

DEPUTY SHERIFFS ACT, 2024

No. 21



of 2024

ARRANGEMENT OF SECTIONS

SECTION

PART I — *Preliminary*

1. Short title and commencement
2. Interpretation

PART II — *Establishment of Office of Sheriff*

3. Establishment of Office of Sheriff
4. Powers and functions of Sheriff

PART III — *Qualification and Disqualification of Deputy Sheriffs*

5. Application for admission of Deputy Sheriff
6. Appointment of Deputy Sheriff
7. Qualification for admission as Deputy Sheriff
8. Disqualification for admission as Deputy Sheriff
9. Performance of functions of Deputy Sheriff

PART IV — *Register and Registration*

10. Register
11. Procedure for registration
12. Certificate of registration
13. Removal from the register

PART V — *Practising Certificate*

14. Issuance of practising certificate
15. Effect of practising certificate
16. Renewal of practising certificate

PART VI — *Removal and vacation of office*

17. Removal and vacation of office

PART VII — *Accounts of Deputy Sheriffs*

18. Accounts

PART VIII — *Board for Deputy Sheriffs*

19. Establishment of Board
20. Functions of Board
21. Composition of Board
22. Tenure of office
23. Disqualification
24. Removal of member from office
25. Vacation of office
26. Filling of vacancy
27. Remuneration and allowances
28. Secretary of Board
29. Co-option of advisory personnel to Board
30. Committees of Board

PART IX — *Meetings and Proceedings of Board*

31. Election of Vice-Chairperson
32. Meetings of Board
33. Quorum and procedure at meetings
34. Confidentiality and disclosure of interest
35. Annual reports

PART X — *Financial Provisions*

36. Revenues of Board
37. Payment of levies
38. Financial year
39. Accounts and audits
40. Book keeping and auditing of accounts

PART XI — *Fidelity Fund for Deputy Sheriffs*

41. Establishment of Fidelity Fund for Deputy Sheriffs
42. Requirement for Fidelity Fund certificate
43. Contributions to Fund
44. Utilisation of Fidelity Fund
45. Payment of compensation for loss or hardship due to dishonesty
46. Investment of Fund
47. Auditing of records and statements of Fidelity Fund

PART XII — *Fidelity Fund Certificate*

48. Application for Fidelity Fund certificate
49. Prohibition of performance of functions of Deputy Sheriff in certain circumstances
50. Issuance of Fidelity Fund certificate
51. Disqualification relating to Fidelity Fund certificate
52. Cancellation of Fidelity Fund certificate

PART XIII — *Conduct of Deputy Sheriffs*

53. Improper conduct
54. Complaint's procedure
55. Charge of improper conduct
56. Inquiry into improper conduct
57. Liability of Deputy Sheriff
58. Suspension of Deputy Sheriff

PART XIV — *Miscellaneous*

59. Indemnity
60. Winding up of accounts
61. Storage facility of Deputy Sheriffs
62. Offences and penalties
63. Offences related to execution
64. Regulations
65. Transitional and savings provisions

An Act to provide for the appointment, supervision, monitoring and regulation of the conduct of Deputy Sheriffs, the establishment of a Board and a Fidelity Fund for Deputy Sheriffs, and for matters connected therewith or incidental thereto.

Date of Assent: 29.10.2024

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Deputy Sheriffs Act, 2024, 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 —

Interpretation

“Association” means the Deputy Sheriffs Association registered under the Societies Act which adequately demonstrates to the Minister that it is representative of the majority of deputy sheriffs practising in Botswana at any given time;

Cap. 18:01

- Cap. 42:03
- “Board” means the board for Deputy Sheriffs established under section 19;
- “building society” means a society as defined in the Building Societies Act;
- “code of conduct” means Deputy Sheriff code of conduct as may be prescribed;
- “Deputy Sheriff” means a person appointed as such and carrying out functions under section 6;
- “Fidelity Fund certificate” means the certificate referred to under section 42;
- “Fund” means the Fidelity Fund for Deputy Sheriffs established under section 41;
- Cap. 08:05
- “immediate family member” has the same meaning assigned to it under the Corruption and Economic Crime Act;
- “Office” means the Office of Sheriff established under section 3;
- “practising certificate” means a certificate issued under section 14; and
- “Sheriff” means a person appointed as such under section 3 and persons acting under the general or special direction of such Sheriff.

