



REPUBLIC OF NAMIBIA

OFFICE OF THE ATTORNEY-GENERAL

HANDBOOK FOR THE OFFICE OF THE GOVERNMENT ATTORNEY

Windhoek, Namibia

May 2016

TABLE OF CONTENTS

1.	DEFINITIONS.....	4
2.	OBJECTIVE	5
3.	THE FUNCTIONS OF THE GOVERNMENT ATTORNEY'S OFFICE	6
4.	INSTRUCTIONS TO THE GOVERNMENT ATTORNEY	7
5.	INSTRUCTING AUHTORITY.....	7
6.	LEGAL CHARGES	8
7.	LEGAL SERVICES OFFERED BY THE GOVERNMENT ATTORNEY'S OFFICE.....	9
8.	NOTIFICATION TO THE GOVERNMENT ATTORNEY OF CIVIL ACTIONS IN PROSPECT AGAINST THE STATE IN WHICH THE GOVERNMENT OR STATE MAY HAVE AN INTEREST	9
9.	PROHIBITION OF INTERVIEWS AND CONSULTATIONS WITH OFFICIALS FROM OMAS BY PROSPECTIVE PRIVATE LITIGANTS WITHOUT THE GOVERNMENT ATTORNEY'S PRIOR CONSENT	10
10.	DISCLOSURE OF LETTERS AND OTHER DOCUMENTS	10
11.	COMMUNICATION BETWEEN PARTIES IS NOT PERMITTED	11
12.	BRIEFING CLIENTS ON THE STATUS OF THEIR CASES	11
12.1.	THE GOVERNMENT ATTORNEY WILL KEEP CLIENTS INFORMED OF THE PROGRESS THAT IS MADE WITH THEIR CASES.	11
12.2.	SPECIFIC SUGGESTIONS OR INSTRUCTIONS TO THE GOVERNMENT ATTORNEY	12
13.	APPOINTMENT OF ADVOCATES AND CORRESPONDENTS	12
14.	PROVISION OF LEGAL ADVICE	12
14.1.	REQUESTS FOR LEGAL ADVICE	12
14.2.	ADVICE BY TELEPHONE.....	13
14.3.	ORAL ADVICE.....	13
15.	GENERAL PROCEDURES FOR SUBMITTING MATTERS TO THE GOVERNMENT ATTORNEY	13
16.	ACKNOWLEDGEMENT OF RECEIPT OF INSTRUCTIONS BY GOVERNMENT ATTORNEY'S OFFICE	14
17.	THE GOVERNMENT ATTORNEY DOES NOT DEAL WITH THE INSTITUTION OF CRIMINAL PROCEEDINGS	14
18.	LEGAL REPRESENTATION OF OFFICIALS, EMPLOYEES OR STAFF MEMBERS OF OMAS IN CRIMINAL CASES.....	15
19.	CLAIMS ARISING FROM MOTOR VEHICLE ACCIDENTS.....	15
20.	ASSISTANCE TO GOVERNMENT ATTORNEY	16
21.	SETTLEMENTS OR PAYMENTS	17
21.1.	THE CLIENT MUST AGREE	17

21.2.	PROCEDURE TO BE FOLLOWED IF THE CLIENT DOES NOT AGREE	17
21.3.	SETTLEMENT AT THE HEARING.....	17
22.	PRESCRIPTION / EXPIRY OF CLAIMS	18
23.	INSTRUCTIONS TO RECOVER DEBTS	19
23.1.	PROCEDURES TO BE FOLLOWED BEFORE INSTRUCTIONS ARE GIVEN TO THE GOVERNMENT ATTORNEY TO RECOVER DEBT	20
23.2.	HOW TO GIVE INSTRUCTIONS TO THE GOVERNMENT ATTORNEY TO RECOVER DEBT.....	20
23.3.	PAYMENT OF DEBTS ALREADY HANDED TO THE GOVERNMENT ATTORNEY FOR LEGAL ACTION	21
24.	THE GOVERNMENT ATTORNEY DOES NOT VISIT CLIENTS	22
25.	DRAFTING AND NEGOTIATING CONTRACTS	22
26.	OUR CONTACT DETAILS	22
27.	ANNEXURES.....	24
27.1.	ANNEXURE 1 –EXAMPLE OF LETTER OF DEMAND.....	24
27.2.	ANNEXURE 2 – EXAMPLE OF FINAL LETTER OF DEMAND	25
27.3.	ANNEXURE 3- EXAMPLE OF LETTER OF ACCEPTANCE OF AN OFFER.....	26
27.4.	ANNEXURE 4 – EXAMPLE OF INSTRUCTIONS LETTER TO THE GOVERNMENT ATTORNEY TO RECOVER A DEBT	27
27.5.	ANNEXURE 5 – EXAMPLE OF A LETTER OF ADVICE TO THE GOVERNMENT ATTORNEY THAT PAYMENT BY A DEBTOR HAS BEEN RECEIVED	31

