

## CHAPTER 31:01 ADMINISTRATION OF ESTATES

### ARRANGEMENT OF SECTIONS

#### PART I

##### *Preliminary*

#### SECTION

1. Short title
2. Interpretation
3. Limits of application of Act

#### PART II

##### *Administration*

4. Appointment of Master
5. Assistant Master
6. Jurisdiction of Master
7. Master to keep registers of executors, etc.
8. Records of Master's office
9. Appointment of appraisers
10. Oath of appraisers, and restriction on action
11. Master's fees

#### PART III

##### *Estates of Deceased Persons*

12. Death notices to the Master
13. Deposit of wills with Master
14. Transmission or delivery of wills to Master and registration thereof
15. Warrants to search for concealed wills
16. Application by Master for order to deliver
17. Inventory of estate in community of property
18. Inventory on death of persons not married in community
19. Transmission of inventory to Master
20. Inventory by order of court or Master
21. Particulars of immovable property required
22. Master to furnish certain returns
23. Temporary custody of estates
24. Temporary custody of estates of persons married in community
25. Liability of persons disposing of property in estates without authority, etc.
26. Duty of person in possession of assets of estate of deceased person
27. Appointment of *curator bonis* until issue of letters of administration
28. Grant of letters of administration
29. Letters of administration to executors appointed by will
30. Assumption of executors under power contained in will
31. Proceedings on failure of nomination of executors or on death, incapacity or refusal to act, etc.
32. Competition for the office of executor dative

33. Preference of minor's tutor for the appointment of executor
34. Removal from office of executor
35. Security for due administration
36. Limits of application of sections 37 and 38 respecting external letters of administration
37. Signing and sealing of letters of administration granted in another country
38. Admissibility of copy certified by Master and certificate by Master
39. Inventories by executors
40. Master may appoint appraiser to value assets
41. Public notice to lodge claims
42. Suspension of execution of judgements
43. Payment of debts; insolvent estates
44. Liability of executor
45. Disputed claims
46. Rejected claims
47. Taking over by surviving spouse of estate or portion thereof
48. Sales by executor
49. Master may consent to subdivision of immovable property on behalf of minor, mental patient or unborn heir
50. Movable property to which minors and moneys to which absentees or persons under curatorship are entitled
51. Movable property to which minor or unborn heir is entitled subject to usufructuary or fiduciary rights or other like interests
52. Conditions under which survivor married in community of property may deal with such property
53. Duty of executor in case of bequests of immovable property
54. Duty of Registrar of Deeds
55. Penalty for refusing to deliver title deed to executor when required
56. Endorsement against title deeds of immovable property of the terms of trusts in a will
57. Transfer of immovables out of estate
58. Payment of portion accruing to minor or person under curatorship domiciled outside Botswana
59. Master may fix time for lodging claims and account
60. Estates of persons not resident and not owning property other than shares in Botswana
61. Liquidation and distribution accounts
62. Remuneration of executors
63. Continuance of pending legal proceedings by remaining or new executor
64. Discharge of executors, and proceedings against discharged executors

PART IV  
*Administrators*

65. Property not to be administered in certain cases without certificate of authority
66. Orders by Master prohibiting administration without certificate of authority
67. Certificates of authority to administrators nominated by deceased persons, and endorsements in case of assumed administrators
68. Proceedings on failure of nomination of administrators or on death, incapacity or refusal to act, etc.
69. Competition for office of administrator
70. Foreign certificates of authority
71. Security by administrators

- 72. Transfer and mortgage of immovable property by or in favour of administrators
- 73. Accounts by administrators
- 74. Movable property to which minors and moneys to which absentees or persons under curatorship are entitled
- 75. Payment of moneys to minors or persons under curatorship domiciled outside Botswana
- 76. Administrator making wrong distribution
- 77. Remuneration of administrators
- 78. Application of certain sections to administrators

#### PART V

##### *Estates of Minors and Absent Persons*

- 79. Persons who may appoint tutors to minors
- 80. Tutors testamentary
- 81. Mode of granting letters of confirmation
- 82. Letters of confirmation to curators nominate
- 83. Security *rem pupilli salvam fore* by curators nominate and tutors testamentary
- 84. Appointment of tutors dative by Master
- 85. Assumption by tutors testamentary and curators nominate
- 86. Proceedings in case of death, incapacity or removal of tutors or curators
- 87. Revocation of letters of confirmation
- 88. Appointment of curator dative of property belonging to absent person
- 89. Appointment of *curator ad litem* by the court and of *curator bonis* by Master
- 90. Security for due administration by tutors and curators
- 91. Circumstances under which women may be tutors or curators
- 92. Removal of insolvent tutors and curators
- 93. Inventories by tutors and curators
- 94. Duties and liabilities of curators
- 95. Restriction on alienation or mortgage of immovable property by natural guardian, tutor or curator
- 96. Restriction on purchase by tutor or curator of property administered
- 97. Payment to Master of moneys not immediately required
- 98. Accounts of administration by tutors and curators
- 99. Remuneration of tutors and curators
- 100. Application of certain sections to tutors and curators

#### PART VI

##### *The Guardian's Fund*

- 101. Guardian's Fund continued
- 102. Statements of unclaimed moneys to be published, and amounts to be paid into Guardian's Fund
- 103. Interest on certain moneys in Guardian's Fund
- 104. Guardian's Fund to be available for investment
- 105. Ordinary payments from Guardian's Fund
- 106. Extraordinary payments from Guardian's Fund
- 107. List of unclaimed moneys to be published annually
- 108. Lapse to the State of moneys unclaimed for 30 years

#### PART VII

*Miscellaneous*

- 109. Failure to lodge administration account
- 110. Failure to pay over moneys
- 111. Master's costs when not otherwise recoverable payable out of Guardian's Fund
- 112. Form of court proceedings taken by Master
- 113. Report by Master to the court otherwise than upon formal application
- 114. Statement of case by Master to the court in certain events
- 115. Review of Master's appointments, etc.
- 116. Penalties
- 117. Forfeiture on omission by surviving spouse to make inventory, or true inventory
- 118. No substitution or surrogation
- 119. Master not to act as executor, etc.
- 120. Reduction of security tendered by executors, administrators, tutors and curators in certain cases
- 121. Effect of massing of joint estate
- 122. Estate account
- 123. Meetings before District Commissioner or other officer
- 124. Exemption from liability for acts or omissions in Master's office or Deeds Registry
- 125. Regulations

First Schedule - Forms  
Second Schedule - Fees

Act 20, 1972,  
Act 41, 1972,  
Act 23, 1979.  
Act 11, 2008.

**An Act to make provision for the administration of estates of deceased persons, minors, persons under curatorship, absent persons and all property given in trust by deceased persons and to provide for incidental matters.**

*[Date of Commencement: 1st July, 1974]*

**PART I**  
***Preliminary (ss 1-3)***

**1. Short title**

(1) This Act may be cited as the Administration of Estates Act.

**2. Interpretation**

In this Act, unless the context otherwise requires-

**"absentee"** means any person of whom the Master, after enquiry, believes that his whereabouts are unknown and that he has no legal representative in Botswana;

**"appraiser"** means a person appointed or deemed to have been appointed under section 9;

**"commissioner of oaths"** means any person who is a commissioner of oaths under the Commissioner of Oaths Act;

**"court"** means the High Court of Botswana;

**"letters of administration"** includes any document issued or a copy of such document duly certified by any competent authority in any country, from which it appears that any person named or designated therein has the authority to administer for the benefit, in whole or in part, of any other person, any property given under the control of such first mentioned person by a deceased person to be so administered;

**"Master"** means the Master of the High Court;

**"mental patient"** means a person who is the subject of a reception order made under the Mental Disorders Act, or who is confined under the provisions of Part XII of the Criminal Procedure and Evidence Act, or any other person who, by reason of mental disorder or defect, is incapable of managing his own affairs;

**"person under curatorship"** includes any person whose property has been placed under the care of a curator;

**"property"** means all property whether movable or immovable and includes rights and any contingent interest in property;

**"Registrar of Deeds"** means the person appointed as Registrar of Deeds under the Deeds Registry Act;

**"tribesman"** means a member of a tribe or tribal community of Botswana or a member of a tribe or similar group of any other country in Africa prescribed for the purposes of this Act;

**"tribal community"** means any community which is living outside a tribal territory but is organized in a tribal manner;

**"will"** includes a codicil and every kind of testamentary writing.

### **3. Limits of application of Act**

This Act shall not apply-

- (a) to the estates of deceased tribesmen, which as heretofore, shall be administered according to the customary law:

Provided that whenever a tribesman dies after the commencement of this Act leaving a will valid in accordance with the Wills Act, this Act shall, notwithstanding any partial intestacy, apply as far as may be to the administration of the whole of his estate; and for the purpose of such application informal testamentary instructions in accordance with any written law relating to customary succession, given by the deceased shall be deemed, in so far as they are not inconsistent with the will, to be part of the will;

- (b) to the property of any person belonging to and serving with any visiting forces who dies within Botswana while on service with those forces, unless it is shown to the satisfaction of the court or the Master that for the preservation or due administration of that property it is expedient that it should be dealt with under this Act.

## **PART II**

### ***Administration (ss 4-11)***

#### **4. Appointment of Master**

The President shall appoint an officer to be styled the Master of the High Court.

#### **5. Assistant Master**

The President may appoint one or more Assistant Masters to exercise such of the functions of the Master under this Act or any other law as the Master may from time to time direct.

#### **6. Jurisdiction of Master**

All the property and estate of every deceased person, minor, person under curatorship, or person permanently absent from Botswana without a lawful representative therein and whose whereabouts are unknown, shall be administered under the exclusive supervision of the Master.

#### **7 Master to keep registers of executors, etc.**

The Master shall cause to be kept-

- (a) a register containing the names of every executor to whom letters of administration have been granted, and every surety for any executor;
- (b) a register containing the names of every administrator to whom a certificate of authority has been granted, and every surety for any administrator; and
- (c) a register containing the names of every tutor and curator to whom letters of confirmation have been granted, and every surety for any such tutor or curator.

#### **8. Records of Master's office**

(1) The Master shall preserve a record in his office of all original wills, death notices, inventories, and liquidation, administration and distribution accounts lodged at his office under this Act or any prior law under which any such documents were customarily lodged or were required to be lodged at the office of the Master:

Provided that when the Master is satisfied that the administration of any estate or assets subject to his supervision in accordance with this Act has been finally completed according to law and that 10 years have elapsed since such completion, he may cause to be lodged with the National Archives and Record Services any file relating to such estate or assets which has been kept in his office, together with its contents.

(2) Any person may at any time during office hours inspect any such documents and make or

obtain a copy thereof or an extract therefrom on payment of the fees prescribed in respect thereof by the Second Schedule:

Provided that any person holding office under the Government may, in the course of his official duties, take a copy of or an extract from any such documents without payment of any fee.

(3) Whenever an order for sequestration has, under any law in force in Botswana for the time being relating to insolvent estates, been lodged with the Master or the estate of any debtor has been placed under assignment, in accordance with any law so in force, the Master shall cause the said registers to be examined and-

- (a) if an insolvent or such a debtor is the executor of an estate not previously administered, distributed, and finally settled, the Master shall notify the fact in the *Gazette*;
- (b) if an insolvent or such a debtor is either a tutor or curator, the Master may take steps for the appointment of a tutor or curator dative in the place of that insolvent or debtor;
- (c) if an insolvent or such a debtor is a surety for an executor, tutor or curator, the Master may by notice require that executor, tutor or curator to find additional security to his satisfaction within a period specified in such notice.

## **9. Appointment of appraisers**

(1) The Master may from time to time appoint such persons as he thinks fit to be appraisers for the valuation of property, and revoke any appointment so made.

(2) Every appraiser shall, in respect of every appraisal by him, be entitled to demand and receive a reasonable compensation, which shall be assessed according to a tariff of fees fixed by regulation, and shall be taxed by the Master.

## **10. Oath of appraisers, and restriction on action**

(1) Every person who is appointed an appraiser under section 9(1) shall take an oath before the Master or a commissioner of oaths designated by him that he will appraise all such estates or properties as may be submitted to his valuation according to the just, proper, and true valuation thereof and to the best of his skill and knowledge.

(2) Any commissioner of oaths before whom any such oath has been taken shall forthwith transmit the same to the Master.

(3) No appraiser shall act in connection with any property in which or in the valuation of which-

- (a) he or his spouse or partner has any pecuniary interest other than his remuneration as appraiser; or
- (b) his principal or employer or any person related to him within the third degree has any

pecuniary interest.

#### **11. Master's fees**

The Master is hereby authorized and required to charge and to demand, receive and retain, or recover in respect of the acts, matters or things done or caused to be done by him or in his office, the fees specified in the tariff contained in the Second Schedule, and every such fee shall be paid by the means prescribed.

### **PART III**

#### ***Estates of Deceased Persons (ss 12-64)***

#### **12. Death notices to the Master**

(1) Whenever any person dies within Botswana leaving therein any property or a will, the nearest relative or connection of the deceased at or near the place of death, or in default of any such near relative or connection, the person who at or immediately after the death has the control of the premises at which the death occurs, shall within 14 days thereafter cause a notice of death to be framed in Form A set out in the First Schedule, and shall cause that notice, signed by himself, to be delivered or transmitted to the Master and the notice shall be accompanied by a true copy thereof.

(2) Whenever any person dies outside Botswana leaving any property or a will therein, any person within Botswana having possession or control of any such property or such will shall within 14 days after the death has come to his knowledge report the death to the Master.

(3) The Master may by written notice require any person who may, in his opinion, be able to furnish the information required-

- (a) if no death notice has been given or obtained, to submit to him within a period specified in the notice, a death notice substantially in the prescribed form; and
- (b) if a death notice has been given or obtained or has been submitted under paragraph (a) and the Master desires any further information, to answer in writing to the best of his knowledge, within a period so specified, such questions as may be sent forth in the notice.

