

• NEWSFLASH

LEGAL PRACTITIONERS BILL

BILL NO 9 OF 2022 (THE "BILL")

The objective of the Bill is to repeal and re-enact the Legal Practitioners Act [Cap.61:01] (the "Act"). The Bill proposes several far-reaching changes which are summarised below:

ADMISSION AND ENROLMENT OF LEGAL PRACTITIONERS

For one to be admitted as a legal practitioner, he or she must satisfy the High Court that he or she is fit and proper person, has obtained by examination a bachelor's degree in law from the University of Botswana or a university as may be prescribed. He or she should have passed practical or bar examinations, completed pupillage, and in respect of non-citizens, there must be a reciprocal provision in the laws of the country of which he or she is a citizen to permit a citizen of Botswana to practice in such country.

In addition to this, a new subsection has been added to define the phrase, "fit and proper." In terms of the Bill, for one to be considered fit and proper, he or she shall not have been convicted of a serious offence in terms of the Proceeds and Instruments of Crime Act, shall not have been convicted outside Botswana of a criminal offence which if committed in Botswana would have been a serious criminal offence, shall not be an unrehabilitated insolvent, shall not have been a subject of any investigation by supervisory authority or investigatory authority in terms of the Financial Intelligence Act, 2022 No. 2 of 2022, and shall not have held a senior management position in a company that is disqualified from trading by a professional body or supervisory authority.

■ **ADMISSION OF FOREIGN ADVOCATES**

An advocate who is not a citizen and is not resident in Botswana but is qualified to practice as an advocate in the superior court of any prescribed country or country prescribed by parliament may be admitted to practice as a foreign advocate.

■ **LEGAL PRACTITIONER EMPLOYED BY LAW CLINIC**

The Bill adds a new clause which requires a legal practitioner employed by a law clinic to apply for a practising certificate, apply for a fidelity fund certificate, and enter into a contract of pupillage.

■ **CONTRACT OF PUPILLAGE**

The Bill adds the office of the Director of Military Prosecutions or Judge Advocate General to the designation of offices where pupillage can be served.

■ **FIDELITY GUARANTEE FUND**

A requirement has been added for an applicant for a fidelity fund certificate to submit an audit report to the Secretary of the Society, reporting that the applicant has complied with the requirements relating to the keeping of trust accounts.

Every legal practitioner except those employed in any private entity or institution shall procure and maintain professional indemnity insurance as prescribed.

■ **KEEPING OF TRUST ACCOUNTS**

The Bill provides that interest accrued on moneys deposited in the trust account of a legal practitioner, shall without any deduction, be paid over to the fund and a legal practitioner may submit claims for actual costs incurred in the performance of any duty imposed on the legal practitioner.

■ **TOUTING**

Section 52 of the Act, which outlines misconduct on the part of a legal practitioner, has been amended by replacing it with clause 49, which omits touting, advertising, tendering, and any similar invitations relating to one's business as a legal practitioner as acts which constitutes misconduct.

■ **THE POWERS OF THE LAW SOCIETY UNDER THE FINANCIAL INTELLIGENCE ACT**

The Act has been amended by the addition of clause 57(2), which confers supervisory powers under the Financial Intelligence Act on the Secretary of the Law Society.

■ **CONTINGENCY FEE AGREEMENT**

A new clause has been added which provides for contingency fee agreements, which is an agreement between a legal practitioner and his or her client, in terms of which the client undertakes to pay the legal practitioner a regulated percentage of the sum of money to be recovered if the legal services to be provided are in respect of prosecutions of claims sounding in money, when the recovery of such money is effected by the legal practitioner. Legal practitioners practising under the Legal Aid Act are not permitted to enter into such agreements with clients if the matter in question is a matter for which legal aid is available.

■ **EXEMPTED PERSONS**

The Bill has amended schedule 2, which provides for persons exempted under sections 26(1), 30(2), 33, 35(1), 38(3), 42(1) and 54 of the Act, has been amended to include the Director of Military Prosecutions, a Judge Advocate General, the Chief Executive Officer of Legal Aid Botswana and any legal practitioner employed by Legal Aid Botswana.

■ **PRACTISING CERTIFICATES**

Clause 27 of the Bill amends section 30 by inserting additional requirements for the issuance of a practising certificate to a legal practitioner. The legal practitioner is required to have passed any bar examinations as prescribed, to have, during the immediate preceding year undertaken pro deo or pro bono work (not applicable to a legal practitioner applying for a certificate for the first time or one employed by a private entity), to have attended the minimum number of continued development courses or workshops as may be prescribed, to have obtained professional indemnity insurance, and to be a fit and proper person in terms of clause 8(1).

■ **OFFENCES**

Clause 71(6) of the Bill amends section 53(6) of the Act by increasing the fine for falsely presenting oneself as a legal practitioner, practising while struck off or suspended from the roll, or employing a legal practitioner whose name is struck off or suspended from the roll and sharing of profits with anyone other than a legal practitioner from BWP2,000 to BWP5,000. Section 71(7) amends section 53(7) of the Act by increasing the fine for contravening the sections providing for trust accounts from BWP5,000 to BWP10,000.

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