



BERMUDA

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1974 : 105

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PART I

Interpretation

- 1 In this Act, unless the context otherwise requires—
- “accountant” means a person who is a member of an accounting institution recognized by the Bar Council;
- “admitted” in relation to a barrister means admitted and enrolled as a barrister and attorney under section 51 or 53 of the Supreme Court Act 1905;
- “AML/ATF Regulations” means the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, and any subsequent regulations made under section 49(3) of the Proceeds of Crime Act 1997 or section 12A of the Anti-Terrorism (Financial and other Measures) Act 2004;
- “Association” means the Bermuda Bar Association established under section 2;
- “bank” means an institution licensed as a bank under the Banks and Deposit Companies Act 1999;
- “Bar” means the Bar of Bermuda;
- “Bar Council” or “Council” means the Bar Council established under section 3;
- “barrister” means a barrister and attorney admitted as such;
- “Barristers and Accountants AML/ATF Board” means the Board established by section 25A;
- “the Committee” means the Professional Conduct Committee established by section 18;
- “certificate of recognition” means a certificate issued by the Council under section 16C, and “valid certificate of recognition” means a certificate of recognition which is in force;
- “Court” means the Supreme Court;

“director”, “controller” and “senior executive” shall, with the necessary modifications, be construed in accordance with the provisions of section 11B of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;

“disciplinary tribunal” means a tribunal appointed under section 19;

“disqualified person” means either—

- (a) a person whose name is on the Roll but who at the time in question is suspended from practice; or
- (b) a person whose name was once on the Roll but at the time in question has been struck off the Roll;

“elected member” has the meaning given in section 3(1);

“fit and proper person certificate” means a certificate issued by the Bar Council pursuant to section 10E;

“practising certificate” means a certificate issued by the Council under section 10 or 10A, and “valid practising certificate” means a practising certificate which is in force;

“prescribed” means prescribed by rules under section 9;

“President” means the President of the Association;

“professional company” means a company that holds a valid certificate of recognition;

“registered associate” means a person whose name appears in the Register of Associates;

“Register of Associates” means the register provided for in section 14(4);

“Register of Professional Companies” means the register provided for in section 16F;

“Registrar” means the Registrar of the Supreme Court;

“regulated professional firm” and “firm” have the meanings given in section 2 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 in relation to regulated professional firms of barristers;

“Roll” means the Roll maintained in accordance with section 54 of the Supreme Court Act 1905;

“rules” means rules made under section 9;

“Secretary” means the Secretary of the Association;

“special practising certificate” means a certificate issued by the Council under section 12, and “valid special practising certificate” means a special practising certificate which is in force;

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“specially admitted” means admitted and enrolled under section 51(3) of the Supreme Court Act 1905;

“unqualified person” means a person whose name is not, and has never been, on the Roll, but does not include either—

- (a) a registered associate as respects the performance by him of any function falling within his competence under this Act as such an associate; or
- (b) any person within the benefit of section 32;

“Vice-President” means the Vice-President of the Association.

[Section 1 amended by 1997:26 effective 15 August 1997; “bank” substituted by BR81/1999 effective 1 January 2000; “practising certificate” amended by 2008:47 s.2 effective 23 December 2008; “certificate of recognition”, “professional company”, “Register of Professional Companies”, and “Registrar” inserted by 2009:29 s.2 effective 19 October 2009; “AML/ATF Regulations”, “Barristers and Accountants AML/ATF Board”, and “regulated professional firm” and “firm” inserted by 2010 : 50 s. 43 effective 25 August 2010; definition “director”, “controller”, and “senior executive” inserted by 2018 : 53 s. 2 effective 25 September 2018; definition “fit and proper person certificate” inserted by 2018 : 53 s. 2 effective 31 January 2019]

PART II

THE BERMUDA BAR ASSOCIATION AND BAR COUNCIL

Bermuda Bar Association

2 (1) There shall be established an association under the name of “The Bermuda Bar Association”, which shall be a body corporate with the exclusive right to use that name and with power to sue and liability to be sued in its corporate capacity by that name in all courts and with power to have and use a common seal and to renew or vary the same at pleasure.

(2) All barristers other than those specially admitted shall for so long as they remain admitted form and be members of the Association:

(2A) Subject to sections 3(1), 5, and to sections 14 to 16 of this Act which define the rights, privileges and functions of registered associates, all registered associates shall for so long as they remain registered be members of the Bermuda Bar Association.

Provided that any barrister who is appointed to hold, or to act for a period exceeding three months in, the office of Judge, Registrar or magistrate shall for the duration of such appointment be deemed not to be a member of the Association.

(3) The liability of each barrister or registered associate for the debts or other legal obligations of the Association shall be limited to the amount (if any) for the time being owed by him to the Association for any fees prescribed by rules made under section 9 or otherwise except with respect to a debt or legal obligation of the Association for which he shall have expressly agreed to become responsible either alone or in conjunction with others; but all the property and assets of the Association shall be liable for its debts and obligations.

[Section 2 amended by 1997:26 effective 15 August 1997]

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Bar Council

- 3 (1) The Bar Council shall consist of—
- (a) such number of barristers, not being less than five as may be specified in the rules, elected in accordance with section 5, hereinafter referred to as “elected members”; and
 - (b) the Attorney-General, ex officio:

Provided that the Bar Council may act notwithstanding any vacancy in the number of elected members or in the office of Attorney-General.

(2) An elected member shall vacate office immediately before the election of members of the Council for the year next following the date of his election takes place in accordance with section 5.

(3) An elected member shall be eligible for re-election to the Council.

[Section 3 amended by 1997 : 26 effective 15 August 1997]

General responsibilities of Bar Council

4 Without prejudice to any other powers conferred or duties imposed by this or any other Act, the Bar Council shall be responsible for the management of the affairs of the Association and for—

- (a) the maintenance of the honour and independence of the Bar and the defence of the Bar in its relations with the executive and the judiciary;
- (b) the encouragement of legal education, and the promotion of the study of jurisprudence;
- (c) the determination of questions relating to etiquette and the professional conduct of members of the Bar and the conduct of professional companies;
- (d) the support of the public right of access to the courts and of the right of representation by members of the Bar before courts and tribunals;
- (e) the encouragement of improvements in the administration of justice and procedure including arrangements for legal advice and aid and for a system of law reporting;
- (f) the encouragement and support of law reform;
- (g) the furtherance of good relations between the Bar and lawyers of other countries;
- (h) the issuance, revocation and suspension of practising certificates and certificates of recognition;
- (i) such other matters of professional concern to barristers as the Association may determine.

[Section 4 paragraph (c) and (h) amended by 2009:29 s.3 effective 19 October 2009]

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Annual meeting of Association

5 (1) The Bar Council shall in each and every year summon a meeting of the Association to be held in accordance with the rules for the purposes specified in subsection (2).

(2) At every meeting of the Association summoned in accordance with subsection (1) the following business shall be conducted—

- (a) to receive a report from the President of the proceedings of the Bar Council during the previous year;
- (b) to consider the audited financial statements of the Associations;
- (c) to elect a Bar Council and officers of the Association for the ensuing year;
- (d) to appoint an auditor of the books of the Association for the ensuing year; and
- (e) to transact any other business which might properly be brought before the meeting.

(3) At any meeting held under this section—

- (a) twenty-five members shall constitute a quorum:

Provided that if within thirty minutes of the time notified for commencement of the meeting twenty-five members are not present, the person presiding shall adjourn the meeting for one week and if, when the meeting is convened after such adjournment, there are not present twenty-five members within that period, the members then present shall constitute a quorum;

- (b) the elected members of the Council shall be elected by ballot in such manner as the rules may determine.

(4) As soon as the elected members of the Council have been elected in accordance with subsection (3), the meeting shall proceed to elect one of those members to be President of the Association, another to be Vice-President, and a third to be Secretary:

Provided that the Association shall elect as President a barrister in active private practice in Bermuda.

(5) In the event of a casual vacancy occurring in the office of President, Vice-President or Secretary during any year the Bar Council shall have power to appoint another barrister to fill up the vacancy, and in the event of a casual vacancy occurring among the other elected members of the Council it shall have power to appoint some other member of the Association to fill up the vacancy.

(6) If, after a member of the Council has disqualified himself for considering a matter, the number of members remaining is insufficient to make up a quorum of the Council for the consideration of that matter, the President shall have power to appoint another barrister in his place to be a temporary member of the Council for the purpose of making up the quorum for the consideration of that matter.