(4) If the person signing any death notice was not present at the death, or did not identify the deceased after death, the Master may call upon any person having any interest in the estate for proof of the death.

#### **13. Deposit of wills with Master**

(1) Any person may lodge with the Master, either open or enclosed, any will executed by such person; and the Master with whom that will is lodged shall cause to be kept a register of the name and address of every person so lodging a will and the date when it was lodged.

(2) Every will so lodged shall be accompanied by a duplicate or fair and true copy thereof, which, together with the original, shall be kept in the custody of the Master until the death of the person executing the will unless re-delivery thereof is demanded by him, or in his lifetime by his



agent specially authorized for that purpose, and when any such will is re-delivered the said person or his said agent (as the case may be) shall sign a receipt for the same.

#### **14. Transmission or delivery of wills to Master and registration thereof**

(1) Any person who has any document being or purporting to be a will in his possession at the time of or at any time after the death of any person who executed such document, shall, as soon as the death comes to his knowledge, transmit or deliver such document to the Master.

(2) Every person shall, at the expense of the estate and when required by the Master to do so, transmit the original minute of any notarial will passed before him or in his possession, to the Master, and shall at the same time file a certified copy thereof in his protocol and endorse thereon that the original has been transmitted to the Master.

(3) Any such document which has been received by the Master, shall be registered by him in a register of estates, and he shall cause any such document which is closed to be opened for the purpose of such registration.

(4) If it appears to the Master that any such document, being or purporting to be a will, is for any reason invalid, he may, notwithstanding registration thereof in terms of subsection (3), refuse to accept it for the purposes of this Act until the validity thereof has been determined by the court.

(5) If the Master is satisfied that the person who executed any will transmitted or delivered to him in terms of subsection (1), has not left any property in Botswana, he may release such will to any person lawfully requiring it for the purpose of liquidating and distributing the estate of the deceased person outside Botswana.

#### **15. Warrants to search for concealed wills**

Every judge of the High Court and every magistrate who upon information taken on oath is satisfied that there is reason to suspect that any will is concealed in any place within his jurisdiction may, by warrant under his hand, cause every such place to be searched.

#### **16. Application by Master for order to deliver**

When any person on reasonable grounds is believed to be in possession of or to have under his control any will, and after the death of the testator fails to deliver or transmit the same as hereinbefore provided, the Master shall forthwith apply to any court having jurisdiction for an order that such person forthwith deliver that will to him.

#### **17. Inventory of estate in community of property**

(1) When one of two spouses who have been married in community of property dies the survivor shall, within six weeks after the death, cause an inventory of all property which, at the time of the death, formed part of or belonged to the estate possessed in community between the pre-deceasing and surviving spouses, to be made in the presence of two impartial witnesses being persons of good credit and repute and in the presence of such persons having an interest in the distribution of the joint estate as heirs or legatees of the pre-deceased spouse as may

attend.

(2) If any such property not included in any such inventory has, after the death, been registered in the name of the surviving spouse, the surviving spouse shall, within 14 days after the date of any such registration, transmit to the Master a supplementary inventory of all such property.

(3) Every such inventory shall be subscribed by the surviving spouse, the witnesses, and the heirs or legatees so attending.

## **18. Inventory on death of persons not married in community**

(1) On the death of any person, not being one of two spouses married in community of property-

- (a) the wife or husband of the deceased; or in the default or absence of the wife or husband;
- (b) the child or children of the deceased; or in the default, absence, or minority of the child or children;
- (c) the next of kin of the deceased; or in default, absence, or minority of the next of kin;
- (d) the person who, at or immediately after the death, has the control of the premises where the deceased was living or staying at the time of his death,

shall within 14 days after the death, cause to be made, in the presence of two impartial witnesses being persons of good credit and repute, an inventory of all property known by the person making the inventory to have belonged to the deceased or to have been in his possession upon the said premises at the time of his death.

(2) Every such inventory shall be subscribed by the person causing the same to be made and by the said witnesses.

## **19 Transmission of inventory to Master**

Every person hereinbefore required to cause any inventory to be made shall, as soon as the same has been made, forthwith deliver or transmit it to the Master.

## **20. Inventory by order of court or Master**

Notwithstanding anything to the contrary hereinbefore contained, the court or the Master may, on sufficient cause appearing, at any time order that an inventory of any property belonging to any deceased person or to the joint estate of any deceased person and the surviving spouse, be taken by any person named in the order.

## **21. Particulars of immovable property required**

Every person required by law to frame an inventory of the property of a deceased person shall include therein a specified list of all immovable property registered in the name of the deceased or in which he knew that the deceased had an interest at the date of his death, and

shall insert, if possible, a reference to the title under which the deceased held such property, the date of the title, and full particulars concerning such interest.

## **22. Master to furnish certain returns**

(1) The Master shall forthwith after the receipt by him of the inventory and particulars mentioned in the last preceding section furnish to the Registrar of Deeds a return-

- (a) giving the name of every deceased person who, being married in community of property, had at the date of death (as shown by the inventory filed as hereinbefore required) an interest in immovable property not registered in the name of such deceased person, the date of the death of such person and a reference to the will, if any;
- (b) embodying all material information in respect of that immovable property, and the interest of the deceased therein, contained either in the inventory lodged with the Master, or in the will (if any) of the deceased.

(2) The Registrar of Deeds after being furnished with such a return, shall not, unless directed by the court or the Master to do so, register any transaction or right in respect of such property in the estate at the instance of any person other than the executor of the estate.

## **23. Temporary custody of estates**

On the death of any person not being one of two spouses married in community of property-

- (a) the husband or wife of the deceased or in the default or absence of the husband or wife;
- (b) the child or children of the deceased, or in the default, absence, or minority of the child or children;
- (c) the next of kin of the deceased, or in the default, absence, or minority of the next of kin;
- (d) the person who at or immediately after the death has the control of the premises where the death occurred; and
- (e) the person who at or immediately after the death has possession or control of any goods and effects of the deceased,

shall secure and take charge of all goods and effects of whatever description under his control which belonged to the deceased, and shall retain the same in his custody and possession until delivery thereof is demanded by the executor of the deceased or by any other person lawfully appointed by the court or the Master to receive delivery for the purpose of the administration of the estate.

## **24. Temporary custody of estates of persons married in community**

Whenever one of two spouses married in community of property dies, the assets of the joint estate shall remain under the charge of the survivor until the appointment of a *curator bonis* or

executor to administer the assets of such estate.

## **25. Liability of persons disposing of property in estates without authority, etc.**

If any person-

- (a) in any way disposes of any property of an estate of a deceased person except in so far as he may be authorized thereto by a competent court or by the Master, or as may be necessary for the safe custody or preservation of any part of the estate or for providing a suitable funeral for the deceased or for the subsistence of the family or household of the deceased; or
- (b) after letters of administration have been granted to him, in any way disposes of any property of the estate which is not contained in an inventory of that estate lodged with the Master under this Act,

he shall thereupon become personally liable to pay to the creditors, legatees, and heirs of the deceased the full amount of their debts, legacies and inheritances, in so far as the estate is insufficient for the payment thereof:

Provided that if he satisfies the court that the value of the property so disposed of by him did not exceed a certain sum and that the disposal of the property was made in good faith, his liability shall be limited (but without prejudice to the right of any creditor, legatee, or heir to be paid the taxed costs of suit incurred by him in respect of the recovery from the person so liable of the debt, legacy, or inheritance) to the said sum, after deduction therefrom of the amount (if any) which that person proves to have been the value of any part of the estate disposed of by him in a manner in which, and for a purpose for which, it ought by law to have been disposed of:

Provided that nothing contained in this section shall be construed as modifying section 24 whereby the survivor of two spouses married in community of property, retains, as provided in that section, the charge of the joint estate.

## **26. Duty of person in possession of assets of estate of deceased person**

Every person, not being the executor or curator of the estate of a deceased person duly appointed by the Master, who has in his possession or custody any property belonging to that estate, shall forthwith either deliver that property to the executor or curator duly appointed and authorized to administer the estate, or report the particulars of the property to the Master; and if any such person fails to do so or parts with any such property to any person not authorized by the Master by letters of administration or other direction to receive the same, he shall, apart from any other liability he may incur thereby, be liable for all duties, taxes, or fees payable.

## **27. Appointment of *curator bonis* until issue of letters of administration**

(1) In all cases where the Master deems it expedient, he may appoint a *curator bonis* to take the custody and charge of any estate until letters of administration are granted for the due administration thereof.

(2) Every such *curator bonis* may collect such debts and may sell or dispose of such

perishable property belonging to the estate, wherever situate within Botswana, as the Master may specially authorize.

## **28. Grant of letters of administration**

(1) The estate of all persons dying either testate or intestate shall be administered and distributed according to law under letters of administration granted by the Master in Form B set out in the First Schedule.

(2) Such letters of administration shall be granted to the executors testamentary duly appointed by persons so dying or to such persons as, in default of executors testamentary, are appointed as described in this Act, executors dative to the persons so dying.

(3) Letters of administration shall authorize the executor to administer the estate wherever situate.

(4) Whenever the estate or property of any person is being administered at the commencement of this Act under the supervision of the Master, the person administering that estate or property shall be entitled to have his authority recognized under this Act throughout Botswana, and the administration of the estate or property shall be carried out as if this Act had not been promulgated.

(5) Letters of administration shall not be issued to a spouse married in community of property unless the other spouse consents in writing.

## **29. Letters of administration to executors appointed by will**

In all cases in which any deceased person has by will duly appointed any person to be executor the Master shall, upon the written application of the person so appointed, grant letters of administration to him as soon as the will has been registered in the office of the Master:

Provided that-

- (i) if it appears to the Master; or
- (ii) if any person by writing lodged with the Master objects,

that any will by virtue whereof any person claims to be the executor testamentary of any person deceased is not in law sufficient to warrant and support the claim, letters of administration may be refused by the Master-

- (a) until the validity and legal effect of that will has been determined by the judgment of the court;
- (b) until the objection has been withdrawn by the person by whom the same was made; or
- (c) until the person objecting has had sufficient time to apply to the court for an order restraining the issue of letters of administration:

Provided further that if the executor appointed by the will is a corporation the Master shall grant letters of administration to any officer of the corporation thereto nominated by the

corporation, for whose acts as executor the corporation accepts liability, and upon his death, resignation or dismissal, to his successor being thereto nominated and guaranteed by the corporation:

Provided also that in case any such executor is or resides outside Botswana the Master may refuse to grant letters of administration to that executor until he finds sufficient security for his due and faithful administration of the estate and chooses *domicilium citandi et executandi* within Botswana:

Provided lastly that if it is brought to the notice of the Master that any such executor testamentary is insolvent or has assigned his estate, notwithstanding anything in section 35(2) the Master may refuse to grant letters of administration to that executor until he finds security as aforesaid, and if the estate of any such executor be placed under sequestration or assigned after he has been granted letters of administration, the Master may by notice require him to find security as aforesaid within a period specified in such notice. The Master may allow reasonable costs of finding security to be charged out of the estate.

### **30. Assumption of executors under power contained in will**

(1) Nothing in this Act shall prevent any executor testamentary from assuming any other person as executor of the testator under and by virtue of any power for that purpose to him committed by the testator by his will:

Provided that no person shall be entitled or qualified to act as assumed executor unless letters of administration have, during the life-time of the executor testamentary, been granted to him as such by the Master.

(2) Subject to the provisions of this Act as to security, the Master shall grant such letters of administration on production to him of the will by which the assumption of the executor is authorized and of the deed by which such executor testamentary has assumed that person as executor, and wherever possible, the original letters of administration granted to that executor.

(3) Every provision of this Act and of every other law applicable or relating to or affecting executors shall be deemed and taken to, and shall, apply and relate to and affect every such executor so assumed.

### **31. Proceedings on failure of nomination of executors or on death, incapacity or refusal to act, etc.**

(1) The Master shall, subject to subsections (3), (4), (5) and (6)-

- (a) if any person has died without having by will nominated any person to be his executor;
- (b) if the whereabouts of any person so nominated to be sole executor or of all the persons so nominated to be executors are unknown, or if such person or all such persons are dead or refuse or are incapacitated to act as executors or when called upon by the Master by notice in writing to take out letters of administration within a period specified in the notice fail to take out such letters within that period or within such further period

as the Master may allow;

- (c) if, in the case of two or more persons being so nominated to be executors, the whereabouts of one or some of them are unknown, or one or some of them are dead or refuse or are incapacitated to act as executors or when so called upon by the Master fail so to take out letters of administration, and in the interests of the estate, one or more executors should be joined with the remaining executor or executors;
- (d) if the executors in any estate are at any time less than the number required by the will of the testator to form a quorum;
- (e) if any person who is the sole executor or all the persons who are executors of any estate, cease for any reason to be executors thereof; or
- (f) if, in the case of two or more persons who are the executors of any estate, one or some of them cease to be executors thereof, and in the interests of the estate, one or more executors should be joined with the remaining executor or executors,

by notice published in the *Gazette* and in such other manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the surviving spouse (if any), the heirs of the deceased and all persons having claims against his estate, to attend before him or, if more expedient, before any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as executor or executors, a person or a specified number of persons.

(2) On receipt of such recommendation or when it appears that the persons concerned have failed to make any recommendation, the Master shall, subject to subsection (3) and sections 32, 35, 36 and 39, unless it appears to him to be necessary or expedient to postpone the appointment and to publish another notice under subsection (1), appoint and grant letters of administration to such person or persons as he deems fit and proper to be executor or executors of the estate of the deceased.

(3) If the value of any estate does not exceed P600, the Master may dispense with a notice under subsection (1) and with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated and distributed.

