

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**ARCHITECTURAL AND QUANTITY  
SURVEYING PROFESSIONS BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Works and Transport)*

**[B. 18 - 2010]**

## **BILL**

**To provide for the continued existence of the Namibia Council for Architects and Quantity Surveyors under the name Namibia Council for Architectural and Quantity Surveying Professions; to provide for the registration of architects and quantity surveyors, architects in training and quantity surveyors in training, and other architectural and quantity surveying professionals; to provide for the reservation of certain kinds of work to architects and quantity surveyors and architectural and quantity surveying professionals; to provide for the establishment of boards of control for architectural and quantity surveying professionals; and to provide for incidental matters.**

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:

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## **PART 1**

### **PRELIMINARY**

#### **Definitions**

1. In this Act, unless the context indicates otherwise -

“architect” means a person registered as an architect in terms of section 23;

“architect in training” means a person registered as an architect in training in terms of section 23;

“architectural and quantity surveying professions” means the professions of architecture and quantity surveying and any of the professions referred to in section 41(1);

“architectural professional” means a person registered as architectural professional in terms of section 23;

“board of control” means a board of control established in terms of section 41;

“Council” means the Namibia Council for Architectural and Quantity Surveying Professions referred to in section 2;

“financial institution” means a banking institution authorised to conduct business under the Banking Institutions Act, 1998 (Act No. 2 of 1998) or a building society registered as such under the Building Societies Act, 1986 (Act No. 2 of 1986);

“financial year” means a period of 12 months ending on the last day of February of every year immediately succeeding such date;

“juristic person” means

- (a) a private company referred to in section 32; or

(b) a close corporation referred to in section 33;

“Minister” means the Minister responsible for works;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for works;

“prescribe” means, in relation to the Council, prescribe by rules made by the Council under this Act and, in relation to the Minister, prescribe by notice in the *Gazette* or by regulation made under section 58;

“quantity surveyor” means a person registered as a quantity surveyor in terms of section 23;

“quantity surveyor in training” means a person registered as a quantity surveyor in training in terms of section 23;

“quantity surveying professional” means a person registered as a quantity surveying professional in terms of section 23;

“register” when used as a noun, means the register referred to in section 26;

“registrar” means the person appointed as registrar under section 16;

“registered person” means a person registered in terms of section 23 in any of the architectural and quantity surveying professions;

“reserved work” means any kind of work reserved for architects or quantity surveyors or architectural or quantity surveying professionals pursuant to section 17;

“repealed Act” means the Architects’ and Quantity Surveyors’ Act, 1979 (Act No. 13 of 1979);

“rule” means a rule made or deemed to have been made under this Act;

“this Act” includes any regulation, notice, order or rule issued or prescribed or made under this Act; and

“unprofessional conduct” means improper or dishonourable or unworthy conduct, or conduct which, when regard is had to the profession of the registered person, is improper or disgraceful or dishonourable or unworthy, and includes acts and omissions specified in rules made under section 34(1) or specified in section 34(2).

## **PART 2**

### **NAMIBIA COUNCIL FOR ARCHITECTURAL AND QUANTITY SURVEYING PROFESSIONS**

**Continuation of Namibia Council for Architects and Quantity Surveyors under  
new name**

**2.** Despite the repeal of the repealed Act -

- (a) the Namibia Council for Architects and Quantity Surveyors established by section 2 of the repealed Act, continues to exist from the date of commencement of this Act, as a body corporate under the name Namibia Council for Architectural and Quantity Surveying Professions; and
- (b) any person who immediately before the commencement of this Act held office as a member of the Council or of a committee of the Council by virtue of his or her appointment under the repealed Act continues to so hold office as if he or she were appointed under the corresponding provision of this Act, for such period of time until the Council is properly constituted as contemplated under section 4.

