

LEGAL PRACTITIONERS ACT, 2022

No. 39



of 2022

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *Admission and Enrolment of Legal Practitioners*

3. Qualifications for practising as legal practitioner
4. Qualifications for admission as legal practitioner
5. Admission of foreign advocate
6. Qualifications for practising as notary or conveyancer
7. Qualifications for admission as notary or conveyancer
8. Application for admission and enrolment
9. Admission and enrolment
10. Legal practitioner employed by Law Clinic
11. Oath to be taken before enrolment

PART III — *The Roll*

12. Keeping the roll
13. Entry of name and restoration of name
14. Removal or restoration of name
15. Rights of advocate and attorney
16. Restriction on practice of advocate

PART IV — *Pupillage*

17. Contract of pupillage
18. Service of pupillage
19. Contents of contract of pupillage
20. Registration of contract of pupillage
21. Termination of contract of pupillage
22. Provisional practising certificate
23. Certificate of pupillage
24. Exemption from contract of pupillage
25. Remuneration of pupil

PART V — *Practising Certificate*

26. Application for practising certificate
27. Issue of practising certificate
28. Fees payable on issue of practising certificate
29. Date and expiry of practising certificate

PART VI — *Fidelity Guarantee Fund*

30. Continuation of Fund
31. Fund to vest in Board of Trustees
32. Appointment of Board of Trustees
33. Application for fidelity fund certificate
34. Issue of fidelity fund certificate
35. Contribution to Fund
36. Investment of Fund moneys
37. Accounts to be kept
38. Professional indemnity
39. Moneys to credit of Fund
40. Application of moneys in Fund
41. Payment of compensation for loss due to dishonesty or theft

PART VII — *Trust Account and Protocol Register*

42. Trust account
43. Keeping of protocol register and examination of protocols

PART VIII — *Disciplinary Committee*

44. Appointment of Disciplinary Committee
45. Secretary of Disciplinary Committee

PART IX — *Misconduct*

46. Complaint against legal practitioner
47. Investigation of complaint by Disciplinary Committee
48. Suspension or removal of name from roll
49. Professional misconduct

PART X — *The Law Society of Botswana*

50. Continuation of Law Society of Botswana
51. Objectives of Society
52. Powers and functions of Society
53. Membership of Society
54. Annual subscription
55. Cessation of membership

56. Continuation of Council of Society
57. Powers of Council
58. Appointment of committees
59. Officers of Society

PART XI — *Meetings of Council*

60. General meeting
61. Special general meeting
62. Quorum and procedure at meetings
63. Minutes of meetings

PART XII — *Financial Provisions*

64. Funds of Society
65. Financial year
66. Accounts and audit
67. Pension and other funds
68. Annual report

PART XIII — *Miscellaneous Provisions*

69. Common Seal
70. Contingency fee agreement
71. Offences
72. Power of Council to make rules
73. Regulations
74. Repeal of Cap. 61:01
75. Transitional and savings provisions

SCHEDULES

An Act to provide for the admission, enrolment and practice of legal practitioners in Botswana and matters ancillary thereto.

Date of Assent: 29.09.2022

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana

PART I — *Preliminary*

1. This Act may be cited as the Legal Practitioners Act, 2022, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. In this Act, unless the context otherwise requires —
“advocate” means any legal practitioner duly admitted to practise as an advocate in Botswana;

Interpretation

“attorney” means a legal practitioner duly admitted and enrolled as an attorney-at-law in Botswana;

“certificate of pupillage” means a certificate of pupillage issued under section 23;

“conveyancer” means a legal practitioner duly admitted to practise as a conveyancer in Botswana;

“Council” means the Council of the Society continued under section 56;

“court” means the Chief Justice or any judge of the Court of Appeal, High Court or Industrial Court;

“courts of Botswana” means the Court of Appeal, the High Court, the Industrial Court, the magistrates’ courts and all tribunals at which legal practitioners have a right of audience, but subject to the provisions of any other written law and of the Constitution, but does not include any customary court or customary court of appeal established under the Customary Courts Act;

“Disciplinary Committee” means the Disciplinary Committee under section 44;

“enrolment” means the entry of a name on the roll of legal practitioners;

“fidelity fund certificate” means a certificate issued under section 34;

“foreign advocate” has the meaning assigned to it under section 5;

“Fund” means the Fidelity Guarantee Fund continued under section 30;

“Law Clinic” means a Law Clinic under the professional control and management of a legal practitioner, certified by the Council and which provides legal services to indigent persons, but does not include a university Law Clinic;

“Legal Aid Botswana” has the same meaning assigned to it in the Legal Aid Act;

“legal practitioner” means any person entitled to practise under this Act as an advocate, attorney, notary or conveyancer;

“Master” means the Master of the High Court;

“notary” means a legal practitioner duly admitted to practise as a notary public in Botswana;

“practise” means to practise as an advocate, attorney, notary or conveyancer;

“practising certificate” means a certificate issued under section 27;

“private entity” means any voluntary organisation, non-governmental organisation, political party, charitable institution, society, association, company, partnership, club, trust or any other person or organisation where public moneys are not used;

“pupil” means a person who serves pupillage under a pupil master in terms of this Act;

Cap. 04:05

Cap. 16:02

“pupil master” means a legal practitioner who has practised for a period of seven years and is on the register of pupil masters kept by the Society under section 17 (4), and includes —

- (a) the Attorney-General;
- (b) the Director of Public Prosecutions;
- (c) the Director of Military Prosecutions; and
- (d) a Judge Advocate General;

“Registrar” means the Registrar of the High Court;

“removed from the roll” means deprived of the right to practise;

“repealed Act” means the Legal Practitioners Act;

Cap. 61:01

“Secretary” means the Secretary of the Society;

“the roll” means the register kept by the Registrar in terms of section 12; and

“the Society” means the Law Society of Botswana continued under section 50.

PART II — *Admission and Enrolment of Legal Practitioners*

3. A person shall not be qualified to practise as a legal practitioner unless —

- (a) he or she has been admitted to practise as a legal practitioner;
- (b) his or her name is on the roll; and
- (c) he or she has in force, a practising certificate issued by the Registrar under section 27.

Qualifications
for practising
as legal
practitioner

4. (1) A person shall be qualified to be admitted as a legal practitioner if he or she satisfies the court that —

- (a) he or she is a fit and proper person;
- (b) he or she has obtained by examination, an accredited bachelor’s degree in law or its equivalent from any accredited —
 - (i) university in Botswana, or
 - (ii) university as may be prescribed,together with such additional qualifications, if any, as may be prescribed;
- (c) he or she has passed such practical or bar examinations as may be prescribed;
- (d) he or she has completed pupillage in accordance with Part IV of this Act;
- (e) he or she is ordinarily resident in Botswana or intends to reside permanently in Botswana; and
- (f) in the case of a non-citizen referred to in paragraph (b) (i) to (ii), there is a reciprocal provision in the laws of the country of which he or she is a citizen, to permit a citizen of Botswana qualified in terms of the laws of that country to be admitted to practise in that country.