(4) If the value of any estate does not exceed P2000, the Master may, in any case referred to in subsection (1), without any notice under that subsection, appoint and grant letters of administration to such person or persons as he deems fit and proper to be executor or executors of the estate of the deceased.

(5) The Master may at any time, without any such notice-

- (a) if, in the case of two or more persons-
  - (i) who have been nominated by will to be executors, the whereabouts of one or some of them are unknown, or one or some of them are dead or refuse or are incapacitated to act as executors, or when called upon by the Master by notice in writing to take out letters of administration within a period specified in the notice,

fail to take out such letters within that period or within such further period as the Master may allow; or

- (ii) who are the executors in any estate, one or some of them cease to be executors thereof,

grant letters of administration to the remaining executor or executors, or authorize the remaining executor or executors to liquidate and distribute the estate, as the case may be; or

- (b) if after the discharge of any executor it appears that there is property in the estate which has not been distributed by such executor, appoint and grant letters of administration to such person as he deems fit and proper to liquidate and distribute such property.

(6) Nothing contained in this section shall authorize the Master to grant letters of administration to any person who is legally incapacitated to act as executor of the estate of the deceased.

(7) The second proviso to section 29 shall *mutatis mutandis* apply with reference to the grant of letters of administration under this section.

### **32. Competition for the office of executor dative**

In every case in which there is competition for the office of executor dative, the surviving spouse, or, failing a surviving spouse, an heir or some of the heirs or, failing an heir, a creditor or creditors, or, failing a creditor, a legatee or legatees or the nominee of any such person or class of person, shall be preferred by the Master to the office of executor:

Provided that nothing in this section shall prevent any one or more persons of the classes aforesaid from being conjoined in the said office with one or more of any other of those classes and if it appears to the Master, or to the court on reviewing the appointment of the Master, that any good reason exists against the appointment of all or any of those persons or classes of persons as executor or executors any such person or class of persons may be passed by and some other fit and proper person or persons may by the Master or by the court be appointed executor or executors.

### **33. Preference of minor's tutor for the appointment of executor**

If any heir, creditor, or legatee of a deceased person is a minor under the guardianship of a tutor duly appointed, that tutor shall be entitled to be preferred to the office of executor dative under section 32 in like manner in all respects as the minor, whose tutor he is, would, if of full age, have been entitled to be preferred to that office under that section.

### **34. Removal from office of executor**

- (1) An executor may at any time be removed from his office-
  - (a) by the court-



- (i) if he fails to comply with a notice under section 35(1) within the period specified in the notice, or within such further period as the Master may allow, and was not, prior to the issue of such notice, under an obligation to find security for the proper performance of his functions;
  - (ii) if he has at any time been a party to an agreement or arrangement whereby he has undertaken that he will, in his capacity as executor, grant or endeavour to grant to, or obtain or endeavour to obtain for any heir, debtor or creditor of the estate, any benefit to which he is not entitled;
  - (iii) if he has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to vote for his recommendation to the Master as executor or to effect or to assist in effecting such recommendation;
  - (iv) if he has accepted or expressed his willingness to accept from any person any benefit whatsoever in consideration of such person being engaged to perform any work on behalf of the estate; or
  - (v) if for any other reason the court is satisfied that it is undesirable that he should act as executor of the estate concerned; and
- (b) by the Master-
- (i) if he has been nominated by will and that will has been declared to be void by the court or has been revoked, either wholly or in so far as it relates to his nomination;
  - (ii) if he fails to comply with a notice under section 8(3)(c) or the fourth proviso to section 29 within the period specified in the notice or within such further period as the Master may allow and was, prior to the issue of such notice, under an obligation to find security for the proper performance of his functions;
  - (iii) if he is convicted, in Botswana or elsewhere, of theft, fraud, forgery, uttering a forged instrument or perjury, and is sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding P20;
  - (iv) if at the time of his appointment he was incapacitated, or if he becomes incapacitated to act as executor of the estate of the deceased;
  - (v) if he fails to perform satisfactorily any duty imposed upon him by or under this Act or to comply with any lawful request of the Master; or
  - (vi) if he applies in writing to the Master to be released from his office.

(2) Before removing an executor from his office under subparagraph (i), (ii), (iii), (iv) or (v) of subsection (1)(b), the Master shall forward to him by registered post a notice setting forth the reasons for such removal, and informing him that he may apply to the court within 30 days from the date of such notice for an order restraining the Master from removing him from his office.

(3) An executor who has not been nominated by will may at any time be removed from his

office by the Master if it appears that there is a will by which any other person who is capable of acting and consents to act as executor has been nominated as executor to the estate which he has been appointed to liquidate and distribute:

Provided that if the non-production or non-disclosure of the will prior to the appointment of such first-mentioned executor has been due to the fault or negligence of the person therein nominated executor, the person so nominated shall be personally liable, at the instance of the Master or any person interested, to make good all expenses which have been incurred in respect of the appointment of such first-mentioned executor.

(4) The court removing any executor from his office may declare him incapable during the period of his life or such other period as it may determine, of holding office as an executor.

(5) Any person who ceases to be an executor shall forthwith return his letters of administration to the Master.

### **35. Security for due administration**

(1) Every executor dative or assumed executor shall, before he is permitted to enter upon the administration of the estate, and thereafter as the Master may by notice require, find security to the satisfaction of the Master for the due and faithful administration of the estate to which he has been appointed:

Provided that if such executor dative or assumed executor is a parent, surviving spouse or child of the deceased, he shall not be required to furnish security unless the Master specially directs that he shall do so.

(2) Every executor testamentary shall be under the like obligation of finding security, unless-

- (a) he is the parent, child or surviving spouse of the deceased testator;
- (b) he has been nominated by will executed before the 7th July, 1933, and has not been directed by the will to find security;
- (c) he has been nominated by will executed on or after the said date, and the testator has in such will directed the Master to dispense with such security; or
- (d) the court otherwise directs.

(3) The Master shall allow the reasonable costs of finding security to be charged out of the estate.

(4) The security shall be for such amount as in the circumstances of each particular case appears to the Master reasonable.

(5) If any default is made in the faithful administration of the estate, the Master may proceed to enforce the security and recover from the person in default or from the sureties the actual loss to the estate.

(6) A certificate under the hand of the Master shall be *prima facie* evidence of the amount of

any such loss.

### **36. Limits of application of sections 37 and 38 respecting external letters of administration**

(1) The provisions of sections 37 and 38 shall apply to all letters of administration at any time granted in any country as and from the date and during the period (if any) fixed by the Minister by order published in the *Gazette* declaring the said sections applicable to letters of administration granted in that country, and thereupon those provisions shall continue in force as regards letters of administration granted in that country either until any period so fixed as aforesaid or any extension thereof by like order has expired, or until a further like order has been similarly published declaring that the said provisions shall no longer apply to letters of administration granted in that country.

(2) The provisions of the said sections applying to letters of administration granted in any country shall apply also to letters of administration granted by any consular court of that country.

### **37. Signing and sealing of letters of administration granted in another country**

Whenever letters of administration of the estate of a deceased person granted in any country are, or a notarially certified copy thereof is, produced to and a copy thereof deposited with the Master by the person in whose favour those letters of administration have been granted or his duly authorized agent, those letters or that certified copy may be signed by the Master and sealed with his seal of office, and shall thereupon be of like force and effect and have as full operation in Botswana with respect to the whole estate therein situate, and the Master shall have the same control over the administration of the same, as if the said letters had been letters of administration granted by the Master:

Provided that-

- (i) the Master shall not sign and seal letters of administration or a certified copy thereof in any estate in regard to which letters have already been granted or signed and sealed within Botswana;
- (ii) before any such letters are, or any such certified copy is, signed and sealed a certificate of death and a duly certified copy of the will (if any) of the deceased and an inventory of all property known to belong to him within Botswana, together with any information required by the Master for the due supervision of the administration of the estate in Botswana, shall be lodged with the Master, and the same stamps, fees of office, duties and security shall be paid and given which would be required if the said letters or copy had been letters dative granted by the Master and such executor shall choose *domicilium citandi et executandi* within Botswana;
- (iii) if the Master refuses to sign and seal any such letters of administration or notarially certified copy thereof so produced the person thereby authorized and empowered to act may, after notice to the Master, apply to the court for relief and thereupon the court shall make such order as it may think fit.

### **38. Admissibility of copy certified by Master and certificate by Master**

(1) A copy certified by the Master of the copy of any letters of administration deposited with him under section 37 shall be admitted in evidence in all proceedings within Botswana as if that certified copy were the original letters.

(2) A certificate under the hand of the Master that he has, in accordance with the said section, signed and sealed any letters of administration authorizing and empowering any person to act thereunder shall be admitted in all legal proceedings within Botswana as *prima facie* proof of the legal rights and title of that person to administer the estate within Botswana of the deceased person named in the certificate.

### **39. Inventories by executors**

Every executor shall, within 30 days after letters of administration have been granted to him, or within such further period as the Master may allow, make, subscribe, and transmit to the Master an inventory showing the value of all property belonging to the estate; and if he comes to know thereafter of any such property which is not contained in any inventory lodged by him with the Master he shall make, subscribe, and transmit to the Master an additional inventory showing the value thereof, and the Master may direct him to find further security under section 35.

### **40. Master may appoint appraiser to value assets**

If an executor fails, within such reasonable time as the Master may prescribe, to place a value upon the assets or any portion thereof or if he places such a value thereon as does not meet with the approval of the Master, the Master may cause the value of those assets to be appraised by an appraiser and the value so ascertained shall be taken to be the true value of those assets for the purposes of this Act.

### **41. Public notice to lodge claims**

(1) Every executor shall, so soon as he has entered on the administration of the estate, cause a notice to be published in the *Gazette* and in a newspaper circulating in the district in which the deceased ordinarily resided or if not resident in Botswana at the time of his death in a newspaper circulating in a district where the deceased owned property, calling upon all persons having claims against the deceased or his estate to lodge the same with that executor within such period from the date of the latest publication of the notice as is therein specified, not being less (except as provided in section 59 of this Act) than 30 days or more than three months, as is deemed by the executor proper in the particular circumstances of each case.

(2) All claims which would be capable of proof in case of the insolvency of the estate shall be deemed to be claims of creditors for the purposes of this Act.

### **42. Suspension of execution of judgments**

No person who has obtained judgment of any court against any deceased person in his lifetime or against his executor shall sue out or obtain any process in execution of that judgment before the expiration of the period notified in the *Gazette* in the manner provided in section 41, and no person shall thereafter within six months after the grant of letters of administration obtain

any process in execution of any such judgment without first obtaining an order of the court.

#### **43. Payment of debts; insolvent estates**

(1) On the expiry of the period notified in the *Gazette* under section 41 the executor, before paying any debts of the deceased other than the reasonable expenses of the funeral and last illness shall satisfy himself as to the solvency of the estate.

(2) If the estate is solvent, the executor shall pay the creditors so soon as funds sufficient for that purpose have been realised out of the estate, but subject always to section 61.

(3) If the estate is insolvent and the Master is satisfied that the value of the assets does not exceed P2000, the executor shall administer and distribute the same in such manner as the Master may direct, due regard being had to the rights of creditors.

(4) If the Master is not satisfied as to the value of the assets the executor shall immediately report in writing the position of the estate to the creditors, informing them that unless a majority in number and value of all the creditors instruct him in writing to surrender the estate, he will proceed to realize the estate and will distribute the same as if he were a trustee distributing an insolvent estate.

(5) Unless creditors to the number and value stated in the preceding provisions, of this section, instruct the executor within a reasonable time to surrender the estate he shall proceed so to realize and distribute the same, but nothing in this section shall prevent a creditor from applying to the court for the sequestration of the estate as insolvent, and the court may order the sequestration of the estate if satisfied that the sequestration will be for the benefit of the creditors generally.

(6) For the purposes of subsections (3), (4) and (5) no creditor whose claim does not amount to P60 shall be reckoned in number and a creditor holding a specific security shall, in the same manner as is provided in the law relating to insolvency, place a value upon such security and shall only be reckoned in respect of the unsecured balance of his claim.

(7) An executor distributing an estate in pursuance of subsections (4) and (5) shall advertise his account and the same shall be confirmed in like manner, and with like effect, as if it were an account framed by a trustee of an insolvent estate:

Provided that every such account shall be confirmed by the Master and not by the court.

#### **44. Liability of executor**

(1) Any executor who makes a distribution except in accordance with sections 43 and 61 shall be personally liable to make good to every creditor whose claim was lodged with the executor within the period mentioned in the *Gazette* or was known to him when he made the distribution, any loss sustained by that creditor in respect of his claim through the failure of the executor to make a lawful distribution, but the executor shall be entitled at his own cost to recover from any person any amount paid to him in the course of the distribution which would not have been paid to him if a lawful distribution had been made.

(2) No creditor, whose claim was not lodged with the executor before the expiry of the period notified in the *Gazette* or before a distribution of the funds of the estate, shall be entitled in respect of his claim to demand restitution from any other creditor of any moneys paid to such other creditor after the expiry of the said period and in the course of such distribution on account of a valid claim against the estate.

#### **45. Disputed claims**

(1) If an executor disputes any claim against the estate, he may, by notice in writing-

- (a) require the claimant to lodge, in support of his claim, within a period specified in the notice, an affidavit setting forth such details of the claim as the executor may indicate in the notice; and
- (b) with the consent of the Master, require the claimant or any other person who may in the opinion of the Master be able to give material information in connection with the claim, to appear before the Master or any magistrate nominated by the Master, at a place and time stated in the notice, to be examined under oath in connection with the claim.

(2) At an examination under subsection (1)(b), the person concerned may be questioned by the magistrate or Master before whom the examination takes place, and by the executor and any heir or the attorney or advocate acting on behalf of the executor or any heir.

(3) If any claimant fails without reasonable excuse to comply with any notice under subsection (1), or having appeared in answer to any such notice, refuses to take the oath or to submit to examination or to answer fully and satisfactorily any lawful question put to him, his claim may be rejected by the executor.