### **Functions, duties and powers of Council**

**3.** (1) In addition to any other functions, duties or powers conferred on the Council by this Act or by any other law, the Council has the following functions, duties and powers -

- (a) to determine -
  - (i) the manner in which an applicant must apply for registration in terms of section 22;
  - (ii) the registration fees which are payable to the Council in respect of registration under this Act and the annual fees which are payable to the Council by any person registered in terms of this Act;
  - (iii) what portion of such annual fees which are payable in respect of any part of a year and the date on which such annual fees or portion thereof becomes due and payable,
- (b) to grant exemptions from payment of any registration or annual fees or any portion thereof payable in terms of paragraph (a);
- (c) for the purposes of section 23, to determine the period for which a person may be required to perform architectural or quantity surveying work, as the case may be, under the direction and control of a person contemplated in paragraph (b)(ii) of that section, and may determine different periods in accordance with the different qualifications held by such persons;
- (d) to determine the conditions or requirements with which a registered person must comply with in order to retain such registration;
- (e) to decide on the form of the registers and certificates to be kept, maintained or issued under this Act, the reviewing thereof and the manner in which alterations thereto may be effected;
- (f) to determine the levies payable to the Council by architects or quantity surveyors and architectural or quantity surveying professionals in respect of the training and education of architects or quantity surveyors

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and architectural or quantity surveying professionals, to grant exemption from payment of any levy or any portion thereof and to determine how such levy may be imposed, collected and administered;

- (g) to determine from time to time, and in conformity with principles and formulae prescribed in advance by the Minister, the minimum tariffs of architectural and quantity surveying fees according to which an architect or quantity surveyor or an architectural or quantity surveying professional may calculate the amount chargeable by him or her in respect of the rendering by him or her of architectural or quantity surveying consulting services;
- (h) to recommend to the Minister a tariff of fees which a registered person may use as a guideline when determining the fees for services rendered by him or her in private practice;
- (i) to recommend to the Minister the kinds of work in connection with projects, undertakings or services of an architectural or quantity surveying nature which must be reserved for architects or quantity surveyors or architectural or quantity surveying professionals;
- (j) subject to this Act, to determine the method of inquiry into allegations of unprofessional conduct;
- (k) to make an order as to reasonable costs incurred by the Council or any person in connection with an inquiry conducted into the alleged unprofessional conduct by any of the persons engaged in the architectural or quantity surveying professions;
- (l) to take any steps which it may consider expedient for the protection of the public in dealings with any architect or quantity surveyor or architectural or quantity surveying professionals, for the improvement of the standard of professional services rendered by an architect or quantity surveyor or architectural or quantity surveying professionals, for the maintenance of the integrity and the enhancement of the status of the architectural and quantity surveying professions, and for the improvement of the professional qualifications of architects or quantity surveyors or architectural or quantity surveying professionals;
- (m) to encourage research into matters relating to the architectural and quantity surveying professions and to give advice or render financial or other assistance to any educational institution or any architect or quantity surveyor or architectural or quantity surveying professionals institute or any examining body with regard to educational facilities for and the training and education of prospective architects or quantity surveyors or of persons registered, or to be registered with any board of control;
- (n) to finance, print, circulate and administer the publication of, and generally to take any steps necessary to publish any publication relating to the architectural or quantity surveying professions and matters relating thereto;

- (o) to regulate that architects, quantity surveyors and architectural and quantity surveying professionals may participate in any competition subject to compliance with paragraph (g); and
  - (p) to perform any other duty or function as may be assigned to it by or under this Act or by the Minister or as may be prescribed.
- (2) To enable it to perform the functions and duties referred to in subsection (1) or in this Act, the Council is empowered to -
- (a) acquire by purchase, lease, exchange, or otherwise, any movable or immovable property or any interest in movable or immovable property;
  - (b) sell, lease, exchange, pledge, mortgage or otherwise deal with any movable or immovable property of the Council;
  - (c) enter into contracts and to decide the manner in which contracts must be entered into on behalf of the Council;
  - (d) make or accept donations;
  - (e) collect or receive moneys due to the Council;
  - (f) obtain information necessary to achieve its objects and perform its functions, including requiring any registered person in writing to submit to the Council such information as the Council may consider necessary;
  - (g) subject to section 10(2), to consider and give its final decisions on recommendations made by a committee of the Council; and
  - (h) do all such things as it may regard necessary or expedient in order to achieve the objects of this Act.

