The Law Society of Scotland Practice Rules (Amendment NO 2 rules) 2020

Rules dated [ ] 2020 made on behalf of the Council of the Law Society of Scotland by the Regulatory Committee formed in accordance with section 3B(1) of the Solicitors (Scotland) Act 1980 under section 34(1A) of that Act and approved by the Lord President under section 34(3) of that Act.

**Citation and Commencement**

1.- (1) These rules may be cited as The Law Society of Scotland Practice Rules (Amendment No. 2 Rules) 2020.

(2) These rules shall come into operation on [ ].

**Definition and Interpretation**

2.- (1) In these rules, the "Principal Rules" shall mean The Law Society of Scotland Practice Rules 2011.

(2) The Interpretation Act 1978 applies to the interpretation of these rules as it applies to the interpretation of an Act of Parliament.

**Amendments to the Principal Rules**

3.- Rule D5 of the Principal Rules shall be amended as follows:

 (1) In rule D5.1.1. add the following after the definition of ‘1986 Act’:

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| --- | --- |
| ‘incorporation documents | 1. in the case of a company, its Memorandum and Articles of Association;
2. in the case of a limited liability partnership, the limited liability partnership agreement between its members’
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 (2) Every reference to ‘registrar of companies’ shall be replaced with reference to ‘Registrar of Companies’;

 (3) In rule D5.3:

 (a) delete the word ‘and’ at the end of sub-paragraph (a)(iii) thereof;

 (b) add the following as a new sub-paragraph (a)(iv) thereof:

 ‘(iv) a draft of the proposed final version of the incorporation documents; and’

 (c) renumber existing sub-paragraph (a)(iv) as (a)(v) accordingly;

 (d) delete the text of paragraph (b) thereof and substitute therefor:

‘(b) in the case of an [incorporated practice](https://www.lawscot.org.uk/rules-and-guidance/glossary/incorporated-practice) which is to be a [company](https://www.lawscot.org.uk/rules-and-guidance/glossary/company), the names, designations and business addresses (and, where appropriate, registered offices) of all persons who will be directors of the [incorporated practice](https://www.lawscot.org.uk/rules-and-guidance/glossary/incorporated-practice);

 (e) delete paragraph (c) and reletter paragraph (d) as (c) accordingly;

(4) Delete the heading ‘Memorandum and Articles of Association’ above rule D5.4 and substitute the heading ‘Incorporation Documents’ therefor;

 (5) Rule 5.4.1 shall be amended:

 (a) by deleting the words ‘The memorandum and articles of association of an incorporated practice which is a company’ at the start thereof and substituting therefor the words ‘The incorporation documents of an incorporated practice’;

(b) by inserting after ‘(a)’ the words ‘in the case of an incorporated practice which is a company:’ and reletter the remainder of current sub-paragraph (a) as sub-paragraph (i) to sub-paragraph (a); and amending the reference therein to ‘sub-paragraph (d) of this rule 5.4.1’ to a reference to ‘sub-paragraph (b) of this rule 5.4.1’; and redesignate current sub-paragraphs (b) and (c) as sub-paragraphs (ii) and (iii) to sub-paragraph (a), as amended;

(c) by deleting the word ‘company’ in current sub-paragraph (c) (which will become sub-paragraph (a)(iii) of rule 5.4.1) and substituting the words ‘incorporated practice’ therefor;

(d) by relettering current sub-paragraph (d) as sub-paragraph (b) and amending the reference therein to ‘sub-paragraph (f) of this rule 5.4.1’ to a reference to ‘sub-paragraph (d) this rule 5.4.1’;

(e) by relettering current sub-paragraph (e) as sub-paragraph (c) and amending the reference therein to ‘sub-paragraph (f) of this rule 5.4.1’ to a reference to ‘sub-paragraph (d) of this rule 5.4.1’ and the reference therein to ‘sub-paragraph (d) of this rule 5.4.1’ to a reference to ‘sub-paragraph (b) of this rule 5.4.1;