[Section 5 amended by 1997:26 effective 15 August 1997]

Special meetings

6 (1) A special meeting of the Association shall be held upon the requisition of the President or of any two members of the Council or of any ten members of the Association to consider any matter specified in such requisition.

(2) Every such requisition shall be made in writing and shall be addressed to the Secretary.

Presiding at meetings

7 The President shall be ex officio the chairman and the Vice-President shall be ex officio the vice-chairman of the Bar Council and at every meeting of the Council or the Association the President or in his absence the Vice-President shall preside:

Provided that if both the President and the Vice-President are absent from a meeting of the Association or of the Council, such other member as the members present shall select from their number shall preside.

Quorum and procedure of Council

8 (1) The quorum for any meeting of the Council shall be one half of the number of the members of the Council for the time being.

(2) Subject to this Act and of the rules the Bar Council may make its own rules of procedure.

Council may make rules

9 (1) The Bar Council may make rules—

- (a) regulating in respect of any matter the professional practice, conduct and etiquette of barristers or registered associates;
- (aa) regulating in respect of any matter the duties and conduct of barristers or registered associates with respect to the Barristers and Accountants AML/ATF Board, but such rules shall not be inconsistent with the provisions of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 or the AML/ATF Regulations;
- (b) in relation to the keeping by barristers, firms of barristers and professional companies of accounts and in particular providing for—
 - (i) the opening and keeping by barristers, firms of barristers and professional companies of accounts at banks of clients' money;
 - (ii) the keeping by barristers, firms of barristers and professional companies of accounts containing particulars and information as to moneys received, held or paid both for or on account of their clients;
 - (iii) the Council to take such action as may be necessary to enable them to ascertain whether or not such rules are being complied with;

- (iv) the manner in which barristers, firms of barristers and professional companies shall deal with money held by them in a fiduciary capacity and the books of accounts to be kept in respect thereof and for the auditing of such accounts;
 - (bb) governing the practice of law by professional companies, including—
 - (i) the issuance, suspension and revocation of certificates of recognition,
 - (ii) terms, conditions, limitations and restrictions that may be imposed in relation to certificates of recognition,
 - (iii) the conduct of professional companies, including the duties and conduct of professional companies with respect to the Board, but such Rules shall not be inconsistent with the provisions of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 or the AML/ATF Regulations,
 - (iv) disciplinary proceedings in respect of professional companies, in addition to any rules made under paragraph (c) that are applicable to professional companies, and
 - (v) the Register of Professional Companies;
 - (c) providing for the conduct of inquiries, and investigations, or hearings respectively by the Professional Conduct Committee or a disciplinary tribunal under section 18A or 19A;
 - (ca) regulating the rights and duties of barristers and pupil-barristers in connection with the training of the latter, whether for the purpose of section 51(1) of the Supreme Court Act 1905 or otherwise;
 - (d) enabling the Council to exempt any person from compliance with any such rules and to impose and enforce conditions upon which such exemption may be granted in any particular case;
 - (e) fixing the fees payable by members to the Association;
 - (ea) fixing the fees payable by firms to defray the operational costs of the Barristers and Accountants AML/ATF Board and providing for penalties to be assessed against firms who fail to pay such fees, including the withdrawal of the practising certificates of barristers practising for such firms;
 - (f) prescribing any matter which under the Act is required or permitted to be prescribed by rules; and
 - (g) generally for the better carrying out by the Council of its functions under this Act and for the direction, government and control of the Association.
- (2) Every rule made by the Council under this section shall be subject to confirmation by the Chief Justice.

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(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.

[Section 9 amended by 1992 : 54 effective 17 July 1992; by 1997 : 26 effective 15 August 1997; by 2009 : 29 s.4 effective 19 October 2009; subsection (1) amended by 2010 : 50 s. 44 effective 25 August 2010; subsection 9(1) amended by 2018 : 53 s. 3 effective 25 September 2018]

Rules respecting Barristers and Accountants AML/ATF Board

9A (1) The Bar Council, in conjunction with the Council of the Chartered Professional Accountants of Bermuda, may make rules respecting the Barristers and Accountants AML/ATF Board, including rules—

- (a) for the nomination and appointment of the Chairperson and members of the Board;
- (b) prescribing the quorum, frequency of and place for holding meetings of the Board and the manner of decision-making at Board meetings;
- (c) providing for monitoring of regulated professional firms and investigating their compliance with the AML/ATF Regulations;
- (d) governing the practice and procedure for imposing civil penalties on regulated professional firms under Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
- (e) establishing guidelines for expenditure by the Board of its approved budget; and
- (f) respecting the presentation of the Board's financial statements and the auditing of those statements.

(2) Every rule made under this section shall be approved by the Bar Council and Council of the Chartered Professional Accountants of Bermuda and be subject to confirmation by the Chief Justice.

(3) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.

[Section 9A inserted by 2010 : 50 s. 45 effective 25 August 2010; amended by 2014 : 8 s. 16 effective 11 April 2014]

PART III

PRACTISING CERTIFICATES

Practising certificate

10 (1) The Council, on application in writing by a barrister in the month of November in any year in such form as the Council may determine and on payment of such fee as may be prescribed by rules and upon being satisfied that the person to whom the application relates is qualified to practise as a barrister shall, in accordance with this Part, issue to the

applicant a practising certificate as a barrister for the period of one calendar year from the 1st January next following the date of the application.

(2) A practising certificate issued under subsection (1) shall be in such form as the Council may from time to time determine.

(3) A barrister shall be entitled to a practising certificate if—

- (a) he is admitted in accordance with section 51 of the Supreme Court Act 1905 and has not been suspended under section 57 of that Act or section 22 of this Act or his name has not been removed from or struck off the Roll;
- (b) (i) he possesses Bermudian status within the meaning of the Bermuda Immigration and Protection Act 1956;
- (ii) he possesses a current and valid permit issued under that Act entitling him to engage in gainful occupation in Bermuda as a barrister; or
- (iii) he possesses spouse employment rights in accordance with the provisions of section 60 of that Act;
- (c) he is not in default in the payment of the fees prescribed by the Bermuda Bar Association (Organization) Rules 1975;
- (d) he or his firm of barristers, or a professional company of which he is a member or an employee, is not in default of the requirement of the Barristers (Accounts and Records) Rules 1976 to file an accountant's report;
- (e) *[repealed by 2008:47]*
- (f) he has, within the period of twelve months immediately preceding the date on which he applies for a practising certificate, complied with such requirements applicable to him, if any, of the Continuing Legal Education Programme;
- (fa) the Council has issued to him a fit and proper person certificate within the period of ninety days immediately preceding the date on which he applies for a practising certificate;
- (g) with respect to insurance, he provides evidence that—
 - (i) he has professional liability insurance as required by section 13A(1),
 - (ii) the firm of barristers of which he is a partner or employee has professional liability insurance as required by section 13B(1), or
 - (iii) the professional company of which he is a member or employee has professional liability insurance as required by section 16B(1)(h); and
- (h) with respect to the Barristers and Accountants AML/ATF Board, he provides evidence that—

- (i) he is registered with the Board as required by section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
- (ii) the firm of barristers of which he is a partner or employee is registered with the Board as required by section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
- (iii) the professional company of which he is a member or an employee is registered with the Board as required by section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008.

(4) Notwithstanding subsection (1), the Council may permit an application for a practising certificate to be made under this subsection in a month other than November and upon such application may issue to the applicant a practising certificate for any period not exceeding one calendar year and ending on the 31st December in the year in which it is issued.

(5) The Bar Council shall cause to be published in the Gazette—

- (a) in the month of February in every year, an alphabetical list of persons who have at the 1st January in that year obtained a practising certificate;
- (b) as soon as practicable after he obtains a practising certificate, the name of any person obtaining a practising certificate after the 1st January in any year.

(5A) If a person whose name is published under subsection (5) holds a practising certificate that is subject to limitations under sections 10B and 10C, the Council shall at the same time as it publishes the name of that person publish the fact that the practising certificate for that person is subject to those limitations.

(6) A copy of the Gazette containing the list referred to in subsection (5)(a) or the name of any person published pursuant to subsection (5)(b) shall be prima facie evidence in any court of the holding of a valid practising certificate by any person mentioned in subsection (5)(a) or (b).

(7) For the purposes of subsection (3) “the Continuing Legal Education Programme” means such programme as the Bar Council may from time to time approve.