PART II — Establishment of Office of Sheriff

Establishment
of Office
of Sheriff

3. (1) There is hereby established an office of the Sheriff which shall consist of a Sheriff and such other officers as may be appointed.

(2) The Sheriff shall be under the supervision of the Chief Registrar.

(3) The President shall, acting on the advice of the Judicial Service Commission, appoint a Sheriff from persons possessing qualifications to hold judicial office.

Cap. 28:01

(4) The Office of the Sheriff shall be a public office and accordingly, the provisions of the Public Service Act shall apply to the Office of the Sheriff.

Powers and
functions
of Sheriff

4. The powers of the Sheriff shall be to —

(a) execute judgements, orders and writs issued by the court in civil and criminal cases;

(b) advertise, recruit and select from a list of names recommended to him or her by the Board, a name for the post of a Deputy Sheriff;

(c) hear and resolve public complaints against the Deputy Sheriffs;

(d) issue a practising certificate or grant the renewal of a practising certificate to a Deputy Sheriff in terms of sections 14 and 16;

(e) inspect and approve a storage facility for property that has been attached by a Deputy Sheriff;

(f) keep and maintain a register of Deputy Sheriffs;

(g) keep and update the Code of conduct; and

(h) assess all reports submitted to him or her by a Deputy Sheriff.

PART III — *Qualification and Disqualification for Admission of Deputy Sheriff*

5. A person may apply, in such form as may be prescribed, to the Sheriff, to be admitted as a Deputy Sheriff and on payment of a prescribed fee.

Application for admission of Deputy Sheriff

6. The Sheriff acting on the recommendations of the Board may appoint persons to be Deputy Sheriffs to perform, subject to his or her directions, the functions vested in the Deputy Sheriff under this Act or any other written law:

Appointment of Deputy Sheriff

Provided that the Office of the Sheriff shall not *ipso facto* be a public office or an office of emolument in the Public Service.

7. A person shall qualify to be a Deputy Sheriff if he or she satisfies the Sheriff that —

Qualification for admission

(a) he or she holds a minimum certificate in law, commerce, accounts, tracing, auctioneering or such other related or equivalent field; and

(b) he or she has satisfied any other condition as may be prescribed.

8. Subject to the provisions of sections 6 and 7, the Board shall not issue a Fidelity Fund certificate to a Deputy Sheriff if the Deputy Sheriff —

Disqualification for admission of Deputy Sheriff

(a) is not a citizen permanently resident in Botswana;

(b) is under the age of 18 years;

(c) is an insolvent;

(d) is of an unsound mind;

(e) does not have the prescribed training and practical experience;

(f) has at any time been dismissed from a position of trust by reason of improper conduct involving a breach of such trust;

(g) has been convicted of an offence involving dishonesty or of any other offence for which he or she has been sentenced to imprisonment without the option of a fine;

(h) has failed to comply with the provisions of section 15 during a period of one year immediately prior to the date on which he or she applies for a Fidelity Fund certificate;

(i) has at any time been prohibited from dealing with an account under section 18 or in any manner;

(j) was previously the holder of a Fidelity Fund certificate which has been cancelled under section 52;

(k) has at any time incurred liability towards the Board by virtue of section 45:

Provided he or she has repaid the relevant amount in full to the Board or has made in the opinion of the Board, satisfactory arrangements for the repayment of the amount.

9. Subject to the provisions of this Act, a Deputy Sheriff shall perform the functions under any law or assigned to or by the Sheriff, within Botswana.

Performance of functions by Deputy Sheriffs

PART IV — Register and Registration

Register

10. (1) Subject to the provisions of this Act, the Sheriff shall establish and maintain a register of Deputy Sheriffs.

(2) The register shall be kept at the Office of the Sheriff and shall be open for inspection during office hours to any member of the public, upon payment of such fee as may be prescribed.

(3) The Sheriff shall —

(a) keep the register in such form as may be prescribed;

(b) enter in the register, in relation to a Deputy Sheriff —

(i) his or her name,

(ii) his or her address,

(iii) his or her qualification,

(iv) his or her first date of registration, and

(v) such other particulars as the Sheriff may from time to time determine;

(c) make in the register any necessary alterations to the particulars referred to under paragraph (b);

(d) remove, from the register, the name of a Deputy Sheriff who dies or ceases to practise as a Deputy Sheriff;

(e) on the instructions of the Chairperson, convene meetings of the Board or any committee of the Board; and

(f) cause to be published by notice in the *Gazette*, at the beginning of each year in January, a list containing the names, addresses and qualifications of all registered Deputy Sheriffs remaining on the register at the end of the previous year.