(4) Any magistrate or Master before whom any such examination takes place shall take or cause to be taken a record thereof and shall, at the request of the executor or of the claimant and at the expense of the estate, or of the claimant, as the case may be, furnish the executor or claimant with a copy of such record.

#### **46. Rejected claims**

(1) If any executor rejects any claim against the estate, he shall forthwith notify the claimant in writing by registered post and shall state in the notice his reasons for rejecting the claim.

(2) Any court by which any claim against a deceased estate is adjudged in favour of a claimant may decline to grant the claimant his costs against the estate if the court is satisfied that the information given by the claimant to the executor was insufficient or that the executor was justified in rejecting the claim under section 45(3).

#### **47. Taking over by surviving spouse of estate or portion thereof**

(1) The Master may, if-

- (a) one of two spouses, whether they were married in or out of community of property, has

died;

- (b) the deceased has made no provision to the contrary in any will;
- (c) the major heirs and any claimants against the estate consent; and
- (d) it appears to him that no person interested would be prejudiced thereby,

authorize the executor, subject to security being given *mutatis mutandis* as provided under section 50(2) for the payment of any minor's share, and to such conditions as the Master may determine, to make over any property or all the property of the deceased, or the whole or any part of that portion of his property in respect of which he has made no testamentary provision to the contrary to the surviving spouse at a valuation to be made by an appraiser or any other person approved by the Master, and to frame his distribution account on the basis of such valuation.

(2) Subsections (3), (4) and (5) of section 50 shall *mutatis mutandis* apply in respect of any security given under subsection (1).

#### **48. Sales by executor**

An executor shall not, unless authorized thereto by the will of the deceased, sell any property (other than property of a class ordinarily sold through a stockbroker, or a bill of exchange) otherwise than by public auction after such notice and upon such conditions (if any) as the Master may direct:

Provided that-

- (i) the preceding provisions of this section shall not apply in respect of property sold in the ordinary course of any business or undertaking of the deceased carried on by the executor; and
- (ii) the Master may, if it would be to the advantage of the persons interested or if they all consent thereto and it would not be contrary to the terms of the will (if any) of the deceased, authorize the executor to sell any such property on such conditions as the Master may determine, by public tender or out of hand.

#### **49. Master may consent to subdivision of immovable property on behalf of minor, mental patient or unborn heir**

(1) If, in the opinion of the Master, it is expedient to subdivide, or to make a division of, any immovable property which is registered in the name of a minor or mental patient or in which a minor or mental patient is interested, or any unborn heir may acquire any interest, the Master, on being satisfied after due enquiry and after inspection of the property (if necessary), by him or by some suitable person appointed by him that the proposed subdivision or division is fair and equitable, may upon such terms as to costs as he thinks fit consent thereto on behalf of the minor, mental patient or unborn heir concerned.

(2) Such consent shall be subject to the requirements of any other law relating to subdivision

of property.

**50. Movable property to which minors and moneys to which absentees or persons under curatorship are entitled**

(1) The natural guardian of a minor shall, subject to subsections (2) and (3) and to the terms of the will (if any) of the deceased, be entitled to receive from the executor for and on behalf of the minor, any movable property to which the minor is, according to any distribution account in any deceased estate, entitled as an heir.

(2) No sum of money shall be paid, and if in the case of any other movable property, the Master so directs, no such movable property shall be delivered to any such guardian under subsection (1) unless payment of such sum of money or payment, in default of delivery, of the value of such movable property according to a valuation by an appraiser or any other person approved by the Master, as the case may be, to the minor, at the time when he is to become entitled to the payment of such sum of money or delivery of such property, has been secured to the satisfaction of the Master.

(3) Any such guardian shall, if called upon to do so by the Master by notice in writing, lodge with the Master, within a period specified in the notice or within such further period as the Master may allow, a statement in writing, signed by him in person and verified by an affidavit made by him, giving such particulars in respect of any such property or sum of money as may be indicated in the notice.

(4) If the estate of any such guardian or of his surety is sequestrated, or if such guardian or surety commits an act of insolvency, or is about to go or has gone to reside outside Botswana, or if in the opinion of the Master the security given under subsection (2) has become inadequate, the Master may, by notice in writing, require such guardian to provide within the period stated in the notice, such additional security as the Master may specify, and if the guardian fails to comply with the notice within the said period or within such further period as the Master may allow, the amount in question shall, unless the notice has been withdrawn by the Master, forthwith become payable into the hands of the Master.

(5) The Master may-

- (a) if any payment or delivery referred to in subsection (2) has been made to any minor entitled thereto; or
- (b) if any minor entitled to any such payment or delivery at any time after his majority, consents thereto in writing after he has attained majority,

reduce the amount of the security to an amount which would, in his opinion, be sufficient to secure any other such payment or delivery still to be made by the guardian.

(6) Subject to subsection (1) and to the terms of the will (if any) of the deceased, an executor shall pay into the hands of the Master any money to which any minor, absentee, unknown heir or person under curatorship is entitled according to any liquidation or distribution account in the estate of the deceased:



Provided that the court may, upon consideration of a report by the Master and of the terms of the will (if any) of the deceased, make such order exempting the executor from compliance with the provisions of this subsection as it may deem fit.

**51. Movable property to which minor or unborn heir is entitled subject to usufructuary or fiduciary rights or other like interests**

(1) If according to any distribution account a minor is, or an unborn heir will when born be, entitled to any movable property out of a deceased estate, subject to usufructuary or fiduciary rights or any other like interest in favour of any other person including the natural guardian, tutor or curator of the minor or unborn heir, then, subject to subsection (3) and any express provision to the contrary in the will-

- (a) the executor shall, in the case of a sum of money, pay such sum of money into the hands of the Master, and, in the case of any other movable property, deal with such property in such manner as the Master may direct; and
- (b) such sum of money and, unless the Master otherwise directs, such other movable property shall not, during the minority of the minor or before the birth and during the minority of the heir, as the case may be, be paid or delivered to such person unless such person has given security *mutatis mutandis* as provided in section 50(2), for the payment of such sum or the delivery of such property to the minor or heir at the time when the minor or heir is to become entitled to such payment or delivery.

(2) Subsections (3), (4) and (5) of section 50 shall *mutatis mutandis* apply in respect of any security given under subsection (1).

(3) Subsection (1) shall not apply in relation to any disposition in a will executed prior to a date 12 months after the date of commencement of this Act.

**52. Conditions under which survivor married in community of property may deal with such property**

It shall not be lawful for the survivor of two spouses who were married in community of property, not being an executor to whom letters of administration have been duly granted by the Master, to transfer or mortgage any land belonging to the joint estate and registered in the name of such survivor, unless he has obtained a certificate from the Master authorizing him to deal with that property, whether unconditionally or in the manner detailed in such certificate.

**53. Duty of executor in case of bequests of immovable property**

(1) Except as hereinafter provided, it shall be the duty of every executor, subject to the terms of the will, to transfer immovable property to the person to whom it is bequeathed:

Provided that if a usufructuary interest or other like limited interest in such property has been bequeathed to any person with a direction that after the expiry of such interest the property shall devolve upon some person uncertain, the executor shall, instead of transferring the property, transmit the title deeds to the Registrar of Deeds, in order that the terms of the will or a reference thereto, may, subject to the payment of transfer duty, if any, be endorsed against the

said title deeds.

(2) Whenever the Master is satisfied that it is impossible to transfer property as aforesaid without causing undue hardship, he may authorize the executor to transmit the titles to the Registrar of Deeds in order that a note may be endorsed on the said titles that the property has been bequeathed.

(3) Every executor who fails to use due diligence in complying with this section, shall forfeit all claims to fees in respect of his administration of the estate.

#### **54. Duty of Registrar of Deeds**

It shall be the duty of the Registrar of Deeds to whom the titles have been transmitted under section 53 to make all endorsements and to do all things necessary to give effect to the provisions of that section.

#### **55. Penalty for refusing to deliver title deed to executor when required**

(1) Any person in possession of a title deed required by an executor in order to comply with section 53, who refuses to deliver or unreasonably delays the delivery of such title deed to such executor, shall be liable to pay all reasonable costs to which the executor may be put in obtaining the order of a competent court declaring him entitled to the possession of the said deed, and shall be liable in addition to such penalty, not exceeding P1000, as such court may impose; but the legal rights or position of such person shall not be affected by his delivery of such deed in terms of this section.

(2) Every executor shall, so soon as the said deed is no longer required for the purposes of complying with the provisions of that section, return it to the person from whom it was received, if, but for this section, such person would be entitled to possession thereof.

(3) The provisions of this section respecting imposition of a penalty shall be deemed to be in addition to and not in derogation from the power of any court to punish for contempt of court.

#### **56. Endorsement against title deeds of immovable property of the terms of trusts in a will**

(1) Whenever a deceased person by his will directs that any of his property instead of being distributed amongst beneficiaries shall be administered by some person (hereinafter called the administrator) on their behalf, the executor shall, after payment of debts, deliver such of the property as is movable to the administrator and lodge the administrator's acquittance for the same with the Master; the executor shall further cause the terms of the will, or a reference thereto, in so far as those terms relate to the administration, to be endorsed by the Registrar of Deeds concerned against the title deeds of such of the property as is immovable and shall lodge with the Master the receipt of the administrator for the titles and a certificate from the Registrar of Deeds that the title deeds have been endorsed as aforesaid, and thereupon the administrator shall have full power to deal, in terms of the said will, with any of the deceased person's property.

(2) The Registrar of Deeds shall do all things necessary to enable an executor to comply with

this section.

#### **57. Transfer of immovables out of estate**

(1) Every executor who desires to effect transfer of any immovable property out of an estate in pursuance of the terms of a will, shall lodge with the Registrar of Deeds a copy of the will of the deceased duly certified by the Master.

(2) If a copy of the will has already been lodged, a reference thereto will be deemed a sufficient compliance with this section.

(3) Every executor who desires to effect transfer of any immovable property in pursuance of a sale whether by public auction or private treaty shall lodge with such transfer a certificate under the hand of the Master to the effect that no objection to such transfer exists.

#### **58. Payment of portion accruing to minor or person under curatorship domiciled outside Botswana**

(1) If upon the distribution under this Act of an estate in due course it appears that any person who is a minor or under curatorship is entitled to an amount not exceeding P1000, the executor with the concurrence of the Master, or the Master if this amount has been paid into his hands, may, if the executor or the Master (as the case may be) is satisfied that it will be to the benefit of the minor or person under curatorship to do so, and, if such minor or person be domiciled in a country outside Botswana, remit the amount due to such minor or person to the Government of that country or to the lawful guardian or curator of such minor or person within that country.

(2) The executor shall produce proof in due course to the satisfaction of the Master that he has remitted any amount in accordance with this section.

(3) No action shall lie against the Master at the instance of any such minor or person under curatorship in respect of any amount remitted under subsection (1).

#### **59. Master may fix time for lodging claims and account**

In any case in which it appears that an estate does not exceed P2000 in value the Master may with due regard to the terms of the will, direct-

- (a) that the estate be administered within a less time than six months;
- (b) that the advertisement calling upon creditors to lodge their claims be inserted once only in the *Gazette* and in a newspaper circulating in the district in which the deceased was ordinarily resident at the time of his death or, if not resident, circulating in a district where the deceased owned property and that all claims be lodged within a period (not being less than 14 days or more than three months) fixed by the Master and notified in the advertisement;
- (c) that the administration and distribution account in the estate be lodged within a period (not being less than 14 days) after the last date fixed for the sending in of claims.

## **60. Estates of persons not resident and not owning property other than shares in Botswana**

Upon the death of any person who is neither ordinarily resident within Botswana nor the owner of any property therein, other than shares in a company, the Master may summarily and without observance of the usual customary forms and without requiring security or an account of the administration and distribution of the estate, sign and seal letters of administration or certified copies thereof produced to him under section 37, or if no such letters be produced, the Master may appoint an executor dative to administer the estate of the deceased or dispense with such an appointment and direct the manner in which the estate shall be administered:

Provided that before the signing and sealing or appointment or direction-

- (a) evidence to the satisfaction of the Master is produced, that no person in Botswana will be prejudiced;
- (b) any duty payable in respect of the shares has been paid or secured to the satisfaction of the proper authority.

## **61. Liquidation and distribution accounts**

(1) An executor shall, as soon as may be after the last day of the period specified in the notice referred to in section 41, but within-

- (a) six months after letters of administration have been granted to him, if the gross value of the estate exceeds P2000;
- (b) three months after letters of administration have been granted to him, if the gross value of the estate does not exceed P2000; or
- (c) such further period as the Master may in any case allow,

submit to the Master an account in the prescribed form, supported by vouchers, of the liquidation and distribution of the estate.

(2) The Master may at any time in any case in which he has exercised his powers under subsection (1)(c) or in which an executor has funds in hand which ought, in the opinion of the Master, to be distributed or applied towards the payment of debts, direct the executor in writing to submit to him an interim account in the prescribed form, supported by vouchers, within a specified period.

(3) The executor shall set forth in any interim account all debts due to the estate and still outstanding and all property still unrealized, and the reasons why such debts or property, as the case may be, have not been collected or realized.

(4) Every executor's account shall, after the Master has examined it, lie open at the office of the Master and at such other places as the Master may specify for not less than 21 days, for inspection by any person interested in the estate.

(5) The executor shall give notice that the account will be so open for inspection by

advertisement in the *Gazette* and in one or more newspapers circulating in the district in which the deceased was ordinarily resident at the time of his death and, if at any time within the period of 12 months immediately preceding the date of his death he was so resident in any other district, also in one or more newspapers circulating in that other district, and shall state in the notice the period during which and the place at which the account will lie open for inspection.