1. DEFINITIONS

Unless the context of this handbook otherwise indicates –

“Cabinet” means the Cabinet of the Republic of Namibia constituted under Article 35 (1) of the Namibian Constitution;

“Government Attorney’s Office” means the office established in terms of section 2(1) of the Government Attorney Proclamation No. R161, 1982 as amended;

“Government Attorney” means a person admitted and entitled to practise law in the Republic of Namibia and duly appointed in terms of section 3 of the Government Attorney Proclamation No. R161, 1982 as amended;

“Legal Practitioner” means a legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No.15 of 1995);

“Legal services” means the institution or defence of civil actions for or in contemplation of litigation on behalf of the OMAs including representing the Government in civil matters in all courts of Namibia, recovering of debts on behalf of the OMAs, conveyancing, provision of legal opinions/advice to the OMAs; representation of the state in any bodies in which the services of a Government admitted legal practitioner is required (i.e. Law Society, Namibia Lawyers Association etc.);

“OMAs” means offices; ministries or agencies of the Government to which the Government Attorney’s Office provides legal services and the word *Client* shall bear the same meaning;

“Proclamation” means the Government Attorney’s Proclamation No. R161, 1982 as amended;

“Public Service” means the Public Service of Namibia as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995);

“Staff member” means a staff member as defined in section 1 of the Public Service Act, 1995;

“State” means the State of the Republic of Namibia comprising the three organs of the state (the executive, legislature and judiciary) as provided for in Article 1 of the Namibian Constitution;

“Treasury Instructions” means the Treasury Instructions, as amended issued in terms of section 24(1) of the State Finance Act, 1991 (Act No. 31 of 1991);

2. OBJECTIVE

- (a) In line with the strategic objective of the Government Attorney’s Office of providing quality legal services and representation to Government offices, ministries, agencies (OMAs) and public service officials timeously; the objective of this handbook is to provide directives and guidelines to OMAs and public service officials on procedures to be followed when requesting the provision of legal services from the Government Attorney’s Office.
- (b) This objective is achievable with the full cooperation of OMAs and their officials and if submissions and instructions to the Government Attorney’s Office are of a high standard and are done timeously.

3. THE FUNCTIONS OF THE GOVERNMENT ATTORNEY'S OFFICE

3.1. The functions of the Government Attorney's Office are as provided for in section 4 of the Proclamation and include:

3.1.1. Such function as may be performed in accordance with the law, practice or custom by legal practitioners, notaries or conveyancers-

(a) shall be performed by the Government Attorney's Office-

(i) for or on behalf of any OMAs in the Republic of Namibia;

(ii) for or on behalf of any OMAs in the Republic of Namibia other than an OMAs referred to in sub-clause (i) above, subject to such conditions as to cost as the Cabinet may determine (e.g. regional councils and traditional authorities);

(b) may be performed in connection with any matter in which any OMAs or the Government, though not a party, has an interest or is concerned, or in respect of which, in the opinion of the Government Attorney, the Attorney-General or any person acting under the authority of the Government Attorney or the Attorney-General, it is in the public interest that the functions concerned shall be performed by the said office;

3.2. The Government Attorney's Office may also –

3.2.1. perform legal services for statutory bodies in which the Government has financial or other interests;

3.2.2. act on behalf of officials, staff members and employees of the Government Attorney's clients in which civil and criminal cases arising from the performance by these persons of their official functions;