Procedure for registration

11. (1) A person may apply, in such form as may be prescribed, to the Sheriff to be registered as a Deputy Sheriff and shall submit with his or her application —

(a) a certificate of any qualification on which he or she relies for registration;

(b) such evidence of identity and such other evidence or information as may be required by the Board; and

(c) such fee as may be prescribed.

(2) Where the Sheriff is satisfied that the applicant has satisfied the conditions specified in subsection (1), he or she shall refer the application and any report he or she may make thereon, to the Board.

(3) The Board shall direct the Sheriff to register an applicant where it is satisfied that the applicant meets the requirements under section 7.

Certificate of registration

12. (1) Where the Sheriff registers a Deputy Sheriff, he or she, shall issue the Deputy Sheriff with a certificate of registration in such form as may be prescribed.

(2) A Deputy Sheriff may apply in such form as may be prescribed, for a duplicate of his or her certificate of registration in the following circumstances —

(a) where the certificate is lost;

- (b) where the certificate is destroyed; or
- (c) upon any other condition as may be prescribed.
- (3) On an application by a Deputy Sheriff for a duplicate in terms of subsection (1), the Sheriff shall issue to the Deputy Sheriff, a duplicate of his or her certificate of registration –

- (a) where the Sheriff is satisfied as to the identity of the Deputy Sheriff; and

- (b) on production by the Deputy Sheriff, of an affidavit.

13. The Board shall order the Sheriff to remove from the register –

Removal from register

- (a) the name of a Deputy Sheriff who –

- (i) has failed to notify the Sheriff of his or her present address, within six months of a notice being sent to him or her by registered letter by the Sheriff requesting him or her to notify the Sheriff:

Provided that where such registered letter is returned to the Sheriff by reason of it being unclaimed or any other reason, the Board may, as soon as practicable, direct that the name of the Deputy Sheriff be removed from the register, or

- (ii) has requested that his or her name be removed from the register; and

- (b) any entry which is proven, to the satisfaction of the Board, to have been made in error or through fraudulent representation or concealment of material facts or in contravention of the Act.

PART V – *Practising certificate*

14. (1) The Sheriff shall, within 21 days of receipt of an application, issue a practising certificate in the prescribed form, to a Deputy Sheriff.

Issuance of practising certificate

(2) A person shall not be qualified to practise as a Deputy Sheriff unless –

- (a) he or she has been admitted as a Deputy Sheriff;
- (b) his or her name is in the register;
- (c) subject to subsection (1), he or she has in force a practising certificate issued by the Sheriff as prescribed;
- (d) he or she is issued with a Fidelity Fund certificate;
- (e) he or she has furnished to the Board, a certified copy of the audited accounts of his or her trust account, certified as having been properly kept:

Provided that the provisions of this paragraph shall not apply to a Deputy Sheriff applying for a practising certificate for the first time; and

- (f) the Deputy Sheriff has paid the annual levy fee as prescribed under section 37 and has paid, if any, all fines and levies imposed on him or her under this Act.

15. (1) A practising certificate shall have effect from the beginning of the day of which it bears the date, and the Sheriff shall enter the date in the register.

Effect of practising certificate

(2) Subject to subsection (3), every practising certificate shall be valid for a period of 12 months.

(3) Where the name of a Deputy Sheriff is removed from the register, the practising certificate of that Deputy Sheriff for the time being in force shall expire forthwith and the Sheriff shall enter the date of such expiration in the register.

Renewal of
practising
certificate

16. (1) Where a Deputy Sheriff fails to apply for a practising certificate for any year after the expiration of his or her practising certificate, the Sheriff shall notify the Deputy Sheriff 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 notice the Deputy Sheriff has not applied for such licence, the Sheriff shall remove the name of the Deputy Sheriff from the register.

(2) The Sheriff shall forthwith enter the date of removal of the name of the Deputy Sheriff from the register under subsection (1).

(3) A name removed from the register in terms of subsection (1) may be restored to the register on an application made by the Deputy Sheriff concerned and on payment of a prescribed fee.

