
REPUBLIC OF SOUTH AFRICA

CONTINGENCY FEES ACT

ACT

To provide for contingency fees agreements between legal practitioners and their clients; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—

- (i) “contingency fees agreement” means any agreement referred to in section 2(1); (iii) 5
- (ii) “day” means a court day; (ii)
- (iii) “legal practitioner” means an attorney or an advocate; (v)
- (iv) “normal fees”, in relation to work performed by a legal practitioner in connection with proceedings, means the reasonable fees which may be charged by such practitioner for such work, if such fees are taxed or assessed on an attorney and own client basis, in the absence of a contingency fees agreement; (iv) 10
- (v) “proceedings” means any proceedings in or before any court of law or any tribunal or functionary having the powers of a court of law, or having the power to issue, grant or recommend the issuing of any licence, permit or other authorisation for the performance of any act or the carrying on of any business or other activity, and includes any professional services rendered by the legal practitioner concerned and any arbitration proceedings, but excludes any criminal proceedings or any proceedings in respect of any family law matter; (vi) 15
- (vi) “professional controlling body”— 20
 - (a) in respect of an attorney, means any body established by or under any law for the purposes of exercising control over the carrying on of the business of the attorneys’ profession, and of which such an attorney is a member; and 25
 - (b) in respect of an advocate, means any body which is determined by the Minister of Justice by notice in the *Gazette* for the purposes of this Act, and of which such an advocate is a member. (i)

Contingency fees agreements 30

2. (1) Notwithstanding anything to the contrary in any law or the common law, a legal practitioner may, if in his or her opinion there are reasonable prospects that his or her client may be successful in any proceedings, enter into an agreement with such client in which it is agreed—

- (a) that the legal practitioner shall not be entitled to any fees for services rendered in respect of such proceedings unless such client is successful in such proceedings to the extent set out in such agreement; 35
- (b) that the legal practitioner shall be entitled to fees equal to or, subject to subsection (2), higher than his or her normal fees, set out in such agreement, for any such services rendered, if such client is successful in such proceedings to the extent set out in such agreement. 40

(2) Any fees referred to in subsection (1)(b) which are higher than the normal fees of

the legal practitioner concerned (hereinafter referred to as the ‘success fee’), shall not exceed such normal fees by more than 100 per cent: Provided that, in the case of claims sounding in money, the total of any such success fee payable by the client to the legal practitioner, shall not exceed 25 per cent of the total amount awarded or any amount obtained by the client in consequence of the proceedings concerned, which amount shall not, for purposes of calculating such excess, include any costs. 5

Form and content of contingency fees agreement

3. (1) (a) A contingency fees agreement shall be in writing and in the form prescribed by the Minister of Justice, which shall be published in the *Gazette*, after consultation with the advocates’ and attorneys’ professions. 10

(b) The Minister of Justice shall cause a copy of the form referred to in paragraph (a) to be tabled in Parliament, before such form is put into operation.

(2) A contingency fees agreement shall be signed by the client concerned or, if the client is a juristic person, by its duly authorised representative, and the attorney representing such client and, where applicable, shall be countersigned by the advocate concerned, who shall thereby become a party to the agreement. 15

(3) A contingency fees agreement shall state—

(a) the proceedings to which the agreement relates;

(b) that, before the agreement was entered into, the client—
 (i) was advised of any other ways of financing the litigation and of their respective implications; 20

(ii) was informed of the normal rule that in the event of his, her or it being unsuccessful in the proceedings, he, she or it may be liable to pay the taxed party and party costs of his, her or its opponent in the proceedings;

(iii) was informed that he, she or it will also be liable to pay the success fee in the event of success; and 25

(iv) understood the meaning and purport of the agreement;

(c) what will be regarded by the parties to the agreement as constituting success or partial success;

(d) the circumstances in which the legal practitioner’s fees and disbursements relating to the matter are payable; 30

(e) the amount which will be due, and the consequences which will follow, in the event of the partial success in the proceedings, and in the event of the premature termination for any reason of the agreement;

(f) either the amounts payable or the method to be used in calculating the amounts payable; 35

(g) the manner in which disbursements made or incurred by the legal practitioner on behalf of the client shall be dealt with;

(h) that the client will have a period of 14 days, calculated from the date of the agreement, during which he, she or it will have the right to withdraw from the agreement by giving notice to the legal practitioner in writing: Provided that in the event of withdrawal the legal practitioner shall be entitled to fees and disbursements in respect of any necessary or essential work done to protect the interests of the client during such period, calculated on an attorney and client basis; and 40

(i) the manner in which any amendment or other agreements ancillary to that contingency fees agreement will be dealt with. 45

(4) A copy of any contingency fees agreement shall be delivered to the client concerned upon the date on which such agreement is signed.

Settlement 50

4. (1) Any offer of settlement made to any party who has entered into a contingency fees agreement, may be accepted after the legal practitioner has filed an affidavit with the court, if the matter is before court, or has filed an affidavit with the professional controlling body, if the matter is not before court, stating—

(a) the full terms of the settlement; 55

- (b) an estimate of the amount or other relief that may be obtained by taking the matter to trial;
 - (c) an estimate of the chances of success or failure at trial;
 - (d) an outline of the legal practitioner's fees if the matter is settled as compared to taking the matter to trial; 5
 - (e) the reasons why the settlement is recommended;
 - (f) that the matters contemplated in paragraphs (a) to (e) were explained to the client, and the steps taken to ensure that the client understands the explanation; and
 - (g) that the legal practitioner was informed by the client that he or she understands and accepts the terms of the settlement. 10
- (2) The affidavit referred to in subsection (1) must be accompanied by an affidavit by the client, stating—
- (a) that he or she was notified in writing of the terms of the settlement;
 - (b) that the terms of the settlement were explained to him or her, and that he or she understands and agrees to them; and 15
 - (c) his or her attitude to the settlement.
- (3) Any settlement made where a contingency fees agreement has been entered into, shall be made an order of court, if the matter was before court.

Client may claim review of agreement or fees 20

5. (1) A client of a legal practitioner who has entered into a contingency fees agreement and who feels aggrieved by any provision thereof or any fees chargeable in terms thereof may refer such agreement or fees to the professional controlling body or, in the case of a legal practitioner who is not a member of a professional controlling body, to such body or person as the Minister of Justice may designate by notice in the *Gazette* for the purposes of this section. 25

(2) Such professional controlling body or designated body or person may review any such agreement and set aside any provision thereof or any fees claimable in terms thereof if in his, her or its opinion the provision or fees are unreasonable or unjust.

Rules 30

6. Any professional controlling body or, in the absence of such body, the Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), may make such rules as such professional controlling body or the Rules Board may deem necessary in order to give effect to this Act.

Regulations 35

7. The Minister of Justice may make regulations prescribing further steps to be taken for the purposes of implementing and monitoring the provisions of this Act.

Short title and commencement

8. This Act shall be called the Contingency Fees Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 40