

LEGISLATIVE UPDATE

AUG 2022

1. The objective of this report is to inform our valued clients of new legislative developments during the reporting period of July 2022. The report provides a record of new legislation published in the Government Gazette in a summary form. Legislation for purposes of this report refers to Acts of Parliament, regulations prescribed pursuant to Acts of Parliament, any other statutory instruments and Bills before the National Assembly.
2. For purposes of the below table, terms defined and used in each row will bear the meaning as given to them in their respective row and will not bear the same meaning when used in other rows.

UPDATE	COMMENT	DATE PUBLISHED
Legal Practitioners Bill – Bill No. 9 of 2022 (The “Bill”)	<p>The objective of the Bill is to repeal and re-enact the Legal Practitioners Act [Cap 61:01](the “Act”).</p> <p>The Bill provides for requirements for admission and enrolment of legal practitioners, which are as follows:</p> <ul style="list-style-type: none">• The petitioner must be a fit and proper person;• The petitioner must have obtained by examination a bachelor’s degree in law from the University of Botswana or a university as may be prescribed;• The petitioner must have passed practical or bar examinations;• The petitioner must have completed pupillage; and• In respect of non-citizens there must be a reciprocal provision in the laws of the country of which the petitioner is a citizen to permit a citizen of Botswana to practice in such country. <p>In addition to this, a new subsection has been added to define the term fit and proper. In terms of the Bill, for one to be considered fit and proper, they must not:</p> <ul style="list-style-type: none">• Have been convicted of a serious offence in terms of the Proceeds and Instruments of Crime Act;• Have been convicted outside Botswana of a criminal offence which if committed in Botswana would have been a serious criminal offence;• Be an unrehabilitated insolvent;• 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• Have held a senior management position in a company that is disqualified from trading by a professional body or supervisory authority.	24 June 2022

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The Bill also provides that 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.

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.

Further, 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 in Schedule 2.

A requirement has been added in the Bill 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.

Further, the Bill proposes that every legal practitioner except those employed in any private entity or institution are required to procure and maintain professional indemnity insurance as prescribed.

The Bill requires that interest accrued on moneys deposited in the trust account of a legal practitioner be paid over to the fund. Further, a legal practitioner is permitted under the Bill to submit claims for actual costs incurred in the performance of any duty imposed on the legal practitioner.

Clause 49 of the Bill replaces section 52 of the Act (misconduct by legal practitioners), which clause now omits touting, advertising, tendering and any similar invitations relating to one's business as a legal practitioner as acts which constitute misconduct.

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.

A new clause has been added which provides for contingency fee agreements, which means 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.

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Legal practitioners practising under the Legal Aid Act are not permitted to enter into contingency fee agreements with clients if the matter in question is a matter for which legal aid is available.

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.

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;
- 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.

Clause 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.

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;
- Have, during the immediately 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);
- Have attended the minimum number of continued development courses or workshops as may be prescribed;
- Have obtained professional indemnity insurance; and
- Be a fit and proper person.

Bank of Botswana (Amendment) Bill, 2022 (the "Bill")

The following amendments have been made to the Bill

Clause 2 of the Bill amends section 2 of the Act by introducing the definitions of "deposit", "financial institution", "International Financial Reporting Standards", "Monetary Policy Committee" and "ordinary revenue".

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	<ul style="list-style-type: none">• Formulation of policies to maintain financial stability;• Implementation of exchange rate policy;• Conducting foreign exchange operations;• Management of official foreign exchange reserves of Botswana;• Establishment, promotion, regulation and oversight of safe, sound, efficient payment, clearance and securities settlement systems, operators and providers under the Act or other legislation;• Regulation, licensing and supervision of banks and other financial institutions as may be specified and imposition of remedial measures and sanctions on banks and other financial institutions;• Acting as a banker to banks and other financial institutions as the Board may decide;• Provision of services as banker, advisor and fiscal agent to government;• Collection of data and issue of statistics aligned with the bank's mandate;• Provision of advice to the council on potential risks to financial stability;• Proposal of recommendations, actions or programmes for adoption by the council;• Issuance of publications about the bank's policies, functions and operations and the achievements of its objectives; and• Ancillary activities incidental to the functions of the bank. <p>Section 4C empowers the bank to issue bye-laws, directives, circulars and notices in pursuance of the objectives of the bank. Failure to comply with this requirement is an offence punishable by fine not exceeding BWP2,500,000.00 or to imprisonment for a term not exceeding ten years.</p> <p>Clause 5 of the Bill amends section 5 of the Act by increasing the authorised capital of the bank from BWP25,000,000.00 to BWP150,000,000.00 to ensure the financial solvency and sustainability of the bank.</p> <p>Clause 6 amends the Act by inserting a new section, 5A which provides for the coverage of shortfall in capital to preserve the financial autonomy of the bank through a capital contribution by government by periodically issuing non-negotiable, non-interest-bearing securities at market rate.</p> <p>Clause 7 substitutes section 6 of the Act to provide for the coverage of profits, losses and distributable earnings of the bank in accordance with international financial reporting standards.</p>	