[Section 10 amended by 1997:26 effective 15 August 1997; subsections (3)(f) and (7) inserted by 1999:29 s.2 effective 23 August 1999; section 10 amended by 2008:47 s.3 effective 23 December 2008; amended by 2009:29 s.5 effective 19 October 2009; subsection (3) amended by 2018 : 53 s. 4 effective 31 January 2019]

Practising certificate subject to limitations

10A (1) On application under section 10(1) or (4) by a barrister who is an undischarged bankrupt or in respect of whom a fit and proper person certificate discloses matters which in the discretion of the Council warrant the imposition of limitations, the Council shall, if the applicant meets the requirements of section 10(3), issue to the applicant a practising

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certificate as a barrister for the period referred to in subsection 10(1) or (4), as the case may be, subject to the limitations in sections 10B and 10C.

- (2) Upon the holder of a practising certificate that is subject to limitations—
 - (a) being discharged from bankruptcy; or
 - (b) producing evidence satisfactory to the Council that any conviction has been expunged or has elapsed by operation of time,

the limitations shall cease to apply.

[Section 10A inserted by 2008:47 s.4 effective 23 December 2008; Section 10A amended by 2018 : 53 s. 5 effective 31 January 2019]

Limitation regarding trust accounts

10B (1) Subject to subsections (2) to (5), the holder of a practising certificate that is subject to limitations shall not, in connection with his or her practice, receive from or on behalf of a person or group of persons any money or other property and shall not handle money or other property that is held in trust for a person or group of persons.

(2) The holder of a practising certificate that is subject to limitations may receive from or on behalf of a person or group of persons money—

- (a) in payment of fees for services performed by the holder for the person or group; or
- (b) in reimbursement for moneys properly expended, or for expenses properly incurred, on behalf of the person or group.

(3) The holder of a practising certificate that is subject to limitations may, subject to the approval of the Council, appoint a barrister who holds a practising certificate issued under section 10 to operate a trust account on behalf of the clients of the holder of the practising certificate that is subject to limitations.

(4) A barrister appointed under subsection (3) to operate a trust account shall be responsible for keeping the account, and accountable for monies in the account, in the same way as for trust accounts operated by the barrister for his or her own clients.

(5) For greater certainty, the Barristers (Accounts and Records) Rules 1976 apply to a barrister appointed under subsection (3) in relation to a trust account operated by that barrister on behalf of the clients of a holder of a practising certificate that is subject to limitations.

[Section 10B inserted by 2008:47 s.4 effective 23 December 2008]

Limitation regarding practice of real estate law

10C (1) The holder of a practising certificate that is subject to limitations may not practise real estate law.

(2) For the purposes of subsection (1), “real estate law” means the law concerning the actual or contemplated transfer or charging of any right, title or interest in land,

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including receipt of instructions, preparation of documents, conducting searches and providing opinions or certificates with respect to the title, transfer or charging of land.

[Section 10C inserted by 2008:47 s.4 effective 23 December 2008]

Limitations regarding specified activities

10CA (1) The holder of a practising certificate that is subject to limitations may not assist in the planning or execution of a transaction or otherwise act for or on behalf of a client in a transaction concerning a specified activity.

(2) For the purposes of subsection (1), “specified activities” means the activities referred to in section 49(5) of the Proceeds of Crime Act 1997.

[Section 10CA inserted by 2018 : 53 s. 6 effective 31 January 2019]

Practising certificate invalidated on bankruptcy

10D (1) If a barrister who holds a practising certificate issued under section 10 is adjudicated to be bankrupt, the practising certificate shall cease to be valid.

(2) A barrister who is adjudicated to be bankrupt shall immediately give notice in writing of that fact to the Council.

(3) A barrister whose practising certificate has ceased to be valid under subsection (1) may make an application under section 10 for a new practising certificate.

[Section 10D inserted by 2008:47 s.4 effective 23 December 2008]

Fit and proper persons

10E (1) Every Barrister and registered associate, and every shareholder, controller, director and senior executive who exercises control of a professional company, must be a fit and proper person to engage in the practice of law.

(2) On an application to the Council for a fit and proper person certificate by a person who wishes to engage in the practice of law, the Council shall determine whether that person is a fit and proper person, and in making that determination, the Council shall act fairly and in good faith in respect of each person.

(3) In determining whether a person is a fit and proper person, the Council shall, with a view to protecting the interests of clients, potential clients and the public, and in the interest of protecting the integrity of the profession as a whole, shall have regard to the matters set out in subsections (4), (5) and (6).

(4) The Council shall consider the previous conduct and activities in business or financial matters of the person, and shall have regard in particular to—

- (a) evidence that the person has been convicted by a court of a criminal offence—
 - (i) for which the person received a custodial or suspended sentence;
 - (ii) involving dishonesty, fraud, perjury or bribery;
 - (iii) associated with obstructing the course of justice;

- (iv) associated with money-laundering or terrorism;
- (b) evidence that the person has been convicted by a court of more than one criminal offence;
- (c) material evidence that the person has been responsible for behaviour which—
 - (i) is dishonest or violent;
 - (ii) involves a misuse of any position to obtain a pecuniary advantage;
 - (iii) involves a misuse of any position of trust;
 - (iv) demonstrates that the person cannot be relied upon to discharge his financial duties as a barrister;
- (d) the regulatory history of the person, in particular whether the person—
 - (i) has been made the subject of a serious disciplinary finding, sanction or action by any regulatory body, court or other body hearing appeals in relation to disciplinary or regulatory findings;
 - (ii) has failed to disclose information to a regulatory body when required to do so, or has provided false or misleading information;
 - (iii) has significantly breached the requirements of a regulatory body;
 - (iv) has been refused registration by a regulatory body;
 - (v) has failed to comply with reasonable requests of a regulatory body;
 - (vi) has, within the preceding five years, been rebuked, reprimanded or received a warning about his conduct by a regulatory body; and
- (e) matters relating to the operation of companies, trusts, and legal arrangements, in particular whether the person—
 - (i) has been removed or disqualified as a company director or trustee;
 - (ii) is or was a shareholder, controller, director or senior executive of a body corporate which has been the subject of a winding up order or receivership order, or has otherwise been wound up or put into receivership or administration in circumstances of default on any debt or insolvency.

(5) A person shall disclose if he has received a police caution for any of the matters referred to in subsection (4) and, to the extent such caution amounts to an admission of guilt, the Council shall consider the caution in like manner as a conviction for the purposes of that subsection.

(6) Notwithstanding that the Council shall have regard to the evidence and matters set out in subsections (4) and (5), it shall also have regard to any relevant exceptional circumstances when making a determination under this section.

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(7) For the purposes of making its determinations, the Council shall be empowered to commission the production of research and reports from any third party appearing to the Council to be properly qualified to do so, and to rely upon such research and reports for the purpose of issuing a fit and proper person certificate.

(8) The Council may make a determination upon an application for enrolment being made under section 52 of the Supreme Court Act 1905, or upon the application of any person who proposes the candidacy of any such applicant for enrolment at the Supreme Court.

(9) The Council shall make its determination within a period of not more than thirty days from the date of an application made by the person under this section.

(10) Where it has determined that a person is a fit and proper person to engage in the practice of law, the Council shall not more than five days thereafter issue to the person a fit and proper person certificate in such form as it shall determine.

(11) For the avoidance of doubt, in making a determination under this section the Council shall not have regard to any criminal conviction that has been spent in accordance with the Rehabilitation of Offenders Act 1977.

[Section 10E inserted by 2018 : 53 s. 7 effective 31 January 2019]

Practising certificate invalidated on indictable conviction

10F (1) If a barrister who holds a practising certificate issued under section 10 is convicted of an indictable offence, the practising certificate shall cease to be valid.

(2) A barrister who is convicted of an indictable offence shall immediately give notice in writing of that fact to the Bar Council.

(3) A barrister whose practising certificate has ceased to be valid under subsection (1) may, with leave of the Court, make an application under section 10 for a new practising certificate.

[Section 10F inserted by 2018 : 53 s. 7 effective 31 January 2019]

Appeals

10G (1) A person who is aggrieved by the determination of the Council under section 10E may appeal to the Supreme Court against such determination within one month of being notified by the Council.

(2) Section 13, and any rules referred to in that section that apply to an appeal by a barrister in relation to a practising certificate, apply, with any necessary modifications, to an appeal under this section by a person in relation to a fit and proper person certificate.

(3) The determination of the Supreme Court is final.

[Section 10G inserted by 2018 : 53 s. 7 effective 31 January 2019]

Practising certificate invalidated by removal from Roll or suspension

11 (1) If the name of a barrister is removed from the Roll any practising certificate issued to him shall cease to be valid.

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(2) During the period of suspension of a barrister from practice, no practising certificate shall be issued to him and any practising certificate issued to him prior to such suspension shall cease to be valid for the period of that suspension.

