

## **Explanatory notes to the Legal Profession Bye-Law**

As amended by the decision of the Board of Representatives dated 2 December 2015 (Catch-All Bye-Law 2015 (*Veegverordening 2015*)), the decision dated 19 April 2017 (Collective Bye-Law 2016 (*Verzamelverordening 2016*)), the decision dated 7 December 2016 (Clients' Funds Amendment Bye-Law 2016 (*Wijzigingsverordening derdengelden 2016*)), the decision dated 29 March 2018 (Professional Indemnity Insurance Liability Amendment Bye-Law (*Wijzigingsverordening beroepsaansprakelijkheidsverzekering*)) and the decision dated 13 December 2018 (Quality Promotion Measures Amendment Bye-Law (*Wijzigingsverordening kwaliteitsbevorderende maatregelen*) and Personal Injury and Loss of Dependency Cases Experiment (Extension) Amendment Bye-Law (*Wijzigingsverordening verlenging Experiment letsel- en overlijdensschadezaken*)).

### Explanatory notes

#### 1. General

The Legal Profession Bye-Law (*Verordening op de advocatuur*) is a bye-law resulting from the regulatory power conferred on the Board of Representatives under Sections 4(5), 9b(6), 9c(2), 9j(3) and (4), 28(1) and (2), 32a(5) and 36a(5) of the Dutch Act on Advocates (*Advocatenwet*). This power is being exercised with a view to the core values of the legal profession referred to in Section 10a(1) of the Act on Advocates (integrity, partiality, competence, confidentiality and independence).

#### 2. Formation of the Bye-Law

The Bye-Law, explanatory notes and subordinate regulations find their origin in the screening project. This project was launched in 2012 with the objective to rewrite the existing bye-laws, schemes and regulations of the Netherlands Bar. The screening did not include any codes of conduct. The aim was to establish clear-cut and high-quality regulations for the legal profession.

As a result of the screening project, 12 bye-laws and ten schemes and regulations were combined into a single bye-law and a single implementing regulation.

In addition, the bye-law was brought into line with the text of the Act on Advocates as it reads after the adjustments to the Legal Profession (Supervision and Position) Act (*Wet toezicht en positie advocatuur*), most of which entered into force on 1 January 2015 (Bulletin of Acts, Orders and Decrees 2014, no. 429). Section I(R) of that Act (amending Section 26) will enter into force at a later time.

#### 3. Scope of the Bye-Law

The Bye-Law is binding on advocates registered with the Netherlands Bar (Section 29(1) of the Act on Advocates). This concerns the advocates referred to in Section 1(1) of the Act on Advocates. These include both advocates who obtained a university law degree in the Netherlands and are following or have completed the vocational training programme, and who applied for registration pursuant to Section 2(1) of that Act, and advocates who acquired the right to use the title of 'advocate' in another

country and are registered pursuant to Section 16h of that Act. The latter category concerns advocates who are entitled to practise law under their original professional title in a Member State of the European Economic Area (EEA) or Switzerland. The EEA consists of the Member States of the European Union, Iceland, Norway and Liechtenstein. For these advocates, the Bye-Law is binding pursuant to Section 29 and Section 16k of the Act on Advocates.

Likewise, the Bye-Law is binding on advocates who are not registered in the Netherlands but in another country of the EEA or in Switzerland and occasionally perform activities in the Netherlands in the form of services. These 'visiting' advocates from those countries must observe the professional rules applicable to advocates registered in the Netherlands, including the bye-laws (Sections 16d(2), 16f and 29 of the Act on Advocates).

The Bye-Law is also binding on legal entities and group practices in which advocates practise law (Section 29 of the Act on Advocates). These must be practising legal entities and group practices within the meaning of this Bye-Law.

In addition, a number of articles further define the scope of a part or paragraph (such as Article 4.2 and Article 6.1). Those articles make a distinction between advocates registered pursuant to Section 16h of the Act on Advocates and trainee advocates.

#### Notes on individual articles

##### Chapter 1

Chapter 1 provides a uniform set of definitions, which applies to the terms used in this Bye-Law and in the subordinate regulations based on it.

##### Article 1.1

This article defines the terms used in the Bye-Law. The definitions are listed in alphabetical order and are not numbered. This makes it easier to insert a new definition if this should prove necessary.

Because the Bye-Law is based on the Act on Advocates (hereafter also: "the Act"), the terms derived from this Act are not defined. The idea is that there can be no reasonable doubt as to who is meant by 'the Board of Representatives' or 'secretary of the general council'. Likewise, it was decided not to define the name of the Act on Advocates for the purpose of repeated references to 'the Act'. Where necessary, reference is made to the Act on Advocates, at least in the text of the articles. This name is short enough, while the added value of a definition is limited.

The terms used in this Bye-Law are interpreted in conformity with the Act on Advocates and other (higher-level) laws and regulations, even if they have not been specifically defined. The laws and regulations of a higher order, such as European directives and acts in a formal sense, take precedence over this Bye-Law. This Bye-Law will have to be interpreted and applied in conformity with the higher-level laws and regulations.

## Advocate

The advocates are listed in the bar register kept by the secretary of the general council. Registration is possible both under Section 2 and under Section 16h of the Act on Advocates.

## Advocate's pass

The advocate's pass is a photo card which enables others to identify the advocate as such. A means of authentication has been added to the advocate's pass through which the advocate can be identified in an online environment with a large degree of certainty and reliability. Only advocates can apply for an advocate's pass.

## Means of authentication

A means of authentication is a card which, in combination with a card reader, generates a one-time password (OTP). This enables users to log on to the secure website of the Netherlands Bar, among others. In this way, advocates and staff members authorised by the advocate can identify themselves in an online environment. The means of authentication may be part of the advocate's pass if the user is an advocate. If the user of the means of authentication is an authorised representative, the means of authentication will be part of a different, more neutral card.

## Practitioner of an admitted liberal profession

A practitioner of an admitted liberal profession is an advocate who is a member of a foreign bar association recognised by the general council, a civil-law notary, a junior civil-law notary, a patent agent, a member of the Dutch Association of Tax Advisors or a university-trained member of the Dutch Register of Tax Advisors. For foreign advocates, this also includes the foreign equivalent of the title of 'advocate', which may be denoted by a different term in a different language; see Article 1(2) of the Professional Qualifications Directive (1998/5/EC). The same applies to the foreign equivalent of the term 'bar'.

## Client monies

Client monies are funds which the advocate receives in the context of the services they provides to their client or to a third party. There must be a clear relationship with the services provided by the advocate. Disbursements and court fees are not clients' funds.

## Financial result

The financial result is the result in monetary terms of litigation. It comprises nothing more and nothing less than the following financial elements: the principal sum, interest and cost reimbursements received.

Cost reimbursements are calculated inclusive of the financial losses pursuant to Article 6:96 of the Dutch Civil Code (*Burgerlijk Wetboek*, hereafter: "DCC"), orders for cost of litigation and other cost awards. The definition has been included in connection with the provisions of Paragraph 7.4.3. This

section specifies which elements may be included in the financial result in calculating of the maximum amount of the advocate's fee. The list is exhaustive. The reimbursements based on Article 6:96 DCC are part of the financial result. The costs to be reimbursed are offset against the amounts to be obtained. This means that the financial result may be negative.

#### Holding legal entity

In the legal profession, it is customary for shares in a practising legal entity to be held by a private limited company (BV) whose shares are held by the person practising law in or via the practising legal entity. The BV holding the shares in the practising legal entity is the holding legal entity. The shares in that holding legal entity may in turn be held by another legal entity. Likewise, a foundation may be the holding legal entity if a trust office foundation holds the shares in a practising legal entity and depositary receipts have been issued for those shares.

#### Complaint

The core definition in the provisions on complaints and disputes (Part 6.8) is 'complaint'. Part 6.8 provides that advocates must describe in an office complaints mechanism how complaints falling under this definition should be handled. A complaint within the meaning of this definition may relate to dissatisfaction with the formation and performance of an agreement for services, the quality of the services or the amount of the fee note. This emphasises the fact that a complaint within the meaning of this Bye-Law concerns the provision of services by the advocate. Therefore, this complaint is different from 'disciplinary complaints' within the meaning of Section 4 of the Act on Advocates. Such 'disciplinary complaints' are complaints submitted to the Local Bar President pursuant to Section 46c of the Act on Advocates. In general, these 'disciplinary complaints' will relate to some act or omission that breaches an advocate's duty of care or some act or omission that does not befit an advocate acting properly. A complainant may submit complaints about the services to the firm's complaints officer (Article 6.28(2)(c)) and complaints about treatment, conduct, client care and suchlike to the Local Bar President. All the same, a client with complaints about treatment may (first) contact the complaints officer. Obviously, the President may act as mediator pursuant to Section 35(2) and Section 46d(1) of the Act on Advocates.

The definition provides that the dissatisfaction must in any event be expressed in writing. The aim of this is not to raise a threshold, but to ensure careful complaints handling. This does not alter the fact that a verbal complaint may also be handled in accordance with the office complaints mechanism, although this is not compulsory. In that case, the advocate or the firm will most likely document the handling of the complaint in writing.

#### Practising law in employment

The term 'practising as an employee' means conducting a legal practice with another person, group practice or legal entity in the context of an employment relationship. An employment relationship is assessed against four elements: work must be performed, in exchange for payment, and during a particular period, while there must be a relationship of authority.

## Practising legal entity

A practising legal entity is a legal entity conducting a legal practice. A legal practice may be an advocate's practice, but also a civil-law notary's practice or the practice of another practitioner of an admitted liberal profession. Under Dutch law, such practitioners are usually organised in legal entities such as a private limited company (BV), public limited company (NV), foundation or cooperative. The limited liability partnership (hereafter: "LLP") under the laws of England and Wales is also fairly common in the Netherlands as a practising legal entity. The LLP under the laws of Delaware (among others) has no legal personality and for this reason does not qualify as a practising legal entity. A practising legal entity is the legal entity concluding the agreements with clients. There are also legal entities which take part in a group practice (such as BVs that are partners in a partnership) falling under the definition of practising legal entity, even if that group practice does not have legal personality itself. In such constructions, either the partnership or the BV may conclude the agreement to perform services with clients. It is up to the advocate to create clarity on this point to (potential) clients pursuant to Article 7.4.

## Group practice

A group practice is understood to mean any form of collaboration between an advocate and another person, group practice or legal entity in which expense and risk are shared, or in which control over or ultimate responsibility for the professional practice is shared. A group practice exists in any event if the collaboration is organised in the form of a legal entity. If the definition of group practice is met, the special conditions set out in, among others, Chapter 5 and Rule of Conduct 7 will apply. See also the notes to Article 5.3.

## Specific costs

The specific costs comprise the costs associated with the handling of a personal injury or loss of dependency case. The more or less customary consultancy costs are listed under (a), while the costs of legal experts and various procedural steps are listed under (b). The specific costs play a special part in the context of Paragraph 7.4.3 (contingency pay) and Article 7.10 in particular. Because the specific costs are relevant for the calculation of the advocate's fee, this fee is not included in the specific costs. The list is not exhaustive.

## Chapter 2 Organisation of the Netherlands Bar

Chapter 2 of the Legal Profession Bye-Law comprises the organisational element of the regulations. Part 2.1 contains the regulations creating the bodies of the Netherlands Bar, insofar as these have not already been established by law. Part 2.2 contains the regulations concerning the money flows from and to the Netherlands Bar.

### Part 2.1 Councils, boards and committees

The Netherlands Bar is a legal entity under public law pursuant to Section 17(1) in conjunction with Section 17(3) of the Act on Advocates. Section 17a(1) of this Act establishes a number of bodies of the Netherlands Bar, i.e. the general council, the Bar President, the Board of Representatives, the

Advisory Board and the Supervisory Board. The list is exhaustive (cf. Trade and Industry Appeals Tribunal, 21 September 2006, ECLI:CBB:2006: AY8684). These bodies are administrative bodies within the meaning of Section 1:1(1)(a) of the General Administrative Law Act (*Algemene wet bestuursrecht*). Therefore, they are known as 'class A bodies'. These class A bodies may be granted powers.

This Bye-Law establishes particular councils, boards and committees. These are also bodies of the Netherlands Bar. A body is a part of a legal entity that has obtained decision-making power pursuant to the law or the articles of association, cf. Articles 2:14 and 2:15 DCC.

Although the bodies of the Netherlands Bar established under a bye-law are not administrative bodies within the meaning of Section 1:1(1)(a) of the General Administrative Law Act (class A bodies), they may still be granted powers. Through the conferral of these powers, these bodies may obtain the status of administrative bodies as referred to in Section 1:1(1)(b) of the General Administrative Law Act. These powers may be conferred, for example, through the grant of a mandate or through delegation.

#### Paragraph 2.1.1 Advisory Board

##### General

Section 32a(1) of the Act on Advocates provides for the establishment of the Advisory Board. This section also describes the number of members, their incompatibilities (Subsection 4) and the duties of the Advisory Board (Subsection 2). Section 32a(5) of the Act on Advocates offers a basis for the provision of further rules under a bye-law on the composition and structure of the Advisory Board. This subsection also provides the option of extending the advisory task. This option has been exercised in that Article 2.2 extends the Advisory Board's duties.

The Advisory Board was established in order to increase the external legitimacy of the Netherlands Bar. The Advisory Board's authority lies primarily in its composition and in the respective qualities of its members with their specific social experience. In this context, the composition of the Advisory Board is meant to ensure that third-party contributions are used effectively in the conduct of the legal profession. Under the Bye-Law, the Advisory Board is also expected to comment on the social positioning of the Netherlands Bar and its key policies from different perspectives. The key policies may be apparent from an annually adopted policy plan, but also from other policy documents. By advising the general council, the Advisory Board can make a valuable contribution to the quality of the decision-making and thereby to the general public interest of a properly functioning legal profession.

The Advisory Board does not take decisions within the meaning of Section 1:3 of the General Administrative Law Act. The Advisory Board's recommendations are subject *inter alia* to Sections 3:7 and 3:43 of the General Administrative Law Act. Where relevant here, these sections entail that the general council must provide the Advisory Board with the necessary information and inform the Advisory Board of its reasons if the recommendations are not followed. No such provisions need therefore be included in this Bye-Law.

## Article 2.1

The members are appointed in a private capacity and give advice without any form of consultation or feedback. This means that they are entirely independent.

The members of the Advisory Board must possess wide social experience and a high level of knowledge in particular fields. They must be able to put forward viewpoints from a general social perspective which are of material importance to the legal profession's place in society. The knowledge and experience referred to in paragraph 2 must be available in the Advisory Board as a whole. This means that not every member is required to possess this knowledge and experience.

## Article 2.2

The Advisory Board is asked to advise on draft regulations, in conformity with Section 32a(2) of the Act on Advocates. Paragraph 1 of Article 2.2 extends that advisory task relative to the statutory task.

The Advisory Board advises on the social positioning of the Netherlands Bar as a public-law professional organisation. It does so from the following angles: the Netherlands Bar as an institution, its positioning for the legal profession as a whole and its positioning for the individual advocate. In this way, the Advisory Board can contribute to the professional organisation's social function and operation.

In addition, paragraph 1 assigns the Advisory Board an advisory task in respect of the key policies. The general council submits these key policies to the Advisory Board. These key policies are currently documented in an annual plan for the coming budget year. This plan sets the course which the Netherlands Bar wants to follow. The name of this document and its time horizon may change. The general council may also request advice on the key policies in other ways. Examples include advice based on a project plan, a memorandum explicitly drawn up for advisory purposes or a report. The document submitted to the Advisory Board may be accompanied by a budget.

All advice issued by the Advisory Board is in the public domain pursuant to Section 32a(3) of the Act on Advocates. Paragraph 2 instructs the general council also to publish the request for advice and the follow-up given to the advice. It is left to the general council to determine the manner of publication. In practice, this is done through publication on the website of the Netherlands Bar and through inclusion in the annual report of the Netherlands Bar and of the Advisory Board.

## Article 2.3

Paragraph 2 entails that, following a first term of no more than four consecutive years, members can be reappointed for another term not exceeding four years. This ensures that new members are appointed regularly. Although the article does not preclude a person from being appointed more than once, it does follow that the maximum uninterrupted term of office is eight years.

## Article 2.4

The general council elects a chair from among the members of the Advisory Board. The designation as chair can be separate from the appointment as member and may therefore take effect at a later time. The chairship will end when the appointment period has expired and no reappointment takes place, or reappointment is no longer possible.

The Advisory Board may determine its own working procedure within the parameters laid down by the Act on Advocates and this Bye-Law. The working procedure includes aspects such as the order of meetings, how and how often meetings are convened and the manner in which the advice is produced. This is consistent with the idea of the Advisory Board being autonomous. If desired, the Advisory Board can document this working procedure in regulations.

### Paragraph 2.1.2 Local Bar Presidents' Consultative Panel

The Local Bar Presidents' Consultative Panel is a consultative body in which all the Presidents discuss the manner in which they discharge their duties and powers. Presidents take part in these discussions as supervisor and complaints officer on the one hand and as chair of the Council of the Local Bar in their district on the other. The Consultative Panel makes an important contribution to the effective, efficient and practical exercise of supervision and complaints handling by facilitating consultations among Presidents. In addition, the Consultative Panel helps in coordinating and harmonising the manner in which the Councils of the Local Bars discharge their duties. The Consultative Panel is supported by staff members of the office of the Netherlands Bar (Article 2.25).

## Article 2.5

The Consultative Panel consists of the Local Bar Presidents (11 in total).

With a view to the proper functioning of the Netherlands Bar, it is useful that the Bar President and the Secretary General take part in and contribute to the exchange of information within the Consultative Panel. In principle, they take part in the Consultative Panel's discussions. The Consultative Panel may decide that either or both cannot take part in a particular part of the discussions. A President who is unable to attend may be replaced by their deputy.

## Article 2.6

The Consultative Panel may place all subjects concerning the Presidents' duties on the agenda and discuss these subjects. The Consultative Panel is pre-eminently suitable for discussing specific case studies and sharing insights among colleagues. The exchange of knowledge and experiences gained and the discussion of emerging developments help create more responsive, more efficient and more proactive supervision. This may lead to informal recommendations, for example in the form of best practices. In addition, the Consultative Panel can exchange knowledge and information about all subjects concerning the Councils of the Local Bars. This exchange is useful and necessary with a view to a more effective and harmonised performance of duties.



## Article 2.7

The Consultative Panel may elect one of its members as chair. In addition, it may entrust the technical chairship of the meeting to a person other than the elected chair. If desired, the Consultative Panel may document the duties of the chair and the technical chair in internal regulations. The Consultative Panel determines its own working procedure and decides, among other things, what subjects will be discussed and how often, where and when consultations will be held.

### Paragraph 2.1.3 Cassation committee

Section 9j of the Act on Advocates instructs the Board of Representatives to lay down rules in a bye-law on obtaining, retaining and losing the capacity of advocate at the Supreme Court, as well as bar registration. The purpose of setting professional requirements geared to the cassation practice is to ensure that solid written documents are submitted in appeals in cassation. These professional requirements have been laid down in Part 4.2 of this Bye-Law; they apply in addition to the professional standards laid down in Part 4.1, which apply to all advocates. Paragraph 2.1.3 regulates the establishment and duties of the cassation committee. The establishment of the committee is based on Section 9j(5) of the Act on Advocates. Under that subsection, the general council is responsible for implementing the matters referred to in Section 9j(3) of the Act on Advocates. The general council delegates this duty to the committee while remaining ultimately responsible. The general council grants the committee a mandate to take decisions and carry out the duties referred to above.

Thus, the committee becomes an administrative body within the meaning of Section 1:1(1)(b) of the General Administrative Law Act. Pursuant to Article 2.25, the general council provides the committee with a secretarial office. Under Section 2:5 of the General Administrative Law Act, the members and the secretarial office of the civil cassation committee are obliged to observe secrecy in respect of confidential information coming to their attention in that capacity. The cassation committee annually reports on its activities to the general council. The general council in turn incorporates the figures into the annual report of the Netherlands Bar.

## Article 2.8

The members of the cassation committee must have expertise in the area of civil cassation. Members might be former Supreme Court of the Netherlands justices or former members of the Procurator General's Office, (former) civil cassation advocates, (emeritus) professors of civil (procedural) law, and former staff members of the research department of the Supreme Court of the Netherlands. Current members of the Supreme Court of the Netherlands and the Procurator General's Office are not eligible. Their involvement in the committee might jeopardise their independent position in relation to the advocate at the Supreme Court, as well as the independence of cassation advocates in general. There is no cap on the number of members, given the extent of the range of duties and the workload this is expected to generate for the committee.

## Article 2.9

The cassation committee develops examination requirements, administers examinations and competence tests and issues the certificate stating that an advocate meets the requirements set. With regard to testing and assessing the knowledge and professional competence respectively, the following is observed. The test concerns the knowledge an advocate needs to possess in order to obtain the conditional endorsement 'advocate at the Supreme Court'. At that time, therefore, the advocate does not yet have the status of advocate at the Supreme Court. The assessment is about the expertise of advocates already registered with the Supreme Court of the Netherlands. This involves the unconditional endorsement as 'advocate at the Supreme Court' and retaining that endorsement. The assessment and the test therefore relate to different phases.

## Article 2.11

The general council elects a chair from among the members of the cassation committee. The designation as chair can be separate from the appointment as member and may therefore take effect at a later time. The chairship will end when the appointment period has expired and no reappointment takes place, or reappointment is no longer possible. The cassation committee may determine its working procedure within the parameters laid down in the Act on Advocates and this Bye-Law, and in consultation with the general council. The working procedure includes aspects such as the order of meetings and how often meetings are convened. If such is desired, the committee may also make arrangements about the manner of assessment, within the parameters laid down for that purpose in this Bye-Law and in the general council's mandating decision. The consultations with the general council about the working procedure is intended to bring the meetings and the examinations and competence tests to be administered in line with the actual needs. In addition, such consultations will ensure the proper fulfilment of the mandate granted by the general council.

### Paragraph 2.1.4

The Dutch delegation to the Council of Bars and Law Societies of Europe ("CCBE") consists of two members of the general council, including the President of the Netherlands Bar, the Information Officer, a staff member of the office of the Netherlands Bar and a fourth member. It is the task of the delegation to represent the Netherlands Bar in the standing committee and the plenary meeting of the CCBE. In addition, the CCBE may set up committees and working groups. It is possible that the CCBE requests the general council to participate in such a committee or working group. The general council may designate one or more persons who will represent the Netherlands Bar in the relevant committee or working group. However, they are to coordinate their activities with the general council (via the Information Officer) and report on these activities.

### Paragraph 2.1.5 Advisory committee on regulation

Effective from 1 January 2015, the Advisory Board was given the statutory task to advise on proposed bye-laws (Section 32a of the Act on Advocates). The advisory committee on regulation has been in existence for much longer, and was established in order to advise on bye-laws and other regulations of the Netherlands Bar, i.e. before the Advisory Board was given this task. In view of the Advisory

Board's statutory task, the most obvious course is to further specify the task of the advisory committee on regulation.

From a legal perspective, there are no impediments to the provision of advice by two separate bodies. Nevertheless, the added value lies in ensuring that the two bodies apply complementary angles.

Under this Bye-Law, the focus of the advice provided by the advisory committee on regulation is on legal quality and the consequences of the draft regulations for the advocates' practice. In performing its duties, the Advisory Board is not restricted by the contents of this Bye-Law or the explanatory notes. In view of the composition of the Advisory Board, however, it is expected that the Advisory Board will provide advice from a social rather angle rather than a legal-technical angle.

The advisory committee performs its advisory duties independently. For this reason, Part 3.3 of the General Administrative Law Act applies to the advisory committee. After all, the advice relates to decisions of the general council and the Board of Representatives respectively.

Because of the applicability of Part 3.3 of the General Administrative Law Act, other sections of this Act apply as well. Thus, the confidentiality of the documents is regulated in Section 2:5, while Section 3:43(1) provides that an advisor should be notified of the decision if the advice was not followed. Likewise, the explanatory notes to that decision will have to explain why the decision differs from the advice. This follows from Section 3:50 of the General Administrative Law Act.

#### Article 2.16

The members of the advisory committee on regulation are appointed by the general council. In this way, the general council can ensure that the committee has expertise and experience in the subject areas considered desirable. The general council takes the incompatibilities referred to in paragraph 2 into account. Members of the general council and the Board of Representatives are excluded from membership of the advisory committee on regulation. This means that the (delegated) regulator cannot provide advice to itself. Furthermore, they are excluded from membership of a disciplinary tribunal for the legal profession. This will prevent any appearance of bias on the application of regulations.

#### Article 2.17

Paragraph 2 of this article provides that the general council informs the committee about its decisions on which advice was issued. This includes those cases in which disclosure to the committee is not mandatory under the General Administrative Law Act, such as cases in which the advice was followed in full.

A member of the general council may attend the meetings and explain proposed regulations in more detail. This may increase the relevance of the advisory committee's advice.