(f) by relettering current sub-paragraph (f) as sub-paragraph (d);

(g) by relettering current sub-paragraph (g) as sub-paragraph (e);

 (6) Rule 5.4.2 shall be amended:

 (a) by deleting the words ‘memorandum and articles of association’ where they occur in the first line thereof and substituting the words ‘incorporation documents’ therefor;

 (b) by deleting the words ‘which is a company’ where they occur in the second line thereof;

 (c) by deleting the reference to ‘rule 5.2’ in the third line thereof and substituting therefor reference to ‘rule 5’;

 (d) by deleting the words ‘memorandum and articles’ where they occur in the fifth line thereof and substituting the words ‘incorporation documents’ therefor;

 (7) Rule 5.4.3 shall be amended:

 (a) by deleting the words ‘memorandum and articles of association’ where they occur in the first line thereof and substituting the words ‘incorporation documents’ therefor;

 (b) by deleting the words ‘which is a company’ where they occur in the second line thereof;

(c) by deleting the word ‘a’ before the word ‘draft’ and substituting the word ‘the’ therefor;

(d) by deleting the words ‘memorandum and articles’ where they occur in the fourth line thereof and substituting the words ‘incorporation documents’ therefor;

 (8) Rule 5.4.4 shall be amended:

 (a) by deleting the words ‘memorandum and articles of association’ and substituting the words ‘incorporation documents’ therefor;

 (b) by deleting the words ‘which is a company’;

 (c) by deleting the reference to rule ‘5.3 (a)(iv)’ and substituting therefor reference to ‘rule 5.3(a)(v)’;

 (9) Rule 5.5. shall be amended by deleting the reference to ‘rule 5.3(d)’ and substituting reference to ‘rule 5.3(c)’;

 (10) Rule 5.6.1 shall be amended:

 (a) by deleting the words ‘and directors’ in the first line thereof and substituting the words ‘(and, where appointed, directors)’ therefor;

 (b) by deleting the words ‘which is a company’;

 (c) by deleting the words ‘memorandum and articles of association’ and substituting the words ‘incorporation documents’ therefor;

 (11) Rule 5.6.2 shall be amended:

 (a) by adding the words ‘the members of’ before the words ‘an incorporated practice’ where they first occur;

 (b) by deleting the words ‘which is a company’;

 (c) by adding the following at the end thereof:

‘In particular, where the incorporation documents of an incorporated practice contain provision for the nomination of any other regulated person to carry out functions necessary to secure compliance with rule 5.4, the Council may, at any time, require evidence of the continuing agreement of the person so nominated to exercise such functions. Such evidence shall be in a form reasonably required by the Council.’;

 (12) Rule 5.6.3 shall be amended by adding at the end of sub-paragraph (b) thereof the following:

‘and, in the case of new members, the name, designation, business address (and where appropriate registered offices) of all such new members.’;

 (13) Rule 5.6.6 shall be amended:

 (a) by deleting reference to ‘rule 5.2’ and substituting reference to ‘rule 5’ therefor;

 (b) by deleting reference to ‘rule 5.4.1(f)’ and substituting reference to ‘rule 5.4.1(d)’ therefor;

 (14) Rule 5.6.7 shall be amended:

 (a) by deleting the words ‘under rule 5.9’;

 (b) by deleting the words ‘memorandum and articles of association’ and substituting the words ‘incorporation documents’ therefor;

 (15) Rule 5.7.8 shall be deleted;

 (16) Rule 5.8.1 shall be amended by deleting the word ‘partnerships’ in sub-paragraph (b) thereof and substituting ‘partnership’ therefor;

 (17) Rule 5.9 shall be amended:

 (a) by deleting the word ‘or’ at the end of sub-paragraph (c) thereof;

 (b) by substituting a semi-colon for the period at the end of sub-paragraph (d) and adding thereafter:

 ‘(e) such incorporated practice is a limited liability partnership which has carried on business without having at least two members for a period in excess of 6 months.’