(3) *[repealed by 2008:47]*

[Section 11 amended by 2008:47 s.5 effective 23 December 2008]

Special practising certificates

12 (1) Notwithstanding section 10, the Council on application in writing by a barrister specially admitted in such form as the Council may determine and on payment of such fee as may be prescribed by rules, shall issue to the applicant a special practising certificate for the particular case or series of cases in respect of which the applicant is specially admitted if the Council is satisfied—

- (a) upon a certificate accompanying the application, issued within the preceding ninety days of the application by the relevant authority in the jurisdiction of legal practice of the barrister, attesting in all material respects to the matters referred to in section 10E; and
- (b) that the barrister possesses a current and valid permit issued under the Bermuda Immigration and Protection Act 1956 entitling him to engage in gainful occupation in Bermuda as a barrister.

(1A) The Council may issue a special practising certificate subject to the limitations referred to in section 10CA.

(2) A special practising certificate issued under subsection (1) shall be in such form as the Council may from time to time determine.

[Section 12 subsection (1) repealed and replaced, and subsection (1A) inserted by 2018 : 53 s. 8 effective 31 January 2019]

Appeals

13 (1) Any barrister aggrieved by a decision of the Council refusing an application made under this Part may appeal to the Supreme Court against that decision within one month of being notified of it.

(2) Upon hearing any appeal under subsection (1), the Supreme Court may make such order, including an order for costs, as it thinks just.

(3) The practice and procedure to be followed in relation to applications and appeals under this section shall be as prescribed by rules of court.

Professional liability insurance - individuals

13A (1) Subject to subsection (5), every individual who practises as a barrister shall obtain and maintain in effect insurance against professional liability under a policy of professional liability insurance issued by an insurance company that is registered as an insurer under the Insurance Act 1978 or is authorized to provide insurance under equivalent legislation in another jurisdiction.

(2) The Council may prescribe minimum requirements for a policy of professional liability insurance under subsection (1), including the minimum amount of cover to be provided.

(3) Every person who knowingly practises as a barrister without having professional liability insurance as required by subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000 or imprisonment of one year or both such fine and imprisonment.

(4) A person who is convicted of an offence under this section is not entitled to maintain an action for recovery of fees or disbursements in relation to any legal services provided by that person while they were without professional liability insurance.

(5) This section does not apply to a barrister who—

- (a) is a magistrate or who holds an office in the Attorney General's Chambers;
- (b) practises as a barrister exclusively for the Government of Bermuda or any of its departments or agencies or any public authority;
- (c) is an employee of a person (other than a firm of barristers or a professional company) and practises as a barrister exclusively for that person;
- (d) is a partner or an employee of a firm of barristers that has professional liability insurance as required by section 13B; or
- (e) is a member or an employee of a professional company that has professional liability insurance as required by section 16B(1)(h).

[Section 13A inserted by 2009 : 29 s. 6 effective 1 October 2010]

Professional liability insurance - firms

13B (1) Every firm of barristers shall obtain and maintain in effect insurance against professional liability under a policy of professional liability insurance issued by an insurance company that is registered as an insurer under the Insurance Act 1978 or is authorized to provide insurance under equivalent legislation in another jurisdiction.

(2) The Council may prescribe minimum requirements for a policy of professional liability insurance under subsection (1), including the minimum amount of cover to be provided.

[Section 13B inserted by 2009 : 29 s. 6 effective 1 October 2010]

PART IV

REGISTRATION OF ASSOCIATES

Register of Associates

14 (1) Subject to this Act, any person registered in accordance with this section, in this Act referred to as a "registered associate", may act as the agent of the barrister, firm or professional company by whom he is for the time being employed in the drawing and

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preparation of such instruments and the performance of such business and functions as are specified in section 15.

(2) A person may not be registered as an associate under this section unless he is qualified in accordance with subsection (5) and produces to the Registrar the statement required by subsection (3).

(3) A person shall be registered as an associate under this section upon application being made to the Registrar by the barrister, firm or professional company by whom he is employed, accompanied by a certificate from the competent authority evidencing the qualifications of such person, a fit and proper person certificate, and a statement by that barrister, by a partner of that firm or by a director of that professional company that to the best of his knowledge and belief such person is of good character.

(4) Upon receipt of the application the Registrar shall enter the name of the barrister, firm or professional company making the application and the name and qualifications of the person in respect of whom the application is made in a register to be known as the Register of Associates.

(5) A person shall be qualified for registration as an associate under this section if he is qualified in the manner set out in section 51(1)(a) of the Supreme Court Act 1905 or satisfies the Registrar that he is entitled to practise in a court of the nature described in section 51(1)(b) of the Supreme Court Act 1905 and, under any statutory provision for the time being in force regulating the right to engage in gainful occupation or to be employed in Bermuda, may lawfully be employed to perform the functions allowed to a registered associate under this Act.

(6) Any person who procures the registration of himself or of any other person as a registered associate by any false or misleading certificate or statement commits an offence:

Punishment on summary conviction: a fine of \$1,000

[Section 14 amended by 2009:29 s.7 effective 1 October 2009; Section 14 amended by 2018 : 53 s. 9 effective 31 January 2019]

Permitted functions of registered associates

15 Notwithstanding anything to the contrary in this Act, a registered associate shall be entitled to act as the agent for the barrister, firm or professional company by whom he is employed in the drawing and preparation of instruments relating either to real or personal property, or on which to found or oppose a grant of probate or letters of administration or a resealing thereof, in the taking of instructions from clients, in the giving of instructions to counsel, in the preparation of such documents relating to legal proceedings as are to be prepared in the chambers of the barrister, firm or professional company, and generally in the conduct of such of the business of the barrister, firm or professional company as is normally conducted in the chambers of a barrister and attorney.

[Section 15 amended by 2009:29 s.8 effective 1 October 2009]

Removal of name from Register of Associates

16 The Registrar shall remove the name of any registered associate from the Register of Associates—

- (a) on receipt of a certificate from the barrister, firm or professional company whose name is for the time being entered in the Register in relation to such associate pursuant to section 14(4) that such person is no longer in his employ; or
- (b) upon the application of the registered associate; or
- (c) upon the taking effect of an order to that effect of a disciplinary tribunal under section 19A in relation to the registered associate;
- (ca) upon the registered associate being convicted of an indictable offence; or
- (d) upon the registered associate becoming admitted as a barrister.

[Section 16 amended by 1997:26 effective 15 August 1997; Section 16 paragraph (ca) inserted by 2018 : 53 s. 10 effective 31 January 2019]

PART IVA
PROFESSIONAL COMPANIES

Establishment of professional company

16A (1) Subject to this Act and the rules, one or more barristers, each of whom holds a valid practising certificate issued under section 10, may establish a professional company for the purpose of providing professional services of the sort provided by individuals who practise as barristers or act as registered associates.

(2) Subject to this Act and the rules, a professional company may carry on the practice of law in Bermuda.

[Section 16A inserted by 2009:29 s.10 effective 19 October 2009]

Conditions for professional companies

16B (1) A professional company shall meet all of the following conditions—

- (a) the company must be incorporated as a company limited by shares within the meaning of the Companies Act 1981 and be in good standing with the Registrar of Companies;
- (b) the memorandum of association of the company must provide that the company has as its principal object the provision of professional services of the sort provided by individuals who practise as barristers or act as registered associates;
- (c) all of the issued and outstanding shares of the company must be legally and beneficially owned, directly or indirectly, by one or more individuals, each of whom is a barrister who holds a valid practising certificate issued under section 10;
- (d) subject to subsection (3), all of the directors of the company must be barristers, each of whom holds a valid practising certificate issued under section 10;

- (e) every barrister who is employed by the company as a barrister must hold a valid practising certificate issued under section 10 or 10A;
 - (f) every person who is employed by the company as an agent of the company to perform functions specified in section 15 must be a registered associate;
 - (fa) every person who is a shareholder, controller, director or senior executive of the company has a valid fit and proper person certificate;
 - (g) the letterhead and promotional material for the company must clearly indicate that it is a limited liability company;
 - (h) the company shall obtain and maintain in effect insurance against professional liability under a policy of professional liability insurance issued by an insurance company that is registered as an insurer under the Insurance Act 1978 or is authorized to provide insurance under equivalent legislation in another jurisdiction;
 - (ha) the company must be registered with the Barristers and Accountants AML/ATF Board in accordance with section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; and
 - (i) the memorandum or bye-laws of the company must provide for the manner in which shares of a member of the company who dies or ceases to hold a valid practising certificate are to be disposed of.
- (2) The Council may prescribe minimum requirements for a policy of professional liability insurance under subsection (1)(h), including the minimum amount of cover to be provided.
- (3) In the case of a professional company that has only one shareholder, that shareholder—
- (a) shall be one of the directors of the company; and
 - (b) shall elect or appoint as a director one other person, who need not be a barrister who holds a practising certificate, subject to the Council being satisfied that the person is a fit and proper person to be elected or appointed as a director of a professional company.
- (4) A shareholder of a professional company shall not create any charge or other third party interest over his or her shares in the company.