## Article 2.19

The general council designates a chair from among the members of the advisory committee on regulation. The designation as chair can be separate from the appointment as member and may therefore take effect at a later time. The chairship will end when the appointment period has expired and no reappointment takes place, or reappointment is no longer possible.

The advisory committee on regulation may determine its working procedure, in consultation with the general council. The working procedure includes aspects such as the order of meetings, how and how often meetings are convened and the manner in which the advice is produced. During the consultations about the working procedure, the general council may address the timetable and the draft regulations that can be expected. In addition, the general council monitors coordination with the advice provided by the Advisory Board. The substance of the advice does not fall under the working procedure and is produced independently.

### Paragraph 2.1.6 Other advisory committees

In addition to the advisory committee on civil cassation and the advisory committee on regulation, the general council may establish other advisory committees. These other advisory committees advise the general council on policy issues and legislative proposals in a specific legal area. As a rule, the advice does not relate to the regulations laid down by the Netherlands Bar but to regulations laid down by the central government which affect the advocates' professional practice.

The advice enables the general council to inform stakeholders, such as the various ministries, about the consequences of proposed regulations for the legal profession, litigants and the administration of justice.

The advisory committees will be advisors within the meaning of Section 3:5 of the General Administrative Law Act if they advise on proposed decisions of the general council.

## Article 2.20

The general council may decide to establish an advisory committee. Such a decision establishing a committee is a decision within the meaning of the General Administrative Law Act. Conversely, the general council may also decide to disband a committee established earlier, for instance if there is no further need for the committee's activities. The decision establishing the committee may stipulate that an advisory committee is set up for a particular period or a specific task.

The general council may also establish a committee in collaboration with other, external, organisations, consisting partly of non-advocates. The general council may arrange for some of the members to be appointed by these other organisations.

## Article 2.21

At the time of their establishment, the advisory committees are instructed to provide advice on the specific policy area in which they specialise.

#### Article 2.22

The members of the advisory committee are appointed by the general council.

The appointment is for a period not exceeding four years, and the members can be reappointed twice. In order to promote renewal, the general council considers it necessary to cap the number of appointment terms. Therefore, a member of an advisory committee is replaced after a maximum period of 12 years. The general council may decide not to reappoint a member. It may fill the vacancy arising by appointing a new member.

#### Article 2.23

The members of an advisory committee themselves elect a chair from among their number. The chair is also a member of the advisory committee. The election as chair can be separate from the appointment as member and may therefore take effect at a later time. The chairship will end when the appointment period has expired and no reappointment takes place, or reappointment is no longer possible, or if the members elect a different chair.

An advisory committee may determine its own working procedure, in consultation with the general council. The working procedure includes aspects such as the order of meetings, how and how often meetings are convened and the manner in which the advice is produced. The general council wants to hold consultations about the working procedure with a view to the usefulness of the advice. In determining the working procedure, an advisory committee will take account of the decision establishing the committee and this Bye-Law.

#### Paragraph 2.1.6a Disciplinary justice committee

The disciplinary justice committee reads disciplinary rulings and examines which rulings are suitable for being brought to the attention of advocates and third parties. These disciplinary rulings may be annotated if this is useful and relevant. They are published in the Advocates Gazette (*Advocatenblad*).

#### Paragraph 2.1.7

#### Article 2.24

The Advisory Board issues a report of activities. The general council sends this report of activities to the Board of Representatives. In addition, the general council makes the report of activities generally available through publication on the website.

The report of activities of the Local Bar Presidents' Consultative Panel contains valuable information on the supervision exercised by the Presidents. The Consultative Panel describes its activities partly for the benefit of the regulatory body of the Netherlands Bar, i.e. the Board of Representatives (paragraph 2). The information contained in the report of activities may prompt the Board of Representatives to adjust the regulations.

The public report of activities of the Local Bar Presidents' Consultative Panel contains information valuable to the Supervisory Board. For efficiency purposes, it is therefore sent to that board directly.

The general council makes the aforesaid reports generally available through publication on the website of the Netherlands Bar (paragraph 3).

#### Article 2.25

This article provides that the general council should arrange support for the Local Bar Presidents' Consultative Panel, the civil cassation committee and the advisory committee on regulation. The general council may support the Advisory Board and the other advisory committees whenever the general council considers this useful.

#### Part 2.2 Income and expenditure

This part deals with the income and expenditure of the Netherlands Bar.

##### Paragraph 2.2.1 Contributions to the Netherlands Bar

Pursuant to Section 32 of the Act on Advocates, the Board of Representatives annually sets the amount which advocates must contribute to cover the costs to be incurred by the Netherlands Bar. This paragraph regulates the manner in which the amount of the contribution is determined, and the moment when the advocate has to pay the financial contribution. This paragraph is based on Section 28 of the Act on Advocates.

The general council is charged with invoicing the cost apportionment. Because the general council is an administrative body within the meaning of the General Administrative Law Act and the liability to pay the financial contribution ensues from a statutory regulation, the obligation to pay is subject to Title 4.4 of the General Administrative Law Act (monetary debts).

#### Article 2.26

Article 2.26 provides that the advocate has to pay a financial contribution on 1 January of the calendar year. Advocates who are listed in the bar register on 1 January – the reference date – are billed the full amount of the financial contribution. Advocates who are registered after 1 January are not billed for the current calendar year. It is inherent to this system that no refund is made if an advocate is disbarred or if their registration as an advocate is cancelled during the year. For example, if an advocate is disbarred in February, that advocate will nevertheless have to pay the full financial contribution for the current calendar year. On the other hand, an advocate who is disbarred during the calendar year in which they were sworn in will not owe a financial contribution. On average, therefore, advocates do not pay for a period longer than that in which they are listed in the bar register.

Pursuant to Section 4:87 of the General Administrative Law Act, payment must be effected within six weeks of the decision being dispatched.

#### Article 2.27

Section 32(2) of the Act on Advocates requires that the Board of Representatives should annually take a decision about the level of the financial contribution. Article 2.27 offers a basis for differentiation of the rate of the contribution and for standardising the gross income. Pursuant to Article 2.27, a classification into categories is prescribed by a decision of the general council. The Board of Representatives annually determines the level of the amount per category.

#### Article 2.28

In order to follow the vocational training programme for advocates, a trainee concludes an agreement with the implementing organisation via the Netherlands Bar. The Netherlands Bar acts as an intermediary. The agreement forms the basis for the collection of course fees and examination fees.

The course fees and examination fees depend on the subjects to be followed and the number of tests and resits to be taken. The general council laid down the specific amounts in this respect in the agreement with the implementing organisation. The general council informed the Board of Representatives about the level of the amounts and will notify the Board of Representatives in good time if there is a change in the course fees and examination fees.

The trainee may agree with their firm that the latter will pay their course fees and examination fees. The registration form contains a space for indicating in whose name the invoice must be made out. However, the trainee advocate will remain jointly and severally liable for payment of the invoice.

The course fees and examination fees are charged in two parts. The first part is invoiced in the first year of the training programme. Access to the second year (and third year) of the programme will be denied if the invoices for the first year have not been paid (Article 3.16(3)). The remaining part of the course fees and examination fees is invoiced during the second year.

A trainee who discontinues the training programme will still owe the course fees and examination fees. They will not receive a refund. A trainee who discontinues the programme during the first year, for example, will only owe the course fees and examination fees for the first year.

A trainee who discontinues the training programme may submit a request for application of the hardship clause (paragraph 4). The implementing organisation will implement the provisions of the agreement and will therefore presumably not abandon the collection of the course fees and examination fees. If the general council should grant the request for application of the hardship clause, the Netherlands Bar will consequently bear the (remaining) costs of the vocational training programme.

#### Article 2.29

The general council will charge a contribution for the examination and the competence test. The level of the contribution has been laid down in subordinate regulations and is linked to the costs incurred by the general council (or the Netherlands Bar) for the entire process. The costs will in any case include: the attendance fees and expense allowance for the members of the committee administering the

examination and the competence test respectively, the costs of the preparatory activities and the costs of a space for administering the examination or the competence test.

#### Article 2.30

The President, the deputy President and the other members of the general council receive a fee for their activities from the funds of the Netherlands Bar. The Board of Representatives determines the level of the fee. The time required by the respective positions may give cause for a differentiated fee. The Board's decision may stipulate that the fee be adjusted annually to, for example, the rate of inflation.

#### Article 2.31

The Netherlands Bar may award a fee for attending meetings and consultations. This fee is known as an attendance fee and is meant to cover the costs of attendance, including preparation. Attendance fees are only paid if the meeting in question was attended.

No attendance fees are awarded for preparing a meeting or consultations without attending this meeting or these consultations.

Normally speaking, attendance fees are a contribution towards the costs of travelling to and from the meeting or the consultations. Because of the geographical distribution of the members of the Netherlands Bar, it is considered necessary to award a separate travel allowance.

The persons referred to in this article are entitled to an attendance fee and travel allowance. Paragraph 2 provides that, where the Board of Representatives is concerned, deputy members will receive an attendance fee even if they do not actually take a member's place.

#### Article 2.35

This article serves as the basis for setting the level of the attendance fees and travel allowances by regulation of the general council. The subordinate regulation of the general council also provides for the fee for the activities of the registrar or registrars of disciplinary tribunals. The basis for this is Section 60(2) of the Act on Advocates. Pursuant to this provision, the general council may determine the level of the expense allowance payable to the registrar. Therefore, it is not possible and not necessary to include that fee in the Bye-Law.

#### Paragraph 2.2.4 Subsidy for the support of disciplinary tribunals

According to its articles of association, the object of the Foundation for the Support of Disciplinary Tribunals for the Legal Profession (*Stichting Ondersteuning Tuchtcolleges Advocatuur*, "SOTA") is "the management and distribution of the financial resources made available by the Netherlands Bar so as to facilitate the operation of the disciplinary justice system for advocates".

The general council sees to the decision-making about and payment of those financial resources. As a result of the substantive subsidy concept applied in the subsidy title of the General Administrative



Law Act, the financial contribution from the Netherlands Bar to SOTA must be qualified as a subsidy within the meaning of the General Administrative Law Act, and the legal basis for the grant of that subsidy must be laid down in a 'statutory regulation', in this case the Legal Profession Bye-Law.

Paragraph 2.2.4 was drawn up as much as possible in line with the statutory provisions of the subsidy title in the General Administrative Law Act (Title 4.2), which means that the Bye-Law can be confined to the rules applying specifically to the grant and determination of the subsidy to SOTA by the general council. In particular, Part 4.2.8 of the General Administrative Law Act, on subsidies provided to legal entities per financial year, has been expressly declared applicable to the subsidising of SOTA. This part contains a detailed standard regulation on granting operating subsidies to legal entities with full legal capacity. The standard regulation contains further provisions on aspects such as time limits and accountability in applying for and determining the annual subsidy.

In addition, Section 4.76 of the General Administrative Law Act has been expressly declared applicable by analogy. SOTA is therefore obliged to provide sufficient insight via its financial report.

The proposed articles contain rules additional to the statutory provisions on aspects such as determining a subsidy cap and a budget proviso, the manner of applying for and determining the subsidy and the time limits applicable in that respect. The proposal also contains provisions on justifying the expenses and maintaining an equalisation reserve.

#### Article 2.37

The Supervisory Board is a body of the Netherlands Bar (Section 17a(1) of the Act on Advocates). Accordingly, the secretary and the other staff members of the Supervisory Board are employed by the Netherlands Bar. The Supervisory Board appoints and dismisses the secretary. The staff regulations of the Netherlands Bar containing the primary and secondary employment conditions apply by analogy to the secretary and other staff members of the Supervisory Board. Their employment conditions are the same as those of other staff members of the Netherlands Bar with regard to:

- primary employment conditions, i.e. the classification into pay grades and increments and arrangements on number of hours, working times, leave days and compulsory leave days, and sick reports;
- secondary employment conditions, including the pension scheme and the travel allowance.

Without prejudice to this employment-law relationship with the Netherlands Bar, the job-specific management is conducted by the Supervisory Board pursuant to Section 36a(5) of the Act on Advocates. The Supervisory Board is also responsible, for example, for the performance reviews and appraisals of the secretary and the other staff members of the Supervisory Board.

#### Article 3.2

After the traineeship has been completed, the advocate will receive the traineeship certificate from the Council of the Local Bar. The traineeship certificate is the proof that the traineeship has been completed and that the advocate is no longer required to practise law under the guidance of a

principal. Article 3.2 contains the requirements for obtaining a traineeship certificate. Paraphrased, these conditions are as follows:

- the three-year traineeship period has ended (in the event of part-time work, the period extended by operation of law will apply);
- the trainee passed the vocational training examination;
- the trainee followed the compulsory elements of the traineeship, such as the local training programme (Article 3.10); and
- the practical training elements (Article 3.9) have been completed.

The Council of the Local Bar may conclude that the trainee – although fulfilling the above requirements – has insufficient practical experience. In that case, the Council of the Local Bar can extend the traineeship by a maximum of three years (Section 9b(2) of the Act on Advocates). This extension is a decision to which the Council of the Local Bar may attach further conditions. The Council of the Local Bar will not issue a traineeship certificate until those conditions are met and the extended period has expired. The extension of the traineeship and thereby the refusal to issue a traineeship certificate is open to an administrative appeal to the general council (Section 9b(5) of the Act on Advocates).

### Article 3.3

Under Section 9b(2) of the Act on Advocates, it is possible for a trainee or self-employed trainee to work part-time. Whether part-time work is involved depends on the contractual number of hours worked. If this number is less than 40 hours per week (full-time), the work will be part-time. The Administrative Jurisdiction Division of the Council of State ruled in its judgment of 16 February 2005 (ECLI:NL:RVS:2005:AS6227) that if fewer than 40 hours are worked per week, this will constitute part-time work, even if the collective labour agreement provides that a working week is 36 hours.

This article sets the minimum number of hours at 24 and 32 hours per week respectively. A trainee working 24 hours per week will have to practise law under the guidance of a principal for five years (260 weeks). If a trainee wants to work part-time, they must inform the Council of the Local Bar of this in advance so that the latter can determine the envisaged end date of the traineeship. The extension of the length of the traineeship for part-time trainees will not affect the length of the vocational training for advocates. Part-time trainees will follow the vocational training programme at the same time as the trainees working full-time. There is no provision to follow the programme at a different and slower, pace.

Newly-qualified advocates need to gain sufficient experience quickly, which will ensure good professional practice even at the early stage of the traineeship. This means that trainees, preferably from the moment they are sworn in, should experience as many different aspects of their profession as possible, work in different kinds of situations and, most of all, gain much practical experience. In this context, it is important that these activities possess a certain degree of substance, which will also enable the trainee to hone their skills.

For this reason, the minimum number of hours to be worked in a week has been set at 24. This minimum had already been laid down in the Traineeship Bye-Law 2012 (*Stageverordening 2012*) and

will not be changed in this Bye-Law. Section 8c(5) of the Act on Advocates provides that the length of the traineeship will be extended proportionally, but that this extension cannot exceed three years. This suggests that the legislator set a minimum for the number of hours that must be worked. This minimum would apparently be 20. However, the Act on Advocates is not conclusive on this point. A higher minimum is required not only with a view to practical experience, but also with a view to the workload entailed by the vocational training programme. This higher minimum was also prompted by the fact that trainees often follow the courses of the vocational training for advocates during working hours. This only leaves these trainees with an average of two days per week in which to do practical work, which the Netherlands Bar considers to be the absolute minimum. A trainee advocate must realise that if they want to train as an advocate, they will need to gain practical experience on a regular basis and within a relatively short period of time.

Paragraph 3 provides that the trainee must notify the Council of the Local Bar of the number of hours to be worked and of every change to that number (see, *inter alia*, ECLI:NL:RVS:2013:1476).

#### Article 3.4

Article 3.4 regulates the end of the traineeship without a traineeship certificate being issued. This has the legal effect that the mutual obligations of the trainee and the principal will cease to apply. In addition, Article 3.4 regulates the effects of suspension of the traineeship. These effects are limited, as appears from the judgment of the Administrative Jurisdiction Division of the Council of State of 17 May 2006 (ECLI:NL:RVS:2006:AX2118). One point addressed in that judgment was that the Act on Advocates dictates when the obligation to practise law under the supervision (in the current terminology of the Act on Advocates: guidance) of a principal comes to an end. Section 9b(1) of the Act on Advocates provides that this obligation applies for three years. In paragraph 2, the Council of the Local Bar is given the option to extend this period by a maximum of three years if the trainee's practical experience is still insufficient. Subsequently the Division rules as follows in ground 2.3.1:

“In the event of a longer interruption, the traineeship period will be extended proportionally, in line with the provisions of Section 9b(2), first sentence of the Act with regard to part-time work. This policy is based on the idea that the traineeship period prescribed by law is prompted by a legitimate public interest in the proper training of advocates and that the utilisation of that full period is necessary to gain the requisite wide knowledge and experience. For this reason, the ‘actual playing time notion’ is adhered to, which means that the three-year period referred to in Section 9b(1) of the Act will in principle not continue if the trainee is not effectively practising law, for example in case of illness or during holidays or other leave. However, the Division takes the view that the text of Section 9b(1) of the Act does not provide a basis for the interpretation which the Supervisory Board [from 1 January 2015: the Council of the Local Bar in the district] gave to this provision in its policies, because the three-year period during which the advocate must work under supervision is related to their registration as such and not to their actually practising law.”

The consequence of the judgment and the aforementioned underlying provisions of the Act on Advocates is that a bye-law cannot prescribe that the ‘actual playing time’ is applied as a *tenet*. The end of the traineeship has already been laid down in the Act on Advocates. An effect of an interim end to the traineeship or suspension of the traineeship, however, is that admission to the vocational training programme will in principle be denied. This is regulated in Article 3.16. In addition, the

provision that the trainee may only practise law under the principal's guidance will remain in force. This will not be so if the traineeship is suspended by operation of law; in that case, the trainee may not practise law.

Paragraph 1 gives special consideration to a number of situations. Unilateral notice of termination of the supervision agreement by the trainee or termination in consultation is not subject to formalities. The supervision agreement may also be part of the employment contract. It is preferable to give notice in writing, though, or at least to confirm termination in writing. Notice of termination by the principal is subject to conditions, however. It requires the approval of the Council of the Local Bar (pursuant to paragraph 1(c)), unless the vocational training certificate cannot or can no longer be obtained within the period set by Section 8c(3) of the Act on Advocates. The latter will be the case, for example, if the trainee also failed at the third and final opportunity to take a test. Under paragraph 3, no prior approval will be required in that situation.

Paragraph 2(a) relates to a trainee who does not practice law, for instance due to illness. In that case, the traineeship will be suspended by operation of law without a further decision from the Council of the Local Bar, unless the period of non-practising is of short duration. For purposes of uniformity, this period has been set at three months. The suspension by operation of law takes effect at the moment when the trainee has not practised law for three months, unless this is due to statutory pregnancy leave or maternity leave (Section 3:1(2) and (3) of the Work and Care Act (*Wet arbeid en zorg*)). This restriction is meant to rule out discrimination of trainees based on gender. Trainees who take leave and are unwilling or unable to follow courses during that period, and are unable to take the examinations, will have to invoke the hardship clause (Article 3.17(5)) in order to be allowed to follow courses or take the tests at a different time. Pursuant to paragraph 2(b), the traineeship will be suspended by operation of law if the principal can no longer function as such. This could be because they are no longer able or allowed to practise law themselves, or because they can no longer provide the guidance the trainee needs. If the principal has been suspended, they will not be an advocate at that moment and will not be allowed to practise law. Although suspension of the principal has already been incorporated into the aforementioned ground for suspension, it is mentioned explicitly in Subparagraph (c) for reasons of awareness. The provisions of this article do not affect the obligations arising from any employment contract between the trainee and the employer. The suspension or termination of the traineeship does have the effect, however, that a trainee will no longer have access to the vocational training programme pursuant to Article 3.16(2)(b). A trainee whose traineeship has been suspended will still be able to invoke the hardship clause of Article 3.16(4).

Pursuant to Article 3.4(5), the principal is obliged to inform the Council of the Local Bar about the occurrence of one of the situations causing the termination or suspension of the traineeship. These situations are known to the principal. The principal knows better than the Council of the Local Bar when such a situation occurs. The principal is also obliged, for that matter, to inform the Council of the Local Bar if the trainee does not practise law for some time (Article 3.13(6)).

#### Article 3.5

The Council of the Local Bar must approve each traineeship and principal. Approval will also be required if the trainee wants to change principal. The initiative to request approval lies with the trainee, who are themselves responsible for finding a principal.

Using an application form designed for that purpose, the trainee requests the Council of the Local Bar to approve the traineeship and the envisaged principal.

In order to obtain that approval, the trainee provides the Council of the Local Bar with the personal data of the envisaged principal, who agreed to this in writing prior to the application for approval. In addition, the trainee submits the employment contract, as well as the supervision agreement if this agreement is not part of the employment contract. If these formalities are not fulfilled, the Council of the Local Bar may, in principle, decide not to process the application (Section 4:5 of the General Administrative Law Act).

### Article 3.6

The Council of the Local Bar has wide discretionary powers in assessing a principal's suitability (Administrative Jurisdiction Division of the Council of State, 28 December 1999, *Advocates Gazette* 2000-3, p. 131). The Bye-Law does not restrict these discretionary powers. However, there appears to be a need for a concrete assessment framework. For this reason, paragraph 1 includes a number of situations in which the Council of the Local Bar can refuse its approval. If one of these situations occurs, the Council of the Local Bar may, in principle, assume that the principal is unsuitable. For example, if the Council of the Local Bar has received indications of irregularities about a firm or if well-founded doubts have arisen in relation to the treatment of trainees, the supervision or the professional practice in a more general sense, this will in principle be sufficient reason not to approve a principal or the traineeship. If the complaints are not serious or if the firm or the principal has modified its or their behaviour, there should in principle be no obstacle to approving the principal and the traineeship after all. The list has a non-exhaustive character. This means that there may also be other reasons to withhold approval.

The principal is asked to submit a statement with regard to the training courses referred to in Article 3.6(1)(d). This statement may relate, for example, to the courses taken in the last five years.

Pursuant to Subparagraph (f), the Council of the Local Bar will consider the number of trainees being overseen by a principal. The Council of the Local Bar may refuse its approval if the principal already has two trainees or more. In addition, the Council of the Local Bar will take into account that the principal will have to devote more attention to the supervision of trainees who have been working for only a short time. This is the reason for the provision that no more than one of the trainees has been a trainee for less than a year. If several trainees are less than one year into their traineeship, this will be a ground for refusing approval.

Paragraph 1(g) describes a residual category in which the principal may be unsuitable for a traineeship or trainee (see ECLI:NL:RVS:2014:3998, for example). This may appear, for instance, from a high turnover of trainees in recent years. In those cases, too, it may be desirable that approval is withheld. Subparagraph (h) relates to the aspects of the traineeship that do not necessarily concern a principal's qualities.

Paragraph 3 prescribes in which cases approval must be withheld. In those cases, no further assessment will be possible. The grounds set out in paragraph 3 are related to the duration of the

advocate's registration. The request for approval will be denied in all cases in which the principal has been registered for less than five years or, in the event of an EU-based advocate, less than two years. Therefore, the Council of the Local Bar may grant its approval if the principal has been registered as an advocate for a period between five and seven years. In that case, the Council of the Local Bar will give special consideration not only to the principal's suitability but also to the trainee (see ECLI:NL:RVS:2014:3998, cited above). If an external trainee or a self-employed trainee makes the application, the principal must in any event have been registered for more than seven years or, in the case of an EU-based advocate, more than four years.

#### Article 3.7

Trainees must find a principal themselves. If the principal ceases to act as such, the traineeship will be suspended, which means that the trainee may no longer look after their clients' interests. In that case, the Council of the Local Bar may act as an intermediary in finding a new principal. These intermediary services are not so extensive that the Council of the Local Bar can designate an advocate. This article is based on Section 28 of the Act on Advocates.

#### Article 3.8

The trainee will have to provide their principal with the information required by the latter for the proper performance of their role of principal. This information may relate to specific matters, but also to aspects of practising law.

#### Article 3.9

Paragraph 1 contains obligations regarding the practical experience to be gained by the trainee. These obligations entail, among other things, that the trainee must have acted in court at least five times and drawn up at least ten procedural documents. In addition, the trainee must have gained experience in two of the three main branches of law (civil law, criminal law and administrative law), unless this is not possible within the firm. The point of departure is that the trainee gains experience in several main specialisations. This is in line with the structure of the vocational training programme, in which the trainee chooses a major and a minor. The principal must provide the trainee with the opportunity to gain experience in the areas of their major and minor, with a view to obtaining some practical familiarity with these areas. This experience need not necessarily involve conducting proceedings, but may also consist in providing legal advice or activities of a different kind. At a firm specialising in criminal cases, for example, a trainee taking a minor in administrative law can gain experience with the tax aspects of a case, in addition to their experience in the discipline of economic criminal law. A trainee taking a minor in civil law may, for example, gain experience in juvenile law, in addition to their specialisation in juvenile criminal law.