3.2.3. institute civil actions on the instructions of a client or on behalf of an official, staff member or employee who is or was wronged or injured while performing his/her official duties;

3.2.4. recover damages or losses caused to the State from any person in terms of section 11 of the State Finance Act, 1991 read together with the provisions of Paragraph E of the Treasury Instructions;

- 3.2.5. collect on behalf of its Clients any debt owed to the State in terms of the provisions of Paragraph EC000 of the Treasury Instructions; and
- 3.2.6. negotiate settlement(s) on behalf of its clients in connection with any claim instituted against the State in accordance with the provisions of Paragraph EC000 of the Treasury Instructions
- 3.3. The functions of the Government Attorney's Office comprise the handling of criminal cases; civil claims and civil actions; notary and deeds work; the drawing up and checking of settlement agreements; the giving of legal advice and any other matters that are usually dealt with by legal practitioners.

4. INSTRUCTIONS TO THE GOVERNMENT ATTORNEY

- 4.1. Like any other law firm, the Government Attorney acts on the instructions of a client. The clients of the Government Attorney are all the OMAs of the Government as defined in Clause 1 of this Handbook.
- 4.2. A client may give written authorisation to divisions, bodies, boards and institutions that fall under them to give instructions to the Government Attorney on the express condition that-
 - (a) The client accepts responsibility for all consequences (including legal charges) arising from the instructions; and
 - (b) The Government Attorney is given notice in writing of such authorisation.
- 4.3. Once the Government Attorney has been instructed the matter should be wholly entrusted to him/her and must not be entrusted to any other litigant.

5. INSTRUCTING AUTHORITY

The Government Attorney will accept an instruction only from a client's head office, unless the head office concerned has authorised the Government Attorney in writing to accept instructions from a branch office, division or body under the control of the client concerned.

6. LEGAL CHARGES

6.1. Legal charges on behalf of OMAs are payable in the following manner-

- (a) The Ministry of Justice bears all expenses and costs;
- (b) The Permanent Secretary of Finance, through the Permanent Secretary of Justice, pays the expenses directly;
- (c) Should the Government Attorney employ the service of a private legal practitioner as a correspondent, the Government Attorney receives an allowance equal to one third of the correspondent's fee, which is not shared with the client. The full amount will therefore be claimed from the client;
- (d) All expenses and charges recovered by the Government Attorney's Office are deposited in the State Revenue Fund.

7. LEGAL SERVICES OFFERED BY THE GOVERNMENT ATTORNEY'S OFFICE

The Government Attorney's Office offers to its Clients in the whole territory of the Republic of Namibia the legal services defined in Paragraph 1 of this Handbook, but not limited to any legal services of such a nature as may according to law, practice or custom be performed by a person who is a legal practitioner, notary or conveyancer and shall only be performed by any such person admitted and entitled to practice law in the Republic of Namibia.

8. NOTIFICATION TO THE GOVERNMENT ATTORNEY OF CIVIL ACTIONS IN PROSPECT AGAINST THE STATE IN WHICH THE GOVERNMENT OR STATE MAY HAVE AN INTEREST

- (a) Where a civil action is instituted against OMAs or an official, employee or staff member, or if there is a prospect of such civil action being instituted, the Government Attorney's Office must be given instructions as soon as possible so that the necessary arrangements can be made in accordance with the Treasury Instructions. Unless this is done the client concerned may face serious consequences in terms of section 11 of the State Finance Act, 1991.
- (b) Because certain processes may be served on the Government Attorney in accordance with court rules, the Government Attorney must be provided with telephone numbers, cell phone numbers and email addresses where senior officials of client can be reached after hours in order to obtain instructions.
- (c) Similarly, clients must ensure that they have the relevant contact details of the Government Attorney's Office officials where they can reach them after hours.

- (d) Should statements be taken from officials or other persons in connection with civil actions in prospect, the statements must specify that it is done for the information of the Government Attorney's Office pending a civil action. This will ensure that the statements are not disclosed. These statements must not be given on oath. No settlements or compromises must be made with third parties and no information must be given or admissions of guilt be made unless the Government Attorney has been consulted in the matter and has recommended this course of action.