[Section 16B inserted by 2009:29 s.10 effective 19 October 2009; Section 16B amended by 2018 : 53 s. 11 effective 31 January 2019]

Issuance of certificate of recognition

16C (1) A company may apply to the Council for a certificate of recognition.

(2) If the Council is satisfied that a company meets the conditions for a professional company set out in section 16B, the Council shall issue to the company a

certificate of recognition as a professional company for the period from the date of issue to December 31 in the year in which the certificate is issued.

(3) A professional company may apply in November in any year for a certificate of recognition for the following year.

(4) If the Council is satisfied that a professional company continues to meet the conditions for a professional company set out in section 16B, the Council shall issue to the professional company a further certificate of recognition as a professional company for the period of one calendar year from January 1 next following the date of the application.

(5) An application by a company for a certificate of recognition shall be made by a director of the company.

(6) An application shall be made in such form as may be prescribed and shall be accompanied by the following—

- (a) the prescribed fee;
- (b) a declaration signed by a director of the company declaring that the conditions set out in section 16B have been met in respect of the company; and
- (c) any other documentation and information that may be prescribed.

(7) A certificate of recognition shall be in such form as may be prescribed.

(8) The Council shall cause a list of the names of professional companies that have obtained certificates of recognition to be published in the Gazette, in the same manner as practising certificates under section 10(5).

(9) A copy of the Gazette that contains the name of a professional company published pursuant to this section shall be prima facie evidence in any court of the holding of a valid certificate of recognition by that professional company at the time of publication of the name.

[Section 16C inserted by 2009:29 s.10 effective 19 October 2009]

Suspension or revocation of certificate of recognition

16D (1) The Council may, in accordance with the rules, suspend or revoke the certificate of recognition of a professional company.

(2) The rules may prescribe circumstances in which a certificate of recognition is deemed to have been revoked.

(2A) The Council shall revoke a certificate of recognition if—

- (a) the professional company fails to register with the Barristers and Accountants AML/ATF Board in accordance with section 30C of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
- (b) a shareholder, director, controller or senior executive, who exercises control of the company is convicted of an indictable offence.

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(3) If a certificate of recognition is revoked, or deemed to have been revoked, it shall cease to be valid.

(4) If a certificate of recognition is suspended, it shall cease to be valid for the period of that suspension.

[Section 16D inserted by 2009:29 s.10 effective 19 October 2009; Section 16D subsection (2A) inserted by 2018 : 53 s. 12 effective 25 September 2018]

Appeal

16E (1) Any barrister or company aggrieved by a decision of the Council to refuse an application for a certificate of recognition, or to suspend or revoke a certificate of recognition, may appeal to the Supreme Court against that decision within one month of being notified of it.

(2) Section 13, and any rules referred to in that section that apply to an appeal by a barrister in relation to a practising certificate, apply, with any necessary modifications, to an appeal under this section by a barrister or a company in relation to a certificate of recognition.

[Section 16E inserted by 2009:29 s.10 effective 19 October 2009]

Register

16F (1) The Council shall, in accordance with the rules, establish and maintain a register of professional companies that have a valid certificate of recognition.

(2) The Council shall make the register available for public inspection in its offices at all reasonable times.

(3) The Council shall provide a copy of the register to the Registrar of the Supreme Court.

[Section 16F inserted by 2009:29 s.10 effective 19 October 2009]

Application of provisions of law

16G (1) Unless the context indicates a contrary intention, a reference in any statutory provision to an individual who practises law or to an individual who holds a practising certificate under this Act shall be deemed to include a reference to a professional company.

(2) The provisions of law that apply to individual barristers and registered associates continue to apply to them notwithstanding that they are members or employees of a professional company.

(3) For greater certainty, the limitations that apply to a barrister who holds a practising certificate that is subject to limitations apply with regard to that barrister's practice as an employee of a professional company.

[Section 16G inserted by 2009:29 s.10 effective 19 October 2009]

False or misleading statements

16H (1) Every person who makes a statement in an application for a certificate of recognition, or in a document that accompanies an application, knowing it to be false or misleading in any material particular, commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for one year or to both such fine and imprisonment.

(2) A barrister who makes a statement in an application for a certificate of recognition, or in a document that accompanies an application, knowing it to be false or misleading in any material particular, is also liable to disciplinary proceedings under this Act.

[Section 16H inserted by 2009:29 s.10 effective 19 October 2009]

Prohibitions, offences and penalties

16I (1) No company, other than a professional company, shall carry on the practice of law in Bermuda.

(2) No company, other than a professional company, shall hold out or represent that it is a professional company or that it may practise law in Bermuda.

(3) Every company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

(4) If a company is guilty of an offence under subsection (3), every director and officer of the company who authorized, permitted or acquiesced in the commission of the offence commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for one year or to both such fine and imprisonment.

(5) A director or officer shall not be convicted of an offence under subsection (4) if they have exercised due diligence to prevent the commission of the offence by the company or if they have relied in good faith on a report or representation made by another director or officer of the company.

(6) A prosecution for an offence under this section shall not be commenced against a person who was a director or an officer of a professional company more than two years after the date when the person ceased to be a director or officer of the company.

(7) The court that convicts a person of an offence under subsection (4) may prescribe as a condition of a probation order that the person pay compensation or make restitution to any person who suffered a loss as a result of the offence.

(8) If a company or other person is convicted of an offence under this section, they shall not be entitled to maintain an action for recovery of fees or disbursements in relation to any legal services provided by that company or person.

[Section 16I inserted by 2009:29 s.10 effective 19 October 2009]

PART V
DISCIPLINE

Improper conduct

- 17 (1) For the purposes of this Act, it shall be improper conduct if a barrister—
- (a) makes a statement which to his knowledge is false in any material particular for the purpose of procuring his admission to practise law or the admission of any other person so to do, or for the purpose of obtaining a certificate of recognition for a company;
 - (b) employs any disqualified or unqualified person, or permits any disqualified or unqualified person in his employ to engage, in any business, matter or thing in contravention of this Act;
 - (c) contravenes any rule made under this Act;
- (ca) contravenes the AML/ATF Regulations;
- (cb) fails to comply with any requirement imposed—
- (i) under section 5 or Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
 - (ii) by the Barristers and Accountants AML/ATF Board acting in the performance of its functions under section 5 or Part 4A of that Act; or
- (d) is otherwise guilty of conduct unbefitting a barrister.
- (2) For the purposes of this Act, it shall be improper conduct if a registered associate—
- (a) for the purpose of procuring his registration as such is found to have produced a certificate which is false in any material particular, or does not relate to himself, or to have made any statement to his employer relating to such qualifications for such registration which is false in any material particular; or
 - (b) in any business, matter or thing in which he is entitled to engage on behalf of his employer under this Act, acts in any manner which would, were he a barrister, constitute improper conduct under subsection (1)(c).
- (3) For the purposes of this Act, it shall be improper conduct if a professional company—
- (a) causes or permits any person on its behalf to make a statement, or produce a document, that is false in any material particular, for the purpose of obtaining a certificate of recognition;
 - (b) employs any disqualified or unqualified person, or permits any disqualified or unqualified person in its employ, to engage in any business, matter or thing in contravention of this Act;

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- (c) contravenes any rule made under this Act;
- (ca) contravenes the AML/ATF Regulations; or
- (d) fails to comply with any requirement imposed—
 - (i) under section 5 or Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008; or
 - (ii) by the Barristers and Accountants AML/ATF Board acting in the performance of its functions under section 5 or Part 4A of that Act.

[Section 17 amended by 2009 : 29 s.11 effective 19 October 2009; amended by 2010 : 50 s. 46 effective 25 August 2010; subsections (1) and (3) amended by 2018 : 53 s. 13 effective 25 September 2018]

Professional Conduct Committee

18 (1) There shall be established a standing committee of the Bermuda Bar Association under the name of the “Professional Conduct Committee” which shall have the powers given to it under this Act.

(2) The Professional Conduct Committee shall consist of—

- (a) one member of the Bar Council; and
- (b) six other members selected by the Council from among the members of the Bar Association.