#### **Constitution of Council**

**4.** (1) The Council consists of the following members appointed by the Minister, subject to the provisions of this section as follows:

- (a) four persons who are registered as architects in terms of this Act, elected, in the prescribed manner and in accordance with the prescribed procedures, by an association or institution representing registered architects recognised by the Council;
- (b) four persons who are registered as quantity surveyors in terms of this Act, elected, in the prescribed manner and in accordance with the prescribed procedures, by an association or institution representing registered quantity surveyors recognised by the Council;
- (c) one architect in the full-time employment of the public service;
- (d) one quantity surveyor in the full-time employment of the public service;



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- (e) one person who in the opinion of the Minister has knowledge and experience of public affairs and the economic requirements of Namibia and is particularly suited to judge how the public interest in so far as it may be affected by the architects' and quantity surveyors' professions, can best be safeguarded or promoted; and
  - (f) one person registered as an architectural or a quantity surveying professional in terms of this Act, and an alternate member for such person, elected in the prescribed manner and in accordance with the prescribed procedures, by each board of control to represent it on the Council.
- (2) Whenever the appointment of any member referred to in subsection (1) (a), (b) or (e) becomes necessary and -
- (a) any of the associations or institutions referred to in that subsection has ceased to exist or does not exist; or
  - (b) any of the associations, institutions or boards of control referred to in that subsection fails to elect the persons as contemplated in that subsection,

the Minister may appoint as a member of the Council such architect or quantity surveyor or architectural or quantity surveying professional, whichever may be applicable, as the Minister may think fit.

(3) The Minister must, within 30 days of appointing a person as a member of the Council, make known in the *Gazette* the name of every person so appointed together with the date from which the appointment takes effect and the period for which such appointment has been made.

#### **Co-opted members**

- 5.** (1) The Council may, subject to subsection (2), invite one or more registered persons to be appointed by the Minister as co-opted members of the Council.
- (2) The co-opted members referred to in subsection (1) -
- (a) serve as co-opted members for a period of one year but are eligible for reappointment;
  - (b) have no voting power on any or all matters discussed by the Council;
  - (c) may not be counted when determining quorums of the Council; and
  - (d) must be excluded from any meeting of the Council wherein any professional disciplinary matter relating to any registered professional architect, quantity surveyor or architectural or quantity surveying professional in being discussed.

**Persons disqualified from being members of the Council**

6. A person may not be appointed as a member of the Council if he or she -
- (a) is not a Namibian citizen or a person lawfully admitted to Namibia for permanent residence and resident therein;
  - (b) is disqualified in terms of this Act or of any other law from practising any of architectural or quantity surveying professions;
  - (c) is an unrehabilitated insolvent;
  - (d) has been declared mentally ill by a competent court in terms of the Mental Health Act, 1973 (Act 18 of 1973);
  - (e) has been convicted of an offence involving dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine, and in respect of which an appeal, if any, was not upheld; or
  - (f) has been removed from an office of trust on account of improper conduct.

**Tenure of office of members of Council**

7. (1) Subject to subsection (2), a member of the Council, other than a member appointed in terms of section 4(1)(c) or (d), holds office for a period of three years from the date of his or her appointment, but must, on the expiration of such period, continue to hold office for a further period, not exceeding three months, until his or her successor has been appointed.

(2) Any member whose period of office has expired is eligible for reappointment.

- (3) A member of the Council vacates his or her office if he or she -
- (a) subsequent to appointment as member of the Council, becomes subject to any of disqualifications mentioned in section 6;
  - (b) resigns as a member of the Council by written notice addressed and delivered to the Minister;
  - (c) has been absent from three consecutive meetings of the Council without its leave;
  - (d) being a member referred to in section 4(1)(a) or (b), ceases to be an architect or quantity surveyor, as the case may be;
  - (e) being a member referred to in section 4(1)(c) or (d), ceases to be a person in the employment of the public service or to be an architect or a quantity surveyor; or
  - (f) being a member referred to in section 4(1)(e), ceases to be a member of the board of control which he or she represents.

(4) Despite subsection (3), the Minister may, after affording a member an opportunity to make representations on the matter, remove a member from office if the Minister has reasonable cause to believe that the member is no longer fit or able to discharge the functions of that member's office or for good cause.

(5) A vacancy on the Council arising from any circumstance referred to in subsection (3), or caused by the death of a member of the Council must be filled by the appointment of another person in accordance with section 4 and every member so appointed holds office for the unexpired portion of the period of office for which his or her predecessor was appointed.

### **Meetings of Council**

**8.** (1) Subject to this section, the Council may determine its own procedure at meetings.

(2) The first meeting of the Council must be held at such time and place as the Minister may determine and subsequent meetings must be held at such times and places as the Council may determine.

(3) The president of the Council may at any time and must at the request of not less than two thirds of the members convene a special meeting of the Council after giving not less than 14 days notice of such meeting to all members.

(4) The majority of the members of the Council forms a quorum.