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	<p>“Deposit” means a sum of money –</p> <ul style="list-style-type: none">• Paid by one person to another person denominated in Botswana Pula or any other recognised currency; and• Subject to an agreement in terms of which an equal amount or any part thereof may be conditionally or unconditionally repaid by the person to whom the money has been paid – <p>(i) With or without interest/premium;</p> <p>(ii) On demand or at specified/unspecified time; and</p> <p>(iii) In circumstances agreed by or on behalf of the persons making the payments and the person receiving such payment, and such deposit is not referable to the provisions of property/services, other than the transmission of money by mobile telephone or electronic system or other giving of security to be rendered;</p> <p>“Financial institution” means –</p> <ul style="list-style-type: none">• A bank as defined under the banking Act;• A person licensed under this Act to carry out on business of buying and selling foreign exchange; o• A non-bank financial institution as defined under the Non-Bank Financial Institutions Regulatory Authority Act; <p>“International Financial Reporting Standards” means the most recent and applicable international accounting standards issued by the International Accounting Board;</p> <p>“Monetary Policy Committee” means the committee established for the formulation of the monetary policy within the bank; and</p> <p>“Ordinary revenue” means all revenue from taxes, duties, fees, rents, profits and income from any investment/undertaking by the government from any statutory corporation, excluding loans, grants or other forms of economic aid or capital raised and the average of the annual ordinary revenues for the three financial years immediately preceding for which audited accounts are available.</p> <p>The Act is further amended by inserting immediately after section 4, sections 4A, 4B and 4C. Section 4A provides for the operational independence of the bank in pursuit of its primary objectives from favour, prejudice or direction from other institutions.</p> <p>Section 4B lays down the functions of the bank, which comprise the following:</p> <ul style="list-style-type: none">• Formulation of monetary policy;	

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	<p>Clause 8 amends section 8 of the Act by extending the scope of duties of the board, which include the power to approve the bank's budget, assess risks and formulate contingency plans for the operations and security of the bank.</p> <p>Clause 9 substitutes section 9 of the Act by merging sections 9 and 10, which provide for the composition of the board. Clause 10 deletes section 10.</p> <p>Clause 11 amends section 11 of the Act by deleting reference to the deleted section 10.</p> <p>Clause 12 amends section 12 of the Act by providing that there shall preside a chairman at every meeting of the board, and in the absence of a chairman, any person elected by the present board members.</p> <p>Clause 13 amends section 13 by substituting:</p> <ul style="list-style-type: none">• Subsection (1), a new subsection that provides for the appointment of a governor by the President and that the said governor shall be a person with recognised experience in economics and financial matters;• Subsection (2), a new subsection that provides that the person appointed as governor shall be appointed for not exceeding five years, and eligible for re-appointment for a further term not exceeding five years; and• Subsection (3) which provides that the terms of appointment of the governor shall not be altered to his or her disadvantage throughout the tenure of such governor. <p>The Act is amended by inserting immediately after section 13, a subsection that spells out the powers and functions of the governor of the bank, which include:</p> <ul style="list-style-type: none">• Implementation of policies of the bank aligned with the regulations, rules and decisions of the board or monetary policy committee;• Execution of the board's decisions and direction and control of the administration and operations of the bank;• Taking actions for the operation of the bank, including procurement and entry into contractual agreements on behalf of the bank;• Appointing staff of bank;• Taking enforcement measures pursuant to payment and security settlement;• Imposing remedial measures;• Appointing a receiver or temporary management for such entities; and• Imposing administrative sanctions. <p>The governor is required to report to the board four times each year on the conduct of the bank's</p>	