It is possible that a firm handles no cases in another main specialisation, or that the second main specialisation within the firm plays such a limited part as to make it effectively impossible for all trainees to gain experience in this second (other) main specialisation. In that case, the principal must ensure (under Article 3.13(2)) that the trainee does gain experience in different legal areas within the main specialisation. What constitutes a legal area may be decided on the basis of the list of legal areas displayed on the website of the Netherlands Bar. The principal must be aware of the desirability

of a broad development on the trainee's part. They may be accused of making insufficient efforts if the trainee is not given the opportunity to gain experience in a different legal area while there is a possibility to do so. The principal therefore has a best-efforts obligation.

The Council of the Local Bar cannot impose any obligations on the trainee which deviate from these rules. However, the Council of the Local Bar may decide in a specific case, pursuant to Section 9b(2) of the Act on Advocates, that insufficient practical experience has been gained, and rule that the traineeship should be extended for that reason. In that case, the Council of the Local Bar may set additional practice requirements and, as a result, postpone issuing the traineeship certificate.

Paragraph 2 emphasises that the trainee's vocational training for advocates always takes precedence over the trainee's activities at the firm.

#### Article 3.10

This article relates to the local training programme. The Councils of the Local Bars must offer an adequate range of courses and ensure that these are of an adequate standard. Four credits are awarded for the moot court exercise, because this also requires preparation. Paragraph 4 implies that the Councils of the Local Bars recognise each other's training credits. This means that a trainee moving to a firm in a different district can transfer the credits already earned.

#### Article 3.11

External trainees and self-employed trainees have a special obligation to organise their offices in an adequate manner. Because an external trainee does not maintain an office with their principal, the principal cannot see to the organisation of the office. A self-employed trainee is in a comparable situation. The obligations laid down in this article are comparable with those of Articles 6.1 to 6.3. The difference with ordinary trainees is that the latter are or may be dependent for their office organisation on the principal with whom they maintain an office.

External trainees and self-employed trainees will, for that matter, also have to make an assessment as to whether they possess the requisite expertise when accepting cases (Article 4.1). This will be the case less often at the start of the traineeship. If the trainee does not possess the expertise, they will have to transfer the case to another advocate or involve an expert advocate in the handling of the case. This advocate may obviously be the principal, but may also be a different advocate.

#### Article 3.12

A self-employed trainee is a trainee practising law at their own expense and risk. This involves risks that may also affect the litigant, such as the risk of bankruptcy. In order to mitigate that risk, a prospective self-employed trainee is required to submit a sound business plan. These risks have also prompted the inclusion of the obligation that the trainee should have and maintain a certain financial buffer, for example in the form of a credit facility. This financial buffer must be appropriate. The appropriateness and thereby the minimum value of the credit facility is determined by the Council of the Local Bar. A buffer of less than EUR 15,000 is not considered appropriate. The financial buffer serves as a guarantee for the continuity of the operations, among other things.

Paragraph 2 ensures that the Council of the Local Bar is periodically informed of the self-employed trainee's financial situation. This will enable the Council of the Local Bar, if necessary, to urge the principal to provide better guidance or to take measures to prevent the clients of the self-employed trainee from being harmed. The obligation to co-sign the balance sheet and the profit and loss account is meant to make the principal aware of the trainee's financial situation. In addition, the principal must provide the self-employed trainee with guidance, information and advice (Article 3.13(1)). While supervising the trainee, the principal must also ensure that the trainee keeps proper accounting records (Article 3.13(5)). It is hereby expressly pointed out that co-signing these records does not make the principal jointly liable. They will sign the documents in evidence of having seen them.

#### Article 3.13

Pursuant to paragraph 6, the principal is obliged to notify the Council of the Local Bar of the trainee's (long-term) absence. The term 'some time' applies if the absence is longer than usual. The trainee will in any case not be practising law 'for some time' if the interruption lasts three months. The principal will have to notify the Council of the Local Bar at the moment when it becomes clear to them that the interruption is of longer duration. The purpose of this duty to notify is to inform the Council of the Local Bar about the trainee's activities. This will enable the Council of the Local Bar to assess the trainee's practical experience. The Council of the Local Bar will involve this assessment in the decision whether or not to extend the traineeship. In addition, the Council of the Local Bar can ask about the reason for the trainee's absence and take measures where necessary. If the trainee does not practise law for more than three months, the traineeship will be suspended by operation of law and the trainee will, in principle, be denied admission to the courses of the vocational training programme. Paragraph 8 facilitates the principal's involvement in the vocational training programme. For example, training components may be organised in which the trainee and the principal take part together.

#### Part 3.2 Vocational training for advocates

The vocational training programme for advocates (hereinafter also: "the vocational training programme") is provided by the implementing organisation. At the moment, the implementing organisation consists of the Centre for Postgraduate Legal Studies (*Centrum voor Postacademisch Juridisch Onderwijs*, "CPO") of Radboud University in Nijmegen and Dialogue BV.

#### Article 3.14

The general council is granted regulatory authority to draw up training regulations and examination regulations. In exercising this authority, the general council can use the implementing organisation's expertise. The regulations contain further details on the content of the courses, such as the compulsory and optional subjects offered, the requisite preparation and the time involved in this, as well as more practical matters that are subject to change and need to be arranged at the level of regulations.

Both the training regulations and the examination regulations describe the specific, practical implementation of the vocational training programme. The training regulations may confer education-related powers to the implementing organisation through delegation or attribution. Examples include



the assessment of the trainee's homework or preparations and the associated admission to the courses, or the registration of a trainee as absent.

The examination regulations also provide for the establishment of the examination board, which is maintained by the implementing organisation. Through delegation or attribution, the examination regulations grant the examination board duties and powers in relation to the examination. Examples include admission to the examination, setting of tests and determination of the mark.

In addition, the general council may confer on the examination board its authority to issue the vocational training certificate (Article 3.21). Under the Act on Advocates, practising law independently is conditional on having obtained a vocational training certificate. In view of this, the examination board is an administrative body within the meaning of Section 1:1(1)(b) of the General Administrative Law Act. After all, the board has been invested with some public authority.

#### Article 3.15

Paragraph 1 of Article 3.15 describes the three components of the vocational training programme. The further specifics of the subjects and courses taught are laid down in the training regulations referred to in Article 3.14(1).

#### Article 3.16

This article describes the requirements for admission to the courses of the vocational training programme. Paragraph 1 provides that the trainee should enrol with the implementing organisation. This results in a civil-law agreement. The Netherlands Bar acts as an intermediary, which means that the Netherlands Bar will know immediately what persons follow the vocational training programme and may follow these persons for administrative reasons. Paragraph 2, on the other hand, regulates admission under public law. Article 3.19(3) contains the requirements for admission to the examination or parts of the examination.

In the interest of efficient organisation, the trainee must enrol for the vocational training programme as soon as possible. This is done using a form made available by the implementing organisation. At the time of enrolment, the trainee will be asked to choose a substantive learning pathway (the major), consisting in one of the main specialisations referred to in Article 3.15(1). During the first year, the trainee will be asked to choose their optional courses for the second and third years.

Paragraph 2 sets out the admission criteria. The first criterion is that the trainee is listed in the bar register. The second criterion is that the traineeship is ongoing. If, for example, the trainee no longer has a principal or the trainee has ceased practising law, they may no longer follow courses. The reason for this is that the subjects and courses of the vocational training programme build on the knowledge gained in practice. All the same, a trainee whose traineeship has been suspended must still be able to take the tests. This is necessary in order to safeguard the progress of the vocational training programme. If the trainee is unable to take tests, they can invoke the hardship clause of Article 3.19(9) in order to retain the opportunity to take tests. A trainee who has not paid the tuition and examination fees owed may also be denied admission to the vocational training programme. Before admission is denied, the trainee will be asked several times to effect payment and be informed

of the consequences. A trainee committing fraud may also be denied admission to the vocational training programme. This is arranged in more detail in the examination regulations.

Paragraph 3 ensures that a trainee has a total of three opportunities to take a test in each subject, even if they are no longer admitted to the vocational training programme pursuant to this article and for this reason has already failed to sit tests. As a result, the trainee will not lose any opportunities to take tests.

This situation must be distinguished from that addressed in Article 3.17. If the trainee has been admitted to the courses but does not attend these courses, it follows from Article 3.17(3) that the opportunities to take tests will indeed be lost in the period concerned.

#### Article 3.17

The trainee is obliged to take part in courses, unless the training regulations provide otherwise. Furthermore, the trainee must prepare themselves in the requisite manner. This means that they must have read the prescribed literature and completed any assignments that may be required.

Paragraph 2 provides that the trainee must take part in the courses of the first cycle following their swearing-in, or rather, following the start of their traineeship. The implementing organisation rosters the trainee for the classes and subjects. If the trainee does not fulfil this obligation and cannot invoke a valid reason for their absence, they will be excluded from the associated test. In that case they will have to follow the course at a later stage (in principle six months later) and take the subsequent test. If the trainee fails that test, they will have one remaining opportunity to take the test. If the trainee follows the course at an accredited training institute, they must attend that course as well. The training institute will provide the trainee with a certificate in respect of the course taken.

#### Article 3.18

This article provides the option to grant an exemption from the obligation to follow courses. The general council is authorised to grant that exemption. It may adopt a policy rule in this respect. The intention to take a particular subject elsewhere is not a reason for granting an exemption. However, Article 3.17 does provide the option to equate following courses at an accredited training institute with following courses offered by the implementing organisation. Basically, the exemption may only be granted for a complete component of the vocational training for advocates. An exemption for a number of classes is therefore not possible. An exemption decision is communicated to all the parties involved pursuant to Section 3:41 of the General Administrative Law Act. In this case, these parties are the applicant, the Council of the Local Bar, the implementing organisation and the principal.

#### Article 3.19

A trainee who has followed the courses and meets the other requirements referred to in Paragraph 3 will take a test in the component followed. A trainee may take a maximum of three tests for each component.

The test immediately follows the course provided and taken. If the trainee does not sit this test, the result of this test will be rated unsatisfactory. This means that the trainee will have two opportunities left to take the test. Paragraph 5 provides that the trainee must avail themselves of the next opportunity to take the test if they failed the first test. This opportunity will usually be provided six months later, but sometimes earlier. If the trainee fails this test, they will have one more opportunity. They are not required to use this opportunity immediately.

A trainee following courses at an accredited training institute sits the tests at the implementing organisation at the same time as the trainees who are on the same cycle of training courses.

Paragraph 3 of this article sets out the admission requirements for the examination. Only trainees who attended the courses or obtained an exemption from doing so will be admitted to the examination. For this reason, trainees attending the courses provided by the implementing organisation and the training institutes have to sign an attendance list.

#### Article 3.20

Only in very exceptional cases will the general council grant an exemption from taking the examination. An exemption from following a course (pursuant to Article 3.18) does not in any way imply that the trainee is not required to take the test. In order for the trainee to be granted an exemption from the obligation to take a test in a part of the examination, it is not sufficient that equivalent theoretical competence has been acquired: the trainee must prove that they acquired in-depth theoretical competence. It is up to the trainee to demonstrate this.

#### Article 3.21

In order to obtain the traineeship certificate pursuant to Article 3.2, a certificate of vocational training for advocates is required. The certificate is issued by the examination board under the examination regulations referred to in Article 3.14(2), and serves as proof that the trainee successfully completed the training programme. This proof is also relevant in the context of Section 8c(3) of the Act on Advocates.

#### Article 3.22

Having been disbarred because the certificate of vocational training was not obtained in time, a (former) trainee may apply to the general council for another opportunity to take a test. The number of opportunities to take tests may not exceed the maximum specified in Article 3.19(6). This means that only a (former) trainee who has not yet taken three tests in a particular component may request the general council to be admitted to the tests. In this way, the trainee may still pass the examination and obtain the certificate of vocational training. In that case, however, they must have followed the courses or obtained an exemption from doing so. In their request, the trainee will have to state the circumstances and reasons why the certificate was not obtained in time.

If these circumstances are of such a nature as to make denial of this opportunity unfair, the general council may grant the opportunity. The opportunity to take the test must be provided within two years of the disbarment. The trainee must have submitted the request well before then.

### Article 3.23

In connection with the desired quality of the training programme, this article offers the opportunity to entrust the provision of the education to an implementing organisation whose main activity is education. At present, the implementing organisation is a combination of Radboud University's CPO and Dialogue BV.

The duties of the implementing organisation include the following:

- developing teaching materials and examinations for the entire curriculum, or arranging this;
- seeing to the actual organisation of the courses and the administration of examinations for the entire curriculum;
- providing the courses and the administration of examinations for the entire curriculum, or arranging this;
- maintaining teaching materials and examinations for the entire curriculum, or arranging this;
- selecting and training lecturers;
- rostering trainees and lecturers;
- booking and setting up venues;
- providing a digital learning environment;
- distributing teaching materials;
- communication and information;
- facilitating and staffing an examination board;
- quality assurance;
- reporting to the Foundation for the Vocational Training of Advocates (*Stichting Beroepsopleiding Advocaten*);
- taking part in evaluations.

The vocational training programme must cater for the needs of professional practice, while the postgraduate level of the programme must exceed that of the Master's phase of a law degree programme. In order to achieve this objective, it is necessary to intensify the collaboration with universities, to secure the teaching expertise (at the organisation providing the training programme) and to apply a quality policy of the highest standard in respect of the lecturers involved in the programme. A high quality of lecturers is achieved, among other things, through emphasis on didactic skills and through training and evaluation. This will have to be the implementing organisation's focus.

### Article 3.24

Pursuant to this article, the general council has to designate an organisation that checks and assesses the quality of the training programme. This organisation advises the general council and the implementing organisation.

At present, this task has been assigned to the Foundation for the Vocational Training of Advocates.

One of the Foundation's duties is to assist in drawing up the final attainment levels of the vocational training programme for advocates by providing advice. The Foundation's activities need not be

confined to the implementing organisation, but may also relate to the accredited training institutes. In that case, this would have to be a condition for accreditation.

#### Accreditation framework for vocational training for advocates

##### Article 3.25

Where the teaching components 'main specialisations' and 'other cognitive subjects' referred to in Article 3.15(1)(b) and (c) are concerned, a training institute can obtain accreditation to offer those components. As a result, following courses at these training institutes will be regarded as following courses at the implementing organisation, pursuant to Article 3.17(4). The accredited training institute itself sets the level of the fee owed by the trainee for following the courses. An accredited training institute cannot administer tests which are part of the examination. This is done by the implementing organisation.

To prevent uncertainty, the article also provides that the general council can withdraw the accreditation. In this context, 'unsatisfactory' must be interpreted in the broadest sense. This may be the case, for example, if the training institute itself is unsatisfactory, if the activities which the training institute performs in the context of the vocational training programme are unsatisfactory or if the content of the training programme is unsatisfactory.

The accreditation can be obtained for the cognitive subjects in the vocational training programme for advocates, i.e. the subjects specified in Article 3.15(1)(b) and (c). In addition to these subjects, the vocational training programme also comprises subjects relating to skills and ethics (see Article 3.15(1)(a)). Only the implementing organisation may teach these subjects.

#### Service in the general economic interest

The Netherlands Bar regulates the training of the trainee advocates with a view to the quality of the legal profession, the efficient administration of justice and the instillation of the ethics and core values applicable to the conduct of the profession (deontology). With a view to these interests, Section 9c of the Act on Advocates instructs the Netherlands Bar to provide a training programme for trainee advocates. Given the importance of advocates in the legal system and their position of trust, the vocational training programme is essential in enabling newly-qualified advocates to occupy this position.

It is on the basis of these interests that the training programme was developed and participation in the programme was prescribed. Article 3.15 sets out the components of the vocational training programme. The entire programme is a service in the general public interest. The aforesaid economic and non-economic interests cannot be protected in any other way than by placing the predominant part of this programme exclusively with one provider. Prior to 2013, this provider was the Netherlands Bar itself in respect of the former Vocational Training component (for one year). In the next two years, the market was regulated in accordance with a recognition system for the advanced traineeship programme (*voortgezette stageopleiding*, "VSO"). In that system, the VSO comprised about 25% of the total time requirement of the traineeship programme. In addition, it was possible to obtain an exemption from the vocational training courses if courses of a comparable or higher quality were

followed. In 2012, the Netherlands Bar decided to improve the quality of the programme with a view to the aforesaid interests. The Traineeship Bye-Law 2012 was the legal basis for this.

#### Implementing organisation procurement procedure

In 2012, the Netherlands Bar adopted a procurement procedure aimed at selecting the implementing organisation. Interested providers were invited to submit a quotation and thus take part in this selection. This procurement procedure offered the possibility of competition.

The Netherlands Authority for Consumers and Markets (*Autoriteit Consument en Markt*) ruled in its decision of 3 July 2014, case 7512, *Brink's v. GSN*, among other things in paragraphs 99 and 125, that the choice in favour of a provider and the related consequence that these services are not placed with another party cannot be regarded as anti-competitive. In the general council's view, this will apply all the more if the choice in favour of the provider was the result of a transparent procurement procedure. In this procedure consideration was given to the economically most favourable tender, whereby the elements of the tender were assigned different weightings. This weighting and the parameters had been communicated in the correct manner. There was no evidence (either at the time or afterwards) of bias or practices unlawful under competition law.

The implementing organisation that won the procurement procedure, i.e. CPO-Dialogue, must develop and provide education in all learning pathways and elements, develop, administer and assess examinations, and develop and provide a range of facilities such as the digital learning environment. The system provides for regular checks of the quality of the training programme, which results in incentives to keep innovating and investing.

#### Competition-law framework

For purposes of competition law, the Netherlands Bar can be qualified as an 'association of undertakings', because its members are (to a significant extent) independent undertakings. This was ruled in the (well-known) judgment in *Wouters* (CJEU, 19 February 2002, case C-309/99, *Wouters v. the Netherlands Bar*, ECLI:EU:C:2002:98). The Bye-Law is binding on the members and can therefore be regarded as 'a decision of an association of undertakings'. The Bye-Law and decisions based on it will have to satisfy the provisions of the Dutch Competitive Trading Act (*Mededingingswet*). Initially, the relevant provision here is Section 6(1) of that Act.

A decision of an association of undertakings will fall under the 'cartel prohibition' of Section 6(1) of the Competitive Trading Act if that decision results in a restriction of competition. Primarily, this would be a restriction of competition among the members of the association in the market in which these members operate as providers. Recently, however, the Supreme Court of the Netherlands ruled that this can also be a restriction of competition between the association of undertakings itself and third parties, in a market in which the members do not operate as providers (but may operate on the demand side) (Supreme Court of the Netherlands, 24 January 2014, *NVM v. Veerman q.q.*, paragraph 4.3, ECLI:NL:HR:2014:149).

If a decision of an association of undertakings restricts competition, it is thereby not automatically prohibited. If it entails efficiency benefits, those benefits may outweigh the restriction, provided that it

is beneficial to the users and there is still sufficient competition left (Section 6(3) of the Competitive Trading Act). In the general council's view this is the case for the training programme as offered by the implementing organisation and the associated partial liberalisation.

Regulation may also be necessary in order to safeguard a general interest of a non-economic nature. The judgment in *Wouters* cited above gives an example of the latter situation. The vocational training programme, too, involves a non-economic interest in that it instils the deontology.

#### Partial liberalisation

To ensure that trainees of all firms have access to high-quality deontological education at an acceptable price, it is necessary that education and testing are entrusted to one organisation. Because this implementing organisation obtains the contract only for a period long enough to amortise its investments, the general council considers this restriction of competition to be proportional and in line with the 'Wouters criteria'. Pursuant to these criteria, measures that potentially restrict competition may be permitted if:

1. they are inherent to the (deontological) objective pursued;
2. they do not go beyond what is necessary.

The application of these criteria to the liberalisation policy entails that it is permitted to set quality requirements for providers of the education. It is also permitted to entrust testing exclusively to the implementing organisation, among other things in order to safeguard the relevant quality requirements and keep the costs of this quality assurance to a minimum.

#### Ethics and skills

Because of their highly deontological nature, the skills and ethics subjects require a heterogeneous group composition. In this way, trainees of larger and smaller firms, with different lines of approach and different types of practices will learn from each other's perspectives.

Trainees receive the skills courses in different educational styles, but always in a group of advocates with different backgrounds in which interaction plays a key role. This diversity contributes to the advocate's more general introduction to the bar and is widely supported. The liberalisation of this teaching component might have the effect that trainees following courses at an accredited training institute only meet professional colleagues with a similar background, type of practice and office environment. If the courses are provided in heterogeneous groups, the difference in experience will contribute in practice to the trainee advocate's wide-ranging training. After all, the objective of the vocational training programme for advocates is to train people for a profession rather than a particular firm. The teaching of skills such as conversation and negotiation will benefit if trainees can practise with different styles of advocates (and roles as client or opposing party). In addition, this interaction may also create a greater mutual understanding among the various trainees for each other and each other's practices, which may ultimately have a positive effect on practical problem-solving.

Moreover, the testing of these skills is intertwined with the teaching. Separating these would make the organisation needlessly complex and, consequently, the training programme needlessly expensive.

Often the skills can only be tested in a one-to-one situation, for example with an actor or before an examiner, because this does not involve theoretical knowledge but the practical use of skills. Skills testing is therefore theoretically conceivable but not practically feasible because of the workload this entails for both the trainee and the implementing organisation.

#### Integrated learning pathway

Requirements may be imposed as regards an integrated approach of the training programme. The obligation to offer a complete learning pathway was included because it ensures joined-up teaching of the various components of a legal area. This prevents fragmentation and promotes understanding among trainee advocates. It will increase the quality of the training programme. This effect cannot be achieved by only defining final attainment levels and test attainment levels. For example, a particular case study is introduced at the start of the programme in combination with a particular legal question. This case study may return later in the programme, only in combination with a skills exercise, or a question about an ethical dilemma. Through these combinations, trainees learn to examine a case from different angles, as is customary in practice.

The accredited training institutes are obliged to offer a complete learning pathway, but can make choices within that pathway. This means that, unlike the implementing organisation, the training institute is not required to offer all the subjects. The accredited training institute therefore incurs fewer costs than the implementing organisation does. Accordingly, the system described in the Bye-Law can be considered necessary and proportional and thereby in line with competition law.

#### Article 4.1

Proper and efficient administration of justice requires a high degree of competence on the part of advocates. This article provides that every advocate must be competent. Competence means the professional knowledge and expertise needed to practice law. This entails that an advocate must have a thorough knowledge of procedural and substantive law in the legal areas in which they practice law. An advocate must also possess the expertise, i.e. the skills, which they need in order to practise law properly.

Paragraph 2 implies that an advocate must be aware of their lack of expertise in a particular area. In that case, the advocate will call in another person who does possess this expertise. This expertise could be legal knowledge, knowledge of the legal profession, but also technical or theoretical knowledge in a different field, such as accountancy.

Because trainee advocates are still unable to practise law independently, Paragraph 2 applies to them as well. Where necessary, they can draw on the expertise of their principal or colleagues.

#### Article 4.2

This paragraph relates to all advocates who have been registered with the bar for an interrupted or uninterrupted period of at least three years. Whether an advocate is a trainee or works part-time is irrelevant for the purposes of this paragraph. The three-year period is calculated in accordance with the advocate's first registration with the bar.



This means that an advocate who is disbarred one year after being sworn in and returns after two years must comply with the provisions of this paragraph at that time. This paragraph does not apply during the first three years of an advocate's bar registration, because they will be deemed to follow the three-year vocational training programme. With regard to EU advocates who are registered pursuant to Section 16h of the Act on Advocates, this paragraph applies with immediate effect.

#### Article 4.3

The obligation described in this article comprises more than the provisions following in Article 4.4 and beyond. An advocate has a general obligation to maintain and develop their knowledge in order to ensure proper service provision to their clients, the litigants.

#### Article 4.4

Paragraph 1 of this article provides that an advocate obtains at least 20 training credits. This is a minimum number. The advocate is free to obtain more training credits, which is indeed recommended for purposes of competence and quality.

In general, it is observed that gaining training credits is a means of maintaining competence. Accordingly, annually obtaining 20 training credits does not mean that the advocate thereby complies with the broader and more general requirement of competence referred to in Article 4.1 and the requirement of developing and maintaining knowledge referred to in Article 4.3.

For advocates to whom this paragraph applies, the obligation means that they must obtain at least 20 training credits per year by maintaining and developing their knowledge. Half of these regular training credits must concern substantive legal knowledge. This legal knowledge must have been acquired in a legal area relevant to the advocate's practice. Attending just any course will therefore not suffice. Legal areas relevant to the advocate's practice may be legal areas in which they are currently active, but also legal areas in which they are not active yet but expects to be active in the future in view of, for instance, developments in their practice.

The obligation that half of the training credits to be gained must concern substantive legal knowledge does not apply to the surplus credits obtained each year. If, for example, an advocate gains 30 training credits in a year, they will meet the obligation if at least ten of these credits concern substantive legal knowledge.

Paragraph 2 provides that advocates registered with the bar for six months or longer must obtain at least ten training credits each year per registered legal area. The six-month period relates to advocates registered in the course of the year (unconditionally after their traineeship or as returners). For the advocates who are registered between 1 July and 31 December of any calendar year, the obligation will not apply in that calendar year. It will only come into effect in the following year.