PART VI — *Removal and Vacation of Office*

Removal and
vacation of
office

17. (1) A Sheriff shall remove a Deputy Sheriff from office and his or her office shall become vacant where —

- (a) he or she contravenes the Code of conduct;
- (b) his or her Fidelity Fund certificate is cancelled; or
- (c) reasons exist for the cancellation of the Fidelity Fund certificate in the interest of the maintenance of effective and reliable service to the courts and the public.

(2) A Deputy Sheriff may resign by giving the Sheriff a three months' notice in writing of his or her resignation.

PART VII — *Accounts of Deputy Sheriffs*

Accounts

Cap. 46:04

18. (1) A Deputy Sheriff practising on his or her own or in partnership, 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.

(2) The amount standing to the credit of an account under subsection (1) shall not form part of the assets of the Deputy Sheriff or of his or her deceased or insolvent estate.

(3) A Deputy Sheriff shall before or at the end of every financial year, pay into the Fidelity Fund account, interest that accrues to the trust account under subsection (1).

(4) Notwithstanding the provisions of subsection (3), regulations may prescribe the mode of investing any moneys deposited in a trust account which is not immediately required for any other purpose and the manner of dealing with any interest that accrues on such money.

(5) A Deputy Sheriff may open and keep a separate savings or personal account with a financial institution registered in Botswana and he or she shall maintain it under the Banking Act.

(6) A Deputy Sheriff shall —

(a) keep separate records of moneys deposited or invested by him or her in, and payments made by him or her out of, accounts under section 18; and

(b) cause the records referred to in paragraph (a) to be audited by an auditor at least once annually.

(7) An auditor who has performed an audit in terms of subsection (6) shall furnish the Board with a report on his or her findings in such form as may be prescribed.

(8) If in the opinion of the Board reasons exist for doing so, the Board may by way of a notice, in writing, request any Deputy Sheriff to submit to the Board within the period specified in the notice, which period shall not be less than 30 days after the date of the notice, such auditor's report, statement or any other document relating to an account referred to in subsection (6).

PART VIII — *Board for Deputy Sheriffs*

19. There is hereby established a Board to be known as the Board for Deputy Sheriffs, (hereinafter referred to as "the Board").

Establishment
of Board

20. The functions of the Board shall be to —

Functions of
Board

(a) maintain the esteem of, the enhancement of the status of, and the improvement of the standard of training of and functions performed by the Deputy Sheriffs;

(b) recommend to the Sheriff, names of persons eligible for admission as Deputy Sheriffs;

(c) direct the Sheriff on entries in the register for Deputy Sheriffs

(d) issue to a Deputy Sheriff, a Fidelity Fund certificate;

(e) keep account of and maintain the Fidelity Fund; and

(f) inspect and maintain the Code of Conduct for Deputy Sheriffs.

21. The Board shall consist of the following nine members, appointed by the Minister —

Composition of
Board

(a) the Chief Registrar who shall be the Chairperson;

(b) a representative of the Ministry responsible for Justice;

(c) a representative of the Ministry responsible for Defence and Security;

(d) a representative of the Law Society of Botswana;

(e) a representative of Business Botswana;

(f) a representative of the community;

- (g) a representative of the judiciary; and
 - (h) two members appointed on the recommendation of the Deputy Sheriffs Association.
- 22.** A member of the Board, other than the Chairperson, shall hold office for a period not exceeding three years and shall be eligible for reappointment for a further period not exceeding two terms.
- 23.** A person shall not be appointed to be a member of the Board or qualify to continue to hold office in the Board where the person —
- (a) has, in terms of a law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt and has not been discharged, or
 - (ii) made assignment, arrangement or composition with his or her creditors, which has not been rescinded or set aside;
 - (b) has, within a period of 10 years immediately preceding the date of his or her appointment, been convicted —
 - (i) of a criminal offence within Botswana, or
 - (ii) outside Botswana, of an offence which if committed in Botswana, would have been a criminal offence,
 and sentenced by a court of competent jurisdiction to imprisonment for a term of six months or more without the option of a fine, whether that sentence has been suspended or not, and for which he or she has not received a free pardon; or
 - (c) is a member of the National Assembly, a Councillor in a local authority, a member of the *Ntlo ya Dikgosi* or a holder of an office in a political party.
- 24.** The Minister may remove a member of the Board from office where the member —
- (a) is absent without reasonable cause from three consecutive meetings of the Board, of which that member has had notice;
 - (b) is inefficient in the performance of his or her duties;
 - (c) has been found to be physically or mentally incapable of performing his or her duties efficiently and a medical doctor has issued a certificate to that effect; or
 - (d) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Board.
- 25.** A member shall vacate his or her office and his or her office shall become vacant —
- (a) where a member becomes disqualified, in terms of section 23;
 - (b) where a period of 30 days has elapsed from the date the member is given notice in writing by the Minister, to vacate office;
 - (c) on the expiry of 30 days' notice in writing, to the Minister, of the member's intention to resign from office; or
 - (d) after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of a conviction of an offence under this Act, or under any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine.