9. PROHIBITION OF INTERVIEWS AND CONSULTATIONS WITH OFFICIALS FROM OMAs BY PROSPECTIVE PRIVATE LITIGANTS WITHOUT THE GOVERNMENT ATTORNEY'S PRIOR CONSENT

From time to time private attorneys and advocates interview or attempt to interview or consult officials from OMAs in connection with prospective civil actions to be instituted or already instituted by their clients, either against the client concerned or against a client's official. Since there is a danger that the client or client's official may be prejudiced by the provision of any information, it is desirable that the Government Attorney's Office be consulted before client's officials grant such interviews or consultations.

10. DISCLOSURE OF LETTERS AND OTHER DOCUMENTS

- (a) Attempts are also frequently made to obtain documents or information from clients' officials with a view to using them in civil action. Interviews and consultations with or request for information or documents from clients' officials must be refused if they have any bearing on an action or action in prospect against or on behalf of the client or a client's official.
- (b) Furthermore, no information or documents may be provided in a civil litigation. Any request in this regard should immediately be referred to

the Government Attorney. The same procedure should be followed when a letter or subpoena is received.

11. COMMUNICATION BETWEEN PARTIES IS NOT PERMITTED

- (a) After the services of the Government Attorney's office have been solicited in any case, no communication may take place between the client concerned and the opposing party in connection with the action, except with the approval or through the mediation of the Government Attorney's office or its appointed correspondent.
- (b) An exception is made in the case of a debtor who wishes to make payments on his/her account directly to the client concerned. (See also paragraph 23.3).

12. BRIEFING CLIENTS ON THE STATUS OF THEIR CASES

12.1. The Government Attorney will keep clients informed of the progress that is made with their cases.

Should a client not hear from the Government Attorney for a considerable period of time in connection with a particular case, this does not necessarily mean that the case is being neglected. The Government Attorney frequently has to wait for a suitable date to be arranged for a hearing, or a litigation may reach a stage where the initiative to take further steps rests with the opposing party. In order to prevent an unnecessary exchange of correspondence, enquiries in connection with the progress of a case should therefore be restricted to instances where it is absolutely essential.

12.2. Specific suggestions or instructions to the Government Attorney

The Government Attorney welcomes any specific suggestions that a client wishes to make or instructions that a client wishes to give in respect of the manner to be followed in a case. Such suggestions or instructions should be fully and clearly set out in writing and submitted to the Government Attorney on time. Particularly in the case of motion proceedings (that is cases where the client is brought to court by notice of court motion or petition), such suggestions must be set out in paragraphs relevant to the allegations contained in the petition or in the applicant's affidavit.

13. APPOINTMENT OF ADVOCATES AND CORRESPONDENTS

The appointment of advocates and correspondents rests with the Government Attorney. The Government Attorney will act in accordance with the original written instructions and will deviate from it only if he/she receives further written instructions to do so or it is in the best interest of the State or Government. Upon a study of a case, the Attorney-General may advise that an advocate be instructed.

14. PROVISION OF LEGAL ADVICE

14.1. Requests for legal advice

- (a) It is advisable that clients consult the Government Attorney's Office at an early stage when a problem arises. This ensures that clients deal with the problem correctly from the beginning. The Government Attorney's office is frequently consulted about a matter when it is already too late to do anything about it.

- (b) In instances where there is no possibility of a civil action arising, but where the problem lies more specifically in the interpretation of an act or regulations and the client concerned needs the legal opinion of the Government Legal Advisers, a request to this effect should be made directly to the Attorney-General or to the Directorate of Legal Advice in the Ministry of Justice.

14.2. Advice by telephone

Due to the fact that it is not advisable or desirable for a Government Attorney to give legal advice over the telephone, this practice is strongly discouraged and will be avoided. It is preferable to arrange a meeting with the Government Attorney to discuss current or potential litigation.

14.3. Oral advice

- (a) Any client is free to discuss a matter with the Government Attorney after an appointment has been made with him/her by telephone. Other legal practitioners may not be approached direct for oral advice, except in instances where a matter has already been assigned to such legal practitioner.
- (b) The disadvantage of this method of consultation is of course that neither the facts nor the points of law can be provided or considered in detail during oral advice. It is therefore advisable that clients rather place all correspondence in writing.