(6) Every person at whose office an account lies open for inspection shall cause to be affixed in some public place in or about his office, a list of all such accounts lodged in his office, showing the date on which each such account will be transmitted to the Master, and, upon the expiry of the period allowed for inspection, shall endorse on each account his certificate that the account has lain open in his office for inspection in accordance with this section and transmit the account to the Master.

(7) Any person interested in the estate may at any time before the expiry of the period allowed for inspection lodge with the Master in duplicate any objection, with the reasons therefor, to any such account and the Master shall deliver or transmit by registered post to the executor a copy of any such objection together with copies of any documents which such person may have submitted to the Master in support thereof.

(8) The executor shall, within 14 days after receipt by him of the copy of the objection, transmit two copies of his comments thereon to the Master.

(9) If, after consideration of such objection, the comments of the executor and such further particulars as the Master may require, the Master is of opinion that such objection is well-founded or if, apart from any objection, he is of opinion that the account is in any respect incorrect and should be amended, he may direct the executor to amend the account or may give such other direction in connection therewith as he may think fit.

(10) Any person aggrieved by any such direction of the Master or by a refusal of the Master to sustain an objection so lodged, may apply by motion to the court within 30 days after the date of such direction or refusal or within such further period as the court may allow, for an order to set aside the Master's decision and the court may make such order as it may think fit.

(11) If any such direction affects the interests of a person who has not lodged an objection and the account is amended, the account as so amended shall, unless the said person consents in writing to the account being acted upon, again lie open for inspection in the manner and with the notice and subject to the remedies hereinbefore provided.

(12) When an account has lain open for inspection as hereinbefore provided and-

- (a) no objection has been lodged;
- (b) an objection has been lodged and the account has been amended in accordance with the Master's direction and has again lain open for inspection, if necessary, as provided in subsection (11), and no application has been made to the court within the period referred to in subsection (10) to set aside the Master's decision; or
- (c) an objection has been lodged but withdrawn, or has not been sustained and no such

application has been made to the court within the said period,

the executor shall forthwith pay the creditors and distribute the estate among the heirs in accordance with the account, lodge with the Master the receipts and acquittances of such creditors and heirs and produce to the Master the deeds of registration relating to such distribution, or lodge with the Master a certificate by the Registrar of Deeds or a conveyancer specifying the registrations which have been effected by the executor:

Provided that a cheque purporting to be drawn payable to a creditor or heir in respect of any claim or share due to him and paid by the banker on whom it is drawn, may be accepted by the Master in lieu of any such receipt or acquittance.

(13) The executor shall not later than two months after the estate has become distributable in terms of subsection (12), pay to the Master for deposit in the Guardian's Fund on behalf of the persons entitled thereto, all moneys which he has for any reason been unable to distribute in accordance with the account.

## **62. Remuneration of executors**

(1) Every executor shall, in respect of his administration, distribution, and final settlement of any estate, be entitled to receive out of the assets of the estate, or from any person who, as heir, legatee, or creditor is entitled to the whole or any part of the estate, such remuneration as may have been fixed by the deceased by will or deed.

(2) If no such remuneration has been fixed, the executor shall receive a fair and reasonable compensation which shall be assessed according to a tariff fixed by regulation and shall be taxed by the Master.

(3) If any executor fails to lodge the account of his administration and distribution of the estate as and when required by this Act to do so and can give no lawful and sufficient excuse for such failure, the Master may disallow the whole or any portion of the remuneration which the executor might otherwise have been entitled to receive in respect of his administration of the estate.

## **63. Continuance of pending legal proceedings by remaining or new executor**

(1) No civil legal proceedings instituted by or against any executor shall lapse merely because he has ceased to be an executor.

(2) The court in which any such proceedings are pending may, upon receiving notice that such executor has ceased to be an executor, allow the name of any remaining or new executor to be substituted for the former, and the proceedings shall thereupon be continued as if they had originally been instituted by or against such remaining or new executor.

## **64. Discharge of executors, and proceedings against discharged executors**

(1) Upon the completion to the satisfaction of the Master of the liquidation and distribution of a deceased estate, the executor shall be entitled to obtain his discharge from the Master.

(2) No person shall institute any legal proceedings against any person who has been

discharged as executor under subsection (1) in respect of any claim against the deceased estate or any benefit out of that estate:

Provided that this subsection shall not exempt any such person from liability in respect of any fraudulent dealing in connection with the estate or the liquidation or distribution thereof.

(3) After two years have elapsed as from the date upon which any person has been discharged as an executor, he may, with the consent in writing of the Master, destroy all books and documents in his possession relating to the estate of which he was the executor.

(4) Subsection (3) shall apply also in relation to any deceased estate liquidated and distributed prior to the date of commencement of this Act.

#### **PART IV** **Administrators (ss 65-78)**

##### **65. Property not to be administered in certain cases without certificate of authority**

No person shall-

- (a) administer any property which has, by the will of any person who dies after the commencement of this Act, been given under his control to be administered for the benefit, whether in whole or in part, of any other person; or
- (b) after the death of any donor who dies after the commencement of this Act, administer any property which has by any written instrument operating *inter vivos* been given under his control by such donor for the said purpose,

except under a certificate of authority granted or signed and sealed under this Part, or under an endorsement made under section 67.

##### **66. Orders by Master prohibiting administration without certificate of authority**

(1) The Master may, subject to subsections (3) and (4)-

- (a) if written application is made therefor by any interested beneficiary under any will or written instrument operating *inter vivos* whereby a testator or donor who has died before the commencement of this Act has given any property under the control of any person to be administered for the benefit, whether in whole, or in part, of any other person;
- (b) if a report by an accountant on the administration of the property by the person under whose control it has been so given is submitted with the application; and
- (c) if there are reasonable grounds for believing that the interests of such beneficiary will be prejudiced if the said person is not restrained from administering that property otherwise than under a certificate of authority granted or signed and sealed under this Part or under an endorsement made under section 67, as the case may be,

by written order under his hand, prohibit that person from so administering that property.

(2) Any person under whose control any property has been given as aforesaid shall allow any accountant nominated in writing by any beneficiary referred to in subsection (1)(a) to examine, for the purposes of compiling the report referred to in paragraph (b) of the said subsection, any books of account and any document kept by him or in his custody or under his control and relating to his administration of such property.

(3) The Master shall, before exercising his powers under subsection (1), give the person under whose control the property has been so given, not less than 30 days' notice of the grounds upon which the exercise of those powers is contemplated, and shall consider any representations made or information or evidence submitted to him by such person within that period.

(4) The said notice shall be accompanied by a summary of all the relevant facts relating to the application which have come to the knowledge of the Master.

**67. Certificates of authority to administrators nominated by deceased persons, and endorsements in case of assumed administrators**

(1) The Master shall, subject to subsection (3), on the written application of any person-

- (a) under whose control a testator or donor who has died before or after the commencement of this Act, has by will or written instrument operating *inter vivos*, given any property to be administered for the benefit, in whole or in part, of any other person; and
- (b) who is not incapacitated from being an administrator of such property and has complied with the provisions of this Act,

grant a certificate of authority to such person.

(2) The Master shall, subject to subsection (3)-

- (a) on the written application of any person who has been duly nominated as an assumed administrator by any administrator nominated by a testator or donor referred to in subsection (1)(a), is not incapacitated from being an administrator of the property concerned, and has complied with the provisions of this Act; and
- (b) on production of the deed of assumption duly signed by the person so assumed and the administrator so assuming him,

endorse the appointment of such person as assumed administrator on the certificate of authority granted to the administrator so assuming him.

(3) Section 29 shall *mutatis mutandis* apply with reference to a certificate of authority to be granted under subsection (1) and any endorsement to be made under subsection (2).

(4) If written application for any certificate of authority granted under subsection (1) was made within 14 days after the death of the testator or donor, or the date of any order made under section 66, as the case may be, such certificate of authority shall, for the purposes of section 65, or of the prohibition contained in such order, as the case may be, be deemed to



have been granted immediately after the death of the testator or donor, or on the date of such order.

**68. Proceedings on failure of nomination of administrators or on death, incapacity or refusal to act, etc.**

(1) The Master shall, subject to subsection (2)-

- (a) if any person who dies after the commencement of this Act, has, without nominating any person as administrator, by will or by written instrument operating *inter vivos* provided for the administration of any property for the benefit, in whole or in part, of any person; or
- (b) if any eventuality referred to in paragraph (b), (c), (d), (e) or (f) of section 31(1), occurs with reference to any person or persons-
  - (i) who have by will or written instrument operating *inter vivos* been nominated by a person who dies after the commencement of this Act to be administrator or administrators;
  - (ii) against whom an order under section 66 has been made; or
  - (iii) to whom a certificate of authority has been granted under this Act,

by notice in writing or by a notice published in such manner as in his opinion is best calculated to bring it to the attention of the persons concerned, call upon the persons for whose benefit the property is or is to be administered, to attend before him or, if more expedient, before any magistrate at a time and place specified in the notice, for the purpose of recommending to the Master for appointment as administrator or administrators, a person or a specified number of persons.

(2) Subsections (2), (4), (5) and (6) of section 31 shall *mutatis mutandis* apply with reference to administrators:

Provided that for the purposes of the application under this subsection of the said subsection (2), the reference to section 31(3) and to section 32, shall be deemed to be omitted.

**69. Competition for office of administrator**

If at any meeting in pursuance of a notice under section 68(1) more than one person is nominated for recommendation to the Master, the Master shall, in making any appointment, prefer the nominee of a more immediate beneficiary to the nominee of a more remote beneficiary:

Provided that the Master may-

- (i) join the nominee of a more immediate beneficiary with the nominee of a more remote beneficiary; or
- (ii) if there is any good reason therefor, pass by any or all of such nominees.

## **70. Foreign certificates of authority**

Whenever the provisions of section 37 apply, in terms of section 36, to letters of administration granted in any country, the said provisions shall *mutatis mutandis* also apply to a certificate of authority so granted.

## **71. Security by administrators**

(1) Every person to be appointed administrator dative or assumed administrator or against whom an order has been made under section 66 shall, before a certificate of authority is granted or signed and sealed, or any endorsement is made under section 67, as the case may be, find security to the satisfaction of the Master, in an amount determined by the Master, for the proper performance of his functions.

(2) Every person to be appointed administrator in pursuance of any will or written instrument operating *inter vivos*, shall be under the like obligation of finding security, unless-

- (a) he has been nominated by any will or by any such instrument executed before the commencement of this Act, and has not been directed by such will or instrument to find security;
- (b) he has been nominated by any will or by any such instrument executed after the commencement of this Act, and the Master has by such will or instrument been directed to dispense with such security; or
- (c) the court otherwise directs:

Provided that if the estate of any such person has been sequestrated, or if he has committed an act of insolvency, or if he is or resides or is about to reside outside Botswana, or if there is any good reason therefor, the Master may, notwithstanding the provisions of paragraph (a) or (b), refuse to grant or sign and seal a certificate of authority or to make any endorsement under section 67, until he finds such security.

(3) The costs of finding such security shall be paid out of the income derived from the property concerned or out of the property itself:

Provided that such costs shall, subject to the terms of the will or written instrument operating *inter vivos*, for the purposes of adjustment between the beneficiaries concerned, be brought into account against the said income and against the property in such proportions as the Master may determine.

(4) Subsections (1), (5) and (6) of section 35 shall *mutatis mutandis* apply with reference to administrators.

(5) Unless the Master otherwise directs, an administrator shall be required to find security in terms of this section if all the beneficiaries concerned are permanently resident outside Botswana.

## **72. Transfer and mortgage of immovable property by or in favour of administrators**

(1) An administrator who desires to have immovable property registered in the name of any beneficiary or to have any endorsement made under section 53, as applied by section 78, shall, in addition to lodging any deed or document which he may by law be required to lodge with the Registrar of Deeds, satisfy the said Registrar that the proposed transfer or endorsement is in accordance with the will or written instrument operating *inter vivos*.

(2) An administrator who desires to effect transfer of any immovable property in pursuance of sale, or to effect the registration of a mortgage over immovable property and any person who desires to effect transfer of any immovable property to an administrator or to effect the registration of a mortgage over immovable property in favour of an administrator, shall satisfy the Registrar of Deeds that it is within the powers of the administrator to effect such transfer or registration, or to acquire such property or accept such mortgage, as the case may be.

### **73. Accounts by administrators**

(1) An administrator shall at least once in every year not later than a date to be determined by the Master-

- (a) lodge with the Master a statement of account in the prescribed form and an audit certificate in the prescribed form, signed by an accountant appointed in terms of the will or written instrument operating *inter vivos*, or, if no accountant has been so appointed, by an accountant nominated by the Master after consultation with the beneficiaries;
- (b) forward to each beneficiary, or in the case of a minor or a person under curatorship, to the natural guardian, tutor or curator of such minor or person, as the case may be, a copy of such statement and certificate; and
- (c) lodge with the Master a certificate that he has complied with the requirements of paragraph (b).

(2) The Master shall issue to every accountant nominated by him in terms of subsection (1)(a) a certificate of nomination and advise the administrator of the name and address of such accountant.

(3) Subject to the terms of the will or written instrument operating *inter vivos*, any expense incurred in terms of subsection (1) shall be paid out of the income derived from the property concerned or out of the property itself and shall, for the purposes of adjustment between the beneficiaries concerned, be brought into account against the said income and against the property in such proportions as the Master may determine.

### **74. Movable property to which minors and moneys to which absentees or persons under curatorship are entitled**

(1) The natural guardian of a minor shall, subject to subsection (2) and to the terms of the will or written instrument operating *inter vivos*, be entitled to receive from an administrator for and on behalf of the minor-

- (a) any income accruing to the minor from the property concerned; and

- (b) any money or other movable property to which the minor is entitled under the will or written instrument.

(2) Subsections (2), (3), (4) and (5) of section 50 shall *mutatis mutandis* apply with reference to any money or other movable property referred to in subsection (1)(b).