The register of legal areas contains various main legal areas in which advocates can register. Each main legal area is divided into sub-areas. These sub-areas are legal areas that require specific knowledge, which advocates who ticked the main legal area do not automatically possess. For

example, the legal area of personal and family law includes the sub-area 'international child abduction'. Sub-areas can only be ticked if the associated main legal area has been ticked.

The obligation to obtain ten training credits applies to the main legal area rather than the sub-areas ticked. The advocate will obviously have to maintain their knowledge and expertise in the sub-areas ticked, which can be achieved by obtaining training credits.

Training credits gained cannot be used twice for different legal areas. However, training credits gained may be divided among different legal areas. For example, a course with six training credits which relates both to employment law and to social security law can be divided between these legal areas (e.g. three credits for employment law and three credits for social security law).

Paragraph 3 provides for a 'pro rata scheme'. This means that an advocate need not obtain the full 20 training credits if this paragraph applies to them for less than 11 months of any calendar year. This may be, for instance, because the third anniversary of their bar registration occurred in the course of the year, or because they had themselves deregistered. This advocate will have fulfilled the requirements of Article 4.4(1) if they obtain the number of training credits specified in the table below.

A second relevant point is that paragraph 3 also applies to an advocate who deregisters during the year. Failure to obtain sufficient training credits may result in an objection by the Local Bar President pursuant to Section 46f of the Act on Advocates and/or the imposition of an administrative fine or an order subject to a penalty by the Local Bar President pursuant to Section 45g of the Act on Advocates.

The table counts on a monthly basis, whereby 1 2/3 credits must be obtained each month (20/12 credits). This number is always rounded up, because the unrounded number is the minimum number of training credits to be gained. If numbers were rounded down, this minimum number would therefore not be obtained.

Date of registration, deregistration or expiry of three-year period of Article 4.2	Number of training credits to be gained up to and including 31 December of that year	Number of training credits to be gained from 1 January of that year until the moment when the Bye-Law no longer applies to the advocate
1-31 January	20 (no reduction possible yet under paragraph 3)	2
1-29 February	19	4
1-31 March	17	5
1-30 April	15	7
1-31 May	14	9
1-30 June	12	10
1-31 July	10	12
1-31 August	9	14
1-30 September	7	15
1-31 October	5	17
1-30 November	4	19
1-31 December	2	20 (no reduction possible under paragraph 3)

Example: An advocate was sworn in on 27 April 2012. From 27 April 2015, Paragraph 4.1.2 applies to this advocate. The advocate will have to obtain at least 15 training credits before 31 December 2015.

The 'pro rata scheme' does not apply to the obligation under paragraph 2. For registration purposes, the requirement to obtain ten training credits needs to be met in full. Advocates who are added to the bar register in the first half of the calendar year must obtain ten training credits in the legal area for which they want to register.

Pursuant to paragraph 4, an advocate who gained surplus training credits in the previous year can use these credits in the current year to compensate a deficit in meeting the obligation under paragraphs 1 and 2. This means that they can carry forward a surplus of no more than ten training credits to the following year.

An advocate who is able to compensate therefore needs to obtain at least ten training credits each year. In order to comply with the standard of paragraph 1, the advocate must gain at least ten training credits in the calendar year concerned.

Paragraph 5 describes the activities for which training credits can be gained.

The system described in this paragraph is an open system. This means that there is no exhaustive list of activities and training programmes for which the advocate can obtain credits. The open standard is reflected in various aspects. First, it is not necessary to follow (subparagraph (a)) or teach (subparagraph (b)) the training programmes at a recognised training institute. Secondly, activities other than education are also eligible for training credits (see subsection (d)). This open standard gives an advocate the freedom to decide which activities or training programmes make the best contribution to their competence. This increases not only the advocate's own responsibility, but also the opportunity to find a (more) suitable solution. The advocate's own responsibility and own need are paramount.

Subparagraph (a) concerns following or attending courses of at least graduate standard. The standard of the education is reflected in the participants, the expertise of the lecturers and the relevance for the legal practice. The graduate courses on offer are courses provided by universities and can be divided into two levels: Bachelor's and Master's programmes. Courses provided by universities of applied sciences are not classified as graduate courses. In general, the Bachelor's programme is not specific enough to be relevant for an advocate's practice. If the advocate wants to claim training credits for a Bachelor's programme, they will have to demonstrate on request that this programme has sufficient added value in the context of their practice. An argument in this context may be that the advocate wants to train in a discipline in which they currently have little knowledge or experience. In that case, a course at foundation level may indeed be relevant.

The bullet points of subparagraph (a) list the conditions ensuring that the education has relevance for the legal practice, that the education is of an adequate standard and that there is some guarantee that the advocate actually absorbed the knowledge. With regard to courses followed remotely (such as webinars or private study), the training institute must indicate the time requirement in advance. It is on the basis of this average time requirement, rather than the time actually spent, that training credits are awarded.

Subparagraph (b) concerns the teaching of courses. In this context, a lecturer can claim a training credit for every half hour. This is equivalent to two training credits per hour. The standard is the duration of the class, rather than the duration of its preparation.

Subparagraph (c) provides that training credits can be obtained for legal articles. These articles must have been published in a legal journal with an independent editorial board; the journal may also be in electronic format. The article being published on the advocate's own website or on a networking site or forum will not suffice. One training credit may be awarded for every 500 words, excluding footnotes, of the written and published article. If the article was written by multiple authors, the total word count of the article will be divided by the number of authors. In this way, each participant will receive the same number of training credits for the article. In that case every 500 words, excluding footnotes, of a share will be awarded one training credit.

Pursuant to subparagraph (d), an advocate can also obtain training credits for other activities. The activities must help obtain knowledge relevant for the advocate's practice. Examples include ancillary activities, or writing legal advice in the context of an advisory committee of the Netherlands Bar. The general council may cap the number of training credits awarded for these activities.

Paragraph 7 provides that an advocate must prove that training credits have been obtained. This requires adequate documentary evidence. In this context, the advocate must indicate to which registered legal areas the training credits relate and for what activities the training credits were gained. After all, the Local Bar President may ask an advocate whether they have satisfied the provisions of Article 4.4(1) to (4). If an advocate followed a programme at a recognised training institute, it will be sufficient to present the certificate stating the training credits obtained and the credits logo. If an advocate followed a programme at a training institute that has not been recognised, a further investigation will be necessary as to whether the requirements of Article 4.4(5) and Articles 14 and 15 of the Legal Profession Regulations (*Regeling op de advocatuur*) are satisfied.

Adequate documentary evidence that a course has been followed can take the form of proof of participation, whereby an attendance record must have been kept, an overview of hours required, a description of the target group and a clear course programme. For teaching legal graduate or postgraduate courses, this evidence can take the form of proof of lecturer status, stating the number of hours actually taught and a description of the target group. For a legal article, this evidence is the article written and published in legal literature. For these and other activities, other documentary evidence may also be adequate. Paragraph 7 does not detract from the Local Bar President's authority to request further details in addition to these documents.

#### Article 4.5

The purpose of the provisions of this chapter is that the advocate should maintain their competence. Failure to obtain training credits is liable to disciplinary action enforceable and finable under administrative law (Section 45g of the Act on Advocates). An objection being raised by the Local Bar President or a subsequent injunction (if any) will not remedy the training credit deficit, however. For this reason, this article provides that the advocate must remedy a training credit deficit in the year following that in which insufficient training credits were obtained. The advocate will be unable to count the 'catch-up' training credits as regular training credits in that year, or use them at a later time to

compensate a deficit (see paragraph 2). This means that the catch-up credits are additional to the regular training credits to be gained during a calendar year.

Paragraph 3 makes it clear that the advocate will be in breach as soon as they fail to reach their training credit quota, even if they intend to catch up on them. Article 4.5 does not contain a right to a deficit, but an obligation intended to remedy an earlier deficit. Non-compliance with both Article 4.4 and Article 4.5 is liable to disciplinary action enforceable under administrative law pursuant to Section 45g of the Act on Advocates. The catch-up obligation in this article will therefore apply if the Local Bar President has raised an objection.

#### Article 4.6

Article 4.6 provides for a returner scheme. This scheme is intended for advocates who, for example, have been disbarred for a while and want to go back to practising law after more than one year. Supplementary to the main rule, the returning advocate must gain another 20 training credits through education on legal subjects in legal areas relevant for the advocate's practice. These training credits must be gained during the first 12 months after registration. A returning advocate who is sworn in halfway through the year must therefore have obtained 20 credits by 1 July of the following year. These training credits are on top of the training credits which they must obtain pursuant to Article 4.4(1) in conjunction with Article 4.4(2). Unlike the regular training credits, the returner credits cannot be obtained through skills training programmes or other non-legal courses. The purpose of the scheme is to remedy the knowledge deficit which the advocate acquired by not practising law for a while. The requirement that the training credits must be gained through following or teaching a substantive legal training programme or writing legal articles is the best guarantee that the returning advocate's knowledge will soon be up to date.

Paragraph 2 provides that the Council of the Local Bar may deviate from the requirement to gain 20 extra training credits. After all, it may happen that the returning advocate's knowledge and expertise are such as to justify a full or partial exemption. In that case, the advocate needs to obtain only a part of the extra training credits, or no extra credits at all. The returning advocate must substantiate why they believe that the number of training credits to be obtained should be reduced. A reason may be that the returning advocate performed legal activities comparable to a legal practice until shortly before their return, or followed a legal training programme during the time they were not registered. It stands to reason to confer the authority to depart from the main rule on the Councils of the Local Bars, in view of their powers relating to the registration of advocates. An exemption granted by the Council of the Local Bar is a decision within the meaning of the General Administrative Law Act that is open to an administrative appeal to the general council pursuant to Article 8.3(2). This also applies to an exemption granted or refused in part.

Pursuant to paragraph 3, the Council of the Local Bar may attach conditions to the exemption in view of the role of the advocate and the interest of the litigants. This could take the form of an obligation to gain the training credits for which no exemption was granted in one particular legal area.

## Article 4.7

An advocate who is prevented by illness from practising law, either wholly or in part, must also fulfil the obligation to gain training credits (Article 4.4(1)). If they obtained insufficient training credits during a particular year, the catch-up obligation of Article 4.5 will apply to them as well.

However, if the illness causes them not to practise law at all for a period of more than six months, Article 4.7 offers a provision. In that case, the advocate can request application of this article even before they go back to practising law. The advocate must submit this request to the Council of the Local Bar. The Council of the Local Bar will not have the option to deny the request if the advocate meets the requirement that they did not practise law for six months or more due to illness. The advocate will have to demonstrate this, for example by submitting a doctor's statement.

The effect of the application of this article has two aspects. These aspects are described in paragraphs 2 and 3. Paragraph 2 relates to obligations which do not apply, either temporarily or permanently. Paragraph 3 relates to the obligations to be fulfilled when the practice is resumed.

An advocate to whom this article applies will not be required to obtain training credits for as long as they do not practise law. This applies to the 'regular' training credits referred to in Article 4.4 and to the catch-up obligation of Article 4.5. The advocate will be entirely blameless under disciplinary law from the moment when this article applies to them.

Example: The advocate becomes ill during a calendar year and ceases practising in March. In October, they request the application of Article 4.7. For as long as the advocate does not practise law due to illness, they are not required to obtain training credits.

It is possible that the advocate obtained insufficient credits in the previous year, while they were not ill or still (partly) practised law. In that case, non-compliance with Article 4.4(1) in that previous year *will* be liable to disciplinary action. However, the advocate will *not* be obliged to catch up on the training credits pursuant to Article 4.5 if this Article 4.7 applies to them. These catch-up credits will be waived. The catch-up obligation of Article 4.5 will not apply to a training credit deficit which arose before the advocate ceased practising due to illness. Since no training credit deficit will arise during a period of illness longer than six months (paragraph 2), it is self-evident that the catch-up obligation of Article 4.5 will not apply either in that situation. It is conceivable that the advocate does not yet meet the condition for application of this article at the moment when a training credit deficit is established (see example 3 below). If the advocate has ceased practising due to illness and they invoke this illness scheme at a later time, the deficit will lapse after all at that time. However, if the illness (or cessation of practice) lasts for less than six months, the advocate will be unable to invoke Article 4.7 and the deficit and the catch-up obligation will remain in place.

A second effect of the application of this article is described in paragraph 3. When the advocate goes back to practising law, either wholly or in part, they will have to comply with paragraph 3. First of all, they must obtain the proportional number of training credits during the remaining part of the calendar year, depending on the moment when the advocate goes back to practising (see the table in the notes to Article 4.4). If they go back to practising halfway through the year, therefore, the advocate must obtain ten training credits during that calendar year (paragraph 3(a)).

Secondly, the advocate must obtain a number of extra credits, comparable with the returner scheme (paragraph 3(b)). The number of training credits which they must obtain depends on the length of the period in which they did not practise due to illness. After six months of illness, the advocate must obtain five extra training credits. After a year of illness this number is ten, and after two years of illness the number is equal to the number of credits to be obtained by a returner, i.e. 20. They will then have 12 months in which to gain these extra credits. The Council of the Local Bar may grant a partial exemption in this respect (Article 4.7(4)). The exemption may be granted if the advocate possesses or has gained sufficient up-to-date knowledge. In case of illness, the advocate is not expected to have gained other legally relevant work experience. However, it cannot be ruled out that they published articles, or followed or taught a course. In those cases, the Council of the Local Bar might grant an exemption.

Example 1: An advocate resumes their practice in March of a calendar year after nine months of illness. They invoke application of this article before the Council of the Local Bar. In that case, a training credit deficit in the previous year will not be liable to disciplinary action. They will have to obtain 17 training credits before the end of that calendar year (see the table in the notes to Article 4.4). In addition, they will have to obtain five training credits before March of the next calendar year. Any training credit backlogs in the previous calendar year will be waived and need not be made up pursuant to Article 4.5.

Example 2: An advocate has already obtained ten training credits at the start of a calendar year. They did not have to catch up on credits. In April, the advocate becomes ill and ceases practising law. The advocate recovers and wants to resume practising in December. The question is whether it is favourable for them to invoke the illness scheme. If they do not invoke the illness scheme, they must obtain ten training credits in the month of December. If they do invoke the illness scheme, they must obtain two training credits in December (paragraph 3(a)) and another five credits before December of the following year.

For this advocate, it may therefore be favourable to invoke the illness scheme. The outcome might have been different if they had gained more credits at the start of the year.

Example 3: An advocate becomes ill in November of a particular year. They have not yet obtained any training credits in that year. On the last day of December of that year, they do not (yet) meet the conditions for invoking the illness scheme. By the letter of the scheme, the advocate does not comply with Article 4.4. In the following year, the catch-up obligation applies to them. This advocate meets the conditions of the illness scheme by May.

If the advocate did not apply the illness scheme, they would have to obtain 40 training credits in the remaining part of the year when resuming their practice. They request application of this scheme, because in that case they must gain another 12 training credits when resuming their practice in June and an additional five training credits before June of the following year. The deficit established on 1 January will lapse, because the illness scheme became applicable after the deficit arose. Pursuant to Paragraph 2, therefore, the catch-up obligation will not apply to that deficit.

#### Paragraph 4.2.1 Advocate at the Supreme Court

Since the entry into force of the Dutch Cassation Proceedings (Further Measures) Act (*Wet versterking cassatierechtspraak*) on 1 July 2012, Sections 9j and 9k have been incorporated into the Act on Advocates. Pursuant to these sections, quality requirements apply for advocates acting before the Supreme Court of the Netherlands in the legal area of civil cases. In this Bye-Law, this legal area is referred to as 'civil cassation' for the sake of brevity. Rules on cassation appeals in criminal and fiscal cases may be laid down in a bye-law in due course. Expectations are that such a bye-law will then also require an amendment of these articles.

Under the Dutch Code of Civil Procedure (*Wetboek van burgerlijke rechtsvordering*), only advocates with the endorsement 'advocate at the Supreme Court' may act in cassation cases.

#### Article 4.8

An advocate at the Supreme Court maintains their specific knowledge in the field of civil law or civil procedural law and cassation technique by obtaining at least ten training credits per year in those fields. If the advocate fails to do so, the Council of the Local Bar may request the disciplinary board pursuant to Section 9k(1) of the Act on Advocates to cancel the endorsement. If this request is granted, the advocate will lose the capacity of advocate at the Supreme Court.

#### Article 4.9

An advocate with the conditional or unconditional endorsement 'advocate at the Supreme Court' for civil cases must actually handle cassation cases in order to gain or retain proficiency in such cases. Over a three-year period, the advocate must handle at least 12 cases.

At least half of those 12 cases must have resulted in a substantive assessment by the Supreme Court of the Netherlands in those three years. A disposal pursuant to Section 80a of the Dutch Judiciary (Organisation) Act (*Wet op de rechterlijke organisatie*) does not count towards that number. Cases that have not yet resulted in a judgment by the end of the three years will be disregarded as well.

Handling a case does not only mean acting before the Supreme Court of the Netherlands, but also preparing a positive or negative opinion on cassation. In that situation, the case cannot also be listed as a case resulting in a substantive assessment by the Supreme Court of the Netherlands.

The advocate will have to demonstrate on request (by virtue of Article 4.14(2) or at the request or demand of the Local Bar President pursuant to Part 5.2 of the General Administrative Law Act) what cases they handled, which of these resulted in a substantive assessment and which did not, and whether they handled a case together with one or more other advocates.

For the purpose of verification of this practice requirement, it is recommended that the advocate keeps an (annual) record of the cases they handled and the cases which resulted in a substantive assessment by the Supreme Court of the Netherlands. The Local Bar President may request this information pursuant to Part 5.2 of the General Administrative Law Act. They may also receive the data as part of the annual central verification of compliance with the Bye-Law. By reviewing the



information over a three-year period, the Council of the Local Bar can assess whether the advocate meets the requirements referred to in paragraph 1.

If it appears that the advocate does not meet the requirements imposed, the Council of the Local Bar may request the disciplinary board to cancel the endorsement 'advocate at the Supreme Court' (Section 9k(1) of the Act on Advocates). As long as there is no final decision, the advocate may handle cases before the Supreme Court of the Netherlands. Once a final decision has been given, the endorsement will lapse and the advocate may no longer handle cassation cases. They will have to transfer the cases, in consultation with the Council of the Local Bar, to an advocate who is permitted to act before the Supreme Court of the Netherlands. In this way, the client's interests can be safeguarded.

Paragraph 2 offers specialists in legal areas in which few cassation cases are brought the option to apply for an exemption from the practice requirements referred to in paragraph 1. These are legal areas in a particular niche. An advocate working only in that legal area can expect to be presented with few cassation cases. This advocate may apply for a (partial) exemption from the obligation under paragraph 1. This exemption will only be granted if, in the opinion of the general council, it has been established that so few cases are brought before the Supreme Court of the Netherlands in that specific legal area as to make it unreasonable to adhere in full to 12 cases over a three-year period, six of which must have resulted in a substantive assessment by the Supreme Court of the Netherlands. The general council may grant a full or a partial exemption. A partial exemption means that a smaller number of cases will suffice. If the general council granted a partial exemption pursuant to Article 4.9(2), this exemption will specify the number of cases to be handled. The advocate must demonstrate that they handled that number of cases. Therefore, if the advocate received an exemption for four cases, they must still have handled eight cases over a three-year period.

The general council may delegate the authority to decide on applications for an exemption, for example to the cassation committee. It is also conceivable that the committee will be asked for its expertise in other ways if the general council does not mandate the committee. A refusal to grant a (partial) exemption is open to objection.

#### Paragraph 4.2.2 Civil cassation endorsement

This paragraph describes the substantive criteria and the procedure for obtaining the certificate for the endorsement 'advocate at the Supreme Court'.

#### Article 4.10

Article 4.10 grants the general council the authority to issue the certificate.

The general council will grant the advocate a certificate if the advocate has fulfilled the relevant requirements set by this Bye-Law to the satisfaction of the civil cassation committee. With this certificate, the advocate can ask the secretary of the general council to add the endorsement to their bar registration. Based on the certificate, the secretary of the general council enters the (conditional) endorsement 'advocate at the Supreme Court' on the bar register (Section 9j(2) of the Act on

Advocates). Whether the endorsement is conditional or unconditional is apparent only to the regulator, the civil cassation committees and the general council.

Where civil cassation is concerned, there are two kinds of certificate as referred to in Section 9j(2) of the Act on Advocates. The first certificate results in a conditional endorsement and the second certificate in an unconditional endorsement.

A refusal to issue a certificate is a decision within the meaning of the General Administrative Law Act, which is open to objection to the general council.

A refusal by the secretary of the general council to enter the capacity of 'advocate at the Supreme Court' is open to appeal to the disciplinary court (Section 9j(7) of the Act on Advocates). Among other things, this provision offers legal protection when it comes to exercising the circumscribed power to enter the endorsement on the bar register.

The loss of the conditional or unconditional endorsement 'advocate at the Supreme Court' is described in Section 9k(1) of the Act on Advocates. The Council of the Local Bar may request the disciplinary board to rule that the endorsement be cancelled. This is possible in cases in which the advocate does not meet or no longer meets the requirements laid down in this Bye-Law. In this system, an advocate can only lose their conditional or unconditional endorsement through the agency of the Council of the Local Bar and the disciplinary board. A decision of the disciplinary board is open to appeal to the disciplinary court.

Article 4.11 and Article 4.12

An advocate wishing to conduct cassation cases must be listed in the bar register with the endorsement 'advocate at the Supreme Court'. This first of all requires a conditional endorsement. With that endorsement, the advocate will be authorised to act before the Supreme Court of the Netherlands and able to meet the requirements for taking the competence test referred to in Article 4.13. The conditional endorsement lapses by operation of law after three years.

In order to request the secretary of the general council to enter a conditional endorsement as 'advocate at the Supreme Court' on the bar register, the advocate must apply for the certificate referred to in this article. They will have to apply to the general council for the opportunity to take the examination. When making this application, the advocate must demonstrate that they are unconditionally listed as an advocate on the bar register (Section 9j(1) of the Act on Advocates) and that they meet the requirement referred to in Article 4.11(1)(a) or has obtained an exemption from this requirement (paragraph 3). Otherwise, the application will not be processed. The examination involves an assessment of, in particular, the theoretical knowledge of civil law and procedural law, with a focus on procedural law in appeal and cassation cases.

The advocate has to pay a fee for taking the examination, which fee is set by the general council pursuant to Article 2.29.

The conditional endorsement 'advocate at the Supreme Court' applies for a period of three years. The advocate is meant to request and obtain the unconditional endorsement 'advocate at the Supreme

Court' in civil cases before the expiry of this three-year period. In special circumstances, including the situation that few cassation cases are brought in particular legal areas, the three-year period may be extended. These are legal areas in a particular niche. An advocate working only in that legal area can expect to be presented with few cassation cases. This extension will only be granted if, in the opinion of the general council, it has been established that so few cases are brought before the Supreme Court of the Netherlands in that specific legal area as to make it unreasonable to adhere in full to the three-year validity period of the registration.

Pursuant to Article 4.11(3), the general council may grant an exemption from the provisions of Article 4.11(1)(a) if an advocate gained knowledge and expertise that are still up-to-date in a previous position, but did not obtain any (advocate's) training credits in the preceding year because they were not registered as an advocate. This advocate may fall into one of the following categories.

1. Former judges, not being members of the Supreme Court of the Netherlands

Judges must obtain 30 training credits per year; these are comparable with advocate's training credits. Nevertheless, these do not count as training credits gained pursuant to Article 4.4. If the requirement that at least ten training credits have been obtained in the area of civil cassation is not fulfilled, an exemption will be conceivable if the person involved must be deemed to have sufficient command of civil procedural law and the Dutch Civil Code. Appeal judges (in the civil-law divisions) may as a rule be presumed to possess this knowledge and are likely to be granted an exemption. Civil-law judges at district courts may be required to follow training in procedural law regarding appeal and cassation. The activities of the former judges will no longer be up-to-date if they were terminated more than three years previously.

2. Cassation experts

Members of the Supreme Court of the Netherlands or the public prosecutor's office at the Supreme Court have no obligation in respect of permanent education. The general council considers it reasonable to assume that justices, members of the public prosecutor's office at the Supreme Court and staff members of the research department of the Supreme Court of the Netherlands have sufficient up-to-date knowledge of the cassation practice, provided that their activities were performed within the past three years.

3. Academics

Doctoral candidates and (senior) university lecturers in the field of civil procedural law or procedural law regarding cassation. Where these persons are concerned, the general council will also consider to what extent their knowledge and expertise relates to the litigation practice of advocates.

Article 4.13 and Article 4.14

The certificate for the unconditional endorsement 'advocate at the Supreme Court' in civil cases is obtained by passing the competence test. The advocate may apply in writing to the general council for the opportunity to take this test at any desired moment, but in any case before the expiry of the three-year period referred to in Article 4.11(2).