15. GENERAL PROCEDURES FOR SUBMITTING MATTERS TO THE GOVERNMENT ATTORNEY

- (a) When a matter is submitted to the Government Attorney's Office for an opinion or with a view to litigation, it should be submitted with all the

necessary information and the relevant files and documentation. This procedure should be followed even if the case or a similar case has been assigned to or has been discussed with a legal practitioner of the Government Attorney's Office.

- (b) The form in which the materials to be studied by the Government Attorney is submitted has a direct influence on the time that the Government Attorney has to spend on the matter. In order to prevent unnecessary waste of time, the client that is setting out a matter for the Government Attorney should express their ideas clearly and succinctly.
- (c) When a matter is drawn up, the relevant legislation and/or regulations should be listed. Furthermore, a chronological summary of the facts should be identified with lettered or numbered flags. The name and telephone, cell phone numbers and e-mail addresses of the client's officials dealing with the matter should be provided.

16. ACKNOWLEDGEMENT OF RECEIPT OF INSTRUCTIONS BY GOVERNMENT ATTORNEY'S OFFICE

Upon receipt of an instruction, the Government Attorney's office will acknowledge receipt of such instructions and will notify the client of its reference number to be used in further correspondence, as well as the name and contact details of the legal practitioner to whom the matter has been assigned.

17. THE GOVERNMENT ATTORNEY DOES NOT DEAL WITH THE INSTITUTION OF CRIMINAL PROCEEDINGS

The institution of criminal proceedings is not the function of the Government Attorney's Office. Such matters are dealt with by the Prosecutor-General. The Government Attorney's Office will however, in the circumstances set out in paragraph 18, defend officials of the State in criminal prosecutions.

18. LEGAL REPRESENTATION OF OFFICIALS, EMPLOYEES OR STAFF MEMBERS OF OMAs IN CRIMINAL CASES

- (a) It is the function of the Government Attorney's Office with regard to criminal cases to defend OMAs officials, employees or staff members if the offence resulted from or is connected with performance of their official duties.
- (b) If an OMA official, employee or staff member is charged with a criminal offence that resulted from or is connected with the performance of his/her official duties, the matter should, if the official, employee or staff member wishes to be defended by the Government Attorney, be submitted to the Government Attorney to enable him/her to decide whether the person should be defended at the public instance in terms section 4 (b) (ii) of the Government Attorney Proclamation.
- (c) Detailed statements by the accused official, employee or staff member and by his/her witnesses, if any, together with an exposition of the facts and a recommendation by the accounting officer of the OMA, should be forwarded to the Government Attorney's Office.
- (d) If a charge has already been served on the accused, a complete charge sheet should accompany the documents that are forwarded to the Government Attorney.
- (e) Instructions should be given to the Government Attorney as soon as possible since time is needed for preparation and postponements are not only time consuming, but also result in unnecessary expenses.

19. CLAIMS ARISING FROM MOTOR VEHICLE ACCIDENTS

Transport Circulars on the State Insurance Coverage in terms of provision DIV/IVA 7(2) of the Public Service Staff Code stipulate the procedure to be

followed should a Government vehicle be involved in an accident. The same procedure should be followed if a Government vehicle is damaged and the damage has to be claimed from the other party. The client concerned should, as soon as a claim has been instituted, forward the claim and all the following documents to the Government Attorney:

- (a) Trip Authority;
- (b) Police Report of accident;
- (c) Parties' statements
- (d) Full name and Physical Addresses of all parties involved in the accident;
- (e) Three quotations indicating cost of damage incurred.

20. ASSISTANCE TO GOVERNMENT ATTORNEY

It is the client's duty to give any assistance to the Government Attorney that may be required to conclude a case successfully. Clients should for example, at the request of the Government Attorney, provide the physical addresses of debtors, trace witnesses, obtain information from experts and arrange for tests and interviews to be carried out as speedily as possible.

21. SETTLEMENTS OR PAYMENTS

21.1. The client must agree

Since the client concerned has to pay the capital amount from its vote in cases where the Government Attorney decides that, on the merits of the case, there are liabilities and recommends that the claimed amount be paid or that a lesser amount be offered, the client should be satisfied that the amount to be paid out is reasonable and that the proposed action is justified (Treasury Instructions).