(3) Subject to subsection (1) and to the terms of the will or written instrument operating *inter vivos*, an administrator shall pay into the hands of the Master any money to which any minor, absentee, unknown beneficiary or person under curatorship becomes entitled by way of income from the property concerned or otherwise under the will or written instrument.

#### **75. Payment of moneys to minors or persons under curatorship domiciled outside Botswana**

(1) If any minor or any person under curatorship domiciled outside Botswana becomes entitled to any sum of money by way of income from any property administered by an administrator or otherwise in terms of the will or written instrument operating *inter vivos* under which any property is administered by an administrator, the administrator, with the concurrence of the Master, or the Master, if the said sum has been paid into his hands, may remit the said sum to the government of the country in which such minor or person is domiciled or to the guardian, tutor or curator of such minor or person in that country.

(2) Subsections (2) and (3) of section 58 shall *mutatis mutandis* apply with reference to any sum remitted under subsection (1).

#### **76. Administrator making wrong distribution**

Any administrator who makes a distribution otherwise than in accordance with the provisions of the relevant will or written instrument operating *inter vivos*-

- (a) shall be personally liable to make good to any beneficiary or creditor any loss sustained by such beneficiary in respect of the benefit to which he is entitled, or by such creditor in respect of his claim, as a result of his failure to make a distribution in accordance with the said provisions, unless the court otherwise directs; and
- (b) shall be entitled to recover from any person any amount paid or any property delivered or transferred to him in the course of the distribution, which would not have been paid, delivered or transferred to him if a distribution had been made in accordance with the said provisions:

Provided that no costs incurred under this paragraph shall be paid out of the property in respect of which such administrator has been appointed or out of any income therefrom.

#### **77. Remuneration of administrators**

(1) Every administrator shall, subject to subsection (2), in respect of his administration and distribution of the property concerned, be entitled to receive out of the income derived from the property concerned or out of the property itself-

- (a) such remuneration as may have been fixed by the will or written instrument operating *inter vivos*; or
- (b) if no such remuneration has been fixed, a remuneration which shall be assessed according to a prescribed tariff and shall be taxed by the Master.

(2) The Master may-

- (a) if there are in any particular case special reasons for doing so, reduce or increase any such remuneration;
- (b) if the administrator has failed to discharge his duties or has discharged them in an unsatisfactory manner, disallow any such remuneration, either wholly or in part.

(3) Any such remuneration shall, subject to the terms of the will or written instrument operating *inter vivos*, for the purposes of adjustment between the beneficiaries concerned, be brought into account against the said income and against the property in such proportions as the Master may determine.

#### **78. Application of certain sections to administrators**

(1) Sections 28(5), 34, 48, 51(1) and (3), 53, 55, 63 and 64 shall *mutatis mutandis* apply with reference to administrators:

Provided that any reference in any of the said sections to a will shall, for the purposes of its application under this subsection include a reference to any written instrument operating *inter vivos* and executed by a person who had died.

(2) Section 29 shall *mutatis mutandis* apply with reference to administrators appointed to administer any property under a written instrument operating *inter vivos*.

### **PART V**

#### ***Estates of Minors and Absent Persons (ss 79-100)***

#### **79. Persons who may appoint tutors to minors**

- (1) It shall not be lawful for any person except—
  - (a) a parent of a minor;
  - (b) where the parent of a minor is dead or the parent has abandoned the minor, the surviving parent or the parent who has not abandoned the minor, as the case may be; or
  - (c) the parent of a minor to whom custody of such minor has been given by a competent court,

by any will or other deed to nominate any tutor or tutors to administer and manage the estate or to take care of the person of that minor:

Provided that nothing in this section shall prevent any person who gives or bequeaths any

property to any person from nominating a curator or curators to administer and manage the property during the minority or during the insanity of the donee or legatee, in like manner and as fully in all respects as the same might lawfully have been done prior to the commencement of this Act.

(2) All curators referred to in the preceding provisions of this section shall be called curators nominate.

#### **80. Tutors testamentary**

(1) A tutor nominated by a father or a mother in manner aforesaid to a minor child shall be called a tutor testamentary, whether that tutor has been nominated by will or by any other deed duly executed by the father or mother.

(2) No tutor testamentary shall assume or enter upon the administration or management of the estate or property of any minor (except in so far as it may be necessary for the preservation and safe custody of the same) until letters of confirmation have been granted to him by the Master in Form C set out in the First Schedule.

(3) Letters of confirmation granted to a tutor testamentary shall authorize him to administer the property of the minor wherever situate within Botswana.

#### **81. Mode of granting letters of confirmation**

(1) The Master shall, on application in writing made to him, grant letters of confirmation as tutor testamentary to every person who has, by a valid will or deed, been lawfully nominated and appointed tutor testamentary to a minor.

(2) Whenever it comes to the knowledge of the Master that any person who has, by any valid will or deed, been nominated tutor testamentary to a minor possessed of property, has not applied for letters of confirmation, the Master shall, by writing, require that person to inform him whether he is willing to act as such tutor testamentary and, if he consents so to act, the Master shall grant him letters of confirmation accordingly:

Provided that-

- (i) a father or mother shall not require letters of confirmation;
- (ii) letters of confirmation as tutor testamentary shall not in any case be granted to a person who is at the time incapacitated or disqualified by law from holding the office of tutor.

(3) The final proviso to section 29 shall *mutatis mutandis* apply to the appointment of a tutor testamentary.

#### **82. Letters of confirmation to curators nominate**

(1) No curator nominate shall assume or enter up the administration or management of any estate or property except in so far as may be necessary for the preservation and safe custody of

the same until letters of confirmation have been granted to him by the Master.

(2) To obtain the grant of such letters of confirmation, proceedings shall be taken by any such person and by the Master in like manner in all respects as is provided by the last preceding section as to the granting of letters of confirmation to tutors testamentary.

(3) Letters of confirmation to a curator nominate shall be in Form D set out in the First Schedule.

(4) Letters of confirmation granted to a curator nominate shall authorize him to administer all property included in the deed pursuant to which he is appointed and therein committed to his care, wherever within Botswana any such property is situate.

### **83. Security *rem pupilli salvam fore* by curators nominate and tutors testamentary**

(1) The court may, on the application of the Master or of any relative or of any person having an interest in the administration of the property of any minor, make an order in every case in which, prior to the commencement of this Act, any tutor testamentary might by law have been required to give security *rem pupilli salvam fore*, that letters of confirmation shall not be granted to any tutor testamentary or curator nominate as aforesaid until he has found security to the satisfaction of the Master.

(2) The Master shall allow the reasonable costs of finding security to be charged out of the estate unless otherwise ordered by the court.

### **84. Appointment of tutors dative by Master**

(1) Whenever it comes to the knowledge of the Master that any estate or property within Botswana has devolved upon or come to any minor within Botswana, who is not at the time under the natural guardianship of his father or mother or under the guardianship of a tutor testamentary duly confirmed, or whose property is not under the care of a curator nominate or dative duly appointed, the Master shall, unless he grants letters of confirmation as provided by section 81(2), cause to be published in the *Gazette* and in such other manner (if any) as he thinks fit, a notice calling upon the relatives of the minor to attend at his office at a time therein specified to see letters of confirmation granted to the person or persons appointed by him tutors or tutors dative of the minor:

Provided that-

- (i) the Master may, if he deems it expedient, call upon the relatives of the minor to attend before a magistrate at a time and place appointed and state the objections (if any) to any of the next of kin or other person being appointed tutor dative or to propose some person or persons to be recommended by the magistrate to the Master as fit and proper, for appointment by him as tutor or tutors dative. The Master shall in either event, or, if there is no attendance, appoint such person or persons as he thinks fit and proper to be the tutor or tutors dative of the minor and shall grant to the person or persons appointed letters of confirmation in Form C set out in the First Schedule unless he deems it necessary or expedient to postpone the appointment and call another

meeting;

- (ii) if any such minor is not possessed of or has no claim to any property whatever or to any property, except such as has been given or bequeathed to him by a person who has duly appointed a curator or curators nominate to administer and manage it during his minority or except money paid over to and in the hands of the Master under section 50(6), the Master need not, but may, take proceedings as aforesaid for the appointment of a tutor dative.

(2) If the property of a minor which is not already being administered by a person having authority in that behalf does not exceed P2000 the Master may appoint a tutor summarily and without observing the formalities prescribed by this section.

(3) Letters of confirmation granted to a tutor dative shall authorize him to administer the property of the minor wherever situate within Botswana.

#### **85. Assumption by tutors testamentary and curators nominate**

(1) Nothing contained in this Part shall prevent any tutor testamentary of any minor or curator nominate of any estate from assuming any other person as tutor of that minor or curator of that estate (as the case may be) by virtue of any power for that purpose committed to him by the will of, or any other deed duly executed by, the person by whom the tutor testamentary or curator nominate was appointed:

Provided that no person shall act as assumed tutor or curator unless, during the lifetime of the tutor testamentary or curator nominate, letters of confirmation have been granted to the assumed tutor or curator as such by the Master.

(2) Subject to the provisions of this Act as to security the Master shall grant such letters on production to him of the will or other deed by which the assumption of that tutor or curator is authorized and of the deed by which such tutor testamentary or curator nominate has assumed that person as tutor or curator, and, wherever possible, the original letters of confirmation granted to that tutor or curator.

(3) Every provision of this Act and of every other law applicable or relating to or affecting tutors or curators dative shall apply to every such tutor or curator so assumed, as the case may be.

#### **86. Proceedings in case of death, incapacity or removal of tutors or curators**

If-

- (a) the tutor of any minor either testamentary or assumed or the curator of any estate either nominate or assumed, to whom letters of confirmation have been granted has died or become incapacitated to act as such or has been removed from his office by any competent court and for the guardianship of that minor or for the administration or management of that estate, as the case may be, no tutor or curator remains;
- (b) there are not as many tutors, either testamentary or assumed, or curators nominate or



assumed, as by the provisions of the will or deed by which they were appointed or permitted to be assumed are necessary to form a quorum of tutors or curators for the guardianship of that minor or for the administration and management of that estate; or

- (c) any tutor dative, after letters of confirmation have been granted to him, dies or becomes incapacitated or be removed in manner aforesaid,

then and in every such case proceedings for the appointment of a tutor dative in place of the person so dying or becoming incapacitated or removed shall be taken by the Master in manner provided by section 84.

### **87. Revocation of letters of confirmation**

(1) Letters of confirmation granted to any person as tutor testamentary or as curator nominate may at any time be revoked and annulled-

- (a) by the court on proof to its satisfaction that the will or deed in respect of which those letters have been granted to that person is null or has been revoked either wholly or in so far as relates to the appointment of such person as tutor or curator or that such person was not legally qualified for the appointment;
- (b) by the Master upon production to him of a will or deed of later date than the will or deed in respect of which those letters were granted, if application is made by a tutor or curator nominated in that later will or deed who is capable and qualified so to act.

(2) Letters of confirmation granted to any person as tutor dative may at any time be revoked and annulled by the Master on production to him of any valid will or deed by which any other person who is then legally capable and qualified and who consents to act as tutor has been legally nominated tutor testamentary of the minor concerned:

Provided that if the will or deed has not been produced prior to letters of confirmation having been granted to the tutor dative owing to the fault or negligence of the person therein appointed tutor testamentary, that person shall be personally liable for and may be compelled by the Master or any person related to the minor to pay to the minor's estate all expenses which have been incurred in respect of and with reference to the appointment of the tutor dative.

### **88. Appointment of curator dative of property belonging to absent person**

(1) If it comes to the knowledge of the Master that there is within Botswana any estate or property belonging to any person whose whereabouts are unknown and whom he believes to be permanently absent from Botswana without having a legal representative therein, the Master may cause to be published in the *Gazette* and in such other manner (if any) as he may think fit a notice calling on all whom it may concern to attend before him at the time and place therein specified to see letters of confirmation granted to some person to be appointed by him curator dative of the property of such absent person and the Master shall at the time and place so specified appoint by letters of appointment in Form D set out in the First Schedule a fit and proper person to be such curator dative as aforesaid:

Provided that if the only property known by the Master to belong to the person believed to be

absent consists of money payable to him by the executor of a deceased person or by the trustee of an insolvent estate the Master shall not take any such proceedings as aforesaid.

(2) Letters of appointment granted under this section to a curator dative shall authorize him to take custody and charge of all the said person's property wherever situate within Botswana.

### **89 Appointment of *curator ad litem* by the court and of *curator bonis* by Master**

(1) Nothing contained in this Part shall prevent the court from appointing a *curator ad litem* to any person whenever and in the same manner in all respects as such an appointment might by law have been made by the court if this Act had not been promulgated.

(2) Whenever expedient the Master may appoint a *curator bonis* to take the custody and charge of any property wherever situate within Botswana until, for the due administration and management of the same, letters of confirmation have been granted to some person as tutor testamentary or dative, or as curator nominate or dative, in manner hereinbefore provided.

### **90. Security for due administration by tutors and curators**

(1) Every tutor dative or assumed tutor and every curator dative and *curator bonis* shall, before he enters upon the administration of the estate or property concerned and thereafter as the Master may require, find security for the due and faithful administration and management of the estate or property, to the satisfaction of the Master and to such an amount as in the circumstances of each particular case appears to him reasonable.

(2) Every tutor testamentary and curator nominate shall be under the like obligation of finding security unless-

- (a) he is the parent of the minor;
- (b) he has been nominated by will executed before 7th July, 1933, and has not been directed by the will to find security;
- (c) he has been nominated by will executed on or after the said date, and the testator has in such will directed the Master to dispense with such security; or
- (d) the court otherwise directs.

(3) The provisions of subsections (3), (4), (5) and (6) of section 35 shall be deemed to be incorporated in this section.