26. (1) Where the office of a member of the Board becomes vacant before the expiry of the member's term of office, the Minister shall appoint another person to be a member of the Board in place of a member who vacates office, until expiry of a period during which such member would have otherwise continued in office.

Filling of
vacancy

(2) Subsection (1) shall not apply where the remainder of the period for which the member whose office has been vacated would otherwise have held office, is less than six months.

27. A member of the Board shall be paid such remuneration and other expenses and allowances incurred in connection with his or her services on the Board, if any, as the Minister may determine.

Remuneration
and allowances

28. (1) The Sheriff shall be the Secretary of the Board responsible for the accurate and complete recording of the proceedings and decisions of the Board.

Secretary of
Board

(2) The Secretary of the Board shall attend the meetings of the Board but shall have no right to vote.

29. The Board may co-opt any person to attend any meeting of the Board to assist or advise it in respect of any of its responsibilities under this Act and such person shall have no right to vote on any matter before the Board.

Co-option of
advisory
personnel to
Board

30. (1) The Board may, for the purpose of performing its functions, establish such committees as it considers appropriate and may delegate to any such committee, such functions as it considers necessary.

Committees of
Board

(2) The Board may appoint, to the committees established under subsection (1), such number of persons from the 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 Board may determine.

(3) The Board shall appoint a Chairperson for any of its committees from amongst its members.

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

(5) The Board 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.

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

PART IX — *Meetings and Proceedings of Board*

31. (1) At the first meeting of the Board, the members shall elect from among their number, a Vice Chairperson.

Election of
Vice
Chairperson

(2) The Vice Chairperson may vacate his or her office as such, upon a 30 days' notice in writing, to the Board of his or her intention to resign from the Board.

(3) The Vice Chairperson shall, whenever the Chairperson is absent or unable to carry out his or her functions, exercise the functions of the Chairperson during the period that the Chairperson is absent or unable to act as Chairperson.

Meetings of
Board

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

(2) The Board shall hold its first meeting on such date and at such place as the Minister may direct and thereafter, the Board shall meet at least four times in a year.

(3) Upon giving notice in writing, of not less than 14 days, a meeting of the Board may be called by the Chairperson, but if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon the giving of a shorter notice.

(4) The notice referred to under subsection (3) shall state —

- (a) the place and time for the meeting; and
- (b) the agenda for the meeting.

(5) There shall preside at any meeting of the Board —

- (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.

Quorum and
procedure at
meetings

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

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

(4) The Board may invite any person whose presence it deems necessary, to attend and participate in the deliberations of a meeting of the Board, but such person shall have no vote.

Confidentiality
and disclosure
of interest

34. (1) A member of the Board, committee or sub-committee, or any person attending a meeting of the Board, committee or sub-committee shall, immediately upon commencement of the meeting of the Board, at which any matter in which the member or the member's immediate family member is directly or indirectly interested in a private capacity is the subject of consideration, disclose such interest and shall not take part in any consideration or discussion of or vote on any question concerning the matter unless the Board otherwise directs.

(2) A disclosure of interest made in accordance with subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member or any person to whom confidential information is revealed through working with the Board shall not disclose that information to any other person, unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(4) Upon ceasing to hold office, neither a member of the Board, committee or sub-committee, the Secretary and any member of staff nor a person co-opted by the Board, shall use to their personal advantage, information acquired by them, by virtue of their association with the Board, committee or sub-committee for a period of two years after termination of the term of office or the mandate of the member.