(3) The members of the Committee shall be appointed annually by the Bar Council to hold office for a period not exceeding one year commencing on the date of such appointment.

(4) A person appointed as a member of the Committee under subsection (3) may be reappointed thereto, so however, that the time of such reappointment shall coincide so far as is practicable with the election of members to the Bar Council.

(5) The Committee shall elect one of its members to be the Chairman thereof to chair Committee meetings and perform any other functions assigned to him in accordance with this Act and the Rules.

(6) Where it is appropriate so to do, the Committee may designate one of its members to be a committee representative to perform, on behalf of the Committee, the functions assigned to him in accordance with the Rules.

(7) If by reason of illness or absence or for any other reason the Chairman of the Committee or a committee representative is unable to act at any time, the Chairman of the Committee shall nominate another of its members to act in his place.

(8) The quorum for any meeting of the Committee shall be three members, so however, that where the Committee is unable to form a quorum, the Chairman thereof shall have power to appoint a member or members of the Bar Association to serve on the Committee temporarily to satisfy quorum requirements.

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(9) The practice and procedure to be followed by the Committee shall be as prescribed by Rules and, subject to this Act and those Rules, the Committee may make its own rules of procedure.

[Section 18 subsection (2) repealed and replaced by 2015 : 5 s. 2 effective 30 April 2015]

General powers of Professional Conduct Committee

18A The powers and functions of the Committee shall be to—

- (a) conduct inquiries into and investigations of complaints of improper conduct made against a barrister, professional company or registered associate in accordance with the Rules, to determine whether a prima facie case of improper conduct has been made out against the person complained against;
- (b) take such measures prescribed by the Rules after such inquiry or investigation, or both such inquiry and investigation, if no prima facie case of improper conduct has been made out against a person complained against;
- (c) take such informal or formal measures in accordance with the Rules after investigating such a complaint, where the Committee determines that a prima facie case has been made out against a person complained against;
- (d) make any necessary administrative arrangements, in accordance with the Rules, for the presentation of a case before a disciplinary tribunal, where formal measures are taken by the Committee in respect of a complaint;
- (e) make an order that a trust fund or funds shall, until a disciplinary tribunal determines otherwise, be operated by an accountant or a bank if the complaint of improper conduct contains an allegation of misuse of trust funds;
- (f) authorize a committee representative to make arrangements for counsel, and any assistant counsel appointed by him, to be remunerated in accordance with the Rules for work done on behalf of the Committee;
- (g) make a ruling in respect of what constitutes a matter of improper conduct where the Committee considers it appropriate so to do or when a barrister, professional company or registered associate asks the Committee so to do, and such a ruling may involve a question of conflict of interest; and
- (h) make recommendations on matters of improper conduct to the Bar Council as it may think appropriate.

[Section 18A amended by 2009:29 s.12 effective 19 October 2009]

Disciplinary tribunals

19 (1) Where the Committee determines that a prima facie case of improper conduct has been made out and formal measures are appropriate, it shall, after causing charges to

be formulated against that person, refer the complaint to a disciplinary tribunal appointed by the Chief Justice under subsection (2).

(2) When invited so to do by the Committee, the Chief Justice shall appoint a disciplinary tribunal to sit to determine a complaint of improper conduct against a barrister, professional company or registered associate in accordance with the Rules.

(3) A disciplinary tribunal shall consist of a Chairman, who shall be a Judge of the Supreme Court selected for appointment by the Chief Justice to preside over disciplinary hearings, and two other members recommended for appointment by the Bar Council from among the members of the Bar Association:

Provided that, where the Bar Council is the complainant, the three members of a disciplinary tribunal shall be selected for appointment by the Chief Justice.

(4) The members of a disciplinary tribunal shall, so far as is possible, be persons of professional standing comparable or senior to that of the person complained against.

(5) The standard of proof required in proceedings before a disciplinary tribunal shall be the same as that required in criminal proceedings.

(6) For the purpose of conducting a hearing, a disciplinary tribunal shall have all the powers of a court of summary jurisdiction in relation to the summoning of witnesses, their examination on oath or otherwise and to compelling the production of any document or thing relevant to the subject matter of the proceedings.

(7) A decision of a disciplinary tribunal may be reached by a majority of the members of that tribunal.

(8) The practice and procedure to be followed in relation to the proceedings of a disciplinary tribunal shall be as prescribed by the Rules and, subject to this Act and those Rules, a disciplinary tribunal may make its own rules of procedure.

[Section 19 subsection (2) amended by 2009:29 s.13 effective 19 October 2009]

Powers of disciplinary tribunals

19A (1) The powers and functions of disciplinary tribunal shall be to—

- (a) conduct a preliminary hearing in accordance with the Rules, for the purpose of giving directions in relation to the conduct of a hearing in respect of a complaint of improper conduct;
- (b) conduct a hearing in accordance with the Rules for the purpose of determining whether or not a complaint of improper conduct has been made out against a person complained against and, thereafter, make such finding, sentence or order in accordance with the Rules as the tribunal deems appropriate in the circumstances of the case before it;
- (c) confirm or, on the application of the person complained against, revoke an order made by the Committee under paragraph (e) of subsection (1) of section 18A to appoint an accountant or a bank to operate a trust fund or

funds temporarily where the complaint of improper conduct contains an allegation of misuse of trust funds;

- (d) make an order for costs against either party to disciplinary proceedings adjudicated before it in accordance with the Rules, and this may include an order for payment of the—
 - (i) professional charges of counsel, and his assistant if any, who presents a case before the tribunal in accordance with this Act and the Rules;
 - (ii) professional charges of a bank or accountant appointed by an order of the Committee or a disciplinary tribunal respectively under section 18A(1)(e) or 19A(1)(c) of this Act respectively;
 - (iii) administrative costs and expenses incurred by the Committee in the performance of its functions under this Act or Rules made hereunder.

(2) An order of the Committee or a disciplinary tribunal in pursuance of section 18A(1)(e) or 19A(1)(c) respectively may, according to the circumstances of each particular case considered by the Committee or a disciplinary tribunal, make provision for any resulting costs to be met by the person complained against or the Bar Association.

Appointment of clerk to disciplinary tribunal

20 (1) The Chief Justice shall, on the recommendation of the Chairman of a disciplinary tribunal, appoint a person to act as clerk to that tribunal and assist the tribunal in the performance of its functions under this Act.

(2) The clerk shall perform such functions as are assigned to him in accordance with this Act and the Rules, and any other functions that a Chairman of a disciplinary tribunal shall direct him to perform in relation to a complaint before it.

Complaints of improper conduct

21 (1) Subject to subsection (3), a complaint that a barrister, professional company or registered associate has been guilty of improper conduct may be made to the Bar Council in writing by the complainant.

(2) As soon as may be practicable after receipt of a complaint under subsection (1), the Bar Council shall refer that complaint to the Committee.

(3) Notwithstanding subsection (1), where the Bar Council is of the opinion that the conduct of a barrister, professional company or registered associate might constitute improper conduct, and no such complaint has been made by any person, it may, on its own motion, refer evidence of the conduct of that barrister, professional company or registered associate to the Committee.

(3A) The Barristers and Accountants AML/ATF Board may on its own motion make a complaint directly to the Committee of any matter relating to the conduct of a barrister, professional company or registered associate arising in connection with Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 or with the AML/ATF Regulations.

(4) As soon as may be practicable after receipt of a complaint from the Bar Council or the Board, the Committee shall inquire into, investigate and make a determination in respect of, the complaint in accordance with the Rules.

(5) After making such determination, the Committee shall take such action prescribed under section 18A of this Act and the Rules as it thinks fit:

Provided that, a determination by the Committee under paragraph (b) of subsection (1) of section 18A to dismiss a complaint in accordance with the Rules shall be final and not subject to appeal.

[Section 21 amended by 2009:29 s.14 effective 19 October 2009; subsection (3A) inserted and subsection (4) amended by 2018 : 53 s. 14 effective 25 September 2018]

Convening Notices

22 (1) The Chief Justice shall, where the Committee determines that formal treatment of a complaint is necessary and disciplinary charges in respect of a person complained against are forwarded to him, issue and cause to be served upon that person a Notice, in this Act and the Rules made hereunder referred to as a "Convening Notice", informing the person about the matters and rights set out in the Rules.

(2) Upon the appointment of a disciplinary tribunal, the Chief Justice shall send a copy of the Convening Notice to the Committee to inform the Committee of the composition of the tribunal that shall determine the charge or charges formulated against a person complained against.