Qualifications
for admission
as legal
practitioner

(2) A person referred to in subsection (1), may be exempted from the provisions of paragraphs (b) and (c) of subsection (1), if he or she satisfies the court that —

Admission of foreign advocate	<p>(a) he or she is qualified to practise in any prescribed country having a sufficiently analogous system of law; or</p> <p>(b) his or her qualifications render him or her suitable for admission and he or she fulfils such conditions, whether as to status or proficiency, as may be prescribed.</p>
	<p>5. (1) An advocate who is not a citizen and is not permanently or ordinarily resident in Botswana, but is qualified to practise as an advocate in a superior court of any prescribed country or a country prescribed by Parliament in accordance with the provisions of section 96 (3) or section 100 (3) of the Constitution (in this section referred to as a "foreign advocate") may, on application to the Chief Justice with notice of the application to the Society, be admitted to practise as a foreign advocate for the purpose of any specific cause or matter of importance and complexity in or with regard to which he or she has been instructed, for the duration of the hearing of that cause or matter, by —</p>
	<p>(a) the Attorney-General;</p> <p>(b) the Director of Public Prosecutions; or</p> <p>(c) any attorney in Botswana.</p>
	<p>(2) A foreign advocate shall, on completion of the hearing of the cause or matter, or on the hearing of the final appeal, cease to be entitled to practise in Botswana.</p>
	<p>(3) A foreign advocate shall not be entitled to practise in Botswana until he or she has paid such fees, as may be prescribed, to the Society.</p>
Qualifications for practising as notary or conveyancer	<p>6. A person shall not be admitted to practise as a notary or as a conveyancer unless he or she is admitted and enrolled as an attorney.</p>
Qualifications for admission as notary or conveyancer	<p>7. Subject to the provisions of section 6, a person shall be admitted as a notary or conveyancer if he or she satisfies the court that —</p>
	<p>(a) he or she is a fit and proper person;</p> <p>(b) there is no order of court removing his or her name from the roll;</p> <p>(c) there are no pending proceedings to remove his or her name from the roll; and</p> <p>(d) he or she has passed such practical examinations as may be prescribed, including —</p> <p>(i) in the case of a notary, in the practices, functions and duties of a notary public, and</p> <p>(ii) in the case of a conveyancer, in the practices, functions and duties of a conveyancer.</p>
Application for admission and enrolment	<p>8. (1) For the purposes of sections 4 and 7, "fit and proper" means that an applicant to be a legal practitioner and notary or conveyancer shall not —</p>
Cap. 08:03	<p>(a) have been convicted of a serious offence in terms of the Proceeds and Instruments of Crime Act;</p>

- (b) have been convicted outside Botswana of a criminal offence, which, if committed in Botswana would have been a serious criminal offence;
- (c) be an unrehabilitated insolvent;
- (d) have been a subject of an investigation by a supervisory authority or investigatory authority in terms of the Financial Intelligence Act; and
- (e) have been a person holding a senior management position in a company which is disqualified from trading by a professional body or supervisory authority.

Cap. 08:07

(2) A person who holds the requisite qualifications in terms of section 4 or 7, may apply to the court by petition, to be admitted and enrolled in the capacity specified in the application.

(3) Every application for admission and enrolment shall be accompanied by documentary proof of the possession, by the applicant, of the requisite qualifications prescribed in section 4 or 7, as the case may be.

(4) A copy of every application, together with copies of supporting affidavits and certificates, shall be served upon the Attorney-General and the Society, not less than 28 days before the date of hearing of the application, and such service shall be effected personally or by registered post:

Provided that the Attorney-General or the Society may accept service for a lesser period and, if they do so, then, the Attorney-General or the Society shall notify the Registrar, in writing.

(5) The Attorney-General, the Society or any legal practitioner may request the leave of the court to appear as amicus curiae to oppose the granting of such application.

9. The court may, if it is satisfied that a person who has applied under section 8 possesses the prescribed qualifications to be admitted and enrolled as a legal practitioner, admit and, subject to section 11, enrol such person as an advocate, attorney, notary or conveyancer, as the case may be:

Admission and enrolment

Provided that a person who has previously acted as an advocate shall not be admitted and enrolled as an attorney, unless he or she satisfies the court that he or she has not practised as an advocate for a period of three months, immediately preceding his or her application for admission and enrolment as an attorney under this Act.

10. Notwithstanding anything contained in any provision of this Act, a legal practitioner employed by a Law Clinic shall —

Legal practitioner employed by Law Clinic

- (a) apply for a practising certificate in terms of section 26;
- (b) apply for a fidelity fund certificate in terms of section 33; and
- (c) enter into a contract of pupillage in terms of section 17.

Oath to be taken before enrolment

11. A person shall not be enrolled as a legal practitioner, unless he or she has taken an oath before the Registrar, or affirmation of office, in the form set out under Schedule 1.

PART III — *The Roll*

Keeping the roll

12. (1) The Registrar shall continue to keep a list of all legal practitioners in Botswana, called “the roll”.

(2) The roll shall be in the form of separate alphabetical lists, recording the names and addresses of advocates, attorneys, notaries and conveyancers, respectively, entitled to practise by reason of having been admitted to practise under this Act, with the dates of such admission.

Entry of name and restoration of name

13. (1) On production —

(a) of an admission of any person as a legal practitioner under section 10, signed by the court; or

(b) of an order for the restoration to the roll of the name of a person whose name has been removed from it,

and on payment to the Registrar of the fee prescribed, the Registrar shall enter the name of that person on the roll.

(2) The Registrar shall issue a certificate of admission and enrolment, in such form as may be prescribed, to any person admitted and enrolled as an advocate, attorney, a notary, or a conveyancer, as the case may be.

Removal or restoration of name

14. (1) The Registrar may, on the application of a legal practitioner, remove the name of the legal practitioner from the roll.

(2) The Registrar may, on the application of the Society, remove the name of a legal practitioner from the roll, if he or she is no longer resident in Botswana or has not resided in Botswana after admission.

(3) The Registrar may, on the application of the Society, remove the name of a legal practitioner who fails to meet the fit and proper test under section 8 (1).

(4) The Registrar may, on the application of a legal practitioner whose name has been removed from the roll at his or her own request, enter the name of the legal practitioner on the roll, upon payment of such fee as may be prescribed.

Rights of advocate and attorney

15. Subject to section 16, an advocate and an attorney shall —

(a) have a right of audience in the courts of Botswana; and

(b) be officers of the courts of Botswana.

Restriction on practice of advocate

16. (1) An advocate shall not have a right of audience in the courts of Botswana unless he or she is acting on the instructions of a person entitled to practise as an attorney or on the instructions of the Attorney-General, Director of Public Prosecutions or of the courts of Botswana.

(2) An advocate shall not be entitled to practise as an attorney, notary or conveyancer.

PART IV — Pupillage

17. (1) A person who, intends to practise as a legal practitioner shall enter into a contract of pupillage to read as a pupil for an aggregate period of not less than 12 months under a pupil master, or, attend such vocational courses in the practice and procedure of the courts of Botswana, as may be provided by the Council.

Contract of pupillage

(2) A legal practitioner, other than the Attorney-General, the Director of Public Prosecutions, the Director of Military Prosecutions, a Judge Advocate General, or Legal Aid Botswana, who wishes to be a pupil master may submit an application, in such form as may be prescribed, to the Society.

(3) Where the Society approves the application under subsection (2), it shall notify the applicant of the approval and shall cause the applicant to be registered as a pupil master.

(4) The Society shall keep a register of pupil masters and pupils, in such form as may be prescribed.

18. (1) A contract of pupillage shall be served under —

Service of pupillage

(a) the Attorney-General, the Director of Public Prosecutions, the Director of Military Prosecutions, a Judge Advocate General or Legal Aid Botswana; or

(b) a pupil master practising as a legal practitioner —
(i) on his or her own account, or
(ii) as a partner in a firm of legal practitioners.

(2) A pupil master, other than the Attorney-General, the Director of Public Prosecutions, the Director of Military Prosecutions, a Judge Advocate General or Legal Aid Botswana, shall at no time have more than three pupils serving their pupillage under him or her.

(3) A letter of employment issued to a pupil serving his or her pupillage under the Attorney-General, the Director of Public Prosecutions, the Director of Military Prosecutions, a Judge Advocate General or Legal Aid Botswana, shall, for the purposes of this Part, be treated as a contract of pupillage entered into between a pupil master and his or her pupil:

Provided that the provisions of sections 19, 20 and 21 relating to the contents, registration and termination of a contract of pupillage shall not apply to such contract.