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	<p>operations.</p> <p>Clauses 16 and 17 amend sections 18 and 19 of the Act to ensure that conflict of interest and non-disclosure principles apply to board members, staff or agent of the bank.</p> <p>Clause 18 amends the Act by inserting new sections 19A and 19B, which establish the monetary policy committee and its membership.</p> <p>Clauses 19, 20 and 21 amend sections 21, 22 and 23 of the Act by substituting the word “bank” for the word “governor”, and by increasing the amount payable in coins from BWP100.00 to BWP1,000.00.</p> <p>Clause 22 amends section 29 of the Act by increasing the fine for forging/counterfeiting bank notes from BWP1,000,000.00 to BWP10,000,000.00.</p> <p>Clause 23 amends section 31 of the Act by substituting for paragraph (a), a new paragraph that expands the scope of the primary reserve of the bank to provide for the demand or time deposits, money at call, banknotes and coins, bills of exchange and repurchase agreements or reverse repurchase agreements denominated in such foreign currencies.</p> <p>Clause 24 substitutes section 36 of the Act with a new section 36 which provides that the bank may open accounts for and accept deposits from domestic financial institutions, deposit insurance agencies and other entities, including central securities depository institutions.</p> <p>Clause 25 amends section 38 of the Act by inserting a new section 38. The said section grants the bank a lender of last resort to other commercial banks under the following circumstances:</p> <ul style="list-style-type: none">• If the commercial bank is solvent and provides adequate collateral and the request for financial assistance is to improve liquidity; or• The assistance is necessary for preserving stability of the financial system and after the issuance of a guarantee by the Minister of finance and economic development to guarantee repayment of the loan. <p>Clause 27 of the Bill amends section 40 by deleting subsection (3).</p> <p>Clause 28 amends section 41 of the Act by increasing the penalties under section 41, which include failure to provide notices to financial institutions of interest rates, commission, minimum cash margins, service charges, and for knowingly supplying false information to the bank from BWP50,000.00 to</p>	

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	<p>BWP100,000.00 and BWP5,000.00 to BWP10,000.00 respectively.</p> <p>Clause 29 amends the Act by inserting new sections 43A and 43B on the establishment of a deposit insurance scheme and licensing and oversight of securities settlement systems by the bank.</p> <p>Clause 30 amends the Act by the insertion of sections 54A and 54B on the cooperation of the bank with the government and other authorities and establishment of the financial stability council.</p> <p>Clause 31 substitutes section 62 of the Act, which prohibits the bank from lending to government, but permits the bank to purchase government securities only in the secondary market and give the government temporary grants.</p> <p>Clause 37 amends section 69 of the Act by allowing the bank to acquire shareholding in any company or establish such subsidiaries as may be necessary for insuring deposits, promoting the development of the money/securities market in Botswana or ensuring financial stability in Botswana.</p> <p>Clause 38 amends section 70 by substituting for the word "P50,000" the word "P500,000", and the words "two years" the words "five years".</p> <p>Clause 39 amends the Act by inserting new clauses 72A, 72B and 72C on indemnity of members of the bank from liability for any manner done in the course of performance of their duties, immunity of the bank from pre-judgment attachment and deals with the issue of preferential rights.</p>	
Communications Regulatory Authority Regulations, 2022 – S.I. No. 82 of 2022	<p>The Communications Regulatory Authority Regulations (the "Regulations") were published on 30 June 2022.</p> <p>The Regulations provide for the classification of broadcasting licences, commercial and non-commercial. These categories include:</p> <ul style="list-style-type: none">• Content service licence (radio);• Content service licence (television);• SMS broadcasting licence;• Special event broadcasting licence; and• Any other class of licence as the Communications Regulatory Authority (the "Authority") may determine. <p>The Regulations allow the holder of a broadcasting licence the following platforms for delivery:</p> <ul style="list-style-type: none">• Terrestrial radio;• Satellite;	