21.2. Procedure to be followed if the client does not agree

If a client does not agree with a decision, the matter should be discussed with the legal practitioner concerned and, if after the discussions no agreement has been reached, the matter should be put before the Government Attorney personally. If the client does not agree with his/her decision, the matter should be referred to the Attorney-General for advice.

21.3. Settlement at the hearing

- (a) A case may develop in such a way at a hearing that a settlement can be reached with the other party. An adjournment is then requested and, if the parties come to an agreement, the client authorises the settlement. For this reason it is essential that a responsible official of the client should either attend the court proceedings or be available or that it should be possible to reach him/her easily so that he/she can give the authorisation without delay.

- (b) If a decision cannot be obtained quickly, it can result in unnecessary legal costs and in unfavourable court orders and remarks being made by the court about the functioning of the public service and the authorities. This unwanted criticism should be avoided at all costs.
- (c) It is also important that the client should know what his/her officials will testify at the hearing.

22. PRESCRIPTION / EXPIRY OF CLAIMS

A case is sometimes handed to the Government Attorney that has already become prescribed, extinguished and unenforceable. Great inconvenience and expense is caused if a case reaches the Government Attorney too late. In some instances, notice has to be given to the defendant before an action can be brought. Clients should therefore be acquainted with the periods of prescription/ expiry dates and the consequences thereof.

The periods of prescription are generally provided for in legislation as follows:

1. Section 11 (d) of the Prescription Act, 1969 (Act No. 68 of 1969):

- (a) thirty years in respect of-
 - (i) any debt secured by mortgage bond;
 - (ii) any judgment debt;
 - (iii) any debt in respect of any taxation imposed or levied by or under any law;
 - (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;
- (b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to

the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);

- (c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);
- (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.

2. Section 39 (1) of the Police Act, 1990 (Act No. 19 of 1990):

Any civil proceedings against the State or any person in respect of anything done in pursuance of this Act shall be instituted within 12 months after the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than 1 month before it is instituted: Provided that the Minister may at any time waive compliance with the provisions of this subsection. If any notice contemplated in subsection (1) is given to the inspector-General, it shall constitute notification to the defendant concerned. Any process by which any proceedings contemplated in subsection (1) are instituted and in which the Minister is the defendant or the respondent, may be served on the Inspector-General.

23. INSTRUCTIONS TO RECOVER DEBTS

- (a) It is essential that all indebted amounts be recovered as soon as possible. If a debtor therefore neglects to pay his/her debts, the matter should be handed to the Government Attorney without delay so that he/she can take legal steps should the debtor's financial position justify it, except in case where the client first makes certain steps itself.
- (b) If the debtor has no assets and his/her income is too small to make payments, and there are no prospects of his/her financial position

improving, the client should consider writing off the debt in terms of section 11 read with section 16 of the State Finance Act, and, if applicable, in accordance with the authorisation given in terms of the Treasury Instructions on the recommendation of the Government Attorney.

23.1. Procedures to be followed before instructions are given to the Government Attorney to recover debt

- (a) The amount of the debt should be claimed from the debtor by the client and the debtor should be notified that, if he/she does not pay, the matter will be handed to the Government Attorney for legal steps to be taken against him/her, which will entail considerable legal expenses for him/her.
- (b) Letters should not be written repeatedly to a debtor when he/she refuses or neglects to pay. Such correspondence is a waste of time and can result in the debt becoming prescribed later. The debtor may also later move to a different address or become insolvent, circumstances that may hamper the recovery of the debt or even make it impossible to do so.
- (c) When an offer from a debtor to make payment in instalments has been accepted, it is advisable to do so in writing and to reserve the right to claim payment of the full outstanding amount at any time, should circumstances justify it.

23.2. How to give instructions to the Government Attorney to recover debt

- (a) It is important that full particulars in connection with the debt and the debtor be given to the Government Attorney. It is also important that the debtor's full residential and postal address, as

well as his/her business address and the name and address of his/her employer, be given. If the debtor is a married person, her/his marital status should be given and also the names of her/his spouse and whether they are married in or out of community of property.