19. Before a pupil master enters into a contract of pupillage with a pupil, he or she shall set out in a letter to the pupil, such information as to the terms and conditions to be included in the contract, as may be prescribed.

Contents of contract of pupillage

20. (1) A pupil master shall submit every contract of pupillage to the Society for registration, within one month from the date of execution of the contract.

Registration of contract of pupillage

(2) Every application for registration under subsection (1), shall be accompanied by —

(a) a certificate of admission; and

(b) the prescribed fee.

Termination of contract of pupillage

21. (1) A contract of pupillage may be terminated by the mutual consent of both parties, or on the death of either party.

(2) Where a contract of pupillage is terminated by mutual consent or the death of the pupil master, the pupil, in such case, may enter into a new contract of pupillage with another pupil master for the remainder of the term of the contract of pupillage.

(3) The new contract of pupillage referred to under subsection (2), shall be submitted by the new pupil master to the Society for registration.

Provisional practising certificate

22. (1) The Registrar may, on the recommendation of a pupil master, issue to a pupil serving a contract of pupillage under the pupil master other than the Attorney-General, the Director of Public Prosecutions, the Director of Military Prosecutions, a Judge Advocate General or Legal Aid Botswana, a provisional practising certificate.

(2) A pupil serving his or her pupillage under the Attorney-General, the Director of Public Prosecutions, the Director of Military Prosecutions, a Judge Advocate General or Legal Aid Botswana, or a pupil issued with a provisional practising certificate under subsection (1), shall, under the supervision of his or her pupil master, have a right of audience in the courts of Botswana during the period of his or her contract of pupillage.

Certificate of pupillage

23. (1) Upon the satisfactory completion of the period of the contract of pupillage, a pupil master shall issue his or her pupil with a certificate of pupillage in the form prescribed, for submission to both the Registrar and the Society.

(2) Where, at the end of the period of a contract of pupillage, the pupil master is not satisfied that the pupil has met the terms and conditions of the contract of pupillage satisfactorily, the pupil may enter into a further contract of pupillage with the same pupil master or another pupil master for such period as will enable him or her to complete the requisite term of pupillage.

Exemption from contract of pupillage

24. A person may be exempted from pupillage under such circumstances, as may be prescribed.

Remuneration of pupil

25. A pupil master shall pay to his or her pupil a reasonable remuneration befitting the status of the pupil, during the period of pupillage.

PART V — *Practising Certificate*

Application for practising certificate

26. (1) A legal practitioner who intends to practise, other than the persons specified in Schedule 2, shall make an application to the Registrar, in such form as may be prescribed, for a practising certificate.

(2) On receipt of an application for a practising certificate, the Registrar shall cause to be entered in a register kept for that purpose, the applicant's full names, his or her place of business and the date of his or her admission.

(3) Notwithstanding the provisions of subsection (1), a legal practitioner shall not practise on his or her own account for a period of not less than 12 months, following his or her admission.

27. (1) Subject to section 28, the Registrar shall, within seven days of an application made in terms of section 26, issue a practising certificate in such form as may be prescribed, to a legal practitioner, if the Registrar is satisfied that —

Issue of
practising
certificate

- (a) the name of the legal practitioner is on the roll;
- (b) in the case of an application for the first time, the legal practitioner has obtained a certificate of pupillage or he or she has been exempted from pupillage;
- (c) the legal practitioner has passed such bar examination, as may be prescribed;
- (d) the legal practitioner is not suspended from practice;
- (e) the legal practitioner has been issued a fidelity fund certificate under section 34 by the Society;
- (f) the legal practitioner has furnished a certified copy of the audited accounts of his or her trust account, certified as having been properly kept, to the Society;

Provided that the provisions of this paragraph shall not apply to a legal practitioner applying for a practising certificate for the first time;

- (g) the legal practitioner has paid the annual subscription under section 54 and such fees as may be prescribed;
- (h) the legal practitioner has paid all fines, if any, imposed on him or her under section 71 (7), or refunded moneys required to be refunded by him or her under section 71 (8), or any fine imposed by the Disciplinary Committee;
- (i) the legal practitioner has during the immediately preceding year undertaken such *pro deo* or *pro bono* work as may be prescribed;

Provided that the provisions of this paragraph shall not apply to a legal practitioner applying for a practicing certificate for the first time or a legal practitioner employed by a private entity;

- (j) the legal practitioner has attended the minimum number of continued development courses or workshops, as may be prescribed;
- (k) the legal practitioner has procured professional indemnity insurance in terms of section 38 (3); and
- (l) the legal practitioner is a fit and proper person in terms of section 8 (1).

(2) The provisions of subsection (1) (e) and (f) shall not apply to advocates.

28. (1) Subject to subsection (2), a legal practitioner shall pay to the Registrar in respect of each practising certificate to be issued by the Registrar, before the certificate is issued, such fee as may be prescribed.

Fees payable
on issue of
practising
certificate

(2) A reduced fee of one half of the fee referred to in subsection (1), in relation to advocates and attorneys, shall be payable in respect of the first two practising certificates to be issued to an advocate or attorney after his or her admission:

Provided that the provisions of this subsection shall not apply to an advocate or attorney who, prior to admission under this Act, has been admitted and has practised in another country.

(3) All fees received by the Registrar under this section shall be paid to the Society and shall be applied in such manner, as the Society may consider fit for the purposes of the Society.

Date and
expiry of
practising
certificate

29. (1) A practising certificate shall have effect from the beginning of the day of which it bears the date, and that date shall be entered by the Registrar in the register kept under section 26 (2).

(2) Subject to subsection (3), every practising certificate shall expire at the end of 31st December next after it is issued.

(3) Where the name of any legal practitioner is removed from the roll, any practising certificate of that legal practitioner for the time being in force shall expire forthwith, and the date of such expiration shall be entered in the register kept under section 26 (2).

(4) If any legal practitioner fails to apply for a practising certificate for any year after the expiration of his or her practising certificate, the Registrar shall notify the legal practitioner of the expiration of his or her practising certificate by means of a registered letter posted to him or her at his or her last known address, and if after 30 days of the posting of such letter the legal practitioner has not applied for a practising certificate, the Registrar shall remove the name of the legal practitioner from the roll.

(5) A name removed from the roll in terms of subsection (4) may be restored to the roll on application for a practising certificate made by the legal practitioner and on payment of the annual subscription and prescribed fees.

PART VI — *Fidelity Guarantee Fund*

Continuation
of Fund

30. (1) There shall be continued and maintained by the Society, the Fidelity Guarantee Fund (in this Part referred to as "the Fund") which shall be administered in accordance with the provisions of this Part.

(2) A legal practitioner, other than an advocate or persons specified in Schedule 2 shall be a member of the Fund.

Fund to vest
in Board of
Trustees

31. The Fund shall vest in and be administered by a Board of Trustees (in this Part referred to as "the Board") who shall hold the Fund in trust for the purpose of compensating any person who has sustained any loss or hardship in consequence of dishonesty on the part of a legal practitioner or theft of money held in trust by a legal practitioner, or of any employee of a legal practitioner, in connection with that legal practitioner's practice.

32. (1) The Board shall consist of three persons appointed by the Council, namely —

Appointment
of Board of
Trustees

(a) two members of the Society who are of at least 10 years standing as legal practitioners; and

(b) a professional accountant practising in Botswana who is a member of the Botswana Institute of Chartered Accountants established under the Accountants Act.

Cap. 61:05

(2) The Council may, in respect of each member appointed by it under subsection (1), appoint an alternate member with the same qualifications as the member appointed under subsection (1).

(3) A member of the Board shall hold office for a period of three years from the date of his or her appointment.

(4) The Secretary shall be the Secretary of the Board.

(5) The Board shall, from among its members, elect a chairperson annually.