(5) The decision of a majority of the members of the Council present at a meeting constitutes a decision of the Council and, in the event of an equality of votes on any matter, the president has a casting vote in addition to his or her deliberative vote, but a decision of the Council recommending to the Minister that this Act be amended requires at least a simple majority vote of the members of the Council.

(6) No decision taken by the Council or act performed under the authority of the Council is invalid by reason only of a vacancy on the Council or of the fact that a person who was not entitled to sit as a member of the Council sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Council who were present at the time and entitled to sit as members.

(7) If a member of the Council or his or her spouse, including a spouse in a customary union or his or her child or any other member of his or her household, or his or her partner, agent or business associate, has a direct or indirect financial interest in any matter to be considered at any meeting of the Council, that member must forthwith disclose the nature and extent of the financial interest at that meeting and thereafter the Council must determine whether or not the member may participate in discussions relating to that matter.

(8) A member who fails to comply with subsection (7) commits an offence and is liable on conviction to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**President and vice-president of Council**

9. (1) At the first meeting of the Council and thereafter as the occasion arises the members of the Council must elect from among their number a president and a vice-president to hold office for such period as may be determined by the Council at the time of their election.

(2) If the president or the vice-president of the Council dies or vacates his or her office before the expiration of the period contemplated in subsection (1), the members of the Council must elect from among their number a president or vice-president, as the case may be, to act as president or vice-president for the unexpired portion of the period of office for which his or her predecessor was elected.

(3) If for any reason the president is absent or unable to perform his or her functions, the vice-president must act in his or her stead.

(4) If both the president and the vice-president are absent or unable to preside at any meeting of the Council, the members present must elect one from among their number to preside at that meeting and the person so elected to preside must during that meeting and until the president or vice-president resumes duty, perform all the functions of the president.

(5) A member of the Council who is not an architect or a quantity surveyor may not be elected president or vice-president of the Council or preside at any meeting thereof.

**Committees of Council**

10. (1) The Council may establish one or more committees to assist it in the performance of its functions and may -

- (a) appoint, for such period as the Council may determine, as members of that committee such members of the Council and such other persons as it may think fit;
- (b) designate a member of that committee as chairperson thereof; and
- (c) do any other act which is necessary to enable the committee to perform its functions.

(2) The Council may delegate to a committee established under subsection (1) such of its powers as it may think fit, but is not divested of any power which it may have delegated to a committee, and may amend or withdraw any decision of any such committee.

(3) A committee to which the Council has delegated the power to inquire into any case of alleged unprofessional conduct and to impose a penalty in respect thereof in accordance with section 38 may, notwithstanding the expiry of the tenure of office of the members of that Council, continue to exercise such power until the conclusion of such inquiry.

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(4) The Council may issue directives with regard to the manner of convening and the procedures to be followed at meetings of a committee established in terms of subsection (1).

### **Funds of Council**

**11.** (1) The funds of the Council consist of -

- (a) the fees and levies referred to in section 3(1)(a) and (f);
- (b) the fees referred to in section 21(2)(b);
- (c) the fines and costs referred to in section 38;
- (d) any moneys received by the Council by virtue of donations;
- (e) any interest or dividends derived from investments made under section 12;
- (f) moneys advanced to the Council in terms of subsection (3); and
- (g) any other moneys accruing to the Council from any other source.

(2) The Council must utilize its funds for defraying expenses in connection with the exercise of its powers and the performance of its functions and duties, but moneys received by virtue of -

- (a) a donation must be utilized in accordance with the conditions, if any, determined by the donor concerned;
- (b) a levy referred to in section 3(1)(f) must be utilized for the purpose of training and education contemplated in that paragraph.

(3) The Minister may, in consultation with the Minister responsible for finance, advance to the Council out of monies appropriated by Parliament for that purpose such amounts as he or she may think necessary in order to enable the Council to carry out its functions and duties.

(4) Any money advanced in terms of subsection (3) must be made on such conditions and is repayable at such times as the Minister may, in consultation with the Minister responsible for finance, determine.

### **Banking account**

**12.** The Council must cause the money in its fund to be paid into an account at a financial institution and may invest any portion thereof which is not immediately required for the purposes mentioned in this Part within Namibia.

### **Bookkeeping and auditing**

**13.** (1) The Council must, in accordance with generally accepted accounting principles, cause full accounts to be kept of all moneys received or expended by it.