(3) Upon receipt of a copy of the Convening Notice, the Committee shall forward to the disciplinary tribunal a copy of the charge and any documentary evidence to enable the tribunal to sit to hear and determine whether the complaint constitutes improper conduct by a person complained against.

Appeal to the Court of Appeal

23 (1) A barrister, professional company or a registered associate aggrieved by a finding, sentence or order of a disciplinary tribunal may appeal to the Court of Appeal against such finding, sentence or order within twenty-one days of being notified of it.

(2) Section 8 of the Court of Appeal Act 1964 [*title 8 item 4*] shall apply *mutatis mutandis* in relation to an appeal under subsection (1) as it applies in relation to a judgment or order of the Supreme Court in a civil cause or matter.

(3) Section 9 of that Act shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

(4) A hearing before the Court of Appeal shall be in camera unless the barrister, professional company or registered associate who files the appeal requests that the hearing shall be in open court.

[Section 23 amended by 2009:29 s.15 effective 19 October 2009]

Restoration to Roll of name of barrister struck off

24 (1) The Bar Council may, at any time, if it thinks fit, upon application being made by a barrister who has been disqualified from practice or whose name has been struck off the Roll and who provides a fit and proper person certificate issued within the period of ninety days immediately preceding the date of the application, recommend to the Supreme Court that that barrister's name shall be restored to the Roll or, as the case may require, that his disqualification from practice shall be terminated, and shall forthwith give notice of any such recommendation to the Registrar.

(2) Upon receipt of notice of a recommendation made by the Bar Council under subsection (1) in relation to a barrister, the Registrar shall forthwith cause that application and recommendation to be placed before the Supreme Court and upon receipt of an application and subject to such conditions as the Court considers appropriate, the Court may—

- (a) exercise any powers vested in it by section 51 of the Supreme Court Act 1905 [*title 8 item 1*] to order the restoration to the Roll of that barrister's name; or as the case may require,
- (b) order the termination, with effect from a date specified in the order, of the barrister's suspension from practice.

(3) Any decision of the Bar Council under subsection (1) in relation to the making of a recommendation under that subsection or a refusal so to do, and any decision or order of the Supreme Court under subsection (2) in relation to any such recommendation, shall be final.

(4) Where the Supreme Court orders under subsection (2) the restoration of a barrister's name to the Roll or the termination of his suspension from practice, the Registrar shall cause a note of the effect of the order to be entered in the Roll and a notice thereof to be published in the Gazette.

[Section 24 amended by 2018 : 53 s. 15 effective 31 January 2019]

Restoration to Register of name removed

24A (1) The Bar Council may at any time, if it thinks fit, upon application being made by a registered associate who has been suspended from practice or whose name has been removed from the Register of Associates and who provides a fit and proper person certificate issued within the period of ninety days immediately preceding the date of his application, recommend to the Registrar that, subject to such conditions as the Bar Council considers appropriate, that registered associate's name shall be restored to the Register of Associates or, as the case may require, that his suspension from practice shall be terminated.

(2) Upon receipt of notice of a recommendation made by the Bar Council under subsection (1) in relation to a registered associate, the Registrar may—

- (a) exercise the power vested in him by section 14 of this Act to enter the registered associate's name in the Register of Associates; or as the case may require,
- (b) terminate that registered associate's suspension from practice.

(3) A decision of the Registrar under subsection (2) shall be final.

(4) The Registrar shall cause a notice of the entry in the Register of Associates to be published in the Gazette.

[Section 24A amended by 2018 : 53 s. 16 effective 31 January 2019]

Registrar may publish charge, finding and sentence

24B (1) Subject to the provisions of this section, a charge, finding or sentence of a disciplinary tribunal may be published in the Gazette.

(2) Where, at the end of disciplinary proceedings, a disciplinary tribunal finds that a complaint does not constitute improper conduct by a person complained against, the Registrar shall publish in the Gazette a notice of the complaint, charge and the finding, if the person complained against requests such publication.

(3) Where the sentence is one of disbarment, suspension or a fine and a period of six weeks from the date of the decision of the disciplinary tribunal has expired, the Registrar shall—

- (a) cause a note of any charge proved against the respondent and the sentence imposed in respect of that charge to be entered, as the case may be—
 - (i) in the Roll against the name of the barrister concerned,
 - (ii) in the Register of Associates against the name of the registered associate concerned, or
 - (iii) in the Register of Professional Companies against the name of the professional company concerned; and
- (b) file the order made in respect of the sentence.

(4) After filing such an order under paragraph (3), the Registrar shall cause a notice stating any charge proved and the sentence imposed against the respondent, to be published in the Gazette.

(5) Where the sentence is one other than disbarment, suspension or a fine and the respondent has not appealed against his sentence to the Court of Appeal, the Registrar shall—

- (a) cause a note of the effect of the order of the disciplinary tribunal to be entered, as the case may be—
 - (i) in the Roll against the name of the barrister to whom the order relates,
 - (ii) in the Register of Associates against the name of the registered associate to whom the order relates, or
 - (iii) in the Register of Professional Companies against the name of the professional company to which the order relates; and
- (b) if the tribunal so recommends and the respondent so requests, cause a notice stating the effect of the order to be published in the Gazette.

(6) Where a respondent has appealed to the Court of Appeal against the finding or sentence or both such finding and sentence in respect of the complaint made against the respondent, such finding or sentence or both shall not be published until the appeal is withdrawn, struck out or determined by the Court of Appeal.

[Section 24B amended by 2009:29 s.16 effective 19 October 2009]

Confidentiality

25 Subject to section 24B of this Act, every disciplinary proceeding under this Part of the Act shall be treated as confidential by every person having access thereto.

[Part V repealed and replaced by 1997:26 effective 15 August 1997]

PART VA

BARRISTERS AND ACCOUNTANTS AML/ATF BOARD

Establishment

25A (1) There shall be established a joint Board of the Bermuda Bar Association and the Chartered Professional Accountants of Bermuda under the name of the "Barristers and Accountants AML/ATF Board" which, upon designation by the Minister responsible for justice under section 4(1) of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008, shall have the powers and duties conferred by section 5 and Part 4A of that Act and any other statutory provision.

(2) The Board shall be a body corporate having perpetual succession and a common seal and, subject to this Act, shall have power to acquire, hold and dispose of moveable and immoveable property of any kind and to enter into contracts and to do all things necessary for the purposes of its functions.

(3) The Board may sue and be sued in its corporate name and may for all purposes be described by that name, to the use of which it shall have exclusive right.

(4) All documents, other than those required by law to be under seal, made by the Board and all decisions of the Board may be signified under the hand of the Chairman or any other member or officer authorized to act for him.

(5) The Board's financial year shall be the period of twelve months ending on the 31st day of March.

[Section 25A inserted by 2010 : 50 s. 47 effective 25 August 2010; subsection (1) amended by BR 5/2011 para.5 effective 25 February 2011; amended by 2014 : 8 s. 16 effective 11 April 2014; amended by 2018 : 53 s. 17 effective 25 September 2018]

Constitution of Board

25B (1) The Barristers and Accountants AML/ATF Board shall consist of—

- (a) a Chairman, jointly appointed by the Bar Council and the Council of the Chartered Professional Accountants of Bermuda to hold office for a term of 3 years; and

- (b) a minimum of 4 and a maximum of 8 other members, one half of whom shall be appointed by the Bar Council and one half of whom shall be appointed by the Council of the Chartered Professional Accountants of Bermuda, to hold office for terms of up to 3 years.
- (2) The terms of office of appointed members shall be such as to ensure, so far as possible, the expiration in any such year of not more than one half of the terms of office of those members.
- (3) The Chairman shall be appointed from persons who have at least 10 years of experience in the practice of law or accountancy in Bermuda and the other members of the Board from persons who have at least 5 years of such experience.
- (4) The Bar Council may not appoint to the Board any person who is employed by, affiliated with or has a financial interest in, a regulated professional firm.
- (5) The Board shall pay to the Chairman such remuneration as the Bar Council and the Council of the Chartered Professional Accountants of Bermuda may determine.

[Section 25B inserted by 2010 : 50 s. 47 effective 25 August 2010; amended by 2014 : 8 s. 16 effective 11 April 2014]

Supervisor

25C (1) The Barristers and Accountants AML/ATF Board shall engage a professional legal adviser or accountant with experience in regulatory compliance as Supervisor responsible for assisting the Board to ensure that regulated professional firms, comply with the requirements of Part 4A of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and the AML/ATF Regulations.