(6) Where the chairperson is absent from any meeting of the Board, the members of the Board shall elect a chairperson from among their number for that meeting.

(7) The Board shall meet at such times and places as the chairperson may determine from time to time.

(8) The Board shall regulate its own proceedings.

33. A person who intends to apply for a practising certificate other than a legal practitioner employed in a private entity or the persons specified under Schedule 2 shall, prior to doing so, apply to the Secretary for a fidelity fund certificate, in such form as may be prescribed.

Application for
fidelity fund
certificate

34. The Secretary shall issue a fidelity fund certificate to a person who applies for one, if the Secretary is satisfied that the applicant —

Issue of fidelity
fund certificate

(a) has his or her name on the roll;

(b) is not suspended from practice; and

(c) has submitted to the Secretary, an audit report issued by a certified auditor registered with the Botswana Accountancy Oversight Authority established under the Financial Reporting Act, in respect of the immediate preceding year, confirming that the applicant has complied with the provisions of this Act relating to the keeping of trust accounts:

Cap. 46:10

Provided that the provisions of this paragraph shall not apply to a legal practitioner applying for a practising certificate for the first time.

35. (1) A legal practitioner, other than the persons specified in Schedule 2, shall pay to the Secretary in respect of each fidelity fund certificate issued by the Secretary, before the certificate is issued, a fee (in this Part referred to as “annual contribution”) as may be prescribed.

Contribution
to Fund

(2) All annual contributions received by the Secretary under this section, shall be paid into the Fund.

Investment of Fund moneys	<p>36. The Board may invest moneys which form part of the Fund and are not immediately required for any other purpose provided for by this Part, in —</p> <ul style="list-style-type: none"> (a) any interest bearing account with any bank licensed under the Banking Act; (b) any building society registered under the Building Societies Act; (c) any government securities; (d) any non-bank financial institution licensed in terms of the Non-Bank Financial Institutions Regulatory Authority Act; or (e) immovable property.
Cap. 46:04 Cap. 42:03 Cap. 46:08	
Accounts to be kept	<p>37. (1) The Board shall cause proper accounts of the Fund to be kept and audited by a certified auditor appointed by the Board, who is a member of the Botswana Institute of Chartered Accountants established under the Accountants Act and who is not a member of the Board or an immediate family member of a member of the Board.</p> <p>(2) The certified auditor appointed under subsection (1) shall, within three months of the end of the year, present to the Board, the audited accounts at the end of 31st December in every year.</p>
Professional indemnity	<p>38. (1) The Board may enter into a contract with any person or company carrying on fidelity insurance business in Botswana, whereby the Fund will be indemnified to the extent and in the manner provided in such contract, against liability to pay claims under this Part.</p> <p>(2) A contract referred to under subsection (1), shall be entered into in respect of legal practitioners generally.</p> <p>(3) Every legal practitioner, other than a legal practitioner employed in a private entity or the persons specified in the Schedule 2, shall procure and maintain a professional indemnity insurance to the extent and value, as may be prescribed.</p> <p>(4) A person claiming against the Board shall not have —</p> <ul style="list-style-type: none"> (a) any right of action against any person or company with whom a contract of indemnity has been entered into in terms of this section, in respect of such contract; or (b) any right to any money paid by the insurer in accordance with such contract. <p>(5) Money paid by an insurer in accordance with a contract referred to under subsection (1), shall be paid into the Fund, for appropriation by the Board.</p>
Moneys to credit of Fund	<p>39. There shall be carried to the credit of the Fund —</p> <ul style="list-style-type: none"> (a) all moneys in the Fund at the commencement of this Act; (b) all annual contributions paid to the Secretary in pursuance of section 35; (c) all interest, dividends and other income and accretions of capital arising from the investment of the Fund or any part thereof; (d) the proceeds of any realisation of any investment of the Fund; (e) all sums received by the Board under any contract of indemnity effected by the Board under section 38;

- (f) all sums received by the Board as a result of its subrogation under section 41 (2) and by way of interest payments under the provisions of this Part; and
- (g) any other moneys which may belong or accrue to the Fund or be received by the Society for the Fund.

40. All moneys forming part of the Fund and all investments of the Fund shall be applied to make payment of —

- (a) any costs, charges and expenses of maintaining, administering and operating the Fund;
- (b) any premiums on assurances effected by the Board under section 38;
- (c) any grant which the Board may make under section 41; and
- (d) any other sums properly payable out of the Fund by virtue of this Part.

Application of moneys in Fund

41. (1) Where it is proved to the satisfaction of the Board that any person has sustained loss or hardship in consequence of dishonesty on the part of a legal practitioner or by theft of money held in trust referred to in section 31 by a legal practitioner, the Board may make a grant to that person out of the Fund for the purpose of relieving or mitigating that loss or hardship.

Payment of compensation for loss due to dishonesty or theft

(2) On the making by the Board of any grant under this section to any person, in respect of any loss —

- (a) the Board shall, to the amount of that grant, be subrogated to any rights and remedies in respect of that loss of the person to whom the grant is made; and
- (b) the person to whom the grant is made shall have no right under insolvency or other legal proceedings or otherwise, to receive any sum out of the assets of the legal practitioner or his or her employee, in respect of the loss, until the Board has been reimbursed the full amount of its grant.

(3) For the purposes of subsection (2), reference to the person to whom the grant is made includes, in the event of his or her death, insolvency or other disability, his or her personal representative or any other person having authority to administer his or her estate.

PART VII — *Trust Account and Protocol Register*

42. (1) Every legal practitioner practising on his or her own or in partnership, other than an advocate, a legal practitioner employed in a private entity or the persons specified under Schedule 2, shall open and keep a separate trust account with a bank licensed under the Banking Act, in which he or she shall deposit all moneys held or received by him or her, in connection with his or her practice in Botswana on account of any person.

Trust account

(2) A legal practitioner may invest in a separate savings or other interest-bearing account opened by him or her with any bank licensed under the Banking Act or a building society registered under the Building Societies Act, any money deposited in his or her trust account, which is not immediately required for any particular purpose.

(3) The interest, if any, on money deposited in terms of subsection (1) and the interest on money invested in terms of subsection (2) shall, without any deduction, be paid over to the Fund by the legal practitioner concerned, at the prescribed time and in the manner prescribed:

Provided that the legal practitioner may submit to the Society a claim for actual costs incurred in the performance of any duty imposed on the legal practitioner under this section.

(4) The Society shall settle or reject a claim submitted by a legal practitioner in accordance with the proviso to subsection (3), within 30 days of receipt of the claim.

(5) Notwithstanding subsections (2) and (3), regulations may prescribe the mode of investing any money deposited in a trust account which is not immediately required for any particular purpose and the manner of dealing with any interest accruing on such money.

(6) A legal practitioner shall, at the end of every three months, furnish the Society with a certified copy of the bank statement of his or her trust account.

(7) A legal practitioner operating a trust account in accordance with the provisions of subsection (1), shall keep proper books of accounts containing particulars and information as to moneys received, held or paid by him or her for or on account of any person.

(8) A legal practitioner shall cause the trust account to be audited once in every year by a certified auditor who is registered with the Botswana Accountancy Oversight Authority, established under the Financial Reporting Act, and the certified auditor shall submit to the Council a report containing such information, as may be prescribed.

(9) Where there is a reasonable suspicion that a legal practitioner's trust account is not in order or is kept in contravention of the provisions of subsections (1) and (7), the Council or a person nominated by it, may inspect the accounting records of the trust account of the legal practitioner, and if it is found upon such inspection that the records of such trust account have not been properly kept, the Council shall cause the records of the account of the legal practitioner to be written up and recover the costs of the inspection or of such writing up, as the case may be, from the legal practitioner.