(2) The accounting and related records of the Council must be audited annually by a person registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) as an accountant and auditor, and appointed by the Council for such purpose.

(3) The person appointed under subsection (2) must, at least once in every year and not later than a date to be determined by the Council, draw up a balance sheet and profit and loss account and as soon as possible forthwith submit certified copies thereof and of his or her report thereon to the Council.

(4) The Council must cause a copy of the audited balance sheet and report referred to in subsection (3) to be open for inspection by any registered person.

### **Remuneration**

**14.** (1) Members -

(a) of the Council, and

(b) of any committee who are not members of the Council,

who are not in full time employment of the public service may be paid such remuneration or allowances, as well as such other benefits, as the Council, with the concurrence of the Minister, may determine.

(2) Any remuneration, allowance or benefit contemplated in subsection (1) may differ from member to member according to the office held, and duties and functions performed by, the member concerned.

### **Reports to Minister**

**15.** (1) The Council must in each year, not later than six months after the end of its financial year, submit to the Minister a report on its activities during that financial year, together with a copy of the audited balance sheet and report referred to in section 13(3) in respect of that financial year.

(2) The president of the Council may from time to time submit to the Minister reports on the activities of the Council which in the opinion of the Council should be brought to the Minister's notice.

(3) The Council must at the request of the Minister or the Permanent Secretary furnish him or her with advice on any matter related to the architectural and quantity surveying professions or matters incidental thereto.

### **Registrar and other staff**

**16.** (1) The Council -

(a) must appoint a registrar who must perform the duties and functions, and exercise the powers conferred on him or her by this Act, including such additional duties, functions and powers as determined by the Council or as may be prescribed;

- (b) may appoint other persons as the Council may consider necessary to assist the registrar in exercising any of the powers or performing any of the duties or functions conferred on the registrar by this Act; and
- (c) must determine the remuneration and allowances payable to the registrar and other persons employed by the Council, who are not in the full-time employment of the public service.

### **PART 3**

#### **RESERVATION OF WORK FOR AND REGISTRATION OF ARCHITECTS AND QUANTITY SURVEYORS AND ARCHITECTURAL AND QUANTITY SURVEYING PROFESSIONALS**

##### **Reservation of certain kinds of work and publication of tariff of fees**

**17.** (1) The Minister may, after consideration of any recommendation made by the Council in terms of section 3(1)(i) -

- (a) prescribe the kinds of work in connection with projects, undertakings or services of an architectural or quantity surveying nature which must be reserved for a registered architect or quantity surveyor or for architectural or quantity surveying professionals, as the case may be;
- (b) prescribe the principles and formulae for a minimum tariff of fees which a registered person must calculate the amount chargeable by him or her in respect of the rendering by him or her of architectural or quantity surveying consulting services or use as a guideline when determining the fees to be charged for services rendered by him or her in private practice.

(2) The Minister must before prescribing any reserved work in terms of subsection (1)(a), give notice in the *Gazette* of the proposed reservation and such notice must invite interested persons to submit to the Permanent Secretary, within 30 days from the date of the notice, their written objections or representations on the proposed reservation.

(3) The Minister must transmit any objections or representations received by virtue of subsection (2) to the Council.

(4) If as a result of any objections or representations submitted in respect of the proposed reservations, the Minister, on the recommendation of the Council, made certain changes to the proposed reservation it will not be necessary to give notice of these changes.

(5) Despite the provisions of this section, the Minister may, after consultation with the Council, and subject to such conditions that he or she may impose, exclude, from any reservation made under this section, any kind of work done under specified circumstances or for specified purposes or by or for specified persons or category of persons or within specified areas.

**Prohibition against performance of reserved work unless registered**

**18.** (1) No person may perform any type of reserved work unless he or she is registered in terms of this Act.

(2) Subject to sections 17(5), 32(11) and 33(7) -

(a) any natural person, other than a registered architect, quantity surveyor, architectural or quantity surveying professional, who -

(i) except in the full-time employment of the public service or by order of and under the supervision of a registered architect, quantity surveyor, architectural or quantity surveying professional performs any kind of reserved work;

(ii) pretends to be or by any means whatsoever holds himself or herself out or allows himself or herself to be held out as an architect, a quantity surveyor, an architectural or a quantity surveying professional or uses the name of architect, quantity surveyor, architectural or quantity surveying professional or any name, title, description or symbol or performs any act indicating or calculated to lead persons to infer that he or she is registered as an architect or a quantity surveyor or an architectural or a quantity surveying professional in terms of this Act,

commits an offence and on conviction is liable to a fine not exceeding N\$12 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(b) any juristic person which -