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	<ul style="list-style-type: none">• Cable;• Internet protocol; or• Any other platform the Authority may determine. <p>The Regulations permit for the issuance of radio licences. Radio licences for terrestrial services are only applicable to radio transmitters located in the territory and will be issued through a competitive process.</p> <p>The Regulations stipulate that the Authority may issue licences to applicants who wish to provide local, national or regional coverage of a commercial broadcasting service or non-commercial broadcasting service.</p> <p>Further, the Regulations provide for the various means through which the commercial broadcasting services may be delivered, being free-to-air service or subscription.</p> <p>Non-commercial broadcasting services shall be operated by non-profit entities where the income generated from such service shall fund the operations of the broadcasting service station, or funded by donations, grants, sponsorships, advertising or membership fees.</p> <p>Political parties are not permitted to fund non-commercial broadcasting services.</p> <p>The Regulations also provide for the periodical issuance by the Authority of a code of conduct or guidelines to guide broadcasting services.</p> <p>The Regulations provide for the ownership and control of broadcasting services. One person (natural or juristic) is not permitted to own more than one broadcasting service without the approval of the Authority.</p> <p>Further, broadcasting licences shall be reserved for enterprises that are owned by citizens or in which citizens have a significant shareholding.</p> <p>A "significant shareholding" for these purposes means:</p> <ul style="list-style-type: none">• In relation to content service licence (television), at least 55%;• In relation to Content service licence (radio), at least 80%; or• In relation to subscription management services, at least 55%. <p>Political parties are not permitted under these Regulations to own a broadcasting service.</p>	

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The Regulations further provide for the commencement of broadcasting services, fairness in advertising and scheduling of advertisements.

The Regulations prohibit licensees from accepting sponsorship for news broadcasts or unreasonably discriminating against or in favour of any particular sponsor. However, licensees are permitted to receive sponsorship in relation to weather, financial or traffic news, provided that the licensee maintains ultimate editorial control of the sponsored programme.

The Regulations further provide for the broadcasting of infomercials and the periodical issuance by the Authority of local content guidelines prescribing the local content quota and quality for broadcasters, except news broadcasts.

Further, the Regulations prescribe the acceptable standards for the content broadcasted by licensees.

The Regulations also provide that due care must be exercised for the protection of children outside the "watershed period", which is from 9pm to 6am, when content unsuitable for children may be broadcast.

The Regulations mandate licensees to broadcast accurate, fair and impartial news and information which are only based on facts.

Additionally, the Regulations stipulate conduct for interviews, commenting and phone-in programmes.

The Regulations prohibit practices that invade individuals' privacy, broadcasting information acquired from a person without that person's consent, disclosure of the identity of victims of sexual offences and the payment of criminals to obtain information from them.

The Regulations mandate licensees to publish a notice of emergency or public disaster announcement for free on behalf of an authority responsible for the management of the emergency or disaster.

The Regulations also provide that a licensee shall not carry out an external broadcast feed without a special event broadcasting licence. An application to the Authority for such licence is to be accompanied by the name of the licensee and type of external broadcast feed intended.

The Regulations stipulate that an opportunity for representation of all political parties shall be granted by a licensee during elections.

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	<p>Licensees are prohibited under the Regulations from acquiring and licence, right, privilege or concession from foreign governments without the approval of the Authority.</p> <p>The Regulations provide for a complaints procedure to follow.</p> <p>The Regulations also provide the entry into a customer service agreement by licensees with subscribers and alterations of such agreement.</p> <p>The Regulations set numbering and addressing standards and essential requirements applicable to terminal equipment.</p> <p>Further, the Regulations provide that the equipment used in the provision of communications services is approved by the Authority prior to import into, use or sale in Botswana. The Regulations further provide for the standards and approval of telecommunications equipment.</p> <p>The Regulations also provide for the registration of subscribers by a licensee, registration particulars to include, confidentiality and disclosure of a subscriber's particulars, and deactivation of subscribers.</p> <p>The Regulations provide that a person requires a licence to provide postal services in the form set out in the schedules and provides for postal services.</p> <p>The Regulations regulate tariffs for licensed services, interconnection agreements and quality of services relating to interconnection agreements.</p> <p>The Regulations further provide for dispute resolution by the Authority, complaint handling procedures, consumer affairs, regulatory monitoring systems and provision to the Authority of annual financial accounts by a licensee.</p> <p>The Regulations further set out guidelines for radio equipment licensees, exemptions for licences and licence application guidelines and procedures.</p>	
S.I No. 83 of 2022 - Married Persons Property (Spouses Affidavit) Regulations, 2022	<p>The new Married Persons Property (Spouses Affidavit) Regulations provides for an affidavit in the event of the loss or destruction of an instrument stipulating the marital regime of spouses, setting out the circumstances of such loss/destruction.</p>	