When making the application, the advocate demonstrates that they obtained the relevant number of training credits referred to in Article 4.8(1). The general council may set further rules on the manner in which the test is requested and administered, the cassation files to be submitted and the content of the competence test (Article 4.14(2)).

When making the application, the advocate demonstrates that they meet the requirement referred to in Article 4.9(1). The advocate will have to handle at least 12 cases in the three years in which they hold a conditional endorsement pursuant to Article 4.11. Of those 12 cases, at least six must have resulted in a substantive assessment by the Supreme Court of the Netherlands. A disposal pursuant to Section 80a of the Judiciary (Organisation) Act does not count. The period of validity means that an advocate will have to take the competence test in good time, so as to leave enough time for re-taking the test within that period if this should be necessary.

In situations in which a case is or was handled by more than one advocate, this must be stated in the list of cases handled. The general council may set further rules on the extent to which cases are allocated to multiple handlers (Article 4.9(4)).

If the advocate has demonstrated that they meet Article 4.13(a) and (b), they will be given the opportunity to take the competence test. The competence test comprises a substantive assessment of the cassation documents drawn up by the advocate in two files. The verbal discussion of the files will involve the theoretical knowledge of procedural law regarding appeal and cassation, as well as the statutory requirements which the documents must satisfy. Opinions on cassation must comply with the provisions of Article 7.6.

The advocate has to pay a fee for taking the competence test, which fee is set by the general council pursuant to Article 2.29.

If the advocate passes the competence test, they will obtain a certificate with which they can request the secretary of the general council to enter the endorsement 'advocate to the Supreme Court' in civil cases on their bar registration (Section 9j(2) of the Act on Advocates).

#### Article 5.1

An advocate must be able to serve their client's interests in a partial and independent manner. This follows from a number of the advocate's core values, such as independence, confidentiality, integrity and partiality. Whether an advocate is trusted or not hinges on that advocate's independence. Independence is also indispensable for the proper implementation of the core values of confidentiality and partiality.

For this reason, Article 5.1 is a core provision of this Bye-Law. The other articles in Chapter 5 can be regarded as an elaboration and refinement of this standard.

The wording 'may be put at risk' means that the risk need not necessarily occur or have occurred. The advocate therefore has to exercise great care to maintain their independence.

Paragraph 2 confines itself to a reference to Paragraph 1 for the sake of legislative efficiency. Paragraph 2 is another provision intended to prevent that any of the elements referred to in Paragraph 1 should be put at risk.

## Article 5.2

This article describes the (legal) forms in which advocates may practise law. The forms referred to under (b) and (c) are subject to further rules, which serve to protect the advocate's independence in particular.

An advocate conducting a stand-alone practice at their own expense and risk and has control over this practice, will practise law in the manner referred to under (a). They run a business which is listed in the Commercial Register as a one-man business. This advocate could make use of a practising legal entity, in which case they would be the only person exercising control over this practising legal entity. It is also possible that this advocate employs staff.

The advocate concludes an agreement to perform services with clients, whereby they are the only person responsible for the performance of the agreement. The agreement need not be confined to clients alone but may also be concluded with, say, a law firm. In that case the advocate may be engaged as an advisor, for example. They will then retain control over the professional practice, even if they collaborate on an individual case with advocates or staff members of the aforesaid law firm.

An advocate practising law independently may have entered into a cost partnership. A cost partnership is usually an undisclosed (non-public) partnership. The partners deal with third parties under their own names and on their own behalf. In that case, there is no sharing of expense and risk or control. By extension, there is no group practice. This may be different if dealings with the public are conducted under a joint name. Such a course of action may give rise to a public partnership, with the partners sharing the risk. In that case, the partnership's contracting parties may hold the other partners (jointly) liable. This means that one of the criteria of Article 5.3 is fulfilled. By acting under the joint name of a cost partnership, therefore, a group practice may be created.

Paragraph (b) concerns practising law in a group practice. The requirements of a group practice are set out in Article 5.3. The group may have legal personality, such as a public or private limited company, but this is not a prerequisite, for example in the case of a (public) partnership.

Paragraph (c) concerns advocates working in employment. In common parlance, the term 'advocate in employment' is normally used only for advocates employed by a business or (government) organisation (see Article 5.9(e) to (g) inclusive). However, it also covers most trainees and junior advocates. Most of the advocates registered in the Netherlands work on the basis of an employment contract; they fall into this group. This applies, for example, to the advocates working for larger law firms, except if they are partners. The partners of those firms fall under Paragraph (b).

### Article 5.3

A group practice will exist if a form of collaboration meets one of the criteria set out in this article. These criteria are: sharing expense and risk or sharing control or ultimate responsibility for the professional practice.

The criteria are not mutually exclusive. It is possible that a collaborative venture meets more than one criterion. In that case, a group practice will exist as well.

The legal form chosen is irrelevant. A practising legal entity with several advocates is also a group practice within the meaning of the Bye-Law, because the condition of sharing the expense and risk of conducting the practice (Paragraph (a)) is fulfilled in any event.

If the firm is a one-man business in which an advocate practices law as a self-employed person, no group practice will exist (see Disciplinary Court, 15 June 2001, 3356). Pursuant to Article 7.4, therefore, the advocate is not allowed to present as being part of a group practice if this is not the case. Although they may deal with the public under a joint name (Article 5.5), they must make it clear when doing so that no group practice exists (Article 7.4).

A cost partnership may be, but does not have to be, a group practice. This depends on the arrangements made within the cost partnership. A cost partnership in the purest meaning of the word is an undisclosed partnership and does not present itself as an entity. The cost partnership shares costs of accommodation, office organisation and staff. The partners in the partnership practise law independently, under their own responsibility and at their own expense and risk. This cost partnership does not meet the definition of 'undertaking' of Section 2 of the Commercial Registers Decree 2008 (*Handelsregisterbesluit 2008*) and is therefore not listed in the Commercial Register of the Chamber of Commerce. In this case, the undertakings are the one-man businesses of the partners in the cost partnership. These one-man businesses *are* listed in the Commercial Register, where applicable with their practising legal entity.

Within the partnership, arrangements may have been made as regards the conduct of a practice. Examples include arrangements about the training required, or about numbers of cases that can be conducted using the services of an assigned counsel. There may even be arrangements to the effect that the partners in the partnership handle cases together.

No group practice will exist if the collaboration is aimed exclusively at one or more of the following aspects: a. sharing knowledge; b. referring clients; c. using the same facilities (such as framework agreements with a bailiff); or d. sharing joint costs of accommodation, support services and external promotion.

External promotion usually involves the use of a joint name or an identical part of the trade name (shared name). This will be permitted if the condition of Article 5.5 is fulfilled.

In assessing whether a practice is conducted at joint expense and risk, a number of factors may be taken into account.

If the advocate has made arrangements with third parties that, in addition to the costs associated with a case, they will also share the revenue generated by the handling of a case, the practice will be conducted at joint expense and risk. In that situation, it is irrelevant whether the sharing involves a very small portion or a more substantial portion.

If the agreement with the client was concluded by the partnership or other collaborative entity (general partnership or foundation), that entity will constitute a group practice. This will also apply if the agreement provides that payment must be made to the group practice. In that case, too, the practice will be conducted at joint expense and (collection) risk.

#### Sharing control or ultimate responsibility for the professional practice

Control over the professional practice will be shared (Paragraph (b)) if others than the advocate exert formal or actual influence over the choices to be made by the advocate when handling or accepting a case. An indication that control is shared is the presence of one or more directors. If there is a board of directors, therefore, a group practice will exist.

An advocate who must tolerate the interference of others in the specific handling of a case will share the control or ultimate responsibility for the professional practice. The professional practice is understood to mean anything relating to the specific handling of a case: the choices in the proceedings, the legal aspects, the substance of the opinions and communications, the knowledge and expertise of the associates involved, and the payment of costs entailed by the legal proceedings (the specific costs).

The professional practice does not mean the conduct of the business or practice; the aspects relating to entrepreneurship, procurement and standing charges. A group practice may be assumed to exist if the conduct of the business is integrated to such an extent that there is a director.

#### Article 5.4

With a view to protecting the advocate's independence, limitations have been set to the parties with which the advocate can enter into a group practice. The persons (or legal entities) referred to in this article are practitioners of liberal professions who meet the criteria set out below.

The practitioners must be subject to disciplinary law comparable with that applicable to advocates.

The collaboration with this professional group should not jeopardise the advocate's freedom and independence, including the partial representation of interests and the associated relationship of trust. The conduct of the profession requires an academic or equivalent course of study. The practitioners referred to in this article must all practise law in some form. Practising law is also understood to mean the provision of advice by tax advisors.

## Article 5.5

An advocate may deal with the public under a joint name only together with the practitioners referred to in Article 5.4(1). This is consistent with the Disciplinary Court's judgment on the use of a joint name dated 12 June 2006, no. 4496 (Advocates Gazette 2007, no. 11).

Dealing with the public under a joint name has legal effects. For example, it may cause an undisclosed partnership to change into a public partnership. As a result, the partners in that partnership may become liable for each other's actions. It is therefore necessary to limit the permitted circle of persons who may deal with the public under one name to the group with which a group practice may (also) be established, i.e. the practitioners referred to in Article 5.3.

In addition, 'dealing with the public under a joint name' may raise expectations among clients. These expectations may also be related to the representation of conflicting interests. For example, it may be a relevant factor that the opposing party's interests are represented by an advocate acting under a joint name with the client's advocate.

The advocate is obliged to prevent a situation in which they represent conflicting interests (Rule of Conduct 7). In addition, they must inform the client properly and correctly about the confidentiality between advocate and client, about the parties with which they act under a joint name and about the manner in which they collaborate or do not collaborate with these parties. If they act under a joint name or a partially joint name with an opposing party's advocate, the advocate must be aware that there may be an apparent conflict of interest. The practitioners referred to in Article 5.3 are supervised by multiple authorities, which increases control of preventing false expectations and fulfilling legitimate expectations.

## Article 5.6

If a firm has a board of directors, the board members have to meet particular requirements. These requirements apply both to directors of legal entities and to directors of other group practices. An example of the latter is a partnership. In that case, the firm has appointed natural persons as directors or as managing partners of the group practice. As a rule, the chair of the board has the casting vote if the votes are tied. This has prompted the stipulation that the chair must be an advocate or a practitioner of an admitted liberal profession. Paragraph 1 also provides that advocates or practitioners of an admitted liberal profession (e.g. civil-law notaries) must hold the majority of the board seats, and thereby have decisive control. A person not pertaining to this group may therefore become a director. For example, it is conceivable that a financial expert or a marketing expert is appointed to the board. These persons are not bound by the regulations for advocates and are not subject either to other disciplinary law, comparable with that applicable to advocates or to practitioners of an admitted liberal profession. This means that no sanctioning or disciplinary enforcement is possible against this group of directors. For this reason, these persons must meet stricter requirements. These requirements have been laid down in Paragraph 2.

Additional requirements also apply to former practitioners. Paragraph 2(b) sets out the more serious disciplinary convictions with regard to each of the liberal professions. A former advocate or former practitioner of an admitted liberal profession cannot become a director of a group practice or legal



entity if a measure was imposed on them which barred them from practising the profession, either temporarily or permanently.

Paragraph 3 provides that each proposed appointment of a non-advocate as a director must be reported to the Council of the Local Bar. This proposed appointment will be accompanied in any case by a statement to the effect that the requirements referred to in Paragraph 2(a) and (b) are fulfilled. In addition, a certificate of good conduct will be submitted. Based on these communications, the Council of the Local Bar may request further information pursuant to Paragraph 4. The competent Council of the Local Bar is the Council of the district in which the practising legal entity has its registered office or in which the group practice has its principal establishment.

#### Article 5.7

This article describes the requirements which the articles of practising legal entities and holding legal entities must fulfil. Paragraphs 1 and 2 are of a general nature. Paragraphs 3 to 5 inclusive relate to specific legal forms.

A practising legal entity can take many forms, such as a BV, NV, cooperative, foundation, association or foreign legal entity (for example, the LLP under the laws of England and Wales or Poland). The provisions of Paragraph 1 relate to all these forms. Paragraph 1(a) and (b) concern the objects clause contained in the articles of association.

The asset management may take the form of participating interests in other businesses. In this respect, it is important that the participating interest should not jeopardise the advocate's independent professional practice (Article 5.1). This means that no participating interest may be acquired in any case in (a business of) a client or the client's opposing party.

A holding legal entity does not conduct a practice, and therefore the articles of association need not state that the object is limited to practising law. This distinction is meant to achieve, among other things, that the Commercial Register will in due course reflect more clearly what 'firms' and practising legal entities exist. With a view to this, the objects clause contained in the articles of association of a pure holding legal entity may be more limited than that of a practising legal entity. This is described in Paragraph 2 of this article.

The provisions of Paragraph 3 apply to BVs and NVs. These legal entities may issue registered shares only. This is meant to ensure that the control and the voting right attached to the share remain with the persons who meet the requirements of Article 5.8. The beneficial entitlement to, for example, profit distributions is limited to a specific group of persons as well. For this reason, only registered depositary receipts may be issued (see also Article 5.8). The inclusion of this provision in the articles of association offers a safeguard against this rule being breached.

The provisions make a distinction between legal entities whose capital is divided into shares, such as the BV and NV referred to in Paragraph 3, and legal entities without shares. Of this latter category, Paragraph 4 mentions the cooperative specifically. Cooperatives do not have shares or shareholders; instead, control is exercised by the members. Therefore, Paragraph 4 provides that where

Paragraphs 1 and 2 refer to 'shareholders', this must be read as 'members' where a cooperative is concerned.

A foreign legal entity does not necessarily have articles with provisions on subjects such as directors or share ownership. However, this legal entity will then have a different kind of agreement documenting arrangements in respect of the object and the manner of collaboration. Pursuant to Paragraph 5, these other agreements will have to comply with the provisions of Paragraphs 1 and 2.

#### Article 5.8

As shareholders usually have control, there is a restriction as to who can be shareholders.

Under certain circumstances, it is permitted to create certain forms of usufruct (as a pledge) in respect of the shares, provided that these do not comprise the right to vote. The effect of a voting right being transferred to a person not entitled to hold this right under this Bye-Law will be that this practising legal entity may no longer practise law. This will be the case, for example, if the shares are pledged to a financier and the right of pledge is exercised.

Likewise, economic benefit based on usufruct may only be granted to a limited extent. The economic benefit (or the risk) attached to shares is essential for the independence of the professional practice. The shareholder or usufructuary will share in the expense and risk of the professional practice. They must therefore have the capacity of one of the parties with whom a group practice may be established (Article 5.3).

Paragraph 2 of Article 5.8 contains a *lex specialis*, which allows usufruct in the form of registered depositary receipts and non-voting shares, but limits such usufruct to a total of 10% of the profit. In this context, profit is understood to mean pre-tax profit, or earnings before interest, taxes, depreciation and amortisation (EBITDA). Where that limited portion is concerned, profit sharing is allowed for staff members of a practising legal entity who are not advocates or practitioners of an admitted liberal profession. The profit-sharing may take the form of shares not carrying the right to attend meetings or the right to vote, or depositary receipts for shares.

#### Article 5.9

The system of practising law in employment is a closed system. Practising law in another person's employment is not permitted, save for the persons listed in Article 5.9.

The list of Article 5.9 is exhaustive.

The leading criterion in this context is that the advocate's independence must be guaranteed. Legal independence in the sense of discretion and uncompromised service to the client's interests entails that the advocate can determine themselves how they will go about handling the case. After all, what distinguishes the advocate is a certain degree of open-mindedness and objectivity in respect of the case and the interests at stake. The core value of independence has been laid down both in the code of conduct (Rule of Conduct 2) and in Section 10a of the Act on Advocates.

Such open-mindedness and objectivity apply just as much to the professional distance which the advocate must take in respect of their 'patron', whether this is a client or – in the case of an advocate in employment – their employer. The relationship of subordination which by definition characterises an employment creates a form of increased dependence, compared for example with the equal footing on which partners in a group practice normally deal with each other. In cases in which the employer themselves is not an advocate, therefore, the freedom and independence in conducting the profession will have to be surrounded by guarantees that eliminate the inequality to an acceptable extent.

If the advocate has an employment contract or a comparable appointment, they can only practise law if the employer is one of the employers listed under (a) to (g) inclusive. All advocates with such an employment contract are advocates practising law in employment. However, the term 'advocate in employment' is used in common parlance for advocates employed by an employer as referred to under (e) to (g) inclusive. Where these advocates are concerned, a professional statute must be agreed at all times (pursuant to Article 5.12(1)).

Paragraph (g) imposes the special requirement that the advocate's activities must be aimed primarily at practising law. This also includes the organisation or management of the legal practice. The purpose of this provision is to prevent the use of an advocate's 'privileged' status as a cover for non-legal activities.

#### Article 5.10

Examples of not-for-profit organisations include consumer organisations and trade unions. At this kind of organisations, there is generally a structural parallelism between the organisation's objective and that of its members. This article is meant to provide a specific, practicable demarcation of the group of institutions at which the provision of legal assistance is limited to a delineated idealistic objective that coincides with the objective of the organisation. This will ensure the necessary (structural) parallelism between the employer's interests and those of the client. The criteria listed are a guarantee against impairment of the advocate's independence and unacceptable conflicts of interest. This is different for organisations that do not confine themselves to a definable, idealistically circumscribed area of legal assistance, and *a fortiori* to organisations that encompass a diversity of wide-ranging interests and conflicts of interests in their other activities as well. Such organisations are free, for that matter, to obtain 'in-house' legal assistance via corporate counsels/advocates, in accordance with Article 5.9, opening words and under (g), certainly where it concerns a general group interest that can be equated with the interest of the organisation in question. Alternatively, the desired legal assistance by advocates could be obtained from a practising legal entity independent of the organisation. Finally, the organisations referred to in this article must fulfil an essential social function (this is meant to prevent abuse of this provision by organisations whose idealistic objective is only a front), while in addition the legal practice of the advocate in employment and its continuity must also be ensured from a financial-economic perspective.

The rule is based on the idea that there must be a concurrence of interests between the 'idealistic' employer and the client affiliated to that employer to whom legal assistance is provided. Therefore, it is important that the employer pursues an idealistic objective (and does not have a profit motive), while the legal assistance to be provided falls within the scope of that same objective. If the employer

also promotes other interests (including the pursuit of profit), the chance of a (latent) clash of interests will be considerable. In that case, there will be no 'structural parallelism'.

The wording of Article 5.10 (in particular the provisions of Paragraph 1(b)) preclude the admission of advocates employed by employers' organisations and similar institutions. The problem with such organisations is that in many cases they do not confine themselves to a definable, idealistically circumscribed area that coincides with the area in which legal assistance is to be provided. Such organisations involve a very wide range of interests and associated clashes of interests. Neither the existing rules of conduct for advocates (in particular Rule of Conduct 7(1)) nor Article 5.13 provide a guarantee against the multitude of (potential) clashes of interests which arise if an advocate employed by such an organisation takes on the promotion of a single member's interests. If the members or affiliates of that organisation have different interests, it is a given fact that the interests of the member to whom legal assistance must be provided do not always run parallel to the interests of the other members. The same applies to the overarching interest of the organisation itself. In that case, the independent promotion of the client's interests will be put under undesirable pressure if an advocate employed by the organisation is engaged for that purpose. This will occur in particular if a viewpoint which the advocate must defend on their client's behalf is in conflict with viewpoints supported by the sector organisation as a whole, or viewpoints supported by groups represented within the sector organisation. These would be fundamental or policy related issues, rather than disputes of an incidental or predominantly factual nature.

#### Examples

A. A sector organisation of retail businesses has adopted the policy viewpoint that action must be taken against the opening of large retail businesses outside the built-up area (hypermarkets). The advocate employed by the organisation is asked by one of the members to act as an intermediary in obtaining a permit for such a hypermarket. The advocate faces an insurmountable conflict of interest: their loyalty to their member-client is under pressure because they also owe loyalty to the sector organisation and the (other) businesses represented in this organisation.

B. A non-commercial organisation brings a test case in a member's name. In the course of the proceedings, a settlement is offered. The member wants to accept this offer, but the organisation would rather obtain a fundamental ruling on the point of law at issue in the test case. Here, too, there is a conflict of interest which prevents the advocate employed by the organisation from functioning properly as an independent representative of their client's interest. This is not altered by the fact that the dispute handled by the advocate is formally between the member and its procedural opponent, and not between the member and the organisation employing the advocate.

In view of the desired parallelism of interests, Paragraph 2 contains additional requirements for the admission of advocates employed by the organisations discussed here. This will prevent unacceptable impairment of the advocate's independent position, aimed at promoting the client's interests. First, the advocate's promotion of individual members' interests must be capable of being deemed consistent with the idealistic objective and may not be incompatible or potentially incompatible with the interests of other members. Secondly, the advocate may only handle cases of which it is likely, considering their nature, that the opposing party cannot apply to the same employer for legal assistance.

## Article 5.11

In its report, the interdepartmental working group on domain monopoly in the legal profession (the Cohen working group) emphasised the importance of the advocate's independence in those employments that do not involve 'structural parallelism', meaning that the employer's interests are not automatically in line with those of the advocate-employee or the client. Structural parallelism is less self-evident at legal expenses insurers, the Cohen working group observed. With regard to these insurers, therefore, the working group states:

“that there is no clear-cut parallelism of interests of insurers and insured parties. On the one hand, the insurer's advocate handling the matter must see to it that the insured party's rights are guaranteed (which may tend to push up the costs), while on the other hand they are also jointly responsible for the insurance company's pursuit of continuity of operations through cost control. Such a field of tension may give rise to conflict situations.”

Paragraph 1 of Article 5.11 provides that an advocate employed by an insurer can act only “for the benefit of the employer or parties insured with that employer”. As already stated in the notes to Article 5.9, the system has an exhaustive and closed nature. This closed nature entails that the term ‘insured parties’ in Paragraph 1 will apply if there exists an insured interest. The services of an advocate employed by a legal expenses insurer must be restricted to services to these insured parties in their capacity of insured party. Services provided outside the policy will be directed at a non-insured party and are therefore not permitted. A different interpretation of the term ‘insured party’ is not compatible on fundamental grounds with the freedom and independence of the professional practice (see the notes to Article 5.9).

A legal expenses insurer is a commercial employer, not an advocate. The provision of assistance to non-insured parties by advocates employed by that profit organisation is not permitted. This would involve an advocate employed by a profit organisation who is instructed to provide and invoice legal services to third parties, all this in support of their employer's pursuit of profit. In this construction, the legal expenses insurer would not be different from another potential provider of legal services who is not an advocate themselves. These alternative business structures are permitted only in the United Kingdom. In these structures, the advocate's independence cannot be remedied with a professional statute, which is why they are forbidden in general.

The European Court of Justice made the advocate's legal profession privilege conditional on the requirement of independence (*inter alia* in CJEU, 14 September 2010, C-550/07 P, *Akzo*, ECLI:EU:C:2010:512). A lack of independence has implications for the protection of confidentiality in the relationship between the client and the advocate (in employment). Although this section, and Paragraph 1 of this article in particular, limits competition in order to guarantee this confidentiality, this limitation is justified.

Paragraph 2 concerns the advocate's obligation to inform the insured party at a particular moment that this insured party can opt for assistance by a counsel of its choice. The insured party is already free in its choice of advocate pursuant to Section 4:65 *et seq.* of the Financial Supervision Act (*Wet op het financieel toezicht*). The system of the Financial Supervision Act seems to describe multiple regimes: one regime in Section 4:65(1)(c) and (2)(b), and the second regime in Section 4:67(1)(a) of

the Financial Supervision Act. This Bye-Law does not compel insurers (and advocates employed by insurers) to choose one of these regimes. At the instigation of these advocates employed by insurers, this Bye-Law has therefore linked up with the wording of Section 4:67(1)(a) of the Financial Supervision Act. Paragraph 2 emphasises that an advocate employed by an insurer has an obligation of their own to ascertain the free choice on the part of the insured party.

#### Article 5.12

A professional statute is always required for advocates employed by the employers referred to in Article 5.9(1)(e), (f) and (g). The professional statute protects the advocate's independent professional practice from undesired influencing by their employer, with whom there is by definition a hierarchical relationship.

The signed professional statute must be submitted to the Local Bar President prior to the employment (Article 5.15(1)).

With regard to employers that are practising legal entities, it may happen that at some point the majority of the board consists or will consist of non-advocates. If this situation occurs, for example at the time of a change in the board, a professional statute must be drawn up for all the advocates working for that practising legal entity. This signed statute must be submitted to the Local Bar President within one week (Article 5.15(2)).

#### Article 5.13

This article fleshes out the guarantees laid down in Article 5.1 to protect the advocate's freedom and independence, focusing on advocates in employment. The prevention of potential clashes of interests has also been laid down in Rule of Conduct 7.

Assisting and acting for clients may involve an apparent conflict of interest. Both Paragraph 1 and Paragraph 2 instruct the advocate to be aware of this, and stipulate that the advocate should not assist clients whereby there is a risk that the advocate cannot comply with the core values of partiality and independence.