(i) performs any kind of reserved work or causes such work to be performed by any person other than a person who is registered as an architect or a quantity surveyor or architectural or quantity surveying professional in terms of this Act;

(ii) pretends to be or by any means whatsoever holds itself out or allows itself to be held out as a juristic person performing any kind of reserved work or uses any name, title, description or symbol indicating or calculated to lead persons to infer that it is a juristic person performing any kind of reserved work,

commits an offence and on conviction is liable to a fine not exceeding N\$12 000.

**Requirements for registration**

**19.** No person qualifies to be registered under this Act unless he or she possesses the qualification prescribed in terms of section 20 and passes the examination or assessment prescribed in terms of section 21.



## **Qualifications**

**20.** (1) Subject to subsection (2), the Minister must on the recommendation of the Council prescribe the qualifications obtained by virtue of examinations conducted by any educational institution or other examining authority which, when held singly or conjointly with any other qualification entitles any holder thereof to registration under this Act, if he or she has, before or after the acquisition of the qualification in question, complied with such conditions or requirements as may be so prescribed.

(2) A qualification obtained by virtue of examinations conducted by an educational institution or other examining authority situated outside Namibia may not be prescribed under this section unless -

- (a) such qualification entitles the holder thereof to practise such profession in the country or state in which such educational institution or other examining authority is situated; and
- (b) the Council is satisfied that such qualification is of a standard of professional education not lower than that prescribed in terms of subsection (1) in respect of the profession concerned, within Namibia.

## **Examinations**

**21.** (1) It is a prerequisite for registration of any person as an architect, a quantity surveyor, or an architectural or a quantity surveying professional that such person must have passed an examination or other assessment prescribed by the Minister under subsection (2) before examiners or assessors appointed by the Council, in order to determine whether such person's professional knowledge and skill in the field of his or her qualification are of such a standard so as to enable such person to practise the profession concerned.

(2) The Minister must on the recommendation of the Council from time to time make regulations prescribing -

- (a) the requirements and conditions for an examination or assessment to be conducted for the purposes of subsection (1), which requirements and conditions may differ according to the different qualifications prescribed in terms of section 20; and
- (b) the fees, if any, which are payable to the Council by persons who sit for or undergo such examination or assessment.

## **Application for registration**

**22.** Any person who wishes to be registered as an architect or a quantity surveyor or an architect in training or a quantity surveyor in training or an architectural or quantity surveying professional must lodge an application for such registration with the Council, in such form as may be determined by it, and the application must be accompanied by the registration fee and such information as may be required by the Council.

**Consideration of application and registration**

**23.** On receipt of an application made under section 22, the Council must consider the application and if the Council is satisfied that -

- (a) in the case of an application for registration as an architect in training or a quantity surveyor in training, or architectural or quantity surveying professional the applicant holds a qualification prescribed under section 20 and has, where applicable, passed an examination or assessment prescribed in terms of section 21, the Council must, subject to the provisions of section 27, register the applicant as an architect in training or a quantity surveyor in training, or architectural or quantity surveying professional, as the case may be, and issue to him or her a certificate of registration to that effect;
- (b) in the case of an application for registration as an architect or a quantity surveyor, the applicant -
  - (i) holds a qualification prescribed under section 20;
  - (ii) has, for the appropriate period determined by the Council in terms of section 3(1)(c), performed architectural or quantity surveying work, as the case may be, which in the opinion of the Council is of sufficient variety and of a satisfactory nature and standard, and has performed such work -
    - (aa) in Namibia, under the direction and control of an architect or a quantity surveyor, as the case may be; or
    - (bb) outside Namibia, under the direction and control of any other person who possesses a qualification which the Council is satisfied as indicating a standard of professional education not lower than that prescribed in terms of section 20, and who is engaged primarily in the performance of any kinds of reserved work; and
  - (iii) has passed the examination or assessment referred to in section 21,

the Council must, subject to the provisions of sections 24(2) and 27, register the applicant as an architect or a quantity surveyor, as the case may be, and issue to him or her a certificate of registration to that effect.

**Effect of registration and persons deemed to be registered**

**24.** (1) A person who is registered as an architect or a quantity surveyor or an architect in training or a quantity surveyor in training or architectural or quantity surveying professional may describe himself or herself as such.