### **91. Circumstances under which women may be tutors or curators**

(1) The provisions of this Act in regard to the election and appointment of tutors and curators shall apply to males and females.

(2) Letters of confirmation shall not be issued to a spouse married in community of property unless the other spouse consents in writing.

### **92. Removal of insolvent tutors and curators**

Every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate has been sequestrated as insolvent or assigned under any law, shall cease to exercise or hold office as tutor or curator unless, before the final sequestration or the assignment of such estate, such tutor or curator has found security to the satisfaction of the Master for the due and faithful performance of his duties and if no such security has been found such tutor or curator shall, as soon as the final order for the sequestration or assignment has been made, *ipso facto* be removed from office.

### **93. Inventories by tutors and curators**

Every tutor and every curator shall make, sign and transmit to the Master-

- (a) within 30 days after entering upon his office, an inventory of all property within Botswana belonging to the person under his guardianship or subject to his administration; and
- (b) as soon as he has knowledge that there is any other property so owned or subject to his administration, an additional inventory of such other property,

and the Master may direct him to find further security under section 90.

### **94. Duties and liabilities of curators**

Every tutor and, in respect of the property which he has been appointed to administer but not otherwise, every curator nominate or dative, whose appointment has been duly confirmed shall, in addition to and in so far as is consistent with the powers conferred and the duties and penalties imposed on him by this Act, possess all such powers and be subject to all such duties and penalties as before the commencement of the Proclamation repealed by this Act a tutor testamentary would by the common law of Botswana have possessed and been subject to:

Provided that-

- (i) nothing contained in this section shall be construed as conferring upon any curator nominate or dative any power or authority in respect of the maintenance, education, or custody of the person of any minor, except in so far as the same has been specially conferred upon him by order of a competent court:
- (ii) every tutor testamentary and curator nominate shall in the discharge of his duties as such or in the administration of the estate and property under his guardianship (as the case may be) conform to and obey every lawful direction concerning the same which has been given in the will or deed by which the appointment was made or in any other document duly executed by the person who made that will or executed that deed.

### **95. Restriction on alienation or mortgage of immovable property by natural guardian, tutor or curator**

(1) No natural guardian shall alienate or mortgage any immovable property belonging to his minor child, and no tutor or curator shall alienate or mortgage any immovable property which he has been appointed to administer, unless he is authorized thereto by the court or by the Master

under this section, in the case of a tutor or curator, by any will or written instrument by which he has been nominated.

(2) The Master may at any time authorize-

- (a) any alienation of immovable property belonging to a minor or to a person for the administration of whose property a tutor or curator has been appointed, if the value of the particular property to be alienated does not exceed P4000 and the alienation would be in the interest of the minor or of such person, as the case may be; and
- (b) any mortgage of any such immovable property to an amount not exceeding, in the case of any one such minor or person, P4000, if the mortgage is necessary for the preservation or improvement of the property or for the maintenance, education or other benefit of such minor or person, as the case may be.

#### **96. Restriction on purchase by tutor or curator of property administered**

If any tutor or curator or the spouse, parent, child, partner, employer, employee or agent of any tutor or curator, purchases any property which such tutor or curator has been appointed to administer, the purchase shall, subject to the terms of any will or written instrument by which he has been nominated, be void, unless it has been consented to or is confirmed by the court or the Master.

#### **97. Payment to Master of moneys not immediately required**

Every tutor dative, every curator dative, and every *curator bonis* and, subject to the terms of the will or deed by which he was appointed, every tutor testamentary and every curator nominate shall forthwith pay over to the Master all moneys subject to his administration and not required for the immediate payment of the debts of the estate or the immediate maintenance of the person to whom the money belongs.

#### **98. Accounts of administration by tutors and curators**

Every tutor and every curator shall, on or before 15th February in every year, lodge with the Master a just, true, and exact account of his administration up to 31st December last preceding, supported by vouchers, together with a true copy of that account:

Provided that the survivor of two spouses to whom the pre-deceasing spouse has by will or other lawful instrument entrusted the administration of their joint estate during the minority of their children shall not in any case be required to lodge any such annual account, notwithstanding anything to the contrary in this section.

#### **99. Remuneration of tutors and curators**

(1) Every tutor, either testamentary or dative, and every curator, either nominate or dative, shall, in respect of his administration and management of any estate, be entitled to claim, receive, or retain out of the assets of that estate a reasonable remuneration for his care and diligence in that administration and management.

(2) All such remuneration shall be assessed according to a tariff fixed by regulation, and shall

be taxed by the Master.

#### **100. Application of certain sections to tutors and curators**

Sections 28(5), 34, 57(3) and 64 shall *mutatis mutandis* apply with reference to tutors and curators:

Provided that-

- (i) any reference in any of the said sections to a will shall for the purposes of its application under this section, include a reference to any written instrument by which the tutor or curator concerned has been nominated; and
- (ii) letters of curatorship may be granted to a spouse as curator or curatrix (as the case may be) of the other spouse or the other spouse's property without such other spouse's consent.

### **PART VI**

#### ***The Guardian's Fund (ss 101-108)***

#### **101. Guardian's Fund continued**

- (1) There shall continue to be the Guardian's Fund and shall consist of all moneys-
  - (a) in that fund at the commencement of this Act;
  - (b) received by the Master under this Act or any other law or in pursuance of an order of court; or
  - (c) accepted by the Master in trust for any known or unknown person.

(2) Whenever any such money is received by the Master he shall forthwith transmit that money to the Accountant-General who shall open in the books of the Guardian's Fund an account with the person to whom or the estate to which that money belongs:

Provided that if it is not known to whom any such money belongs or if, in the case of minor heirs, it is more convenient, the account may be opened in the name of the estate from which that money is derived.

(3) The Guardian's Fund shall, subject to any directions that may be given by the Master in accordance with this Part, be administered by the Accountant-General.

#### **102. Statements of unclaimed moneys to be published, and amounts to be paid into Guardian's Fund**

(1) Every person carrying on business within Botswana shall in the month of January in each year prepare and publish as hereinafter provided a detailed statement of all moneys amounting to P1 and upwards which were in his hands or in the hands of an agent on his behalf within Botswana on 31st December immediately preceding and which were not his property or subject to any valid lien, but at the date of the publication of the said statement have remained

unclaimed for a period of five years or more by the rightful owner.

(2) That statement shall as far as practicable set forth the full name and last known address of each of the owners aforesaid and shall be signed by the person carrying on business or some responsible person on his behalf and shall be published in the *Gazette*.

(3) Every such person or his agent shall make an affidavit in Form E set out in the First Schedule and shall as soon as may be after the publication of the statement, transmit the same together with the evidence of its publication and the said affidavit, to the District Commissioner of the district in which is situate the head or principal office of the business, together with a true copy thereof and the District Commissioner shall cause the copy to be compared with the original and if necessary corrected, authenticate that copy with his signature, and transmit the original forthwith to the Master.

(4) If default is made in complying with any provision of subsection (3) the statement shall be deemed not to have been published.

(5) After the expiration of three months from the date of such publication, all such moneys still remaining unclaimed shall, after deduction of the cost of publication apportioned as far as possible among the owners, be deposited forthwith in the Guardian's Fund; and, subject to the provisions of this Act, all such unclaimed moneys shall be held by the Accountant-General for account of the rightful owners.

(6) If any person fails to publish the statement mentioned in this section or to pay into the Guardian's Fund any moneys which under this section ought so to be paid, as and when the same ought respectively to be published or paid, then every person having the custody or control of such moneys or, in the case of an association of persons other than a partnership, the secretary and every director thereof within Botswana or in the case of a partnership, every member thereof within Botswana shall be liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding 12 months, or to both.

(7) If default is made in publishing the statement, or in paying such money into the Guardian's Fund within a period to be fixed by the court, the person liable for the default may be adjudged guilty of contempt of court and dealt with accordingly.

### **103. Interest on certain moneys in Guardian's Fund**

Interest at the rate of four per cent per annum or at such rate as may from time to time be fixed by the Minister responsible for finance by order published in the *Gazette* shall be allowed on the principal of every sum of money received by the Master for account of any minor, mental patient or unborn heir or, if the Minister so directs, on account of any other person, from the first day of the month following that in which the money has been so received and until the amount becomes legally claimable:

Provided that on 31st March in each year the interest that has become due on any moneys shall be added to the capital in the books of the Guardian's Fund, and in case such interest is not drawn by the person entitled thereto previous to 31st March following interest shall be allowed on the accumulated sum.

#### **104. Guardian's Fund to be available for investment**

The Guardian's Fund shall be deemed to be money available for investment which may be received for or on account of the Government, and the Accountant-General may from time to time at the direction of the Master withdraw, for the purpose of paying any amounts due and payable by the Guardian's Fund, any part of the working balances which are retained at the Master's disposal.

#### **105 Ordinary payments from Guardian's Fund**

The Master shall direct the Accountant-General to pay any sum of money standing to the credit of any person or estate in the books of the Guardian's Fund to the person by law entitled to receive the same:

Provided that the parent of a minor child having money deposited in the Guardian's Fund shall not be entitled to receive a greater amount of the interest due thereon than in the opinion of the Master has been reasonably necessary for the support and advancement in life of the minor, regard being had to his circumstances and condition in life.

#### **106. Extraordinary payments from Guardian's Fund**

(1) If after careful enquiry it appears to the Master to be for the interest of any minor, the Master may direct the Accountant-General to pay for the maintenance, education, or other benefit of that minor an amount which may be standing to his credit but this amount so paid shall not, without the sanction of the court, exceed P4000 in all.

(2) Whenever it appears to the Master that the interest upon any amount standing in the Guardian's Fund to the credit of a mental patient is not sufficient adequately to provide for the maintenance and treatment of the mental patient, the Master may direct the Accountant-General to pay for those purposes so much of the capital as, regard being had to the circumstances of the mental patient and of the persons dependent upon him, appears to the Master to be just and reasonable.

(3) The Master may, after consulting the guardian, direct the Accountant-General to pay to a person nominated by the Master from the working balances referred to in section 104 any sum of money belonging to a minor for the purchase of immovable property within Botswana, if he is satisfied that such purchase will be to the benefit of the minor.

(4) Nothing contained in this section shall authorize the Master to disregard the terms of any valid will or other deed.

#### **107. List of unclaimed moneys to be published annually**

(1) The Accountant-General shall in the month of July in each year cause to be drawn up a list of all amounts standing in the books of the Guardian's Fund which are claimable and are unclaimed, shall cause the same to be inserted in the *Gazette*, and shall forthwith transmit two or more copies thereof to the Master, who may cause the said list or any portion thereof to be published in such manner as he deems most expedient in any country or countries to which any

person or persons interested may be supposed to belong.

(2) In the advertisements all persons shall be invited to submit their claims to the Master:

Provided that no amount which is less than P100 need be advertised more often than once in every five years.

#### **108. Lapse to the State of moneys unclaimed for 30 years**

When any money which has been placed to the credit of any person or estate in the Guardian's Fund remains unclaimed by any person having a just and lawful right thereto for a period of 30 years from the date when the same was so placed to credit or in the case of a minor, from the date when he attains his majority, the claim shall lapse and the money shall become forfeited to the State and may be appropriated as part of the revenue of Botswana.

### **PART VII** **Miscellaneous (ss 109-125)**

#### **109. Failure to lodge administration account**

(1) If any executor, administrator, tutor or curator fails to lodge any account with the Master as and when required by this Act, or to lodge any vouchers in support of such account or to perform any other duty imposed upon him by this Act, or to comply with any reasonable demand of the Master for information or proof required by him in connection with the administration of the executor, administrator, tutor or curator, the Master or any person having an interest in the matter may, after giving the executor, administrator, tutor or curator not less than one month's notice, apply to the court for an order directing the executor, administrator, tutor or curator to lodge such account or vouchers in support thereof or to perform such duty or to comply with such demand.

(2) An executor, administrator, tutor or curator who receives such a notice may apply to the Master for an extension of time wherein to lodge such account or vouchers in support thereof, or to perform such duty, or comply with such demand, and the Master may grant such extension as in the circumstances of the case he may think reasonable.

(3) If the Master refuses any such extension of time and an application under subsection (1) is made to the court, and if upon that application the court is of opinion that an extension of time ought to have been granted by the Master, the Master or other person by whom the application was made shall nevertheless be entitled to his costs if there was sufficient time before the notice of the application for the executor, administrator, tutor or curator in default to bring in review by the court the refusal of the Master to extend the time.

(4) The costs adjudged to the Master or such other person shall, unless otherwise ordered by the court, be payable by the executor, administrator, tutor or curator *de bonis propriis*.

#### **110. Failure to pay over moneys**

Any executor, administrator, tutor or curator who, without sufficient excuse, retains, and fails as and when required by this Act to pay over, any moneys to the Master or for the benefit of a



minor to any other person, shall be liable to forfeit at the instance of the Master or such other person for the benefit of the estate, or (as the case may be) for the person to whom the money belongs, interest upon the amount of the default at the rate of 12 per cent per annum as from the commencement of the default.

#### **111. Master's costs when not otherwise recoverable payable out of Guardian's Fund**

(1) Whenever any executor, administrator, tutor or curator is ordered to pay *de bonis propriis* the costs of any proceedings instituted by the Master, the Master may, if he finds it impossible to recover the same from the executor, administrator, tutor or curator, pay or order payment of such costs from any property subject to the administration of the executor, administrator, tutor or curator in regard to which the proceedings were taken, or if there is no such property available, from the Guardian's Fund.

(2) All costs incurred by the Master in the ordinary course of his duties under this Act or otherwise and not recoverable by him from any other source, may be drawn by him and paid out of the credit balance of the Guardian's Fund unless the court in any case order that the costs be paid by the Master *de bonis propriis*:

Provided that the Minister may specially authorize that any costs ordered to be paid by the Master *de bonis propriis* be refunded to him or met out of the Guardian's Fund.