Paragraph 2 concerns advocates who are employed by an employer on either a full-time or a part-time basis and in addition practise law in a different manner. This article entails that it is possible in principle to act for other clients in addition to working for the employer.

Where Paragraph 2 is concerned, this includes clients who may approach them (also) on account of their position at the employer's business or may be an opposing party of the employer. The same is conceivable for an advocate at a non-commercial organisation with regard to the members or affiliates. The advocate may act for them in the context of their employment, but may not act for those same persons from their 'own' practice.

Even when acting in accordance with Paragraph 2, the advocate must in any case comply with Rule of Conduct 7 with a view to conflicts of interest, as well as with the provisions of Article 5.1.

## Relation to Section 12 of the Act on Advocates

Consideration must be given to Section 12(1) of the Act on Advocates. Under this provision, an advocate must maintain an office at one location in one district. The advocate will have to choose a location at which to maintain an office. Pursuant to Section 12(2), this location will be the chosen office in respect of all their activities. This means that the advocate will be deemed to be contactable at that location for both practices, which includes the service of documents and delivery of post, but also in the context of the supervision to which they are subject. The advocate will therefore need to have a substantial part of their records and files available at this office with a view to that supervision. The address at which the advocate maintains an office pursuant to Section 12(1) of the Act on Advocates is the address at which the advocate is listed in the bar register and which is therefore visible to the persons and authorities referred to in Section 8a(1) and (2) of the Act on Advocates.

Given the obligation arising from this Act, two variants are conceivable in which an advocate employed by an employer can act for other clients. The first variant is that the advocate maintains an office at the employer's address, and that they also maintain the records and files relating to the other clients at that address. At this location, they must be able to comply with all regulations and code of conduct applicable to them. Whether the employer will enable the advocate to do so, and whether the advocate will be permitted to receive others at that work location, is a matter between the advocate and the employer.

In that case we are left with the second variant, in which the advocate maintains an office at a different location, for example their own home. However, rented business premises could also be made suitable for that purpose. This would then be the address at which the advocate maintains an office. They act from that home address for both categories of clients: the employer and their own clients. In both scenarios, the advocate must be aware of the consequences of their choice and take adequate measures in that respect. This would involve aspects such as the confidentiality of files and communication (number recognition).

Pursuant to Paragraph 2, the advocate must prevent conflicts of interest and avoid confusion among clients and third parties about their capacity (advocate in employment or independent advocate). The risk of confusion will be greater if the advocate maintains an office for their mixed practice at the employer's address. The advocate will have to make much greater efforts to rule out the risk of confusion. The supervising Local Bar President may take the view that this risk of confusion cannot be eliminated in a specific situation. In that case, it may be necessary for the advocate to maintain an office for their whole practice at an address other than the employer's, or to cease practising on their own and assisting other clients.

The foregoing does not affect the opportunities for advocates employed by an employer as referred to in Article 5.9(e) and (f) to assist members or affiliates and insured parties respectively (clients as described in Article 5.10(2) and Article 5.11(1) respectively). In those situations, too, Section 12 of the Act on Advocates will apply and the advocate must be aware of the relevant interests of respective clients.

#### Article 5.14

To prevent confusion about the advocate's capacity, they will have to disclose this capacity when performing their activities. Preferably, this capacity should also be mentioned in the advocate's letterhead and electronic signature in e-mail correspondence. If the person with whom they communicate is aware of the capacity, the advocate will not be required to disclose it on every occasion.

#### Article 5.15

This article provides when the advocate must be able to submit a professional statute to the Local Bar President.

Paragraph 1 is also relevant for advocates who are employers. The Council of the Local Bar may request them to provide particular information regarding the employment relationship or relationships.

Paragraph 2 stipulates that the employee-advocate must provide the Council of the Local Bar prior to the start of the employment relationship with a professional statute signed by them and by the employer.

The situation described in Paragraph 3 is rare in practice. If the board of a group practice (which includes a practising legal entity) changes in composition, a professional statute will be required if the majority of the board members are non-advocates (see Article 5.12(2)). A copy of a signed professional statute must be submitted to the Council of the Local Bar within one week of this situation arising. If possible, this must be done before that week has expired.

#### Chapter 6 Office organisation

The provisions of Parts 6.1 and 6.2 are aimed at advocates, who are obliged to comply with them. It stands to reason, however, that most of these obligations are fulfilled by the firm, i.e. the group practice or the practising legal entity. If the group practice and the practising legal entity meet the obligations, the advocates will not be required to do so again. Nevertheless, advocates will remain ultimately responsible for compliance by the firm.

#### Article 6.1

A trainee advocate depends on their principal (or firm) as regards the manner in which the office organisation is structured. This means that trainee advocates have no independent obligation to comply with the provisions of this part. However, this part does apply to trainee advocates who are self-employed trainees or external trainees (see also Article 3.11).

#### Article 6.2 and Article 6.3

With a view to the proper representation of the client's interests and efficient administration of justice, the advocate must organise their office and the provision of services in an adequate manner. What is regarded as adequate depends on the advocate's specific practice.



The advocate may not accept any cases which they cannot handle adequately (Article 6.3). This provision ties in with Article 3.1.3 of the CCBE Code of Conduct: “An advocate shall not handle a matter which the advocate knows or ought to know they are not competent to handle, without cooperating with an advocate who is competent to handle it. An advocate shall not accept instructions unless they can discharge those instructions promptly having regard to the pressure of other work.” An advocate’s competence to handle a matter will partly depend on the pressure of other work and the opportunities for handling all cases properly. An advocate will be able to handle a larger number of cases properly as their office organisation is better equipped and structured for that purpose. Specifically, this means that an advocate may be obliged not to act for or provide assistance to clients, or to cease doing so, if their organisation is not equipped for that purpose or the work pressure of other cases is too high.

#### Article 6.4

Articles 6.2 and 6.3 contain obligations for an advocate in respect of the office organisation and the acceptance of cases. Article 6.4 supplements those obligations. The advocate is obliged to describe how they comply with the rules. This is meant to ensure, among other things, that the advocate thinks about the desired situation. An office manual may be one of the formats in which the advocate describes their working procedure. This has the additional advantage that it provides new advocates and staff members with a clear picture of how the office is organised.

On the other hand, Article 6.4 fleshes out the provisions of Articles 6.2 and 6.3 in that it describes a number of aspects that must be addressed in the office organisation and the decisions on accepting clients.

The aforesaid obligation to describe the manner in which the rules set out in Subparagraphs (a) to (j) inclusive are observed, does not affect the option of the Local Bar President to demand information in the context of their supervisory task (Section 5:16 of the General Administrative Law Act, among others).

#### Article 6.5

This article describes the advocate’s obligation to keep their records in an orderly manner. It links up as closely as possible with Article 2:10 DCC, concerning a legal entity’s administrative obligations, and Article 3:15i DCC, concerning persons who conduct a profession independently. Article 6.5 creates an obligation for an advocate who practises law outside the scope of a legal entity and maintains an office together with others. Other advocates already have this obligation under the aforesaid articles of the Dutch Civil Code. Compliance with the requirement to keep records is monitored by the Local Bar President.

The words ‘of their practice’ reflect that multiple advocates practising law within one and the same office may confine themselves to keeping one set of records. Each of them will remain responsible for the records kept in respect of their own practice. For the purpose of this Bye-Law, keeping records in an orderly manner means, among other things, that the advocate must keep accounts receivable records and accounts payable records, as well as a cash/ giro book and a general ledger.

## Article 6.6

Telephone and fax numbers are registered in order to prevent these numbers from being tapped or monitored. This article specifies the objective of and thereby the limitations to disclosure of data obtained pursuant to this part.

The numbers are collected for the purpose of two number recognition systems, a system used by the police (Article 6.7) and a system used by the Custodial Institutions Agency (*Dienst Justitiële Inrichtingen*, "DJI") (Article 6.8). The file containing all the telephone and fax numbers provided may not be used for purposes other than the number recognition system or similar systems that offer better safeguards for the confidentiality of the communication.

## Article 6.7

The police and the Public Prosecution Service have set up a number recognition system in order to prevent an advocate's confidential communication from being monitored or played back.

The manner in which the police and the Public Prosecution Service must handle calls with confidential information holders recorded as a 'by-catch' is regulated by law in Section 126aa(2) of the Code of Criminal Procedure (*Wetboek van Strafvordering*) and the Retention and Destruction (Non-Case Documents) Decree (*Besluit bewaren en vernietigen niet-gevoegde stukken*) based on it. The Board of Procurators General laid down further rules in the Intercepted Calls with Confidential Information Holders (Destruction) Instruction (*Instructie vernietiging geïntercepteerde gesprekken met geheimhouders*) (2002I003). The aforesaid Decree and Instruction were adjusted in connection with the number recognition system.

Because of the number recognition system, the statutory obligations regarding calls with confidential information holders can be fulfilled in an automated manner. The system entails that the Netherlands Bar sees to the timely and complete disclosure of advocates' current telephone and fax numbers to the national police. The latter enters the numbers into a filter. The filter is located on a separate server which is used for this purpose only. During a tap, the traffic data of a call (numbers, time, etc.) and the call itself (the speech) are received separately. The traffic data of all tapped calls is automatically put through the filter. The filter checks the numbers with which the person tapped communicates against the numbers of confidential information holders. If the filter recognises communication with a confidential information holder's number, the recording is destroyed at the end of the call. This is because the tap system automatically saves the recording, coded and cut up into fragments, at different locations. Subsequently the fragments of the recording are overwritten with new calls. The police or the judiciary cannot access a call while it is in progress or while it is being saved. The recording of communication with a confidential information holder is therefore not forwarded to the local police investigation team involved. The contents of the calls are not assessed by the Public Prosecutor. However, the data traffic remains available to the investigative services. This will tell them, for example, whether any calls were made with numbers of confidential information holders that were not recorded. Advocates can view this traffic as well by means of the special investigative power file involved. Number recognition also works in respect of taps placed account of international requests for legal assistance.

The number recognition system does not alter the fact that the police and the Public Prosecution Office remain obliged by law to destroy calls with confidential information holders. They must remain alert not only to confidential calls made by civil-law notaries, physicians and clergymen, but also to calls made by advocates that were not conducted via a confidential information holder's number. In addition to number recognition, the Public Prosecution Office has developed a number of extra filters that are meant to ensure that confidential calls not conducted via a confidential information holder's number are destroyed all the same.

#### Personal Data Protection Act

For the purpose of number recognition, advocates must disclose their telephone and fax numbers used professionally to the secretary of the general council, in the same way as advocates disclose information for the purpose of bar registration pursuant to Section 8 of the Act on Advocates. To this end, a separate file has been created from which the numbers are disclosed to the national police force referred to in Section 25(1) of the Police Act 2012 (*Politiewet 2012*), hereafter: "the national police". The data contained in this file will be personal data insofar as the telephone or fax number can be traced back to a natural person. In this case, the data comprises business telephone numbers of advocates, including general office numbers, direct dial numbers and mobile numbers. Direct dial numbers and mobile numbers can usually be traced back to a particular person. This also applies to office numbers of one-man offices. Some telephone numbers can therefore be traced back directly to an individual while others cannot. However, because a combination of data makes the numbers in the file traceable to natural persons, the numbers constitute personal data. All this means that this involves fully or partially automated personal data processing that is subject to the Personal Data Protection Act (*Wet bescherming persoonsgegevens*).

The Netherlands Bar is the controller within the meaning of the Personal Data Protection Act for the data processing under its management until the moment of disclosure of the data to the national police. The latter is the controller within the meaning of the Personal Data Protection Act from the moment it receives the data. The data processing has been reported to the Dutch Data Protection Authority (*College bescherming persoonsgegevens*).

#### Ground for processing

The data processing is necessary for the legitimate interest pursued by the Netherlands Bar (Section 8, opening words and under (f) of the Personal Data Protection Act). This is the interest of helping to protect the core value of confidentiality by preventing the monitoring and playback of a confidential information holder's communication. In addition, it contributes to the proper functioning of the legal profession as a whole.

Because this involves the registration of business numbers in a secure environment, the data processing constitutes a minor breach of the advocate's privacy. This breach is outweighed by the interest served by the data processing, i.e. safeguarding the confidentiality of a confidential information holder's communication.

## Subsidiarity and proportionality

There is no other realistic possibility of preventing the monitoring and playback of calls with confidential information holders. Events in recent years have shown that the police and the judiciary appear to be insufficiently capable of fulfilling the obligation to destroy calls with confidential information holders. This is confirmed by the fact that both the Board of Procurators General and the Ministry of Justice and Security support the number recognition system. An added benefit for the legal profession is that number recognition also prevents the Public Prosecutor (and investigating officers) from learning the contents of the calls. The improvement of manual recognition and destruction by the police and the judiciary does not have this benefit.

The data processing not only meets the requirement of subsidiarity, but also that of proportionality. In all likelihood, advocates need to adjust their professional practice and telephone usage only to a limited extent.

All advocates disclose the numbers which they use as confidential information holders. The general council stipulates in subordinate regulations what additional telephone and fax numbers must be disclosed (Article 6.10). In doing so, the general council considers whether the advocate practises law in employment or on their own, the form of collaboration and the persons with whom the advocate collaborates.

The numbers to be disclosed must of necessity be described minutely and in detail in order to link up as closely as possible with the technical possibilities of the system and the arrangements with investigative authorities. Only in this way can the system operate properly.

There are still situations, for that matter, in which advocates conduct calls on their dial direct number that are nevertheless not filtered. An example of this is a call put through via the switchboard. All the parties involved in number recognition accept that the system will not be 100% watertight for reasons of this kind.

## Final observations on proportionality

Since advocates have to disclose nearly all their telephone and fax numbers, virtually all calls will be conducted in practice via one of those specified confidential information holder's numbers. In light of this, advocates may become obliged to make all outgoing calls via the specified confidential information holder's numbers in order to safeguard confidentiality. For reasons of proportionality of the proposed system, calls can only be made from a number other than a specified confidential information holder's number in compelling circumstances.

A final important point is that, where data is processed on this ground, an advocate may at all times object to the processing of their data in connection with their personal circumstances (Section 40 of the Personal Data Protection Act).

## Article 6.8

In 2013, the Netherlands Bar concluded an agreement with the Custodial Institutions Agency (DJI) of the Ministry of Justice and Security about the introduction of a number recognition system by DJI. This arrangement was made because the custodial institutions may record and listen in on prisoners' telephone calls, and the system protects prisoners' confidential calls with advocates against monitoring. For the purpose of this system, the Netherlands Bar provided DJI with advocates' telephone numbers if the advocate concerned had given the Netherlands Bar permission to do so. The institutions involved also include youth custodial institutions and forensic hospitals.

The article does not name DJI but speaks of 'parties other than'. The reason for this wording is that the Bye-Law will not require amendment if DJI should change its name, or if the Netherlands Bar should want to conclude similar agreements on number recognition with other parties in the future. Paragraph 2 provides that the Netherlands Bar, in practice the general council, will hear the Board of Representatives before concluding such a covenant with a party.

The DJI number recognition system differs on two points from the number recognition system used by the national police: the technical operation is different and advocates participate in the DJI system on a voluntary basis.

### Operation of the DJI number recognition system

The DJI system makes it impossible to record and play back telephone calls between prisoners and their advocates. DJI has one central telephone system for the prisoners in all custodial institutions. The prisoners' telephone calls are conducted through this facility, and are centrally recorded and retained during the legally permitted period of no more than eight months. In the institution accommodating the prisoner concerned, calls may be listened in to simultaneously or played back afterwards. An exception to the central storage of recorded calls exists in respect of the UN Detention Unit of the Haaglanden Penal Institution, Scheveningen location. Calls made by prisoners from this Unit are stored at the relevant institution or Unit.

The number recognition system has been installed in the central telephone facility for prisoners. When a prisoner makes a call, the recording of the call will be blocked automatically if they call the number of an advocate specified to DJI. This blocking process kicks in immediately at the start of the call. Staff members of a custodial institution will therefore be unable to listen in to such a call simultaneously and/or play it back afterwards. Because no recording is made, calls with advocates cannot be provided to investigative authorities and intelligence services either if they should so demand. Likewise, no traffic data will be disclosed of the calls with confidential information holders. The system log files will only contain the date, time and duration of the call, as well as the number of the confidential information holder in a somewhat anonymised format, such as 06xxxxx or 035xxxxx. Based on this data, the prisoner can be charged for the costs of a call.

The DJI system is technically compatible with the manner in which the Netherlands Bar collects advocates' numbers in a file and discloses them to the police in the context of number recognition by the police. Advocates are not required to provide their numbers again for the purpose of the DJI number recognition system. All they have to do is indicate in the existing web application for the

number file that they want to take part in the DJI number recognition system and for that purpose grant the Netherlands Bar permission to disclose one or more of their numbers to DJI. Participation in the system therefore has a low threshold for advocates.

#### Voluntary participation; Personal Data Protection Act

Number recognition involves fully or partially automated personal data processing that is subject to the Personal Data Protection Act.

Advocates take part in the DJI number recognition system on a voluntary basis. This is because compulsory participation by all advocates in the DJI number recognition system would be disproportionate, and therefore in breach of the Personal Data Protection Act. Within the bar, a distinction can be made between advocates with and without detained clients. In practice, these will primarily be criminal advocates and youth advocates. In addition, immigration advocates may have clients in immigrant detention. The estimated number of advocates involved is around 5,000, which is over a quarter of the bar. This means that it would be disproportional to oblige all advocates to make their numbers available for this purpose.

Advocates can therefore indicate themselves whether or not they want to take part in the DJI number recognition system. The advocate's unequivocal permission is the ground for the processing of the telephone numbers by the Netherlands Bar (Section 8, opening words and under (a) of the Personal Data Protection Act). This is why Paragraph 1 of Article 6.8 provides that the secretary of the general council will disclose an advocate's number to another party, in this case DJI, at that advocate's request.

#### Advocates with detained clients; guarantees from DJI

Despite this voluntary participation, advocates with one or more detained clients are expected to guard the confidentiality of their calls with these clients by taking part in the DJI system. Advocates who do not take part or conduct calls via a number not disclosed to the Netherlands Bar for that purpose run the risk that these calls are recorded and played back by staff members of a custodial institution or are, for example, requisitioned by the Public Prosecution Service. Therefore, it is important that even advocates who occasionally assist a detained client (irrespective of the nature of the legal area concerned) take part in the system.

DJI guarantees that calls with advocates who take part in the DJI number recognition system are not recorded by DJI. DJI also guarantees that these calls will never be disclosed to the Public Prosecution Service or the intelligence services. If advocates do not take part and do not permit disclosure of their numbers to DJI, the general statutory rules applicable to DJI and the Public Prosecution Service will apply. If, in that situation, an advocate's call should be recorded, monitored or disclosed to third parties, the information may be included in a criminal investigation or a criminal file. No assessment can be made in advance of the consequences which a court will attach to this in a specific situation. Advocates must be aware of this risk if they do not participate in the DJI number recognition system or if they take calls on an undisclosed number.

#### Article 6.9

The confidential information holders' numbers are processed in a separate register, rather than in the bar register. For this reason, the secretary of the general council must be assigned the authority and the task to process this data supplementary to the duties of the secretary of the general council described in Section 8 of the Act on Advocates.

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#### Article 6.10

Paragraph 1 of this article describes in general terms which telephone and fax numbers the advocate must disclose to the Netherlands Bar for the purpose of the number recognition system of the national police. The Netherlands Bar forwards the numbers to the national police. Because of its detailed nature, this paragraph is fleshed out in subordinate regulations. The subordinate regulations can also make allowances for the different technical properties of systems such as telephone switchboards and bundle numbers.

If an advocate has a confidential information holder's number and the number meets the conditions laid down in the subordinate regulations, the advocate will be obliged to disclose that number. Compulsory disclosure is essential for the operation of the police number recognition system and the extent to which parties can and may rely on the operation of that system.

Advocates not holding a specific number cannot disclose that number, while advocates holding a number that does not meet the conditions may not disclose that number. This applies, for example, to the direct dial number of a fax machine that is used by people others than the advocate, other confidential information holders or persons with a derivative legal professional privilege. In that case, the advocate may not disclose that number.

Accordingly, an advocate may not disclose telephone and fax numbers of persons not specified in the regulations, such as persons who are not advocates or do not hold a derivative legal professional privilege. Examples of these would be canteen staff members or civil-law notaries. Although the latter have their own legal professional privilege, their direct dial numbers may not be disclosed. They do not fall under the number recognition system.

Paragraph 2 of this article offers a basis for subordinate regulations further specifying the numbers which an advocate must disclose. Disclosure or non-disclosure of numbers in breach of these regulations is liable to disciplinary action. The number recognition system can only operate properly if the advocate discloses their confidential information holder's numbers to the Netherlands Bar and keeps them up to date.

## DJI number recognition

When disclosing their numbers, the advocate may also grant the Netherlands Bar permission to forward their numbers to DJI. DJI has introduced a number recognition system in order to prevent prisoners' calls with their advocates from being recorded and played back by DJI. Advocates take part in this system on a voluntary basis – as opposed to the police number recognition system, with respect to which participation is compulsory for all advocates. For more information, please see the notes to Article 6.8.

### Article 6.11

Article 6.11 imposes a duty of care on the advocate. The article stipulates that the advocate should in principle conduct their confidential communication via the numbers disclosed. Persons without a duty of secrecy and legal professional privilege may not use the numbers disclosed.

### Article 6.12

Abuse of the confidential information holder's numbers must be prevented. In the event that the disclosed numbers are abused, therefore, the advocate has the duty to report this abuse to the secretary of the general council. If a telephone is lost or stolen, furthermore, the advocate must have the number blocked so as to keep the period of abuse to a minimum. The Secretary General can then inform the investigative authorities whether the number has ceased to be a confidential information holder's number, and if so, from what moment.

### Article 6.13 and Article 6.14

In conducting their practice, advocates are regularly required to provide their identity. They can identify themselves in person by means of the advocate's pass with photograph. In the online world, an advocate's identity and capacity is established via a means of authentication, whereby the pass is used in combination with a card reader in order to establish the advocate's identity.

The advocate may apply for an attorney's pass with regard to associates, secretaries, office managers or directors who may carry out particular (online) acts on the advocate's behalf. This pass is a means of identification that is suitable only for the virtual, online environment (Article 6.14).

In exchange for the advocate's pass (incorporating the means of authentication) and the means of authentication for attorneys, a fee must be paid to the supplier on the basis of an agreement. The general council has made arrangements with the supplier about the fee owed.

### Article 6.15

In connection with an advocate's privileged position, it is important that the loss of an advocate's pass is reported without delay, so that measures can be taken to prevent abuse.

The advocate needs this means of identification in order to conduct their practice. They are unable to do so if the advocate's pass is damaged. Therefore, they must also notify the supplier in the event of



damage to the advocate's pass, and apply for a replacement. The provision of a replacement pass may carry a charge. The supplier can provide the advocate with information on this point.

If an attorney no longer works for an advocate, that advocate will have to report this to the supplier. The supplier can then take measures to prevent this person from performing acts on the advocate's behalf. The (former) attorney may retain their pass if they were also authorised by another advocate and this latter authorisation is still in force.

#### Article 6.16

The general council has the task of selecting one or more suitable suppliers. Paragraph 2 offers a basis for laying down further rules. At present, Quo Vadis is the only selected supplier of the advocate's pass and the means of authentication. See, *inter alia*, <https://advocatenpas.advocatenorde.nl>.

#### Article 6.17

The Secretary General shares information on the advocate's capacity with the supplier or suppliers. This will prevent abuse of the advocate's pass or the means of authentication by persons who are not or no longer advocates.

#### Article 6.18

The part about client monies will not apply if the advocate is acting in a capacity resulting from a judicial appointment and a provision for client monies was made on the occasion of that appointment. Examples include appointment as a receiver, trustee or administrator. In a number of districts, a special arrangement – monitored by the delegated judge – applies to the administration of estates in bankruptcy. In those districts, the advocate will have to abide by that arrangement. Paragraph 6.5.1 will not apply to them in that situation. Further information can be found in the national Guidelines on Bankruptcies and Moratoriums (*Richtlijnen in faillissementen en surseances van betaling*) drawn up by the Dutch national consultative panel of delegated judges in bankruptcies (Recofa).

#### Article 6.19

Paragraph 1 contains a duty of care for the advocate, who must ensure that client monies are not transferred to themselves. This duty of care is reflected in the advocate's obligation to be as clear as possible in the correspondence about the bank account to which amounts must be transferred. Advocates are advised not to state a bank account number in the letterhead, because this may create confusion. If an advocate still wants to state one or more bank account numbers in the letterhead, it must be clear whether the account is that of the firm itself or that of the client monies foundation.

Paragraph 2 provides for the situation in which client monies are nevertheless transferred to the advocate themselves. In that case, they must transfer these funds to the beneficiary immediately or – if this is not yet possible or desirable – to the firm's own client monies foundation. The main rule is that the client monies must be transferred to the beneficiary as soon as possible. Parking client monies in the pooled account without a necessity to do so is therefore not permitted. Likewise, the

advocate may not apply client monies on the client's instructions towards the payment of – for example – third parties' claims against the client, which is known as 'pooled account banking'. The advocate must carefully record the payments, in such a way that they can be verified retrospectively by the auditor or regulator.