(2) Any person who immediately prior to the date of commencement of this Act was registered as an architect or quantity surveyor or an architect in training or quantity surveyor in training under the repealed Act, is, provided such person is resident in Namibia at such commencement date, deemed to have complied with all

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the requirements for registration mentioned in section 23, and the Council must subject to section 27, upon application to it, register the applicant in terms of this Act as an architect or quantity surveyor or architect in training or quantity surveyor in training, whichever may be applicable, and issue to him or her a certificate of registration to that effect.

(3) A person may not be registered as an architect or quantity surveyor or an architect in training or a quantity surveyor in training under subsection (2) unless he or she applies to the Council to be so registered within six months from the commencement of this Act.

### **Certificate of registration**

**25.** (1) If the registrar-

- (a) registers an applicant, the registrar must issue to that applicant a certificate of registration;
- (b) cancels the registration of a registered person or indicates in the register the suspension from practice of a registered person, the registrar must in writing notify the person concerned.

(2) A certificate of registration issued in terms of this Act must be in the form determined by the Council.

### **Keeping of register of and status of register**

**26.** (1) The Council must keep and maintain a register for purposes of this Act and the register must at all reasonable times be open for inspection by any member of the public upon the payment of such fees as the Council may determine.

(2) The registrar must -

- (a) enter in the register, the names and addresses and such other particulars as may be determined by the Council or as may be prescribed of each person registered in terms of this Act;
- (b) make in the register, any necessary alterations in the name, address or prescribed particulars of a registered person;
- (c) delete from the register, the name of a registered person who dies; and
- (d) when required to do so under this Act or pursuant to an order of a court -
  - (i) indicate in the register, the registration of an applicant or the suspension from practice of a registered person; or
  - (ii) cancel in the register the registration of a registered person; and
- (e) generally in connection with the register, comply with this Act and any court order.

- (3) A certificate signed by the registrar -
  - (a) of the entry of the name of a person in the register is *prima facie* evidence that the person is registered in terms of this Act;
  - (b) that the name of a person has been deleted from or does not appear in the register is *prima facie* evidence that the person is not a registered person; and
  - (c) that a registered person has been suspended from practice as such for a period specified in that certificate is *prima facie* evidence that the person has been suspended from practice for that period.
- (4) A copy of any entry in the register or of a document in the custody of the registrar, or an extract from the register or from any such document, certified by the registrar, may be admitted as evidence in any court of law without further proof or production of the original.

### **Refusal of application**

- 27.** (1) The Council must refuse an application of any person who does not comply with the requirements of section 19.
- (2) The Council may -
    - (a) refuse to register any person as an architect or a quantity surveyor or an architect in training or a quantity surveyor in training or architectural or quantity surveying professional, if such person is, in the opinion of the Council, not a fit and proper person; or
    - (b) register him or her as such subject to such restrictive conditions as the Council may impose if he or she -
      - (i) has at any time been removed from an office of trust on account of improper conduct;
      - (iii) has been convicted of an offence involving dishonesty in respect of which he or she was sentenced to imprisonment without the option of a fine, and in respect of which an appeal, if any, was not upheld;
      - (iii) has been declared mentally ill by a competent court in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);
      - (iv) is disqualified from registration in terms of any penalty imposed under this Act; or
      - (v) is an unrehabilitated insolvent.

### **Cancellation of registration**

- 28.** (1) The Council may, subject to subsection (4), cancel the registration of any person as an architect or a quantity surveyor or an architect in training

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or quantity surveyor in training or architectural or quantity surveying professional or impose restrictive conditions upon him or her if -

- (a) subsequent to his or her registration, he or she becomes subject to any of the disqualifications mentioned in section 27(2)(b);
- (b) his or her estate is sequestrated in circumstances which indicate that he or she was negligent in performing work of an architectural or quantity surveying nature or not competent to perform such work;
- (c) his or her registration was made in error or based on information which subsequently proved to be false;
- (d) he or she fails to comply with any requirements introduced under section 3(1)(d);

or

- (e) he or she is found guilty of unprofessional conduct and the Council determines that the registration be cancelled.

