants will not be made in respect of the following:—

- (a) Losses arising solely by reason of professional negligence by an Attorney-at-law, or the employee of an Attorney-at-law or an employee hired by a partnership or a company controlled by an attorney or attorneys.
- (b) Losses which are the personal debts of an Attorney-at-law and where the facts would not otherwise give rise to a claim on the Fund.
- (c) Losses which result from the trading debts or liabilities of the Attorney-at-law.
- (d) Losses which amount to a claim for contractually agreed interest between the applicant and the Attorney-at-law.
- (e) The GLC was not notified of the applicant's loss in accordance with rule 8.

5.2 For the avoidance of doubt, a grant will not be where there is a policy or policies of insurance against which a claim could be or has been made in respect of the liability of the Attorney-at-Law.

Rule 6: *Undertakings*

6.1 A grant in respect of a failure by an Attorney-at-law to comply with an undertaking will be considered if it can be shown that the undertaking was given in the course of the Attorney-at-law's usual business acting on behalf of a client, that the recipient acted reasonably in accepting the undertaking and placing reliance on the undertaking and that the undertaking was given for the purpose of procuring money or money's worth.

- 6.2 The GLC does not consider the giving of an undertaking in circumstances which amount to the giving of a bare guarantee of the Attorney-at-Law's personal liabilities, or the financial obligations and liabilities of a client or third party, will not be considered as forming part of the usual business of an Attorney-at-law.

Rule 7: *Multi-party and multi-profession issues*

- 7.1 Where the loss has been sustained as a result of the combined activities of more than one party (e.g. an Attorney-at-law conspires with an accountant or surveyor, or is assisted by a negligent accountant or valuer), the GLC will consider the role of each contributing factor in causing the applicant's loss. The GLC will base any grant on its assessment of that portion of the loss primarily attributable to the acts of the Attorney-at-law as opposed to that portion which is primarily attributable to the acts or omissions of the other parties, or to other factors. The GLC may decide to make a grant on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an application in its entirety if it is of the opinion that the loss was primarily due to other factors rather than the Attorney-at-law's conduct.
- 7.2 When an Attorney-at-law is practising as the manager or employee of a body regulated not by the GLC but by another statutory regulator, the GLC will not consider any claim in respect of that individual's act or default, or his or her employee's act or default.

Rule 8: *Applications: form and time limit*

- 8.1 Every application must be delivered to the GLC, in such form as the GLC may from time to time prescribe, within twelve months after the loss first came, or reasonably should have come, to the knowledge of the applicant.
- 8.2 The GLC may extend this period if satisfied that there are circumstances which justify the extension.

Rule 9: *Documentation in support*

- 9.1 The burden of proving a claim rests with the applicant who must provide such documentation as may be required by the GLC including, when requested, a voluntary declaration. Failure to provide such documentation or to co-operate with the GLC will be taken into account when determining the merits of the application.

Rule 10: *Exhausting other remedies*

- 10.1 A grant may be refused or limited where the loss or part of the loss is an insured risk or where the loss is capable of being made good by some other means.
- 10.2 The GLC may, before deciding whether to make a grant, require the applicant:—
- (a) to pursue any civil remedy which may be available to the applicant in respect of the loss;
 - (b) to commence insolvency proceedings;

- (c) to make a formal complaint to the Police in respect of any dishonesty on the part of the defaulting Attorney-at-law; or
- (d) to assist in the taking of any action against the defaulting Attorney-at-law.

Rule 11: Notice to defaulting Attorney-at-law

- 11.1 The GLC shall not make a grant unless a communication has been sent to the Attorney-at-law at his last known correspondence address or to his representative informing the Attorney-at-law of the nature and value of the application and allowing 14 days to respond.
- 11.2 If it appears to the GLC that:
- (a) any communication sent under rule 11.1 will not come to the attention of the Attorney-at-law or his representative; or
 - (b) a grant should be made urgently as an interim measure to protect the interests of an applicant or potential applicant to the Fund, then the GLC may make a grant notwithstanding failure to comply with the provisions of this rule.
- 11.3 Where the GLC has made a grant as an interim measure in accordance with rule 11.2(b), the GLC shall as soon as practicable send the communication referred to in rule 11.1 and may (insofar as the failure to communicate before the making of the grant has prejudiced the Attorney-at-law) waive in whole or in part the Fund's right of recovery against the Attorney-at-law.

Rule 12: Maximum grant

- 12.1 The maximum grant that may be made is Two Hundred Thousand Dollars (JA\$ 200,000) or such other amount as the GLC may from time to time prescribe by notice published in the gazette.

Rule 13: Recovery and subrogation

- 13.1 The GLC shall be subrogated to the rights and remedies of the person to whom or on whose behalf the grant is made ("the recipient") to the extent of the amount of the grant. In such event the recipient shall if required by the GLC whether before or after the making of a grant and upon the GLC giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the defaulting practitioner and sue for recovery of the loss in the name of the recipient but on behalf of the GLC. The recipient shall also comply with all proper and reasonable requirements of the GLC for the purpose of giving effect to the GLC's rights and shall permit the GLC to have conduct of such proceedings.

Rule 14: Reduction in grants

- 14.1 Where an applicant or the applicant's servant or agent has contributed to the loss as a result of his, her or its activities, omissions or behaviour whether before, during or after the event giving rise to the application, the GLC may, in the exercise of discretion

and to the extent that such activity, omission or behaviour has contributed to the loss, reduce the amount of any grant that may be authorized or reject the application in its entirety.

Rule 15: *Deduction from grants*

- 15.1 The GLC may at its discretion deduct from any grant all monies already recovered by an applicant and monies which either will be or should have been recovered.

Rule 16: *Refusal of an application*

- 16.1 If the GLC refuses to make a grant of either the whole or part of the amount applied for, the applicant will be informed in writing of the reasons for the decision. The fact that an application has been rejected does not prevent a further application being submitted provided that substantial new relevant evidence, information or submissions are produced in support of the new application.

Rule 17: *Appeals*

- 17.1 There shall be no appeals. By making an application under the rules the applicant accepts that the decision of the GLC is absolutely discretionary and final and that no proceedings or challenge, whatsoever, may be brought with respect to the GLC's decision or treatment of such application.

Rule 18: *Notice of requirements*

- 18.1 Any requirement by the GLC under these rules shall be communicated in writing.

Rule 19: *Commencement*

- 19.1 These rules shall come into effect on 1st day of April, 2020.

Dated this 23rd day of January, 2020.

ALLAN S. WOOD,
Chairman
General Legal Council.

ALTHEA RICHARDS,
Secretary
General Legal Council.