(10) No amount standing to the credit of the trust account in the bank shall form part of the assets of the legal practitioner concerned, and no such amount and interest accruing thereon shall be liable to attachment at the instance of any creditor of the legal practitioner.

(11) Upon an application made by the Council to the court and upon good cause shown, the court may prohibit a legal practitioner from operating in any way, his or her trust account or any other account opened or operated by the legal practitioner and, if there is reason to believe that trust moneys have been improperly deposited in any other account, the court may appoint a *curator bonis* to control and administer such account.

(12) The Master may, upon an application made by the Council or by any person having an interest in the trust account of a legal practitioner, appoint a *curator bonis* to control and administer the trust account —

- (a) upon the death or insolvency of the legal practitioner;
- (b) upon the assignment by the legal practitioner, of his or her estate;
- (c) in the event of the legal practitioner being removed from the roll or being suspended from practice;
- (d) in the event of the legal practitioner being declared by a court to be incapable of managing his or her own affairs; or
- (e) in the event of the legal practitioner abandoning his or her practice.

(13) A person aggrieved by a decision of the Master under subsection (12) may, within 30 days after the decision becomes known to him or her, appeal to the court, which may confirm or vary the decision of the Master or give such other decision as, in its opinion, the Master ought to have given.

(14) Nothing contained in subsection (12) or (13) shall be construed as preventing a legal practitioner practising in partnership with a legal practitioner referred to in subsection (12), from continuing to operate the trust account of that partnership.

(15) A bank at which a legal practitioner keeps a trust account shall not, in respect of any liability of the legal practitioner, not being a liability arising out of or in connection with the trust account, have or obtain any recourse or right, whether by way of set-off, counterclaim, charge or otherwise, against moneys standing to the credit of the account.

43. (1) Every notary practising in Botswana shall keep a register (in this section, referred to as a "protocol register"), in which he or she shall register all deeds notarised by him or her, in the order in which they are notarised.

Keeping of
protocol
register and
examination
of protocols

(2) The protocol register shall contain, in columns, the following information —

- (a) the distinguishing number;
- (b) the date of execution;
- (c) the nature and designation of the deed;
- (d) the full names and the appearers;
- (e) the date of registration; and
- (f) the amount of duty affixed to each deed.

(3) A notary shall cause all instruments to be neatly and securely bound together, when they amount in number to 100.

(4) A notary shall produce his or her protocols and protocol register to a commissioner who shall be appointed for that purpose by the Council, for inspection, at such time and place as the Council may direct, after receiving 48 hours' written notice from the Council.

(5) The commissioner appointed under subsection (4), shall make his or her examination as soon as possible after the first day of January and the first day of July in each year and report the results of his or her investigations to the Council.

(6) If a notary ceases to practise as such, he or she, or if that notary is dead, his or her executor, shall within a reasonable time deliver the notary's protocols and protocol register to the Secretary, who shall file them on record.

PART VIII — *Disciplinary Committee*

Appointment
of Disciplinary
Committee

44. (1) There shall be a Disciplinary Committee of the Council which shall consist of nine members appointed by the Council as follows —

- (a) five members appointed from the members of the Society; and
- (b) four members appointed from among persons nominated by other professional bodies and civil society organisations determined by the Council.

(2) The Council shall, from among the members appointed under paragraph (a) of subsection (1), elect a Chairperson and a Vice-Chairperson.

(3) The members of the Disciplinary Committee shall hold office for a period of two years:

Provided that, the Council may remove a member of the Disciplinary Committee from office, before the expiration of his or her period of office for good cause.

(4) The quorum at any meeting of the Disciplinary Committee shall be three members, which members shall include at least one member of the Society.

(5) The decision of the Disciplinary Committee shall be by a majority vote and, in the event of equality of votes, the person chairing shall have a casting vote.

Secretary of
Disciplinary
Committee

45. The Secretary of the Society shall be the Secretary of the Disciplinary Committee.

PART IX — *Misconduct*

Complaint
against legal
practitioner

46. (1) A complaint of professional misconduct against a legal practitioner may be made to the Council by any person.

(2) In this Part, "professional misconduct" includes disgraceful or dishonourable conduct incompatible with the status of a legal practitioner.

(3) The Secretary shall facilitate a resolution of the complaint between the complainant and the legal practitioner, within 30 days of receipt of a complaint against a legal practitioner.

(4) Where a resolution facilitated in accordance with subsection (3) is not reached, the Secretary shall, within 14 days of failure to resolve the complaint —

- (a) refer the complaint to the Disciplinary Committee; and
- (b) forward a copy of the complaint to the Attorney-General.

47. (1) Where a complaint is referred to the Disciplinary Committee, the Disciplinary Committee shall, within 60 days of receipt of an explanation by a legal practitioner under subsection (2), investigate such complaint by making such inquiries as it may think fit.

Investigation
of complaint
by Disciplinary
Committee

(2) Where the Disciplinary Committee is of the opinion that the complaint discloses a *prima facie* case of professional misconduct on the part of a legal practitioner, the Disciplinary Committee shall furnish the legal practitioner with particulars of the complaint and call on the legal practitioner to furnish it with his or her explanation regarding the complaint, within 30 days of receipt of the particulars of the complaint.

(3) If the Disciplinary Committee, after considering the complaint, is of the opinion that professional misconduct has been established, the Disciplinary Committee may —

- (a) warn or reprimand the legal practitioner;
- (b) impose a fine not exceeding P50 000 on the legal practitioner; or
- (c) order the legal practitioner to pay compensation to the complainant and such order shall, on application by the Council, be subject to confirmation by a court having jurisdiction in the circumstances.

(4) If the Disciplinary Committee considers that the professional misconduct established under subsection (3) is so serious as to warrant the suspension of the legal practitioner or the removal of his or her name from the roll, the Disciplinary Committee shall recommend to the Council to apply to the court —

- (a) to suspend the legal practitioner from practising for a specified period; or
- (b) to have the name of the legal practitioner removed from the roll.

(5) A copy of the recommendation referred to under subsection (4), shall be served on the Attorney-General, by the Secretary.

(6) A fine imposed on a legal practitioner under subsection (3) (b), shall be deemed to be an exercise of the civil jurisdiction of a court of competent jurisdiction in an action between the Society as plaintiff and the legal practitioner as defendant and such fine shall be enforceable in the same manner and be subject to appeal as orders or judgments of a court of competent jurisdiction.

(7) Without prejudice to any other remedy, where a fine imposed on a legal practitioner under this section, is not paid within 14 days after the making of the order imposing the fine, the Disciplinary Committee may, in order to satisfy the order made against the legal practitioner, issue a writ of execution directed to the Secretary to —

Suspension or
removal of
name from roll

- (a) attach such movable or immovable property of the legal practitioner, as may be specified in the writ; and
- (b) sell such property by public auction to satisfy the order made against the legal practitioner.

48. (1) Where a recommendation is made in terms of section 47 (4) to the Council, the Council shall apply to the court for the suspension of the legal practitioner from practising or the removal of his or her name from the roll.

(2) An application to the court under subsection (1), may be made by the Council by way of motion to the court, supported by an affidavit of the facts on which the application is based.

(3) Without prejudice to the provisions of subsection (2), the court may order that any question of fact shall be tried by pleadings or otherwise, as the court shall deem fit.

(4) On the hearing of any application made under subsection (1), the court may make an order that the legal practitioner concerned be suspended from practising or his or her name be removed from the roll, as the case may be, and may make such other order in relation to the application as the court may think fit.

(5) A copy of the decision of the court and the proceedings thereof shall be given to the Attorney-General, by the Secretary.

(6) Where the Disciplinary Committee fails to take any action in respect of a complaint referred to it under section 47 or the Council fails to carry out any recommendation made to it under section 47 (4), the Attorney-General shall, if he or she has reasonable cause to believe that the complaint or recommendation, as the case may be, relates to serious professional misconduct committed by the legal practitioner, apply to the court for the suspension of the legal practitioner from practising or the removal of the legal practitioner's name from the roll, and the provisions of subsection (2), shall apply as if the application had been made by the Council.