#### **112 Form of court proceedings taken by Master**

Whenever by this Act the Master is required or authorized to take civil proceedings against any executor, administrator, tutor or curator, he may proceed by way of application or motion and may when so proceeding report to the court in writing the facts upon which he relies instead of stating them in an affidavit, notwithstanding anything to the contrary in any law or rule of court.

#### **113. Report by Master to the court otherwise than upon formal application**

Whenever in the course of his duties the Master finds it necessary to lay any facts before the court otherwise than upon formal application or motion, the Master may lay those facts before the court having jurisdiction by a report in writing transmitted through the Registrar of the court. The court may thereupon make such order as it thinks fit:

Provided that the court may in every case, if it thinks fit, refer the report back to the Master and require the same to be presented upon formal application in court.

#### **114. Statement of case by Master to the court in certain events**

Whenever any difference of opinion upon a question of law arises between the executor or administrator and the Master in the distribution of an estate or property subject to administration and a minor is interested in the decision of that question, the Master and the executor or administrator may state a case in writing for determination by a judge of the court and his determination shall be binding upon the Master and the executor or administrator, without prejudice to the rights of other persons interested in the distribution:

Provided that the judge may refer the matter to the court for argument.

### **115. Review of Master's appointments, etc.**

Every appointment by the Master of an executor, administrator, tutor or curator, and every order or decision of or taxation by the Master under this Act shall be subject to appeal to or review by the court upon motion at the instance of any person aggrieved thereby, and thereupon the court may confirm, set aside or vary the appointment, order, decision or taxation, as the case may be.

### **116. Penalties**

(1) Any person who-

- (a) steals or wilfully destroys, conceals, falsifies or damages any document purporting to be a will;
- (b) wilfully makes any false inventory under this Act;
- (c) wilfully submits to or lodges with the Master any false account under this Act;
- (d) wilfully makes any false valuation for the purposes of this Act;
- (e) when being interrogated under oath under section 45, makes, with reference to the subject in connection with which he is interrogated any statement which he knows to be false or which he does not know or believe to be true;
- (f) being an executor or administrator, wilfully distributes any estate or property otherwise than in accordance with section 61(12) or of the relevant will or written instrument operating *inter vivos*;
- (g) contravenes or fails to comply with section 17, 18, 19, 21, 39 or that section as applied by section 78, section 61(13), 65, section 73(1), 80(2), 82(1), the proviso to section 85(1), section 93, 98, or any order made by the Master under section 20 or any order under section 66(1), or hinders or obstructs any accountant nominated by the Master in terms of section 73(1)(a) in the execution of his duty;
- (h) contravenes or fails to comply with section 10(3), subsection (1) or (2) of section 14, section 23, 25, 26, 42, 61(1), or any direction under section 61(2), any provision of or notice under subsection (2) or (3) of section 50, or that section as applied by subsection (2) or section 74; or
- (i) contravenes or fails to comply with subsection (1) or (2) of section 12, 61(8), 34(5) or that section as applied by section 78(1) or section 100, or with any notice under section 12(3), or fails without reasonable excuse to comply with a notice under section 45(1)(b), or, having appeared in answer to such notice, refuses to take the oath or to submit to examination or to answer fully and satisfactorily any lawful question put to him,

shall be guilty of an offence and liable-

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding P2000 or to imprisonment for a term not exceeding seven years, or to both;
- (ii) in the case of an offence referred to in paragraph (b), (c), (d) or (e), to a fine not exceeding P1000 or to imprisonment for a term not exceeding five years, or to both;
- (iii) in the case of an offence referred to in paragraph (f) or (g), to a fine not exceeding P200 or to imprisonment for a term not exceeding 12 months, or to both;
- (iv) in the case of an offence referred to in paragraph (h), to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both; and
- (v) in the case of an offence referred to in paragraph (i), to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

(2) The court convicting any person for failure to perform any act required to be performed by him by or under this Act may, in addition to any penalty which it imposes, order such person to perform such act within such period as the court may fix.

#### **117. Forfeiture on omission by surviving spouse to make inventory, or true inventory**

(1) Every surviving spouse of a marriage in community of property who wilfully neglects to cause an inventory of the joint estate to be made in a manner and within the period provided in this Act, or knowingly omits to enter in that inventory any article of property whatsoever, shall in the distribution of that estate forfeit all right to and share in the property so omitted in the inventory.

(2) Every loss which has been caused by the destruction or deterioration of any such property so omitted in the inventory shall in the distribution of the estate fall upon and be borne by the surviving spouse solely and exclusively:

Provided that nothing in this section shall exempt any person who wilfully or for any fraudulent purpose makes or causes to be made any false inventory of any such joint estate, from any penalty or punishment otherwise provided by this Act or any other law for the offence of making false inventories.

#### **118. No substitution or surrogation**

It shall not be competent for any executor or tutor to substitute or surrogate any other person to act in his place.

#### **119. Master not to act as executor, etc.**

The Master in his official capacity shall be incapable of acting as executor, administrator, tutor or curator.

#### **120. Reduction of security tendered by executors, administrators, tutors and curators in certain cases**

When an executor, administrator, tutor or curator, having given security to the Master, has accounted to the Master by means of an account supported by vouchers, as required by this Act, for any assets the value of which was taken into consideration by the Master when the security was assessed, the Master, upon his accepting and filing that account, may, if he is satisfied that the security thereafter remaining will be sufficient to cover the value of the assets remaining to be accounted for, reduce the amount of the security by any sum not exceeding the value as it appeared to him when the security was assessed of the assets so brought to account.

### **121. Effect of massing of joint estate**

Where two spouses, married in community of property, have by their mutual will massed the whole or any specific portion of their joint estate, and disposed of it after the death of the survivor, conferring upon the latter a fiduciary, usufructuary or other limited interest therein, then upon the death of either of such spouses after 7th July, 1933, adiation and the acceptance by the survivor of benefits under the will shall have the effect of conferring upon the heirs entitled to the said property after the expiry of the said limited interest the same rights in respect of the survivor's half share of such property as they may by law possess in respect of the half share which belonged to the spouse who has first died.

### **122. Estate account**

(1) Unless exempted by the Master every executor, administrator, tutor and curator shall, so soon as he has funds of the estate over and above an amount of P40 in hand, open an account with a bank in Botswana, in the name of the estate and shall pay those funds and all other funds of the estate thereafter received by him into the said account not later than one week after the first day upon which it was reasonably possible for him to pay in the amount.

(2) Every person who fails to comply with this section shall, at the instance of the Master or any person having an interest in the estate, pay to the estate interest at the rate of 12 per cent per annum on the amount so retained by him as from the commencement of the default.

(3) All cheques or orders for the payment of moneys out of such accounts shall truly express the cause of payment and the names of the persons in whose favour they are drawn.

(4) The Master may at all times require an executor, administrator, tutor or curator to furnish him with a bank statement or other sufficient evidence of the position of the said account.

(5) Pending the distribution of an estate being administered by an executor, he may, and at the direction of the Master shall, invest at interest with an institution, and upon terms approved by the Master, any moneys belonging to the estate and not immediately required for other purposes.

(6) Any person who fails to comply with the provisions of subsections (1), (2) and (3) or any requirement or direction of the Master under subsection (4) or (5) shall be guilty of an offence and liable to a fine not exceeding P100 or to imprisonment for a term not exceeding six months, or to both.

(7) If upon the prosecution of an executor, administrator, tutor or curator for the theft or

conversion of any property subject to his administration, it is proved that such property was in the possession of such executor, administrator, tutor or curator after his appointment as such, the onus shall lie upon him to prove, if the said property was a sum of money, that the money was duly deposited in an account as hereinbefore required and, if he fails to do so, he shall be liable, if he is not convicted on the charge of theft or conversion, to a fine of double the amount of such sum and to imprisonment for a term not exceeding six months, but such fine or imprisonment shall not relieve him of the liability to pay interest in terms of subsection (2).

### **123. Meetings before District Commissioner or other officer**

Any meeting to be held in pursuance of this Act before any District Commissioner may in his absence be held before any public officer authorized by the Master.

### **124. Exemption from liability for acts or omissions in Master's office or Deeds Registry**

No act or omission of the Master or of any officer employed in the Master's office, and no act or omission, in relation to any property transaction within the purview of this Act, of the Registrar of Deeds or of any officer employed in the Deeds Registry shall subject the Government, the Master, the Registrar of Deeds or any such officer as aforementioned to any liability for any damage sustained by any person in consequence of such act or omission:

Provided that if such act or omission is *mala fide* or if the Master, the Registrar of Deeds or any such officer as aforementioned has, in connection with such act or omission in the course of his duties or functions, not exercised reasonable care and diligence, the Government shall be liable for the damage aforesaid.

### **125. Regulations**

The Minister may make regulations for the better carrying out of the objects and purposes of this Act and for giving effect to its principles and provisions, and without prejudice to the generality of the foregoing may make regulations-

- (a) for the custody and preservation of the records, securities and valuable effects in the office of the Master;
- (b) as to the payment of money out of the working balances of the Guardian's Fund;
- (c) for the management and good conduct of the business of and the practice and procedure to be observed in the office of the Master;
- (d) regulating the application for and issue of copies of wills required for the purposes of section 57 or other purposes and the fees to be paid in respect thereof;
- (e) as to the remuneration to be paid to executors, administrators, tutors, curators and sworn appraisers;
- (f) prescribing means whereby fees payable under this Act shall be paid;
- (g) prescribing anything which is to or may be prescribed.

**FIRST SCHEDULE  
FORMS**

**Form A  
DETAILS OF THE DECEASED**

1. Name of deceased
2. Birthplace and nationality of the deceased
3. Names and addresses of the parents of the deceased } Father  
Mother
4. Age of the deceased Years    Months
5. Occupation in life of the deceased
6. Ordinary place of residence of the deceased
7. Married or unmarried, widower or widow
  - (a) Name of surviving spouse (if any), and whether married in community of property or not
  - (b) Name or names, and approximate date of death of pre-deceased spouse or spouses
  - (c) Place of last marriage}
8. The day of the decease ..... on..... 20 .....
9. Where the person died { House  
Town or Place  
District
10. Names of children of deceased, and whether majors or minors  

State separately the children born of different marriages and give the date of birth of each minor. Names must be written out in full. If there are no children, and either or both parents are dead, then give the names and addresses of the brothers and sisters of deceased

}

- 11. Has the deceased left any movable property?
- 12. Has the deceased left any immovable property?
- 13. Is it estimated that the estate exceeds P600 in value?
- 14. Has the deceased left a will?

Dated at ..... the ..... day of ..... 20 .....

.....  
*Signature*

(State in what capacity and whether at the time at or near the place of death.)

This notice must be filled up and signed by the nearest relative or connection of the deceased who shall at the time be at or near the place of death-or in the absence of such near relative or connection, by the person who at or immediately after the death has the chief charge of the house in or the place at which the death occurred and must be sent to the Master, within 14 days of the death.

**Form B**  
**LETTERS OF ADMINISTRATION**

These are to certify that A.B. of ..... has been duly appointed the executor testamentary (or dative, as the case may be) and is hereby authorized as such to administer the estate of the late C.D. who died at ..... on the .....

.....  
*Master of the High Court*

this ..... day of ..... 20 .....

**Form C**  
**LETTERS OF CONFIRMATION OF TUTORS**

These are to certify that A.B. of ..... has been duly appointed and is hereby authorized as such to act as the tutor testamentary (or dative, as the case may be) of C.D., minor child of the late E.F.

.....  
*Master of the High Court*

this ..... day of ..... 20 .....

**Form D**  
**LETTERS OF CONFIRMATION OF CURATORS**

These are to certify that A.B. of ..... has been duly appointed and is hereby authorized to act as the nominate of the estate given (or bequeathed, as the case may be) to C.D. by G.H. (Here describe the deed of gift or by its date or otherwise) or, as the case may be, as the curator dative of the estate of C.D.

.....  
*Master of the High Court*

this ..... day of ..... 20 .....

**Form E**  
**FORM OF OATH**

I, ..... of ..... (state capacity of deponent) make oath and say that the return of unclaimed moneys in the hand of subscribed by me and published under the provisions of section 102 of the Administration of Estates Act, in the *Gazette* dated the ..... day of ..... 20 ..... is to the best of my knowledge and belief a true and complete return as required by the said Act; and that during the year ended 31st December now last past no unclaimed moneys have been transferred by or on behalf of the said ..... out of Botswana or placed to any suspense or other account with a view to evading the provisions of this Act and that all amounts which ought to be included in the said return are duly included therein.

Sworn at ....., this ..... day of ..... 20 .....

.....  
*Justice of the Peace*

**SECOND SCHEDULE**  
**FEEES**

1. On all estates of deceased persons or estates under tutorship administration (except estates under the charge of a *curator bonis* pending the appointment of an executor) the gross value of which-

	P t
(a) exceeds P200, but does not exceed P800	2 00
(b) exceeds P800, for every P200 or part thereof .....	50



subject to a maximum fee to be fixed to the liquidation  
account ..... 20 00

(c) does not exceed P200 where administration takes place,  
a fee, in the discretion of the Master, to be fixed to the  
inventory, not exceeding ..... 2 00

Where the deceased is one of two spouses married  
in community of property, the above fees shall be  
assessed upon one-half of the gross assets of such  
community.

2. For extracts or copies of documents made or certified in the  
office of the Master, for each 100 words or part thereof  
..... 20

3. For custody of any will during the testator's lifetime, per  
annum  
..... 2 00

4. Upon all unclaimed moneys paid into the hands of the Master pursuant to section 102  
of this Act, or for account of absent or unknown creditors or contributors of any  
company, a commission upon the amount paid in of five per cent payable in cash,  
which shall be deducted from the unclaimed moneys so paid into the hands of the  
Master.