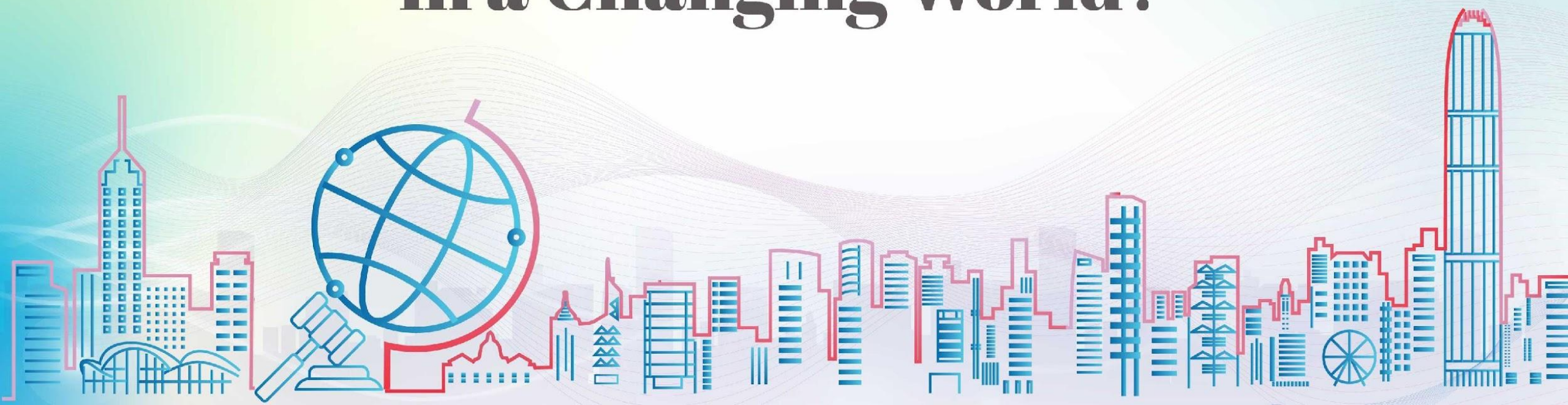




International Conference of Legal Regulators 2025

New Ways to Regulate in a Changing World?





What does “independence” mean for a regulator?

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Province**

LEGAL PRACTICE COUNCIL

(South Africa)

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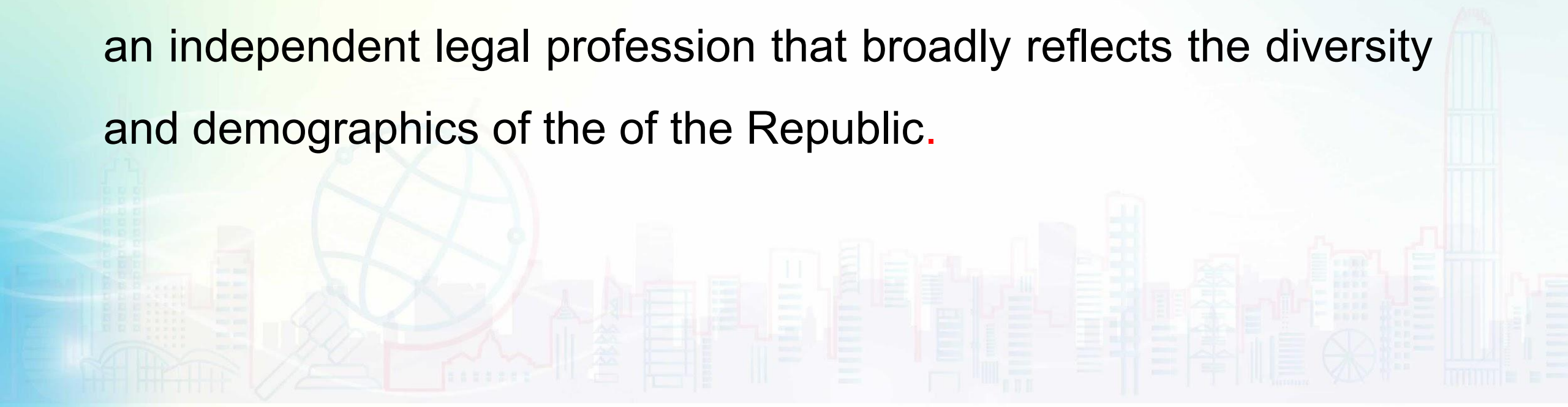
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1. What does “independence” mean for a regulator?



In South Africa, the Legal Practice Act (herein after referred to as the LPA) was promulgated to facilitate a legislative framework for the transformation and restructuring of the legal profession in line with the constitutional imperatives so as to facilitate and enhance an independent legal profession that broadly reflects the diversity and demographics of the of the Republic.



2. Core objectives of the LPC

The objectives of the Council are outlined in s5 of the LPA, namely:-

- Is to promote and protect the public interest.
- Preserve and uphold the independence of the profession.
- Is to enhance and maintain the integrity and status of the legal profession.

3. Key functions to fulfil the mandate

- Is to set Norms and standards.
- To provide admission and enrolment of legal practitioners.
- To regulate the Professional conduct of the legal practitioners to ensure accountability.