(5) Where a member or any person attending the meeting of the Board, committee or sub-committee fails to disclose his or her interest in terms of subsection (1) and a decision by the Board is made benefiting such member, such decision shall be void.

(6) A member, or any other person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P5 000, or to imprisonment for a term not exceeding six months, or to both.

35. The Board shall within a period of six months of the end of the financial year, submit to the Minister a comprehensive report of the operations of the Board during that year, together with the auditor's report and the accounts audited under the Act.

Annual reports

PART X — *Financial Provisions*

36. (1) The revenue of the Board shall consist of —

- (a) fees that the Board may charge for services it may render;
- (b) grants and the donations that the Board may receive;
- (c) income from its members' levies and fees; and
- (d) interests generated from the trust accounts.

Revenues of Board

(2) The Board shall use the funds acquired and any surplus accrued under subsection (1) to meet the costs incurred in its operations as it may determine.

37. (1) A Deputy Sheriff shall pay to the Board, an annual levy, as may be prescribed.

Payment of levies

(2) Different levies may be prescribed under subsection (1) in respect of a Deputy Sheriff.

38. The financial year of the Board shall be a period of 12 months starting on 1st April and ending on 31st March each year.

Financial year

39. (1) The Board shall keep and maintain proper books of accounts and records of accounts in respect of every financial year relating to the assets, liabilities, income and expenditure of the Board, and shall in each financial year, prepare a statement of such accounts.

Accounts and audits

(2) The accounts prepared under subsection (1) shall, within three months of the end of the financial year, be audited by an auditor appointed by the Board.

(3) The auditor appointed under subsection (2) shall report in respect of each financial year and on any other matter on which the auditor considers it necessary to report on.

Book keeping
and auditing
of accounts

40. (1) A Deputy Sheriff shall —

(a) keep separate records of moneys deposited or invested by him or her in, and payments made by him or her out of, an account under section 18; and

(b) cause the records referred to in paragraph (a) to be audited by an accredited auditor at least once annually;

(2) An accredited auditor who has performed an audit in terms of subsection (1) shall furnish the Board with a report on his or her findings in such form as may be prescribed.

(3) The Board may by way of a notice in writing, request any Deputy Sheriff to submit to the Board within the period specified in the notice, which period shall not be less than 30 days after the date of the notice, such auditor's report, statement or any other document relating to an account referred to in subsection (1).

PART XI — *Fidelity Fund for Deputy Sheriffs*

Establishment
of Fidelity
Fund for Deputy
Sheriffs

41. (1) There is hereby established a Fund to be known as the Fidelity Fund for Deputy Sheriffs.

(2) The Fund shall be maintained and administered by the Board.

(3) Every practising Deputy Sheriff shall be a member of the Fund.

Requirement for
Fidelity Fund
certificate

42. (1) A person intending to apply for admission as a Deputy Sheriff shall prior to doing so, apply to the Board for a Fidelity Fund certificate in such form as may be prescribed, and on payment of a prescribed fee.

(2) The Secretary shall issue a Fidelity Fund certificate to a person if he or she is satisfied that the applicant meets the requirements to be a Deputy Sheriff.

Contributions
to Fund

43. (1) There shall be paid into the Fidelity Fund, a fee as prescribed, in respect of each Fidelity Fund certificate to be issued by the Board.

(2) The Fund shall consist of —

(a) interest paid to the Fund in terms of section 36;

(b) interest derived from the investment of moneys in the Fund;

(c) moneys recovered on behalf of the Fund under the Act;

(d) the prescribed levies referred to in section 37; or

(e) moneys which may accrue to the Board from any other source;

(3) The Board shall, until spent or invested in terms of section 46, pay into or keep in a banking institution or a building society, all moneys forming part of the Fund.

Utilisation of
Fidelity Fund

44. Subject to the provisions of this Act, the moneys in the Fund shall be utilised for —

(a) the settlement of claims admitted against the Fund or judgments, including costs obtained against the Fund;

(b) any contribution in the discretion of the Board in respect of expenses incurred by a claimant to verify his or her claim;

- (c) legal expenses incurred in defending an action against the Board in respect of the Fund or otherwise incurred in relation to the Fund;
- (d) premiums payable in respect of agreements entered into by the Board under sections 46 or 59;
- (e) the expenses involved in the establishment, control and management of the Fund;
- (f) interest on and redemption of loans negotiated by the Board on behalf of the Fund; or
- (g) moneys required or permitted to be paid out of the Fund in accordance with this Act.