- (b) The steps to be taken are at the discretion of the Government Attorney. If, however, a client wishes a specific cause of action to be followed in connection with any case or wishes only certain steps to be taken, such cause of action or steps should be set out clearly in the instructions. For example, if a debtor is in prison and the client only wishes a summons to be issued and a judgement to be obtained to interrupt prescription such instructions must be clearly indicated.
- (c) It is advisable that a letter in the form of Annexure 4 to this handbook be used in this connection. These forms should be reproduced by the client.

23.3. Payment of debts already handed to the Government Attorney for legal action

- (a) If money is offered to a client for the payment in full or as partial payment of a debt or claim already handed to the Government Attorney for legal action, the receipt that is issued should be marked with the words ***“without prejudice”*** and be copied to the Government Attorney. The Government Attorney should be notified immediately of the payment.
- (b) Under no circumstances should payment be accepted from a debtor for the settlement of a debt in full if the amount offered is less than the balance owing.

24. THE GOVERNMENT ATTORNEY DOES NOT VISIT CLIENTS

- (a) It is traditionally not the practice for a legal practitioner to go to his/her client. Clients must go to their lawyers in search of legal services.
- (b) Like any other law firm the Government Attorney's Office does not visit clients and it is therefore an absolute rule that all clients requiring the services of the Government Attorney must go to his/her office.
- (c) The only exception to this rule is made in cases where Cabinet Ministers wish to consult the Government Attorney. In this case, arrangements can be made for the legal practitioners of the Government Attorney's Office or the Government Attorney him/herself to visit the Minister that requires legal service.

25. DRAFTING AND NEGOTIATING CONTRACTS

- (a) The Government Attorney does not draft, negotiate or bargain about the terms of contract on behalf of clients.
- (b) If a client intends to have its contract drafted, negotiated, or scrutinised that client must submit its request together with its proposed draft agreement or contract to the Directorate of Legal Advice in the Ministry of Justice for scrutiny and legal advice. The Legal Advisors will then ensure that the form of the contract is correct according to law and that the intentions of the parties are clear and will, if necessary re-word or redraft it.

26. OUR CONTACT DETAILS

Office of the Government Attorney
2nd Floor, Sanlam Centre

Windhoek, Namibia
Private Bag 13189, Windhoek
Tel: +264-61-2812451
Fax: +264-61-222428 / 229788
Email: Matti.Asino@ag.gov.na

This Handbook was issued at **Windhoek** on this day 12th day of May 2016.

Adv. Matti Ileka Asino
GOVERNMENT ATTORNEY

27. ANNEXURES

27.1. ANNEXURE 1 –EXAMPLE OF LETTER OF DEMAND

Example of a first letter of demand that may be addressed to debtor by an OMAs:

According to my record an amount of N\$.....is owed by you in respect of (state subject matter). It has been noted with concern that there has been no reaction from you to the statements of accounts that have already been sent to you in this regard.

You will understand that the Ministry cannot allow this amount to remain outstanding indefinitely and it would therefore be appreciated if you would either settle the account immediately or make acceptable arrangements with this office to do so.

Yours Faithfully,

.....

27.2. ANNEXURE 2 – EXAMPLE OF FINAL LETTER OF DEMAND

Example of a final letter of demand that should be sent by registered post:

The amount of N\$.....owed by you in respect of.....(state subject matter) has been outstanding for a considerable period of time and should be settled within 14 (fourteen) days from the date of receipt of this letter.

Unless payment is received on or before.....(date), we will be compelled to instruct the Government Attorney to take legal steps against you to recover the amount owed. In such a case a summons/warrant will be issued for the seizure of your property without any further notice and you will also be held liable for the legal charges involved. It would therefore be to your benefit to give your immediate attention to the matter and settle your account.

Yours Faithfully,

.....

27.3. ANNEXURE 3- EXAMPLE OF LETTER OF ACCEPTANCE OF AN OFFER

Example of a letter for the acceptance of an offer to pay a debt in instalment:

Your offer to pay the amount mentioned above in instalments of N\$......per month/week is accepted, subject to the following conditions:

- 1. The right is reserved to claim payment from you at any time of the full balance owed.*
- 2. The first instalment must be paid on or before.....and the subsequent instalments must be paid regularly on or before.....(for example, on the third day of every month).*

Yours Faithfully,

.....