4. Structural Independence from the government and parliament



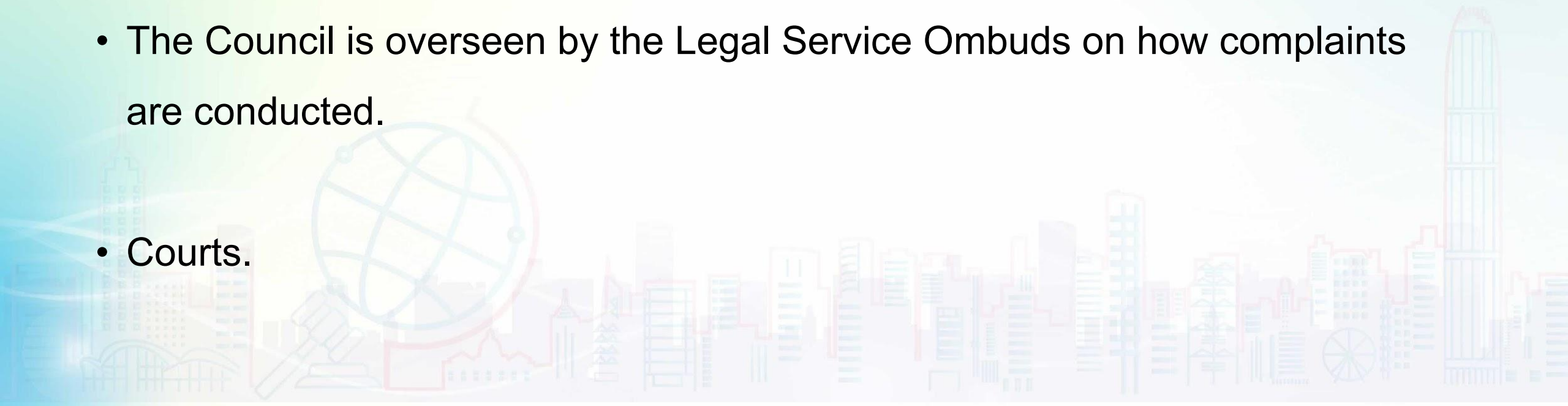
- Council Authority is derived from the LPA
- The LPC is not funded by the Government or Parliament
- Composition of the Council
- Protection against political interference.
- Independence Committee and Rule-making Authority.
- Upholding the rule of law
- **Relationship dynamic**
 - Engagements with the Department of Justice and Parliament to address issues and potential amendments to the Act, which may affect the extent of its independence.

5. Independence from the legal profession

- The LPC regulates the legal profession.
- The public interest and transparency are placed at the centre of this dispensation.
- Independence is crucial for maintaining the integrity and impartiality of the legal practitioners.
- Provisions in the LPA aim to safeguard the Council's autonomy and protect its independence.

6. Independence from other vested interests

- Impartiality in enforcement.
- Focus on transformation.
- The Council is overseen by the Legal Service Ombuds on how complaints are conducted.
- Courts.



7. The importance of financial independence

The Council is funded through the following:-

1. Legal Practitioners' Fidelity Fund (LPFF).
2. Annual fees collected from Legal Practitioners.
3. Admission and enrolment fees.
4. Other Levies and Charges as stipulated in the LPA.

NB: The government or parliament does not fund the operations of the Council.

8. Collaboration with member interest bodies

While the LPA separated regulatory functions from member interest representation, the Council still collaborates with professional bodies.

- **Law Society of South Africa (LSSA):** The LSSA, as a voluntary representative body for attorneys, engages with the LPC on issues of importance to the profession. These discussions may lead to a Memorandum of Understanding (MoU) that formalizes collaboration and defines the boundaries between their distinct functions.
- General Council of the Bar of South Africa (**GCB**)
- Pan African Bar Association of South Africa (**PABASA**)
- Black Lawyers Association (Legal Education Center) (**BLA**)
- National Association of Democratic Lawyers (**NADEL**)
- South African Revenue Services (**SARS**)
- Financial Intelligence Centre (**FIC**)

9. Collaboration on competition and access to justice

The LPC's work on legal fees and market access involves other institutions to protect consumer welfare.

- **Competition Commission:** The Competition Commission has an interest in competition within the legal profession. It has made submissions on the LPA and can investigate anti-competitive behavior. The LPC collaborates with it to ensure its rules on fees and market access do not harm consumers.
- **Non-profit organisations:** The LPC funds and collaborates with non-profit organisations and institutions, such as legal aid clinics, law clinics, Pro Bono to promote access to justice for previously disadvantaged people.

10. Mechanisms for collaboration



Several mechanisms formalize this collaboration:

- Memoranda of Understanding (MoUs)
- Statutory mandates
- Joint task forces and initiatives
- Referral systems

11. Pros and Cons of Self regulation

Pros:

- Expertise: Legal practitioners are best placed to understand and enforce standards specific to their profession.
- Flexibility: The legal profession can adapt regulations to reflect changes in legal practice.
- Trust: Practitioners may have greater trust in a regulatory body composed of their peers.
- Public Confidence: Enhancing public confidence in the legal profession through more transparent and accountable regulatory mechanisms.

11. Pros and Cons of Self regulation(cont)



Cons:

- Potential for Bias: Self-regulation can lead to protectionism and bias, with practitioners possibly favoring their peers.
- Accountability Issues: There may be a lack of accountability and transparency in disciplinary processes.
- Resistance to Change: The profession may resist necessary reforms that challenge established norms or require significant adjustments



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