(7) Without prejudice to the preceding provisions of this section, the Registrar shall remove from the roll the name of any legal practitioner who is convicted of an offence involving dishonesty or moral turpitude, and the legal practitioner has not appealed against the conviction within the time specified for noting an appeal or, if he or she has appealed, the appeal has been dismissed.

(8) A legal practitioner who has appealed against his or her conviction for an offence involving dishonesty or moral turpitude shall not practise as a legal practitioner until his or her appeal has been allowed on the final hearing thereof.

(9) The Attorney-General, the members of the Council and the Disciplinary Committee shall not be subject or liable to any action or proceedings for damages in the *bona fide* execution of their duties and the taking of any steps or the institution of any proceedings, under or purporting to be under the provisions of this Act.

49. Professional misconduct on the part of any legal misconduct shall include, *inter alia*, the commission of any of the following acts —

- (a) entering into or continuing to be a party to any contract or arrangement with an unqualified person, the effect of which is to place him or her under such control on the part of such unqualified person, as may interfere with his or her independence as an officer of the court;
- (b) giving or taking allowances in contravention of the provisions of this Act or of any other law;
- (c) withholding the payment of trust moneys without lawful cause;
- (d) assisting, allowing or enabling an unqualified person to charge, recover or receive any fee or derive any remuneration in respect of or in connection with the preparation or execution of any document or the performance of any professional work which only a legal practitioner, is qualified by law to prepare, sign execute, attest or perform, or in any way conniving in any arrangement, agreement or understanding whereby such fee or remuneration is or shall be charged, recovered or received, by any such unqualified person;
- (e) opening or maintaining any office or branch which is not under the continuous personal supervision of an attorney;
- (f) keeping the accounts of his or her business as a legal practitioner in the books of accounts utilised in connection with any other business, in which he or she may be interested jointly with an unqualified person;
- (g) remunerating an employee who is an unqualified person by way of a share in the profits of his or her business as a legal practitioner;
- (h) assisting an unqualified person to recover charges for services rendered, by including the same in any bill of costs or memorandum of charges rendered by him or her as a legal practitioner, without disclosing the facts in such bill or memorandum;
- (i) entering into or continuing to be a party to any contract of partnership with, or of employment by, a person not being an attorney in estate and general agency, the direct or indirect result of which is to enable the unqualified person to enjoy or participate in fees reserved for legal practitioners or to secure for the legal practitioner the benefit of professional business solicited by the unqualified person; or
- (j) committing any act which may amount to professional misconduct at common law or which may be prescribed, as professional misconduct.

PART X — *The Law Society of Botswana*

Continuation
of Law Society
of Botswana

50. (1) The Law Society of Botswana established in terms of section 55 of the repealed Act, shall continue to exist as if established under this Act.

(2) The Society shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its own name and, subject to the provisions of this Act, performing such acts as bodies corporate may, by law, do or perform.

(3) The Society shall not, as a body corporate, be subject to any disability as regards the holding of land to which an individual would not be subject.

Objectives of
Society

51. The objectives of the Society shall be to —

- (a) promote legal education for the legal profession;
- (b) maintain and enhance the standards of professional conduct and integrity of all members of the legal profession;
- (c) represent the views of the legal profession;
- (d) assist the Government and the courts in all matters affecting the administration and practice of the law; and
- (e) do anything that is necessary for or conducive for the attainment of the objectives of the Society.

Powers and
functions of
Society

52. The Society may, for the purpose of the attainment of its objectives —

- (a) acquire, hold, develop and dispose of its property, whether movable or immovable and derive capital from such property;
- (b) raise or borrow money as may be required by the Society in connection with the performance of its functions or the exercise of its powers, in such manner as may be determined by the Society;
- (c) invest and deal with moneys of the Society not immediately required, in such manner as may be determined by the Society;
- (d) employ officers of the Society and determine the conditions of service of such staff;
- (e) employ the funds of the Society in obtaining or assisting any person to obtain a judicial order, ruling or judgment on a doubtful or disputed point of law where the Society deems it necessary or desirable in the interests of the public or the legal profession;
- (f) conclude any agreement with any person for the performance of any particular act or particular work or the rendering of particular services;
- (g) establish, promote, administer or assist in the establishment, promotion or administration of such schemes or pension or provident funds as may be determined by the Society; and
- (h) enter into contracts in connection with the carrying out of its duties, the performance of its functions or the exercise of its powers.

53. The membership of the Society shall consist of —	Membership of Society
(a) any person who — (i) holds a practising certificate issued in terms of section 27, (ii) has paid the annual subscription and any fees as may be prescribed, and (iii) undertakes to do <i>pro deo</i> or <i>pro bono</i> work; and	
(b) any person specified in Schedule 2.	
54. (1) Every member of the Society, including a legal practitioner employed in a private entity, shall pay to the Society such annual subscription and such fees as may be prescribed.	Annual subscription
(2) Subsection (1) shall not apply to persons specified in Schedule 2.	
55. Any member of the Society whose name is removed from the roll shall cease to be a member of the Society.	Cessation of membership
56. (1) For the proper management of the affairs of the Society, the Council of the Law Society shall be continued and shall consist of seven members, three of whom shall be legal practitioners of at least seven years' standing and at least one of whom shall be a legal practitioner of up to three years' standing; and at least five of the members shall be citizens of Botswana.	Continuation of Council of Society
(2) The members of the Council shall be elected at an annual general meeting and shall hold office for a period of two years.	
(3) Immediately after the election of the Council at an annual general meeting, the members of the Society shall elect a Chairperson and a Vice-Chairperson from among the elected members of the Council.	
(4) The Chairperson, or in his or her absence the Vice-Chairperson shall preside at all meetings of the Council, and in the absence of both the Chairperson and the Vice-Chairperson, the members present shall elect one of the members to preside at the meeting.	
(5) In the event of a vacancy in the Council, the Council may co-opt any member of the Society to become a member of the Council until the next elections of the Council at an annual general meeting.	
57. (1) Except as otherwise expressly provided by this Act or by any regulations made under this Act, the Council may exercise all the powers of the Society.	Powers of Council
(2) Notwithstanding the generality of subsection (1), the powers of the Society as a supervisory authority under the Financial Intelligence Act shall be exercised by the Secretary.	
58. (1) The Council may, for the purpose of performing its functions, establish such committees as it considers appropriate and may delegate to any such committee such of its functions as it considers necessary.	Appointment of committees
(2) The Council may appoint, to the committees established under subsection (1), such number of persons from its members and such number of persons with specialised skills, not being members, as it considers appropriate, to be members of such committees, and such persons shall hold office for such period as the Council may determine.	

(3) The Council shall appoint a Chairperson and Vice-Chairperson for any of its committees from amongst its members.

(4) An officer of the Society appointed in writing by the Secretary shall be secretary to any committee and shall, on the instructions of the Chairperson of the committee, convene meetings of the committee.

(5) Subject to the specific or general directions of the Council, a committee may regulate its own procedure and the Council may attach any conditions to the delegation of any of its powers to such committees.

(6) The Council may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

(7) Meetings of a committee shall be held at such times and places as the committee may determine, or as the Council may direct.

Officers of
Society

59. (1) The Council shall appoint a treasurer and other officers of the Society.

(2) The Secretary shall be the Secretary of the Council.

PART XI — *Meetings of Council*

General
meeting

60. (1) Subject to the provisions of this Act, the Council may regulate its own proceedings.

(2) The Council shall convene an ordinary general meeting of the Society, at least once in 12 months.