27.4. ANNEXURE 4 – EXAMPLE OF INSTRUCTIONS LETTER TO THE GOVERNMENT ATTORNEY TO RECOVER A DEBT

Ministry: (And division, if any):

Address:

Ministry's reference number:

Telephone:

Extension:

Fax Number:

E-mail address:

Name of instructing accounting officer:

Name of enquiry official:

The Government Attorney,

I. INSTRUCTIONS:

1. Nature of debt: (e.g. telephone account, rent, etc)
2. Amount to be recovered:
3. Precise explanation of how the amount should be calculated, with interest, if any, setting out dates, period, any payment, etc....., if applicable. Attached and marked a schedule A.

(Different claims should be set out separately and the names of persons to whom the service was rendered should be provided).

4. If the amount is owed in terms of –

(i) an oral agreement:

Name of parties

And

Place and date of agreement:

Contents of agreement:

(If there is not sufficient space, attach in the form of a annexure).

(ii) a written agreement:

(attach the original written agreement).

(iii) A statutory determination: (give particulars)

5. Reason why amount should be claimed.

II. PARTICULARS OF DEBTOR

1. Full names:

2. Full present residential and/or business and postal address:

N.B. A summons cannot be served to a postal address. If possible, the magisterial district should also be stated.

3. Occupation:

4. Name and address of employer, if available:

The distance from the Magistrate's court should be given in 2 and 4 above.

5. Is the debtor a minor? If so, give name and address of parent or guardian

6. Sex of the debtor

(i) *If female: (Mark were applicable*

(a)Married:

(b)Unmarried:

(ii) *If married: (Mark were applicable*

(a)In community of property:

(b)Out of community of property:

(c)Full names and address of husband:

(iii) *If unmarried: (Mark were applicable*

(a)Divorcee:

(b)Widow:

(c)Spinster:

III. **FINANCIAL REPORT:** *(required in all cases)*

(a) (i) *Monthly income of debtor:*

(ii) *Monthly income of spouse:*

(b) *If not a salaried person, his average monthly or annual income*

(c) *Number of children and other dependants being supported:*

(d) (i) *State whether his estate is under administration:*

(ii) *Name and address of administration*

(e) *State any claims that you know of that other creditors have against the debtor:*

(f) *Other particulars and available information on his financial position which in your opinion should be taken into account (e.g. assets not under hire purchase, pledge or bond, fixed property, etc.);*

IV. *If money has to be recovered from an estate, the following particulars should be provided:*

(a) Is the estate – (Mark where applicable)

(i) an insolvent estate

(ii) a deceased estate

(b) Estate number

(c) Date of death in the case of deceased estate

(d) Date of sequestration order in the case of insolvent estate

(e) Name and full present address of person or firm acting as or on behalf of executor or curator of estate.

V. *The same particulars in respect of surety should be given as though for the principal debtor. Surety bonds should be attached.*

VI. **PREScription**

If a prescription is interrupted, supply details of any payment or acknowledgement.

The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor. If the running of prescription is interrupted as contemplated, prescription shall commence to run afresh from the day on which the interruption takes place or, if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt from the date upon which the debt again becomes due.

SIGNED:

CAPACITY:

.....

27.5. ANNEXURE 5 – EXAMPLE OF A LETTER OF ADVICE TO THE GOVERNMENT ATTORNEY THAT PAYMENT BY A DEBTOR HAS BEEN RECEIVED

Example of a letter of advice to the Government Attorney that payment by a debtor has been received.

To:, Debtor:

With reference to the amount of N\$.....received from, your attention is drawn to the fact that the matter has been referred to the Government Attorney for legal steps to be taken against you and that all further payments must be made to the Government Attorney, since this office does not have a record of the legal charges for which you are liable. The address of the Government Attorney and the reference to be quoted by you are as follow:

.....
.....
.....

The Government Attorney will be notified today of this payment.

Yours faithfully,

.....

Permanent Secretary/Head of OMAs

THE GOVERNMENT ATTORNEY

.....
.....
.....

*This copy is for your information. Your file no.....
and my even-numbered letter of service of.....refer.*

*According to my records the balance outstanding, apart from the legal
charges, now amounts to N\$.....*