- (2) The duties of the Supervisor include—
 - (a) providing guidance to regulated professional firms as to compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and the AML/ATF Regulations;
 - (b) acting as registrar of the register established under section 30B of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008;
 - (c) carrying out on site and off site inspections of regulated professional firms to determine compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and the AML/ATF Regulations;
 - (d) making submissions to the Board respecting cases of non-compliance with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and the AML/ATF Regulations and making recommendations on the imposition of civil penalties; and

- (e) reporting to the Board on the compliance of regulated professional firms with the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 and the AML/ATF Regulations and making recommendations respecting further supervision and enforcement actions.

(3) The Supervisor shall disclose to the Bar Council any information that he receives in carrying out his duties that causes him to suspect that a barrister or professional company has committed an act that constitutes improper conduct under section 17.

[Section 25C inserted by 2010 : 50 s. 47 effective 25 August 2010; Section 25C amended by 2018 : 53 s. 18 effective 25 September 2018]

Expenditure budget

25D (1) The Barristers and Accountants AML/ATF Board shall, not later than December 1 of the year before the commencement of the Board's financial year, submit to the Bar Council and the Council of the Chartered Professional Accountants of Bermuda for approval estimates, in such form and in such detail as the Bar Council and Board of the Chartered Professional Accountants of Bermuda may require, of the Board's expenditure on operations in that financial year.

(2) The Board shall submit as soon as practicable to the Bar Council and Board of the Chartered Professional Accountants of Bermuda for their approval any proposed amendments to any such estimates.

(3) The Bar Council and Board of the Chartered Professional Accountants of Bermuda shall review the estimates and proposed amendments to the estimates without delay and shall not unreasonably withhold their approval.

(4) The estimates and any amendments to them, when approved by the Bar Council and Board of the Chartered Professional Accountants of Bermuda shall constitute the Board's expenditure budget for that financial year.

(5) The Board shall not, without the approval of the Bar Council and Board of the Chartered Professional Accountants of Bermuda, spend in any financial year more than the total amount of expenditure approved for that financial year.

(6) In the management of its expenditure budget, the Board shall comply with any expenditure guidelines established by the Bar Council and Board of the Chartered Professional Accountants of Bermuda.

(7) Where a specific sum is provided in the Board's expenditure budget for any financial year in respect of any expenditure item, the Board shall not spend on that item in that financial year any amount in excess of that sum unless the excess expenditure either—

- (a) is made within the expenditure guidelines; or

- (b) has been approved by the Bar Council and Board of the Chartered Professional Accountants of Bermuda.

[Section 25D inserted by 2010 : 50 s. 47 effective 25 August 2010; Section 25D amended by 2014 : 8 s. 16 effective 11 April 2014]

Accounts of the Board

25E (1) The Board shall cause proper statements of its financial affairs to be maintained and shall prepare in respect of each financial year a statement of its accounts in such form as the Bar Council and Board of the Chartered Professional Accountants of Bermuda may direct.

- (2) The statement of accounts must present fairly and accurately—

(a) the financial transactions of the Board during the financial year to which they relate; and

(b) the financial position of the Board at the end of the financial year.

(3) the Board shall within six months after the end of its financial year cause the statement of its accounts to be audited.

(4) Upon completion of the audit, the Board shall present the audited statements to the Bar Council and the Board of the Chartered Professional Accountants of Bermuda as soon as practicable after receiving it.

[Section 25E inserted by 2010 : 50 s. 47 effective 25 August 2010; amended by 2014 : 8 s. 16 effective 11 April 2014]

PART VI

OFFENCES AND SUPPLEMENTARY

Unqualified person not to act as barrister and attorney

26 (1) Save where expressly permitted by this or any other Act no disqualified or unqualified person shall act as a barrister and attorney, or as such sue out any writ or process, or as such commence, carry on or defend any action, suit or other proceeding in any court, or act as a barrister in any case civil or criminal to be heard or determined in any court.

(1A) Notwithstanding subsection (1), a person who has completed the first six months of the period of practical training referred to in section 51(1)(a)(ii) of the Supreme Court Act 1905 shall for so long as that practical training continues have full rights of audience in any court of summary jurisdiction.

- (2) Any person contravening this section commits an offence:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$1,000 or both such imprisonment and fine.

[Section 26 amended by 1992:54 effective 17 July 1992]

BERMUDA BAR ACT 1974

Pretending to be barrister and attorney

27 Any disqualified or unqualified person who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is qualified or recognized by law as qualified to act as a barrister and attorney in Bermuda commits an offence:

Punishment on summary conviction: a fine of \$1,000.

Unqualified person not to prepare certain instruments

28 (1) Any unqualified person who directly or indirectly draws or prepares any Bill for a private Act of the Legislature, any memorandum of association of a company or any instrument relating to real or personal property or to any legal proceedings, unless he proves that the act was not done for or in expectation of any fee, gain or reward, commits an offence:

Punishment on summary conviction: a fine of \$1,000.

Provided that—

- (a) this subsection shall not apply to—
 - (i) a public officer or the employee of a company or firm preparing or drawing any instrument for his employer in the course of his employment; or
 - (ii) a person merely engrossing any instrument in the course of his employment; or
 - (iii) any professional accountant, as respects the drawing or preparing, in the course of his practice as such an accountant, of memoranda of association of any company; and
 - (b) nothing in this subsection shall be construed as preventing a person in regular employment of a barrister from preparing in the course of such employment and under the supervision of the barrister and attorney any instrument which is required by the barrister and for which the barrister assumes responsibility.
- (2) In this section “instrument” does not include—
- (a) any will or other testamentary instrument; or
 - (b) an agreement under hand only; or
 - (c) a letter or power of attorney; or
 - (d) a transfer of stock containing no trust or limitation.

Practising certificates; offences

29 (1) Subject to subsection (3), a person shall not practise as a barrister unless he is the holder of a valid practising certificate or a valid special practising certificate, as the case may be.

(1A) Subject to subsection (3), a person who holds a practising certificate that is subject to limitations under sections 10B and 10C shall not practise in contravention of those sections.

(2) A person who practises as a barrister in contravention of subsection (1) or (1A) commits an offence:

Punishment on summary conviction : imprisonment for 2 years or a fine of \$10,000 or both such imprisonment and fine, and further is not entitled to maintain any action for the recovery of any fee on account of or in relation to any legal business done by him in the course of such practice.

(3) This section shall not apply to any barrister who is a magistrate or holds an office in the Attorney General's Chambers.

[Section 29 amended by 2008:47 s.6 effective 23 December 2008]

Disqualified persons

30 (1) Except as permitted by subsection (2), a disqualified person shall not engage, or be employed, in any legal practice.

(2) The Bar Council may at any time, if it thinks fit, upon application being made to it by a disqualified person who is suspended from practice and who provides a fit and proper person certificate issued within the period of ninety days immediately preceding the date of his application, grant a written permission under this subsection in respect of that person for such period and subject to such conditions as the Council thinks fit.

(3) The Bar Council may at any time revoke a permission granted by the Council under this section.

(4) The Bar Council's decision on any application under subsection (2), or to revoke a permission in exercise of the Council's powers under subsection (3), shall be final.

(5) The Bar Council shall notify the Registrar in writing of the terms of any permission granted under this section and of any revocation of such a permission, for the information of the Supreme Court.

(6) If—

- (a) any disqualified person acts in contravention of subsection (1); or
- (b) any disqualified person in respect of whom a permission under this section has been granted acts in contravention of any conditions subject to which the permission was granted; or
- (c) any barrister employs a disqualified person otherwise than under and in conformity with a permission under this section,

he commits an offence:

Punishment on summary conviction: a fine of \$1,000 and, in the case of a continuing offence, a fine of \$100 for each day during which the offence continues.

BERMUDA BAR ACT 1974

(7) In subsection (1) “legal practice” means practice as a barrister or work belonging to, or connected with, such a practice.

[Section 30 amended by 2018 : 53 s. 19 effective 31 January 2019]

No costs recoverable where unqualified person acts

31 No costs in respect of anything done by any disqualified or unqualified person acting as a barrister and attorney shall be recoverable in any action, suit or matter by any person whatsoever.

Saving for person authorized to conduct proceedings

32 Nothing in this Act shall derogate from any enactment empowering an unqualified person to conduct, defend or otherwise act in relation to any legal proceedings.

Transitional

33 *[omitted]*

Repeals and amendments

34 *[omitted]*

[Assent Date: 13 December 1974]

[Amended by:

1976 : 54
1977 : 35
1984 : 32
1984 : 55
1992 : 54
1997 : 26
1999 : 29
BR 81 / 1999
2008 : 47
2009 : 29
2010 : 50
BR 5 / 2011
2014 : 8
2015 : 5
2018 : 53]