Special general
meeting

61. (1) The Council may, upon giving notice, in writing, of not less than 14 days, convene a special general meeting of the Society, but if the urgency of any particular matter does not permit the giving of such notice, a special general meeting may be called upon the giving of a shorter notice period.

(2) The notice referred to under subsection (1), shall state —

(a) the place and time for the meeting; and

(b) the agenda for the meeting.

(3) Notwithstanding subsection (1), at least 25 per cent of the members of the Society may at any time request a special general meeting of the Society, by written notice signed by all of them, specifying the object of the proposed meeting and sent by post, or delivered to the Secretary, and the Council shall thereupon convene a special general meeting of the Society.

(4) There shall preside at any meeting of the Council —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of the Chairperson and Vice-Chairperson, such member as the members present may elect from amongst themselves for the purpose of that meeting.

62. (1) The quorum at any meeting of the Council shall be a simple majority of the members.

Quorum and procedure at meetings

(2) A decision of the Council on any question shall be by the majority of the members present and voting at the meeting and, in the event of an equality of votes, the member presiding shall have a casting vote in addition to that member's deliberative vote.

(3) A decision of the Council shall not be rendered invalid by reason of a vacancy on the Council or the fact that a person who was not entitled to sit as a member did so sit.

63. The Secretary shall cause to be recorded and kept, proper minutes of all meetings of the Society and of all meetings of the Council,

Minutes of meetings

PART XII - Financial Provisions

64. (1) The funds of the Society shall consist of —

Funds of Society

- (a) such grants and donations as the Society may receive;
- (b) annual subscription fees paid by members of the Society;
- (c) such fines as may be imposed on legal practitioners in terms of section 47 (3); and
- (d) any income that the Society may receive from the Society's investments.

(2) The Society shall utilise the revenues acquired under subsection (1) to meet the costs incurred for its operations and any surplus accrued shall be used for such purposes as are consistent with the provisions of this Act.

65. The financial year of the Society shall be a period of 12 months, beginning on the 1st April of each year and ending on the 31st March of the subsequent year.

Financial year

66. (1) The Society shall keep and maintain proper accounts and records of accounts in respect of each financial year, and shall prepare, in each financial year, a statement of such accounts showing —

Accounts and audit

- (a) an income and expenditure statement, showing all moneys that were received by and had accrued to the Society during the financial year, and all the expenditure incurred and payments made by the Society, during that year;
- (b) a balance sheet, showing the Society's financial position and the state of its assets and liabilities as at the end of the previous financial year; and
- (c) a cash flow statement for the previous year.

(2) The accounts of the Society in respect of each financial year shall, within three months of the end of the financial year, be audited by an auditor appointed by the Society.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor deems it necessary to comment on, whether or not —

- (a) the auditor has received all the information and explanations which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Society have been properly kept;
- (c) the Society has complied with all the financial provisions of the Act, with which it is its duty to comply with; and
- (d) the statement of accounts prepared by the Society, was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Society.

(4) The auditor's report and a copy of the audited accounts shall, within 14 days of completion, be forwarded to the Society by the auditor.

(5) The auditor's report and the audited accounts shall be presented by the Council, at an ordinary general meeting.

(6) The Society shall, within a period of six months after the end of the financial year or within such longer period as the Minister may direct, submit to the Minister, a comprehensive report on the operations of the Society during such year, together with the auditor's report and audited accounts.

Pension and other funds

67. (1) The Society may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its officers and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its officers.

(2) The Society may contract with insurance companies or such other bodies as may be appropriate, for the maintenance and administration of the funds authorised under subsection (1).

Annual report

68. The Council shall present to the ordinary general meeting, a full report of the activities of the Society, which shall be accessible to members of the public.

PART XIII — *Miscellaneous Provisions*

Common Seal

69. The common seal of the Society shall be kept in the custody of the Secretary and used in such manner, as may be prescribed.

Contingency fee agreement

70. (1) A legal practitioner shall not be entitled to any fees for services rendered in respect of any legal proceedings covered by a contingency fee agreement, unless a client of the legal practitioner is successful in such proceedings.

(2) For the purposes of this section, “contingency fee agreement” means an agreement between a legal practitioner and a client of the legal practitioner, in terms of which the legal practitioner agrees to provide legal services to the client in respect of the prosecution of a claim sounding in money and the client agrees to pay the legal practitioner, no fees other than a fee consisting of an agreed percentage of the total amount recovered by the legal practitioner on behalf of the client, when such recovery is effected.

(3) A legal practitioner shall be entitled to fees equal to or, subject to subsection (4), higher than taxed or assessed attorney and own client fees for any services rendered, if such client is successful in such proceedings to the extent set out in the contingency fee agreement.

(4) A fee under subsection (3) may, in accordance with the contingency fee agreement exceed taxed or assessed attorney and own client fees by a maximum of 100 per cent, subject to a maximum of 25 per cent of the total amount awarded and recovered by a client.

(5) A legal practitioner shall not enter into a contingency fee agreement with any person who qualifies for legal aid under the Legal Aid Act if the matter intended to be covered by the contingency fee agreement is a matter for which legal aid is available.

(6) A contingency fee agreement shall become valid and enforceable from the date on which such agreement is signed by both the legal practitioner and client.

(7) A legal practitioner shall, immediately upon conclusion of a contingency agreement, register such agreement with the Society.

(8) Notwithstanding the provisions of subsections (1) to (7), a legal practitioner shall cause to be filed, in a client’s file, such other fee agreement in respect of any matter.

(9) Subject to the provisions of subsection (8), a legal practitioner shall not, in relation to the same matter, make any further charges other than those provided in the fee agreement.

71. (1) A person, other than a legal practitioner admitted and enrolled, shall not — Offences

- (a) practise as a legal practitioner within Botswana;
- (b) in any manner hold himself or herself out as or pretend to be a legal practitioner; or
- (c) make use of any words, name, title, addition or description implying or tending to the belief that he or she is a legal practitioner or is recognised by law as such.

(2) A person, other than a legal practitioner shall not orally or by means of any written or printed matter or in any manner whatsoever, directly or indirectly, either for himself or herself or for any other person, canvass, advertise or tout for, or make known his or her preparedness or that of such other person to undertake any work, whether for or without remuneration, in connection with the administration or liquidation or distribution of the estate of any deceased or insolvent person, lunatic, or person under other disability.

(3) A legal practitioner whose name has been removed from the roll or who has been suspended from practice shall not, while his or her name is removed from the roll or he or she is suspended, continue to practise as a legal practitioner directly or indirectly by himself or herself or in partnership or association with any other person.

(4) A legal practitioner shall not employ, in any capacity whatsoever, any person whose name has been removed from the roll or suspended from practice while the name of the person is removed from the roll or he or she is suspended.

(5) A legal practitioner shall not make over, share or divide with any person other than a legal practitioner in Botswana or a legal practitioner outside Botswana, either by way of partnership, commission or allowance or in any other manner, any portion whatsoever of his or her professional fees.

(6) A person who contravenes the provisions of subsections (1) to (5) commits an offence and is liable to a fine not exceeding P5 000 for each offence:

Provided that it shall not be deemed to be a contravention of subsection (2) if —

- (a) any board of executors or trust company, not being a private company within the meaning of the Companies Act —
 - (i) has in its name or title words indicating that its objects or functions include work in connection with the administration, liquidation or distribution of any estate mentioned in subsection (2), or
 - (ii) on signboards, nameplates, or notices exhibited on the premises in which the board of executors or trust company carries on business, on its stationery, or on its usual annual almanacs or in any advertisement in the public press, or in its annual reports or the proceedings at an annual general meeting makes known by a simple statement to the effect that its objects or functions include any such work;
- (b) any person in reply to a direct inquiry voluntarily made of him or her by someone else makes known the preparedness of himself or herself or some other person to perform such work;
- (c) any shareholder or employee of a board of executors or trust company described in paragraph (a) canvasses another shareholder or employee of the same board of executors or trust company on behalf of such board or company; or
- (d) any attorney, notary or conveyancer or any commercial banking institution or any such board of executors or trust company indicates in any public notice required by law in connection with the liquidation or administration of any estate, that he or she does such work.