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<p>S.I No. 83 of 2022 - Married Persons Property (Spouses Affidavit) Regulations, 2022</p>	<p>Regulations provides for an affidavit in the event of the loss or destruction of an instrument stipulating the marital regime of spouses, setting out the circumstances of such loss/destruction.</p>	
<p>Non-Bank Financial Institutions Regulatory Authority (Tribunal) (Amendment) Regulations, 2022 (the "Regulations")</p>	<p>Regulation 2 is amended by substituting for the definition of the word "review notice" with the following new definition – "Review notice" means an application for review of a decision by the regulatory authority or the self-regulatory organisation or a notice given by the tribunal to prepare for a hearing.</p> <p>Regulation 3 establishes the Non-Bank Financial Institutions Tribunal. The tribunal has been set up to review, upon giving at least 30 days' notice, a decision of the Non-Bank Financial Institutions Regulatory Authority (the "NBFIRA").</p> <p>The requirement of notice under Regulation 3 is dispensed with where the matter is urgent.</p> <p>Regulation 4 is amended by substituting for subregulation (1), a new subregulation (1) that states the composition of the tribunal, which includes:</p> <ul style="list-style-type: none"> • A chairperson qualified as a judge or similar legal credentials; • A deputy chairperson qualified as a judge or similar credentials; and • Three other persons with qualifications in law, finance, economics, accounting, commerce or an equivalent qualification in any area of the non-bank financial sector. <p>Subregulation (2) has been amended by substitution with a subregulation (2) that provides for a tenure of 5 years for chairperson and deputy chairperson.</p> <p>Regulation 5 is amended by substitution and establishes the office and functions of secretary of the tribunal, whose tenure is 5 years.</p> <p>Regulation 7 is amended by substitution with a new regulation that provides for the appointment by the minister of finance of another member in the case of the death or vacation of another member.</p> <p>Regulation 8 provides for the regulation of the tribunal of its own meetings.</p> <p>Regulation 9(1) is amended by insertion of a new regulation that provides for disclosure in the case of conflict of interest by a member of the tribunal. The other members may consent to the conflicted</p>	

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	<p>member performing their functions despite the conflict.</p> <p>Regulation 9 has also been amended in subregulation (7) –</p> <ul style="list-style-type: none">• Paragraph (b) by substituting for the word “those” for “whose”;• Paragraph (e) by inserting “family” immediately after the word “immediate”;• Paragraph (h)(ii) by inserting “with” immediately after the word “concert”; and• By deleting subregulation 9. <p>Regulation 10 is amended by deleting subregulation (3).</p> <p>Regulation 14(1) is amended by inserting the words “in Form 3 as set out in the Schedule” immediately after the word “Tribunal”.</p> <p>Regulation 15 is amended by substituting for subregulation (2), a new subregulation (2) which provides that NBFIRA or any self-regulatory organisation may state its wish not to oppose a review at any time prior to the hearing of the review.</p> <p>Regulation 17(1) is amended by substituting for the words “Form 3” for the words “Form 4”.</p> <p>The Regulations are also amended at regulation 18, which provides for the holding of meetings in public by the tribunal, who shall also set dates and set its own procedure for such hearings.</p> <p>Regulation 19 is amended by substituting the words “Forms 4(a) and 4(b)” for the words “Forms 5(a) and 5(b)”.</p> <p>Regulation 20(1)(b) is amended by substituting for the words “vhas” with “has”.</p> <p>Regulation 27(b) is amended by deleting the words “or recommendations”.</p> <p>Regulation 30(2)(a) is amended by deleting the words “the regulation” with “these Regulations”.</p> <p>Regulation 35(1) is amended by inserting the words “within six months of the end of the financial year” immediately after the word “report”.</p> <p>Regulation 38 is amended by deleting paragraph (d).</p> <p>The Regulations are amended by substituting for the schedule, a new schedule that sets out a form (Form I) to appeal a decision or order of the NBFIRA.</p>	