45. Where a person proves to the satisfaction of the Board that he or she has sustained loss or hardship in consequence of dishonesty on the part of a Deputy Sheriff, or of any employee of a Deputy Sheriff, in connection with the Deputy Sheriff's practice, the Board may make a payment to that person, out of the Fidelity Fund for the purpose of relieving or mitigating that loss or hardship.

Payment of compensation for loss or hardship due to dishonesty

46. The Board may invest in any interest bearing account with any bank as licensed under the Banking Act or any building society or in any government securities any moneys which forms part of the Fund and are not immediately required for any other purpose provided for by this Part.

Investment of Fund

47. (1) The Board shall —

- (a) cause records to be kept, of moneys received in or payments made out of the Fund, auditing of records and statements of Fund; and
- (b) immediately, but not later than three months after the end of each financial year, cause annual financial statements to be prepared showing moneys received and expenditure incurred on behalf of the Fund for the financial year.

Auditing of records and statements of Fidelity Fund

(2) The records and annual financial statements referred to in subsection (1) shall be audited by an accredited auditor appointed by the Board.

PART XII — *Fidelity Fund Certificate*

48. (1) A Deputy Sheriff shall apply to the Board for a Fidelity Fund certificate in such form as may be prescribed.

Application for Fidelity Fund certificate

(2) An application referred to under subsection (1) shall be accompanied by a fee as may be prescribed.

(3) A Deputy Sheriff who applies for a Fidelity Fund certificate under subsection (1) shall furnish such additional documents as the Board may require.

49. A Deputy Sheriff shall not perform any function assigned to a Deputy Sheriff under any law unless —

Prohibition of performance of functions of Deputy Sheriff in certain circumstances

- (a) he or she is a holder of a valid Fidelity Fund certificate; and
 (b) he or she has paid into the Fund, the fee as prescribed.
- 50.** (1) The Board shall upon consideration of an application by a Deputy Sheriff, for a Fidelity Fund certificate, issue to the applicant, a Fidelity Fund certificate in such form as may be prescribed.
 (2) A Fidelity Fund certificate shall be valid for a period of 12 months.
- 51.** Subject to the provisions of section 50 (1), the Board shall not issue a Fidelity Fund certificate to a Deputy Sheriff if he or she does not meet the requirements under section 8.
- 52.** (1) Notwithstanding the provisions of section 50 (2), the Board may cancel a Fidelity Fund certificate issued to a Deputy Sheriff after at least 14 days' notice, in writing, to the Secretary of the Board if —
 (a) the Deputy Sheriff contravenes or fails to comply with a condition imposed under section 40; or
 (b) the Fidelity Fund certificate was issued on information subsequently proved to be false.
 (2) The Board shall cancel the Fidelity Fund certificate of a Deputy Sheriff if it is requested by the Deputy Sheriff to do so or if the Deputy Sheriff ceases to hold office.
 (3) A person who has in his or her possession or under his or her control, a Fidelity Fund certificate cancelled under this section, shall return such certificate to the Board within a period of 30 days from the date of the cancellation, or after a period of 30 days, from the date he or she becomes aware of the cancellation.

PART XIII — *Conduct of Deputy Sheriffs*

- 53.** (1) A Deputy Sheriff shall be guilty of improper conduct if —
 (a) he or she misappropriates funds, is negligent or dilatory in the service or execution of any process under this Act;
 (b) he or she makes a false return in respect of the service or execution of any process under this Act;
 (c) he or she allows another person to take possession of and distribute proceeds of a sale in execution;
 (d) he or she executes or attempts to execute on a writ that another Deputy Sheriff has been instructed to execute on;
 (e) he or she demands payment of more than the fees or expenses prescribed by or under any law;
 (f) he or she contravenes or fails to comply with a provision of the Code of conduct as prescribed;
 (g) he or she fails to take all reasonable steps to prevent a person under him or her from committing a deed of improper conduct as set out in paragraph (a), (b), (c) or (d); or
 (h) he or she commits an act of insolvency under the Insolvency Act.

(2) The acquittal or conviction of a Deputy Sheriff by any court of law on any criminal charge shall not be a bar to proceedings against him in accordance with this Act on a charge of improper conduct.