Paragraph 3 provides that the client monies may not be used as security. This makes sense, because the client monies foundation or the advocate is not the beneficiary of the funds. If the client monies could be furnished as security, they would be involved in a possible bankruptcy. This, however, is what the regulations are meant to prevent.

Paragraph 4 makes it possible, subject to conditions, that client monies received in the pooled account are applied towards the payment of the advocate's own fee note. This could be either the fee note which the advocate sends to their client or the fee note which the advocate submits to the Netherlands Legal Aid Board (*Raad voor Rechtsbijstand*) in the event of an assigned case. This is subject to the client's express agreement, which agreement must be documented in writing. Because of this documentation, the advocate will always be able to demonstrate that they used the funds in the pooled account towards their own fee note with the client's agreement.

The client's express agreement may be obtained at the start of the service provision, but may not be presumed on the basis of the advocate's or the firm's general terms and conditions.

The advocate will not use client monies to pay their own fee note if the client challenges the fee note within a reasonable period or revokes the agreement, either verbally or in writing. The term 'challenge' is interpreted broadly and is not subject to procedural requirements. The point of departure is that the funds are due to the client, and that it is the client who decides whether they may be used to pay a fee note from the advocate. The reasonable period may be based on the payment term of the fee note. In principle, client monies will not be used until the payment term has expired, especially if the fee note is expected to give rise to debate.

Paragraph 5 provides that if client monies were effectively used to pay the advocate's own fee note, the advocate must confirm this in writing to the beneficiary. If the client objects to the payment at this stage, the advocate will have to reverse the payment.

#### Article 6.20

Paragraph 1 states that the rules on client monies also apply to securities and valuables which the advocate receives as client monies. The advocate must ascertain, however, that they do not breach paragraph 2 of this article. It may happen that an advocate is requested to accept monies, negotiable securities, valuables or other items. For example, they might be requested by a client or intermediary to store or hold a sealed envelope and its contents for a brief or long period. In that case, the advocate risks being abused by clients as a cover for tax offences and/or criminal offences on account of their legal professional privilege. Complying with such requests is not permitted. The advocate may only accept items and goods if this serves a reasonable purpose in the context of the case they are handling. This regulation will also apply if the monies, negotiable securities, valuables or other items are entrusted to the advocate in a capacity other than client monies.

## Article 6.21

Paragraph 1 requires each advocate to have a client monies foundation available. The term 'have at their disposal' means that, in conducting their practice, the advocate can use the services of a client monies foundation with which they or their firm has concluded an agreement on the management of client monies. This agreement must have been concluded in conformity with the model referred to in Article 6.22(9).

In principle, an advocate may have only one client monies foundation available. However, a client monies foundation may provide services to multiple advocates or firms.

Paragraph 2 contains a generic exemption for advocates not receiving client monies in the conduct of their practice. These advocates are not required to have a client monies foundation available. If an advocate is nevertheless faced with the problem of what to do with client monies, the advocate must either ensure that the funds are transferred directly to the beneficiary in conformity with Article 6.19(1) or join a client monies foundation after all and route the funds via this client monies foundation. Under no circumstances may client monies be received in the firm's account.

Paragraph 3 provides that an advocate who does not receive client monies and for this reason does not have a client monies foundation available must inform the Local Bar President of this in writing. The advocate must also immediately notify the Local Bar President if the situation changes and they join a foundation.

## Article 6.22

Paragraph 3 of Article 6.22 explicitly entails that the foundation may only be used for client monies within the meaning of the Bye-Law. This means that the advocate may only receive client monies in the bank account of the client monies foundation insofar as these can be directly related to a particular case and these funds also serve the conduct of that case. In all other situations, funds transfers to the client monies foundation are not permitted. In those other situations, the foundation – or at least its board – is obliged to refuse and return the funds.

Paragraph 6 lists the persons who cannot be appointed to the board of a foundation. Subparagraph (a) excludes trainees, with the exception of self-employed trainees. This exception only applies if the self-employed trainee does not work under the guidance of an officer of the foundation.

Trainees in employment are excluded because they may be influenced by a third party, such as the principal, a junior advocate or a partner of the firm employing the trainee. In order to protect client monies and the trainee themselves, therefore, a trainee in employment may not serve on the board of a client monies foundation. A self-employed trainee practises law at their own expense and risk and, unlike a trainee in employment, only has a relationship of dependence with their principal. Therefore, a self-employed trainee is only excluded from membership of the board of a foundation if their principal is an officer.

Subparagraphs (b) and (c) concern junior advocates. A junior advocate may serve on the board of a client monies foundation, except if they work under the responsibility of, is subordinate to or employed

by the firm of an officer of the foundation. In that case, the junior advocate will have an employment-law relationship with (the firm of) the officer of the foundation. This entails a certain degree of dependence. The same applies to an advocate employed by a firm that is affiliated to the foundation. They will have a relationship of dependence with the board of the firm and will therefore be excluded from membership of the board of the client monies foundation to which the firm is affiliated.

Paragraph 8 contains the dual-signature requirement. Officers are jointly authorised. The joint exercise of this authority must also appear from the records of funds transfer orders. There must be dual electronic authorisation.

#### Article 6.24

The advocate is obliged to take out adequate insurance against the risk of professional liability. 'Adequate insurance' means in any case that the insurance provides sufficient cover against the risk of professional liability in view of the nature and size of the advocate's practice. An advocate who is engaged by a firm with which they have no permanent association must make sure that they are adequately insured also with regard to the activities they will perform for this firm. The purpose of this rule is to provide the public with a certain level of guarantee that every advocate offers sufficient recourse in the event of losses due to a professional error. It is therefore not possible to obtain an exemption from the obligation to take out insurance.

Paragraph 2 contains an exemption from the obligation to take out insurance for advocates practising law in employment who act exclusively for their employer or legal entities affiliated with the employer in the group. In that case, the obligation to take out adequate insurance against the risk of professional liability will remain in force, but not with regard to the risk of the advocate's liability towards their employer or legal entities affiliated with the employer in the group (his 'client') for losses caused by the advocate to their employer or those legal entities in the conduct of their profession. This is subject to the condition that the employer or those legal entities should indemnify the advocate in writing against liability for potential losses as a result of professional errors. An advocate practising law in employment must be aware that they will be obliged to take out adequate insurance if they practise law in any other manner (either full-time or part-time) in addition to this employment.

Paragraph 3 concerns advocates employed by the State. The term 'State' refers exclusively to the central government and not to local authorities or autonomous administrative authorities. The provisions of paragraph 1 apply in full to advocates employed by provincial authorities, municipal authorities or other public authorities. An exception is made for advocates employed by the State, because, as a rule, the State does not take out insurance. This, too, is subject to the condition that the State has indemnified the advocate in writing. This State-employed advocate must be aware as well that they will be obliged to take out adequate insurance if they practise law in any other manner (either full-time or part-time) in addition to this employment.

#### Article 6.25

This article describes the minimum requirements which the advocate's professional indemnity insurance must fulfil. The obligation to take out insurance applies to all advocates. However, this does not rule out that such insurance can also be taken out for the firm as a whole.

The minimum sum insured for which the professional indemnity insurance must provide cover is EUR 500,000 per claim, with a minimum of twice that amount per insurance year. Please note that the mandatory sum insured of EUR 500,000 per claim is only a minimum amount. Whether the minimum cover is sufficient will depend on factors such as the nature of the practice and the size of the firm or the group practice. The minimum mandatory sum insured specified in the Bye-Law applies per insurance policy, and therefore per firm. For each policy, it must be assessed whether the sum insured is sufficient in view of the size of the firm and the type of practice. The basic premise at all times is that an advocate must have adequate insurance.

The amount of EUR 500,000 has been included as a minimum in order to offer protection to litigants. It is important that litigants can seek recourse in the event of losses due to a professional error. However, the insurer will want to assess the risk and determine the premium. For this reason, the policy will often specify a maximum amount in payouts per insurance year. The Bye-Law provides for the minimum amount in payouts per insurance year. This standard has been made flexible on purpose. The amount in payouts per insurance year depends on the amount of cover drawn per claim. This means that the level of the sum insured per insurance year must always be at least twice the level of the sum insured per claim. The reason is that multiple potential claims must be covered each insurance year.

The insurance must also provide cover for liability of the advocate as an employer. Cover must extend to include the errors and omissions made by persons employed by the advocate or the firm.

The advocate's range of activities covered by the insurance is limited to those activities that are inherent to the legal profession. These include mediation, binding advice and arbitration, but also acting as a receiver, trustee or administrator. The advocate will have to take out separate insurance for other activities that are not inherent to the legal profession, such as a board membership or supervisory directorship.

#### Article 6.26

It is not possible to obtain a comprehensive exemption from the obligation to take out insurance. Likewise, the advocate cannot exclude all liability in advance. This is incompatible with the purpose of the obligation to take out insurance, i.e. that every advocate should offer sufficient recourse against the consequences of professional liability. Only if the advocate fulfils the obligations of Article 6.24 and Article 6.25 will limitation of the liability be permitted. The minimum sum insured is the bottom limit above which a disclaimer is allowed. The advocate will remain liable for the amount of the excess which they agreed with the insurer, for that matter. The advocate is unable to disclaim liability for that excess.

To what extent a disclaimer may be invoked in a specific case will ultimately be at the discretion of the court. An advocate contemplating limitation of their liability will have to decide whether they, given the nature and extent of the interests entrusted to them, considers a disclaimer of liability above a particular amount to be justified and defensible within reason.

The disclaimer must have been agreed in writing, which may also take the form of electronic communication.

## Article 6.27

The point of departure in the advocate's payment transactions is that payments are made by bank transfer. Cash payments must be avoided as much as possible. The purpose of this provision is to prevent advocates from becoming involved in criminal acts.

Paragraph 2 provides for an exception to the aforesaid point of departure, in that the advocate may make or accept cash payments in the context of their professional practice if there are facts or circumstances that justify this. A complete prohibition of cash payments is undesirable and impossible. In the conduct of their practice, the advocate must be able to receive cash amounts in particular situations. However, there must be facts or circumstances that justify the cash amounts, even if these are less than EUR 5,000. Examples include the client's contribution towards an assignment, the payment of court fees or the situation in which the client is unable to open a bank account or the bank has frozen the client's account.

In the context of Article 6.27, it is observed that the advocate is free to receive a fee or an advance on this fee for their efforts in respect of necessary legal assistance if the underlying fee note is reasonable and payment is effected entirely through a bank transfer. Proper administration of justice dictates that all persons should be able to obtain the assistance of an advocate. This public interest becomes illusory if no advocate is prepared to assist a litigant for a fee if this will expose them to possible prosecution for receiving stolen property. This risk will arise if an advocate, during the proper provision of services, becomes aware of information about the possible origin of funds with which they are paid. If proper administration of justice requires the provision of assistance to a litigant, the public interest entails that an advocate must be able to provide the assistance for proper remuneration without fear of prosecution. However, the public interest that all persons should be able to obtain the assistance of an expert advocate in the context of proper administration of justice may not be abused for the purpose of sharing in criminal funds through excessive remuneration.

Pursuant to paragraph 3 of Article 6.27, the advocate is obliged to consult with the Local Bar President when making or accepting cash payments for amounts of EUR 5,000 or more in a case or during a period of no more than one year for the benefit of the same client. The advocate must be aware that many small payments make a large payment, which means that the limit of EUR 5,000 applies to all payment transactions together in a case or for the benefit of a client during a period of no more than one year.

The Local Bar President must be consulted before the cash payment is made or accepted, unless this is not possible within reason. In that case, the consultations must be held as soon as possible after the payment. The consultations with the Local Bar President are meant to make the advocate aware of the risks attached to making or accepting cash payments if involvement in criminal acts is to be prevented. The consultations create the possibility for the advocate to reconsider the facts and circumstances that would justify a cash payment, and to check this with the Local Bar President. This does not mean that the Local Bar President authorises or prohibits a cash payment. The Local Bar President can advise the advocate on how to deal with the cash payment in the specific circumstances. The advocate is free to follow or disregard this advice. However, if the Local Bar President believes that a cash payment is not justified, and this payment is still effected after

consultation, the Local Bar President may launch an investigation and submit a complaint to a disciplinary court.

#### Article 6.28

Properly structured complaints hinge on the office complaints mechanism. These regulations document the procedure and approach to be followed by the individual advocate or their firm in the event that a client presents the advocate or the firm with a complaint as referred to in Article 1.1. Paragraph 1 provides that the advocate must have an office complaints mechanism. This obligation will not apply if the advocate works exclusively for an employer as referred to in Article 5.9, opening words and under (e), (f) and (g). In that case, complaints about the advocate in employment can be handled in accordance with the normal employment regulations.

The substance of the office complaints mechanism must satisfy the requirements which Article 6.28(2) imposes on such a mechanism. These requirements provide the advocate and their office with considerable leeway as to the manner in which complaints are handled. The choices made in this context by the advocate and their firm must be laid down in the office complaints mechanism. The general council may adopt a model office complaints mechanism to support advocates and law firms.

The point of departure in dealing with complaints is that if a client has a complaint, this complaint is first handled internally, i.e. by the firm of the advocate concerned. This may be a complaint about an advocate, but also about a person who works under the advocate's responsibility (paragraph 2(b)). This could be a staff member of the firm, but also an auxiliary person as referred to in Article 6:76 DCC.

The office complaints mechanism specifies which advocate will act as complaints officer (paragraph 2(c)). This may be the advocate to whom the complaint relates or a different advocate. This forestalls possible organisational objections from small practices (such as one-man practices) but above all provides advocates with an opportunity to develop their skills in properly handling a complaint, in that the complaint is usually settled to the client's satisfaction.

The internal complaints procedure must be completed within a reasonable period; a situation must be prevented in which referral of the dispute to a third party is obstructed by the advocate or the complaints officer failing to decide on the complaint. The reasonableness of the period to be applied may depend on the size of the firm, the nature of the practice conducted or the ease of contacting the client. In general, the complaint handling may be expected to conclude within a month (paragraph 2(d)). This period may be extended, whereby an indication must be given of the period within which an opinion *can* be expressed about the complaint (paragraph 2(e)).

If there is a need for this, both sides will be heard (paragraph 2(f)). Such a meeting would also provide the best opportunity for reaching an amicable solution.

Furthermore, there is a rule that the firm cannot charge the complainant for the handling of the complaint. The point of departure is that each party bears its own costs. This point of departure cannot be abandoned to the detriment of the complainant (paragraph 2(g)).

The initial complaint handling is aimed at finding a solution for the complaint that is acceptable for both the client and the advocate. A complaints officer (if any) will not act as an 'arbitrator' and can only mediate or make recommendations as part of their involvement. The office complaints mechanism may provide that, if the complaint was not handled to the client's satisfaction, the complaint will be submitted for assessment to an independent third party: a civil court, a binding advisor or an arbitrator (such as the Legal Profession Complaints Board (*Geschillencommissie Advocatuur*)).

Needless to say, the use of an office complaints mechanism does not mean that a client or an individual advocate cannot apply to a civil court, or that a client cannot apply to a disciplinary court. The Bye-Law does not alter the fact that the advocate and the client may deviate, by express mutual agreement, from the dispute settlement prescribed by the applicable office complaints mechanism and, for example, submit their dispute on the service provision by the advocate directly to the competent court (usually the civil court).

If the client is a consumer, there is an additional provision. A consumer not acting in the course of a profession or business may prefer to disregard the binding advice procedure and submit the dispute to an ordinary court. This ensues from the constitutional provision that no person may be prevented against their will from being heard by the courts to which they are entitled to apply under the law (Section 17 of the Dutch Constitution in conjunction with Article 6:236(n) DCC). Based on this, a stipulation necessitating binding advice must be regarded as unreasonably onerous and voidable, unless the client is given a reasonable period in which to choose a court that is competent under the law for the settlement of the dispute. Therefore, the dispute cannot be submitted for binding advice against the will of the client if the latter is a consumer.

Paragraph 3 provides that the advocate declares the office complaints mechanism applicable in that this mechanism is part of the general terms and conditions applicable to the services, or forms an integral part of the agreement to perform services. The office complaints mechanism is in the public domain pursuant to Article 7.4 and may again be brought to the client's attention in the engagement letter.

#### Article 6.29

Paragraph 1 provides that a choice of forum must be included in the agreement to perform services or, if desired, in the general terms and conditions. This makes it clear what independent party is competent to give a binding decision on an unresolved complaint (a dispute). This obligation will not apply if the advocate works exclusively for an employer as referred to in Article 5.9, opening words and under (e), (f) and (g). In that case, disputes about the advocate in employment can be handled in accordance with the normal employment regulations.

Paragraph 2 provides that this dispute may be referred to the competent (civil) court or to an independent third party. If the dispute is referred to an independent third party, the dispute settlement must satisfy particular guarantees. This means that the dispute must be settled through an arrangement which involves an arbitration agreement as referred to in Article 1020 of the Code of Civil Procedure or a settlement agreement as referred to in Article 7:900 DCC. This is in line with the statutory provision of Section 28(2), opening words and under (b) of the Act on Advocates.



The Bye-Law makes no distinction between disputes about the level of a fee note and other disputes. For all types of dispute, the settlement of the dispute must involve guarantees.

#### Article 6.30

One of the basic premises of this part is quality improvement. Such improvement can be achieved if advocates can learn from complaints handled earlier by the firm. In addition, proper complaints registration is an indicator for the general level of the services. For this reason, the complaints officer must keep an overview of all the complaints received and the subjects of these complaints. There is no need to record personal data in this context.

#### Part 6.9 Registration of legal areas

##### Article 6.31

Paragraph 1 provides that advocates with an unconditional bar registration as referred to in Section 1(2) of the Act on Advocates must be registered in the register of legal areas. This part does not apply to trainee advocates who must practise law under the guidance of a principal pursuant to Section 9b of the Act on Advocates and have not yet completed their traineeship as referred to in Article 3.2 of the Bye-Law, and whose bar registration is therefore conditional. Although trainee advocates are included in the register of legal areas, they are not obliged to register for legal areas and obtain ten training credits in the legal areas registered. Section 4.1.2 does not apply to advocates following the training programme either.

Paragraph 2 provides that compulsory registration in the register of legal areas applies immediately to EU advocates who are registered pursuant to Section 16h of the Act on Advocates.

##### Article 6.32

This article lays down the requirements for compulsory registration in the register of legal areas and disclosure of this registration. The purpose of the compulsory register of legal areas is twofold. It is a search register which may help a (vulnerable) litigant to find an advocate who has specific knowledge in respect of a particular legal area. In addition, the register helps improve the quality of the legal profession. This is necessitated by increasingly complex legal domains and specialisation wishes.

Paragraph 1 provides that advocates register at least one legal area and at most four legal areas in the register of legal areas. A condition for registration is that an advocate should obtain ten training credits in the relevant legal area each calendar year (see also Article 4.4(2) of the Bye-Law). This is a retrospective registration which relates to the ten credits obtained in the previous calendar year. Advocates registered during the last six months of a calendar year (for example, after their traineeship or as returners) are not required to gain ten training credits in that calendar year. They are not obliged to register during the calendar year following their inclusion in the bar register, but may do so at this early stage if they meet the requirements for registration.

Pursuant to Paragraph 2, advocates must ensure that the disclosure of their registration is public and generally accessible. For the purpose of recognisability by the public, it is essential that this disclosure

is made in a uniform manner. Advocates must use a model made available by the general council (Paragraph 4). If the advocate has a website, they must post the model in a prominent place so as to make it immediately clear in which legal areas the advocate is registered. If the advocate does not have a website, they will have to disclose their registration in a different manner, for example on their letterhead.

Pursuant to Paragraph 3, advocates must see to it that their registration and the model remain up-to-date. If there is a change in the advocate's registration, the advocate must ensure that the same change is made in the register of legal areas and in the model used for disclosure of the legal areas in which they have registered.

Paragraph 5 provides that the general council adopts a list of legal areas of which general practice is part in any case. General practice is not actually a separate legal area, but is included for advocates working in multiple fields of law.

#### Article 7.1 and Article 7.2

It is in the interest of good professional practice and society's trust in the legal profession that advocates know who their clients are. It is equally important that advocates' services are not abused for illegal activities. This article obliges advocates to ascertain the client's identity when accepting the engagement. This is a practical rule that must be applied to all clients or intermediaries. The term 'ascertain' reflects that the advocate is personally responsible for the manner in which the client's identity is established, depending on the nature and circumstances of the case. For example, the advocate may ascertain the client's identity by inspecting a legal identity document (for natural persons) or checking the Commercial Register of the Chamber of Commerce (for legal entities and businesses).

It may happen that the advocate is unable to ascertain the client's identity because the nature or circumstances of the case make this impossible or virtually impossible. It may also happen that they are unable to do so at the start of the engagement. What matters is that the client may not be deprived of necessary legal assistance. In that situation, the advocate cannot be obliged within reason to ascertain the client's identity beforehand. Examples include urgent cases (such as interim relief proceedings or an attachment) or immigration law practice, in which the client's identity cannot always be established with certainty.

The relationship of trust between the advocate and their client entails that an advocate may in principle rely on the correctness of data provided to them by their client for as long as there are no reasonable indications to the contrary. In general, therefore, the advocate does not have an obligation to investigate. They may accept such data as true and use this data in the context of their provision of services to the client, with due observance of the customary standards of acceptability towards third parties (cf. Rules of Conduct 6(2) and 30).

Pursuant to Paragraph 2 of Article 7.1, the advocate must check whether there are no indications within reason that the engagement serves to prepare, support or hide illegal activities. Making inquiries about the client's legal status is obviously always permitted.

As soon as the advocate has reasonable doubt or becomes aware of circumstances that justify reasonable doubt about the correctness of the data or the identity of the client or the intermediary, they will have to conduct an investigation in conformity with Article 7.2(2) into the correctness of the data provided to them, into the background of the client and the intermediary (if any) and into the purpose of the engagement. In case of doubt about the legality of the purpose served by the engagement, the client must be requested to explain these particulars. No general indication can be given of the scope of this obligation to investigate. The investigation will have to be carried out in such a way as not to breach the duty of secrecy and in the manner least onerous to the client in other respects. In the event of doubt about the scope of the investigation and the adequacy of this scope, it is recommended that the advocate consult the Local Bar President.

### Article 7.3

If a client fails to provide information requested pursuant to Article 7.1 and Article 7.2 or opposes the correction of data (for example, data used in legal proceedings), the interest of society's trust in the legal profession entails that the advocate should decide against using the relevant data, or terminate the relationship with the client if there is a permanent difference of opinion (cf. Rule of Conduct 9(2)). If necessary, prior consultations may be held with the Local Bar President. A refusal to provide services pursuant to this article will be all the more appropriate if there are indications within reason that the services which the advocate is instructed to perform serve to prepare, support or hide illegal activities. The advocate's duty of secrecy entails that the data they have obtained in the context of the investigation and, where applicable, the reason for terminating the relationship with the client will not be disclosed.

This article also applies to data or indications obtained during the handling of the case. In particular, this may occur if the advocate becomes convinced that the real purpose of their engagement is to protect the client's identity. The termination of the engagement may also relate to a part of the assigned activities. It is conceivable that the advocate performs the majority of the activities assigned to them, but must decide not to cooperate in respect of a part of those activities. It may also happen that an advocate is requested to accept monies, negotiable securities, valuables or other items. For example, they might be requested by a client or intermediary to store or hold a sealed envelope and its contents for a shorter or longer period. In that case, the advocate risks being abused as a cover for tax evasion or a criminal offence on account of their legal professional privilege. For this reason, an advocate must not comply with such requests.

### Article 7.4

The advocate may not project a misleading image as to the manner in which the practice is conducted (Paragraph 1). This concerns aspects such as the name of their firm. Accordingly, a breach of the Trade Names Act (*Handelsnaamwet*) will constitute a breach of this article. In that case, the Local Bar President may take disciplinary action. An advocate practising law independently is not permitted to use "[X] Advocates" in their trade name, because this would suggest that the practice involves several advocates. However, they are permitted to use the (trade) name "[X] Law" or "Law Firm [X]".

It is permitted for several advocates to deal with the public under a joint name (see Article 5.5), whether or not together with practitioners of other professions, without there having to be a group

practice. This freedom in advertising oneself is restricted by Paragraph 1: no incorrect, misleading or incomplete representation of the facts may be given. The advocate must beware of misleading in particular when presenting a firm on the website of an advocates' network. A third party may manage the website and associated facilities. The information on the website may create the impression, for example, that several advocates constitute a firm, whereas this is not the case. Alternatively, a false impression may be created that the switchboard operators or other staff members of this third party work under the advocate's responsibility and direction, whereas this is not the case.

It is the advocate's responsibility to represent the facts correctly.