(7) A legal practitioner who contravenes section 42 (1), commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding six months, or to both.

(8) A court convicting a legal practitioner under subsection (7) shall, in addition to the penalty prescribed therein, order the legal practitioner to refund any money which he or she failed to deposit in his or her trust account and to pay to the Fund, the interest which would have accrued if the money had been so kept in deposit.

(9) A legal practitioner who contravenes the provisions of subsection (2), (3) or (7) or section 42 (1) shall be guilty of professional misconduct and shall, in addition to the liability imposed by subsection (6), (7) or (8) of this section, be liable to have his or her name removed from the roll or be suspended from practice, on the application by the Council under section 48 (2) or by the Attorney-General under section 48 (6), to the court.

(10) Except as provided in subsection (11), a person, not being a legal practitioner holding a practising certificate issued in terms of section 27, who for or in expectation of any fee, gain or reward, direct or indirect, to himself or herself or to any other person, draws or prepares or causes to be drawn or prepared any of the following documents —

- (a) any contract, deed or instrument relating to land or immovable property, other than conditions of sale or brokers' notes;
- (b) any will or other testamentary instrument;
- (c) any contract, deed or instrument relating to the creation or dissolution of any partnership or any variation of the terms thereof; or
- (d) any instrument or document relating to or required for use in any action, suit or other proceeding in a court of civil jurisdiction within Botswana,

commits an offence and is liable to a fine not exceeding P10 000 and, in default of payment, to imprisonment for a term not exceeding five years.

(11) Notwithstanding the provisions of subsection (10), the words "fee, gain or reward, direct or indirect" contained therein shall not include or apply to—

- (a) the salary or emoluments of an employee if no fee, gain or reward is sought or obtained by his or her employer from the person on whose behalf the document was drawn or prepared; or
- (b) any commission or other remuneration to which any person is or may be entitled to, either by law or otherwise, for service in his or her capacity as executor, administrator, trustee, curator, tutor or guardian by virtue of his or her appointment as such by any court or under the provisions of any will or other testamentary instrument, or as agent for any person holding such appointment.

(12) The provisions of subsection (10), shall not apply to —

- (a) any person in the employ of a legal practitioner, who draws or prepares or causes to be drawn or prepared any such documents in the course of his or her employment and on behalf of his or her employer;

Cap. 42:02

- (b) any person in the service of the Government who draws or prepares or causes to be prepared any of the documents in the course of his or her duty;
- (c) any trustee appointed in terms of the provisions of the Insolvency Act or any executor, administrator or curator or any liquidator of a company drawing or preparing any such document in the course of his or her statutory duties and receiving such fees as may be allowed by law; or
- (d) any practising advocate in so far as he or she would be entitled to draw or prepare any of the documents referred to in paragraphs (a) to (c), in the ordinary course of his or her profession.

Power of Council to make rules

72. (1) The Council may, subject to approval by a special resolution, make rules which shall be binding on all members of the Society, providing for any matter which is to be prescribed and in addition prescribing all or any of the following matters —

- (a) the regulation of powers exercisable by the Council and any committees thereof, and delegation of powers;
- (b) the manner of convening general meetings of the Society;
- (c) the manner of election, removal and replacement of the Chairperson, the Vice-Chairperson and other members of the Council, and the committees of the Council; and
- (d) such other matters as may be deemed by the Council to be necessary for the promotion of the functions and the regulation of the affairs of the Society.

(2) For the purposes of this section, “special resolution” means a resolution passed by not less than two-thirds of members of the Society as may be present and vote thereon at a general meeting of the Society duly convened with notice of the intention to propose such resolution.

(3) Any rules made under subsection (1) shall not have effect, unless approved by the Chief Justice and published in the *Gazette*.

Regulations

73. (1) The Minister may, in consultation with the Chief Justice and the Council, make regulations for the better carrying out of the provisions of this Act and for any other matter required to be prescribed under this Act.

(2) Without prejudice to the generality of subsection (1), regulations made in accordance with subsection (1) may prescribe for —

- (a) the fees to be paid under this Act;
- (b) the accredited universities that legal practitioners may acquire an accredited bachelor's degree in law or its equivalent in terms of section 4 (1) (b) (ii);
- (c) the manner of application for membership of the Society;
- (d) the form and manner of the registers and other records to be kept by the Society;
- (e) the method of investigating complaints against legal practitioners;
- (f) the form and manner of records or other documents kept by legal practitioners for the purposes of this Act;

- (g) the procedure for the inspection of any records or documents kept by legal practitioners in terms of this Act;
- (h) procedures for the certification of Law Clinics by the Council;
- (i) the content and form of contingency fee agreements;
- (j) the procedures for the annual certification by the Society, in consultation with Legal Aid Botswana, of legal practitioners who have undertaken pro deo or pro bono work; and
- (k) the fees and allowances payable to members of the Disciplinary Committee and to members of the committees of the Council appointed in terms of section 58.

74. The Legal Practitioners Act (herein referred to as "the repealed Act") is hereby repealed.

Repeal of
Cap. 61:01

75. (1) Notwithstanding the repealed Act, any person admitted and enrolled to practise as a legal practitioner immediately before the commencement of this Act shall be deemed to have been so admitted and enrolled under this Act.

Transitional
and savings
provisions

(2) All rights, obligations, assets and liabilities which have accrued to the Society in terms of the repealed Act, shall, upon the coming into operation of this Act, simultaneously pass and accrue to the Society and be dealt with in terms of this Act.

(3) Any disciplinary proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced by or against the Disciplinary Committee in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(4) Any legal proceedings which, before the coming into operation of this Act, were pending shall be continued or enforced by or against the Society in the same manner as they would have been continued or enforced before the coming into operation of this Act.

(5) The Board of Trustees appointed under section 35 of the repealed Act, shall continue as if appointed under this Act.

(6) All employees of the Society established under the repealed Act shall continue to be corresponding employees of the Society under this Act, and shall continue in office for the period which, and be subject to the conditions under which they were appointed in terms of the repealed Act.

(7) Any complaint of professional misconduct made against any legal practitioner which was pending before the Disciplinary Committee immediately before the commencement of this Act shall be deemed to have been made under the corresponding provisions of this Act.

(8) All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as it is not inconsistent with the provisions of this Act, continue in force as if made under this Act.

SCHEDULES

SCHEDULE 1

OATH OR AFFIRMATION OF OFFICE
(In the courts of Botswana)
(section 11)

I,
do swear (or do solemnly affirm) that I will not demean myself in the practice
of
according to the best of my knowledge and ability.

(In the case of an Oath here add)
So help me God

Sworn (or affirmed) before me.....
at this day of 20

.....
Registrar

SCHEDULE 2

EXEMPTED PERSONS

(sections 26 (1), 30 (2), 33, 35 (1), 38 (3), 42 (1) and 54)

(1) The Attorney-General, the Director of Public Prosecutions, the Director of Military Prosecutions, a Judge Advocate General and any legal practitioner in the Attorney-General's Chambers, the Directorate of Public Prosecutions or the Botswana Defence Force.

(2) A legal practitioner admitted and enrolled who is employed by the Government, including a legal practitioner employed by a statutory corporation.

(3) Any person delegated by the Director of Public Prosecutions to appear on behalf of the State in criminal matters.

(4) The Chief Executive Officer of Legal Aid Botswana and any legal practitioner employed by Legal Aid Botswana.

PASSED by the National Assembly on this 1st day of August, 2022.

BARBARA N. DITHAPO,
Clerk of the National Assembly.