(3) If the improper conduct with which a Deputy Sheriff is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court shall, upon the identification of the Deputy Sheriff as the person who has been convicted according to the record, be sufficient proof that he or she committed the offence:

Provided that:

- (a) the conviction has been set aside by a competent court; or
- (b) the Deputy Sheriff proves that he or she was wrongly convicted.

54. (1) A complaint, accusation or allegation against a Deputy Sheriff shall be lodged with the Board in the prescribed manner.

Complaints
procedure

(2) The Board shall keep a record of each complaint, accusation or allegation lodged with it in terms of subsection (1).

55. (1) Where a Deputy Sheriff is accused of improper conduct the Board may charge him or her, in writing, with such improper conduct.

Charge of
improper
conduct

(2) A charge of improper conduct shall be served upon a Deputy Sheriff in the prescribed manner.

(3) A charge under subsection (2) shall be accompanied by a request that the Deputy Sheriff furnishes the Board with a written admission or denial of the charge.

(4) A Deputy Sheriff shall submit a written explanation in connection with the charge, within 14 days of being served with the charge.

(5) The Board may at any time withdraw a charge of improper conduct.

(6) The Board shall inquire into a charge of improper conduct at such time and place as the Board may determine and shall in the prescribed manner give the Deputy Sheriff charged at least 14 days' notice, in writing.

56. (1) The Board may authorise any Deputy Sheriff charged to attend an inquiry instituted in terms of this section, to adduce evidence and arguments against the charge and to cross-examine any person who has given evidence in rebuttal of the charge.

Inquiry into
improper
conduct

(2) At such inquiry the Deputy Sheriff charged with improper conduct shall have the right, to be present, to be assisted or represented by another person to give evidence, either personally or through a representative so as to —

- (a) be heard;
- (b) call witnesses;
- (c) cross-examine any person called as a witness in support of the charge; and
- (d) have access to documents produced in evidence.

(3) The failure of the Deputy Sheriff charged to attend the inquiry shall not invalidate the proceedings.

(4) The Board shall keep a record of the proceedings and of the evidence given.

Liability of
Deputy Sheriff

57. A Deputy Sheriff shall not be liable for any damage arising out of the rescue or escape of any person arrested by him or her, or committed to his or her custody, unless the rescue or escape was caused by his or her negligent or wilful conduct.

Suspension of
Deputy Sheriff

58. (1) The Board may suspend a Deputy Sheriff from office at any time in accordance with this Act, or after he or she has been so charged.

(2) A Deputy Sheriff who has been suspended from his or her office shall forthwith be reinstated in office if —

(a) he or she is not charged with improper conduct within a period of 12 months after the date of his or her suspension;

(b) he or she is not found guilty on the charge in question; or

(c) he or she appeals against his or her conviction on the charge in question and the appeal is upheld.

(3) The Board may at any time cancel the suspension of a Deputy Sheriff, but the cancellation shall not prevent the Deputy Sheriff from being charged with improper conduct in accordance with this Act.

PART XIV — *Miscellaneous*

Indemnity

59. (1) The Board may enter into a contract with a person or company carrying on fidelity insurance business in Botswana.

(2) A contract referred to under subsection (1) shall be entered into in respect of Deputy Sheriffs generally.

(3) No matter or thing done or omitted to be done by a member or staff of the Board shall, if the matter or thing is done or omitted to be done *bona fide* in the course of the operation of the Board, render a member or staff personally liable to an action, claim or demand.

Winding up
of accounts

60. When a Deputy Sheriff ceases to hold office, an account opened by him or her in terms of section 18 shall be wound up in the prescribed manner, and the amount standing to the credit of the account shall be paid out to the persons entitled to it as may be prescribed.

Storage facility
of Deputy
Sheriff

61. (1) The office of the Deputy Sheriff shall be a functional office with a proper storage facility.

(2) A Deputy Sheriff shall pay into the Fidelity Fund, a storage fee as may be prescribed.

(3) The Sheriff may inspect the storage facility to ensure that it is suitable and secure to store the property attached.

Offences and
penalties

62. (1) A person who is not a Deputy Sheriff who —

(a) performs the work of a Deputy Sheriff for gain;

(b) practises or carries on business under any name or act which contains the word “sheriff”;

(c) uses by way of advertisement or other means any name or description which indicates or is calculated to lead persons to assume that he or she is a Deputy Sheriff; or