There are firms which engage an advocate not permanently associated with the firm to handle certain cases. The advocate in question has a one-man business or is associated with another firm. The borrowing firm may not leave any uncertainty on its website, or in other communications, about the manner in which this advocate is associated with the firm. The firm may create the false impression of a permanent employment relationship if the website lists the advocate among the staff members of the firm concerned (e.g. under "our people"), or contains particulars such as the advocate's own office e-mail address, direct dial number and secretary. In those situations, there is insufficient transparency and the firm acts in breach of the standard as laid down in Paragraph 1. Obviously, the advocate may be mentioned on the firm's website, letterhead or in other communications, provided that the advocate's position is distinguished sufficiently from that of other (permanent) staff members, for example by means of a separate page on the website. An advocate who is regularly engaged by a firm with which they are not associated must state this on their own website.

The function of Paragraphs 1 and 2 is to inform the client or potential client and, where applicable, the opposing party about the advocate's practice. Paragraph 2 lists the aspects which the advocate must communicate in addition to their obligations pursuant to Article 6:230b to 6:230e inclusive DCC. They can fulfil the obligation referred to in this paragraph by providing the prescribed information on their website. Preferably, the information should be disclosed on the law firm's website. This obligation is meant to enable clients and potential clients to consider the options when choosing an advocate.

The data to be disclosed as referred to under (a) must provide clarity as to the identity of the contracting party. The website could contain the following text, for example:

"The agreement is concluded with law firm X N.V.", or "Advocate Y concludes the agreement in a personal capacity".

Pursuant to Subparagraph (b), the advocate must explain how the firm is organised. The firm's website could state:

"Law Firm X is the trade name of the advocates A, B and C, based at [address]. The advocates have a partnership in which some costs are shared, but independently conclude the agreement with the client and handle cases independently through their own BVs", or

"ABC Advocates is a partnership between A Advocates BV, B Advocates and C.

A Advocates is a private limited company involving the advocates A, D and E. A Advocates concludes agreements as a legal entity and deals with the public under the trade name ABC Advocates.

B Advocates is a partnership involving the advocates B, F and G and is a group practice within the meaning of the Legal Profession Bye-Law. The partnership concludes agreements and the advocates deal with the public under the trade name ABC Advocates.

C is an independent advocate and concludes agreements in a personal capacity. C shares the firm's facilities and also makes use of the trade name ABC Advocates."

Subparagraph (c) is intended first of all to make it clear who can access the files. Pursuant to Rule of Conduct 7, the deputising advocate, too, will have to check that there is no conflict of interest. Rule of Conduct 7(4) *et seq.* concerns conflicts of interest between the advocate and their colleagues or members of the group practice. Because the rule of conduct already contains a provision for such situations, Subparagraph (c) excepts them. If replacement and deputising has been arranged within the firm or group practice, this need not be explicitly explained. Larger firms are more likely to have such replacement and deputising arrangements in place.

For the purpose of transparency and proper service provision, furthermore, it is useful to indicate which advocates will be involved in the handling of the case; pursuant to Article 7.5, this must also be specified in the engagement letter. Because it is probably impossible to specify beforehand which persons will act as back-up or deputy in all eventualities, it will be sufficient if the information indicates who or which firm will do so in principle. This substitution need not be a hard and fast rule. If desired, the website may state in that case that a replacement or deputising procedure different from that described may apply if the circumstances should require this.

Pursuant to Subparagraph (d), the law firm is obliged to indicate how the advocate is insured against professional liability. The insurer's name or names need not be published in this context. In general, it is sufficient to briefly describe the party insured (the individual advocate, their firm, the group practice or the legal entity) and whether the liability is limited. If the firm engages an advocate who is not permanently associated with the firm, it must be clear in what manner this advocate is insured against the risk of professional liability in respect of the activities they perform for the borrowing firm.

Pursuant to Subparagraph (e), the advocate will have to disclose their office complaints mechanism referred to in Article 6.28. Here, too, the rule applies that if a firm engages an advocate who is not permanently associated with the firm, it must be clear to which Council of the Local Bar the advocate pertains and what office complaints mechanism applies to this advocate in respect of the activities they perform for the borrowing firm.

Pursuant to Subparagraph (f), an advocate who is exempt from the obligation to have a client monies foundation available because they receive no client monies (Article 6.21(2)) must announce publicly that they cannot receive client monies.

Subsection (g) obliges the advocate to make a public and generally accessible disclosure as to the legal areas in which they have registered. The litigant must be able to identify the legal areas for which the advocate is registered. To this end, the advocate must use the model made available by the general council (see Article 6.32(2) and (4) respectively of the Bye-Law).

Ideally, the advocate's practice corresponds to the registered legal areas. However, it may be that an advocate conducts a broader practice and advertises this as well. It must be clear to the litigant in which legal areas the advocate is registered.

#### Article 7.5

The engagement letter must make it clear to the client who is party to the agreement on the advocate's behalf.

If the execution of the engagement involves an advocate who is not permanently associated with the firm, the client will be informed of this in the engagement letter. It must be clear to which Council of the Local Bar the advocate pertains, in what manner the advocate is insured against the risk of professional liability and what office complaints mechanism applies to the advocate in respect of the activities they perform on the client's instructions.

#### Article 7.6

Prior to the decision to submit grounds in cassation proceedings, an advocate at the Supreme Council will first draw up an opinion on cassation.

In the opinion on cassation, the advocate will in any case address the subjects listed under (a) to (c) inclusive of this article. The wording of the article shows that the advocate acting for the respondent must issue an opinion as well, stating among other things that they considered the question whether they are indeed required to act. The opinion on cassation must be part of the cassation file which the advocate submits to the civil cassation committee for the purpose of taking the competence test referred to in Article 4.14.

#### Article 7.7 and Article 7.8

The meaning of Article 7.7(1) is virtually identical to that of Rule of Conduct 25(2) and (3), first sentence. The purport of this article is exactly the same.

Article 7.8 makes exception for the use of collection rates in the debt collection practice. The debt collection practice, which often involves collecting numerous monetary claims of the same nature without any in-depth legal dispute being expected, has traditionally applied no-cure no-pay arrangements in respect of collections.

For advocates there is no fundamental objection against contingency collection arrangements. Thus, an advocate may agree that they will initially charge a lower (hourly) rate, and that this rate will be increased by a percentage of the value in case of a positive outcome. A condition in this respect is that the lower hourly rate must be cost effective and must constitute a small fee for the advocate. Such a remuneration method is therefore not inconsistent with the standard laid down in Article 7.7 or with Rule of Conduct 25.

#### Section 7.4.3 Experiment with personal injury and loss of dependency cases

Section 7.4.3 contains regulations on an experiment in which contingency remuneration is permitted in personal injury and loss of dependency cases. The experiment will end on the date specified in Article 10.3, i.e. 1 January 2019. Until then, a variant of no cure, no pay is permitted under strict conditions.

Failure to fulfil the conditions set out in this section when agreeing contingency remuneration will constitute a breach of Article 7.7. A breach of Article 7.7 is liable to disciplinary action.

#### Article 7.9

In view of the requisite relationship between effort and eventual remuneration, a fee arrangement based on contingency pay will only be permitted if the case is not crystal clear. This means that the case must have a certain complexity which prevents the advocate from achieving a result favourable for their client through very little effort. Based on this article, no relationship will be deemed to exist between effort and remuneration if the relevant personal injury or loss of dependency case involves:

- acknowledged or established liability;
- an evident causal relationship between event and loss;
- a clear loss sustained by the client.

Where the latter two aspects are concerned, therefore, a (legal) battle on this point must be foreseeable. If no such battle is foreseeable, the advocate will be able to settle the case in their client's favour with little effort. The risk of unreasonable remuneration will therefore be very limited, because the number of hours actually spent on the case remains the basis of the permitted remuneration system. Therefore, it will not be possible for the advocate to realise substantial revenue through a few hours' work.

Paragraph (b) of this article provides the following. With regard to clients whose income and assets are below the limit referred to in the Legal Aid Act (*Wet op de rechtsbijstand*), the advocate must request assignment. In such cases, the advocate may not make contingency pay arrangements. This will only be different if the client expressly waives government-funded legal aid, with due observance of the provisions of Rule of Conduct 24(3).

#### Article 7.10

The experiment concerns cases which not only involve considerable debate about liability, causality or loss, but in which billing on a time-spent basis remains the foundation for the advocate's fee. However, the advocate may charge on the basis of an increase by 100 or 150 percent respectively of the agreed hourly rate (in other words, 2 or 2.5 times that hourly rate). Otherwise there would be no sufficient incentive or remuneration for the risk they will run, either in respect of their fee or in respect of the costs they paid on the client's behalf (if any). The advocate is free to agree a lower rate, for that matter.

The fee depends on the contingency financial result achieved. This dependency is reflected in the maximum amount that can be charged. Depending on whether or not the advocate pays the specific

costs, the maximum amount will be 35% or 25% of the financial result (see below, under 'Remuneration modalities').

A calculation example: the advocate agrees a calculation rate of factor 2, 25% of the financial result and an hourly rate of EUR 200 with their client. The financial result eventually obtained is EUR 100,000. The percentage-based fee would then be EUR 25,000, but because the advocate achieved this result through only 20 hours' work, while their doubled hourly rate is EUR 400, they will be able to charge no more than EUR 8,000 plus the specific costs and VAT.

#### Remuneration modalities

Two different modalities are possible within the permitted pay arrangements of this experiment. Under the first arrangement, the litigant in principle pays the specific costs attached to their case himself. In the second variant, the risk for the litigant's specific costs passes to the advocate. This results in a potentially higher calculation rate.

It is not the intention that the advocate receives those payments on top of the fee resulting from the contingency pay arrangement. A financial result must be obtained, that is, a result that can be expressed in money. Results of a purely emotional or fundamental nature are not financial results and cannot be expressed in money just in order to generate remuneration for the advocate. Settlement with the litigant will only take place when the financial result has been definitively obtained. This follows from the nature of the no-cure no-pay arrangement. If the financial result is obtained in part, a partial settlement will be possible, albeit that this settlement must in principle take place initially on a time-spent basis rather than on the basis of the agreed calculation rate, so as not to distort the principle of payment on a time-spent basis.

In a considerable number of personal injury cases, the litigant is unable to pay specific costs associated with the handling of their case. Medical liability and occupational diseases in particular often involve a need for information from multiple experts. The costs associated with engaging those experts may add up to a high amount. The court fees attached to legal proceedings may be prohibitive for a litigant. A litigant may decide not to engage an advocate on a contingency-pay basis if the advocate does not offer to pay those specific costs. The general council believes that the advocate should be in a position to offer this, because the scope of application of this remuneration method might otherwise be too restricted, whereas there can be no particular objections to the variant under (b).

Due to the additional risk which the advocate runs in this variant, it is reasonable to apply a calculation rate higher than that of the basic variant referred to under (a). The method chosen is a success factor of 2.5 times the hourly rate, in combination with a percentage not exceeding 35% of the awarded damages. The higher hourly rate and the resulting higher maximum percentage are justified in part by those cases in which the costs paid by the advocate are not or only partly reimbursed by the liable party. This happens regularly in the personal injury practice, for example if a party-appointed expert has been engaged. The associated costs are not automatically payable by the liable party. Moreover, a litigant's evident need for indemnification against the cost risk may not be thwarted by the experiment being insufficiently attractive to personal injury advocates. For this reason, too, a higher entrepreneurial risk justifies a higher hourly rate than in the variant in which the client



bears the specific costs himself. Please note that the costs generated by the litigant without the advocate's instructions – and perhaps also without their knowledge – are not included in the costs that are at the advocate's risk.

A calculation example with regard to this variant: the advocate arranges with the client that they will pay the specific costs on the client's behalf and agrees a percentage of 35. The specific costs amount to EUR 15,000. The result eventually obtained is EUR 100,000. The fee based on the calculation rate would then be EUR 35,000. If the advocate achieved this result through 20 hours' work and the agreed hourly rate is EUR 200, they will be able to charge EUR 10,000, increased by the EUR 15,000 in specific costs paid by the advocate. If no financial result had been obtained in this case, the specific costs would have remained at the advocate's expense.

#### Article 7.11

Paragraphs 1 and 2 of this article contain an obligation to provide the client with information. Before the agreement is concluded, the client must be informed about the alternatives to contingency pay. In addition, they must receive information about the expected course of the proceedings and the expected costs. Pursuant to Article 7.10(a) and (b), the advocate can opt for payment of the specific costs by the client or by himself. The level of the expected costs will be a factor in the client's decision whether they agree to that choice. If the client does not agree, the advocate can draw their attention to the alternatives, either by making a different choice himself or by recommending an advocate who can assist the client in the desired manner.

Paragraphs 3 and 4 of this article set out the disciplinary-law standards which the advocate must observe if they want to terminate the agreement and if they want to take particular procedural steps. In the latter case, they will need the client's written acceptance. This is necessary because the advocate might otherwise consider completing or escalating proceedings partly on the basis of their own interest. Acceptance by the client ensures that the client's interests will remain decisive in this context.

Paragraph 5 provides that the advocate records the aspects of the case which would justify the invocation of Article 7.9 (see the notes to that article).

#### Article 7.12

This article describes the minimum content of the agreement. The provisions of this Bye-Law are not meant to have consequences under the law of obligations, such as supplementation of the agreement. The provision is purely of a disciplinary nature. If the agreement does not comply with the provisions of this article, the advocate will be liable to disciplinary action pursuant to Article 7.7. This article does not constitute regulatory or mandatory law in respect of the agreement.

Article 7.12 imposes express requirements on the agreement, which will often take the form of an engagement letter. This engagement letter must, in language which the litigant can understand, provide insight into the advocate's reasonable expectation regarding the work to be performed and the judicial and extrajudicial costs to be incurred. Furthermore, the engagement letter must contain advice supported by facts and circumstances regarding the choice of remuneration modality, as well

as a risk assessment and the minimum result to be achieved by the advocate on the basis of which the fee will be calculated. The client may agree with the advocate that the advocate will not receive payment if this limit is not attained.

A reference in the engagement letter (Paragraph (f)) to what will happen if the advocate ends the legal assistance prematurely due to compelling reasons is meant to strengthen the litigant's position in the event of early termination. An example is a situation in which the advocate concludes during the handling of the case that the chances of success are fairly small and then decides to break with the client. The advocate does so in order to still obtain financial recompense, as if the case were transferred another advocate. This is why such an arrangement, containing aspects relating to the advocate's remuneration, must be included in the agreement.

The engagement letter must also state that the advocate can conclude a settlement with the opposing party, or institute or terminate legal proceedings, only with the client's prior written acceptance. In this way, the standards of Article 7.11 are guaranteed also under the law of obligations.

Advocates are free at all times to consider on a per-case basis how they will charge for their activities, depending on the circumstances of the case and in consultation with the litigant: in accordance with the billing methods currently applied (based on an hourly rate or a fixed rate, or based on the remuneration modalities permitted by the Disciplinary Court), or on a contingency basis in conformity with this Bye-Law.

#### Article 7.13

The advocate must inform the Local Bar President if they want to agree contingency pay. This is done with a view to enforcing the applicable rules, but also with a view to evaluating and monitoring the experiment.

Paragraph 2 contains a list of data which, stripped of the client's name, is used for the evaluation of the experiment with contingency pay in personal injury and loss of dependency cases. In any event, the data referred to in Paragraph 2(b) includes all court rulings in these cases and all settlement agreements, including settlement agreements based on the official report as well as settlement agreements as referred to in Title 15 of Book 7 of the DCC.

This chapter regulates the provision by the advocate to the Secretary General of data concerning compliance with the Bye-Law. From as early as 2002, the Secretary General, via the office of the Netherlands Bar, annually performs a central compliance audit (CCA) of the bye-laws for the benefit of the Local Bar Presidents. This CCA consists of a questionnaire which advocates complete electronically. The data provided is used to facilitate supervision by the Local Bar Presidents in the districts. In addition, the CCA provides an opportunity to bring relevant regulations to the advocate's attention and thereby increase the knowledge and awareness of these regulations. The data obtained via the CCA also provide an opportunity to evaluate and where necessary adjust existing regulations. The provisions of this chapter are in line with the current method of conducting the CCA.

## Chapter 8 Decision-making and legal protection

This chapter contains provisions relating to special forms of decision-making and legal protection which differs from the standard legal protection under the General Administrative Law Act.

### Article 8.1

Pursuant to Article 8.1, the Council of the Local Bar may impose additional obligations as part of a number of decisions it gives in relation to traineeships. For example, the approval of a principal may be subject to the condition that a principal's course is taken before a particular date.

### Article 8.2

The Services Act (*Dienstenwet*) offers the option to stipulate by statutory regulation that the positive notional decision laid down in Section 4.1.3.3 of the General Administrative Law Act does not apply to particular decisions. Under the Services Act, the term 'statutory regulation' extends to a bye-law if the granting of the decision has also been regulated in a bye-law. The non-applicability of this *lex silencio positivo* to particular decisions must have been prompted by one or more compelling reasons of general interest, such as the protection of consumer interests, public order and safety or protection of the environment.

The decisions listed in Article 8.2 serve the interest of the protection of consumers, i.e. litigants, and the interest of a proper legal system. In the cases specified, a substantive assessment of the application is essential in order to safeguard the quality of the legal profession.

### Article 8.3

This article provides that the aforesaid decisions are open to an administrative appeal. An administrative appeal to the general council contributes to the uniformity of law, unlike an objection submitted to the Council of the Local Bar. In addition, this article ensures equal legal protection for related decisions, which guarantees uniformity of legal protection. This involves two kinds of decision. Article 8.3 lists the decisions which are not yet open to an administrative appeal, for example pursuant to Section 9b(5) of the Act on Advocates. Section 9b(5) of the Act on Advocates refers to a range of dismissing or negative decisions. An interested party must also be able to obtain legal protection in respect of decisions which, although favourable in themselves, impose conditions that may be unfavourable (e.g. pursuant to Article 8.1). In that case, Article 8.3 ensures that legal protection against these decisions is provided in a similar manner. This means that the legal protection clause under the decisions may be identical for all the kinds of decision referred to in Section 9b(5) of the Act on Advocates and Article 8.3 of this Bye-Law respectively.

Paragraph 2 provides that a refusal to grant an exemption in respect of the returner credits or the extra credits to be obtained under the illness scheme is open to an administrative appeal to the general council. This will prevent excessive differences between the districts in the application of these provisions.

## Chapter 9 Transitional regime

Except for the provisions specified in this chapter, this Bye-Law is meant to have immediate effect upon its introduction. The provisions of this Bye-Law will apply from the moment they enter into force. The advocate and their firm therefore have to comply with these provisions in both existing and new situations.

If a rule is cancelled following the entry into force of this Bye-Law, that rule will no longer apply (Articles 10.1 and 10.2). Existing decisions based on those rules will not be affected, but if a new decision needs to be taken, this must be done in accordance with the new Bye-Law.

When a new provision is introduced, therefore, such as the transparency obligations of Article 7.4 and Article 7.5, the advocate must comply from the moment that provision enters into force. The Bye-Law does not entail a 'settling-in period', except for the provisions of this chapter.

### Notes

#### Article 9.1 and Article 9.2

For a number of years after this Bye-Law has entered into force, there will be trainees who started their legal traineeship under the Traineeship Bye-Law 2005. On certain conditions, the provisions of that repealed bye-law will remain applicable to them. The transitional regime for these articles is expected to be fully expired by the middle of 2017. However, the number of trainee advocates that can invoke these provisions will start falling before then.

No transitional regime been included for trainees falling under the Traineeship Bye-Law 2012. Where they are concerned, the provisions of Chapter 3 will apply immediately. These provisions are virtually identical to those of the Traineeship Bye-Law 2012.

#### Article 9.3

This provision is intended for advocates who followed training programmes worth more than 20 training credits. These training programmes represent an economic value in the form of a costly investment of time and money.

At the time of that investment, the expectation was justified that the training credits could be used for a three-year period pursuant to Article 3(3) of the Professional Competence Bye-Law (*Verordening op de vakbekwaamheid*). To honour that expectation, a transitional regime has been chosen that has a delayed effect. This article therefore aims to protect the legitimate expectations in respect of training credits obtained.

The Grotius training programmes would be a case in point. However, training credits obtained in a different manner under the Professional Competence Bye-Law deserve such protection as well.

This article contains a provision for two specific groups, i.e. advocates who gained a training credit surplus in 2013 and advocates who gained a training credit surplus in 2014.

No transitional regime applies to advocates who obtained a surplus before 2013, because they were expected under the Professional Competence Bye-Law to obtain 20 training credits in 2015.

Advocates starting a programme in 2015 which will generate more than 20 training credits will fall under the provisions of Article 4.4 as normal.

Paragraph 1 focuses on advocates who gained a training credit surplus in 2013. These credits may be used in 2015 for compensating a deficit. These must be residual training credits, though. This means that the training credits used for compensating a deficit in 2014 no longer count. The condition referred to in Subparagraph (b) is meant to prevent that credits are used which could in fact be regarded as 'catch-up' credits pertaining to a deficit prior to 2013. Credits obtained under the returner scheme of Article 3(6) of the Professional Competence Bye-Law do not count either.

Subparagraph (c) limits the effect of the transitional regime to the group of advocates who complied with the provisions of the Professional Competence Bye-Law. Because of this condition, the regime does not apply to advocates who had a deficit of more than 10 training credits in 2014, for example.

Pursuant to Paragraph 3, these advocates with an excessive deficit cannot make use of the more limited compensation scheme of Article 4.4(3) in the year 2015. Obviously, Article 4.4(3) *will* apply in subsequent years.

Paragraph 2 focuses on advocates who gained a training credit surplus in 2014, shortly before the entry into force of this Bye-Law. These credits may be used in 2015 for compensating a deficit (Article 4.4(3)). Based on this transitional regime, any remaining surplus may also be used in 2016. Pursuant to Paragraph 3, this group of advocates cannot make use of the more limited compensation scheme of Article 4.4(3) in the year 2016. Article 4.4(3) *will* apply in the year 2015 and in the years after 2016.

Practical implementation: in the CCA of 2014 and 2015, advocates are asked to specify the number of training credits obtained in the previous year (and possibly also the years before that). In the course of 2015, it will be known which advocates may in principle invoke this transitional regime. This data can be used in the account for the years 2015 (in the CCA of 2016) and 2016 (in the CCA of 2017).

#### Article 9.4

Paragraph 1 contains a transitional regime for directors who were appointed before this Bye-Law entered into force, but do not meet the provisions of Article 5.6(2). The group practices and legal entities at which these directors were appointed will have one year in which to replace this director by a director who does comply with Article 5.6.

Paragraph 2 contains a transitional regime concerning the articles of association of practising legal entities or holding legal entities. Before this Bye-Law entered into force, these articles of association had to meet the provisions of the Practising Legal Entities Bye-Law (*Verordening op de praktijkrechtspersoon*).

Practising or holding legal entities will have a period of five years after the entry into force of Article 5.7 in which to adjust the articles of association. After this adjustment, or after the lapse of five years, Article 5.7 will apply.

## Chapter 10 Concluding provisions

This chapter contains the concluding provisions of the Bye-Law. These provisions regulate the entry into force, the repeal of old regulations and the short title. In addition, it contains a provision on the end of the contingency pay experiment.

### Article 10.1

Article 10.1 repeals all the bye-laws of the Netherlands Bar. The present Bye-Law replaces these bye-laws in their entirety.

### Article 10.2

Article 10.2 repeals a number of regulations and guidelines whereby the Board of Representatives was involved in the formation process. This Bye-Law and the regulations based on it replace these regulations and guidelines. The Legal Areas (Registration) Guideline and the Legal Areas (Registration) Regulations (*Richtlijn Registratie Rechtsgebieden* and *Regeling Registratie Rechtsgebieden*) were repealed because Section 8(1)(g) of the Act on Advocates already provides for the registration of legal areas.

### Notes to Article 10.3

This article refers to the anticipated end of the experiment with contingency pay in personal injury and loss of dependency cases (no cure, no pay). The Board of Representatives may change the date in this article, given its authority to adopt bye-laws. The Board may do so, for example, in the event that the options provided by Section 7.4.3 are abused. If the date is brought forward through an amending bye-law, Article 10.3 will enter into force on that earlier date. This means that the option to make contingency pay arrangements will also cease to apply on that date.

The consequences of the entry into force of this article are of a purely disciplinary nature. They are not meant to affect the agreements already concluded.

If this article enters into force, the advocate will not be liable to disciplinary action if they concluded an agreement providing for contingency pay when this was permitted, and did so in accordance with the requirements then applicable. The moment when the agreement was concluded is decisive.

Once this article has entered into force, however, the advocate will no longer be permitted to amend an existing agreement on the points referred to in Article 7.12. The agreement will be 'frozen'.

If the advocate nevertheless amends the agreement after the entry into force of this article, they will be acting in breach of the general prohibition of contingency pay (Article 7.7). After all, by then it will no longer be permitted (under disciplinary law) to conclude such agreements.

*This is not an official translation*

The entry into force of this article will not affect the possibility of taking disciplinary action against advocates who have already concluded agreements in breach of one or more of the provisions of Section 7.4.3.