(2) The Council must, subject to subsection (4), cancel the registration of any person as an architect or a quantity surveyor or an architect in training or a quantity surveyor in training, or architectural or quantity surveying professional if such person -

- (a) fails to pay any annual fee or levy or any portion of either, determined under section 3(1)(a) or (f) and payable by him or her, within 60 days after such fee or levy or portion thereof becomes due or within such further period as the Council may in any particular case determine;
- (b) being registered as an architect in training or a quantity surveyor in training, has for 90 consecutive days or a longer period determined by the Council failed to perform any work of a kind mentioned in section 23(b)(ii) under the direction and control of an architect or a quantity surveyor, as the case may be, but the Council may condone any failure contemplated in this paragraph if it is satisfied that such failure was beyond the control of the person concerned.

(3) The Council must at the written request of any architect or quantity surveyor or architect in training or quantity surveyor in training or architectural or quantity surveying professional cancel his or her registration, but the cancellation does not affect any liability incurred by such prior to the date of such request.

(4) The Council may, before cancelling the registration of a architect or quantity surveyor or architect in training or quantity surveyor in training or architectural or quantity surveying professional in terms of this section, on such conditions or restrictions as the Council considers necessary, suspend the registration of that person to enable it to properly conduct an investigation whether the registration should be cancelled or not.

**Suspension due to mentally illness**

**29.** (1) Whenever it appears to the Council from information under oath or affirmation that a registered person has become mentally ill to such an extent that it would be contrary to the public interest to allow him or her to continue in practice the Council may, if it thinks fit, hold an inquiry in respect of such architect or quantity surveyor.

(2) If after having held an inquiry the Council is satisfied that such registered person has become mentally ill it may order his or her suspension, for a specified period, from practising as an architect or a quantity surveyor or an architectural or a quantity surveying professional, as the case may be.

(3) The Council may extend the period of operation of any order made under this section for any period determined by it, or withdraw such order.

**Circumstances under which certificates of registration must be returned to registrar**

**30.** (1) Any person whose registration as an architect or a quantity surveyor or an architect in training or a quantity surveyor in training, or architectural or quantity surveying professional, as the case may be, has been cancelled under section 28(1), (2) or (3), or as a result of any penalty imposed under section 38, must return to the registrar his or her certificate of registration within 30 days from the date upon which he or she is directed by written notice by the registrar.

(2) Any person who fails to comply with any direction given under subsection (1) commits an offence and liable on conviction to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**Restoration of name to register**

**31.** (1) Subject to subsection (2), a person whose name has been cancelled from the register in terms of section 28 may apply to the Council, in the form and manner determined by it, to have his or her name restored to such register.

- (2) An application referred to in subsection (1) must be accompanied by -
- (a) such documents and information as may be prescribed in respect of such application;
  - (b) such additional documents and information as the Council may require;
  - (c) if the registration was cancelled due mental illness as contemplated in section 28(1)(a), written proof to the satisfaction of the Council of his or her sound mental health, or proof that the order of court placing him or her under curatorship has been set aside, as the case may be;
  - (d) if the registration was cancelled in terms of section 28(i)(d), proof to the satisfaction of the Council that the applicant has complied with all the conditions or requirements of section 3(1)(d);

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- (e) if the registration was cancelled in terms of section 28(2)(a), proof of payment of the outstanding annual fees concerned;
  - (f) if the registration was cancelled in terms of section 28(2)(b), proof to the satisfaction of the Council that the applicant has complied with all the requirements of section 23(b)(ii); and
  - (g) payment of the fees determined by the Council in respect of such application for restoration.
- (3) On receipt of an application under subsection (1), the registrar may -
- (a) restore the registration of a person if he or she is satisfied that the applicant has complied with the conditions which led to the cancellation of the registration or that the circumstances which led the cancellation of the registration no longer exist; or
  - (b) refuse the application, if the registrar is satisfied that the applicant has not complied with the applicable provisions of subsection (2).
- (4) If the registrar has any doubt relating to any application referred to in subsection (1), the registrar must refer the application for restoration concerned to the Council for consideration and a decision.
- (5) Any person who is aggrieved by the decision of the registrar made in terms of subsection (3) may request that the application be referred to the Council for re-consideration and a decision.
- (6) The registrar must-
- (a) inform in writing a person who has applied to the Council in terms of subsection (1) for the restoration of his or her registration, of any decision made in terms of subsection (3) or (4), as the case may be, and in the event of the registrar's or the Council's refusal to grant the application for restoration, the reasons for such refusal; and
  - (b) if the registration has been restored, issue to the applicant a certificate of registration in such form as the Council may determine.

### **Private company may conduct a practice**

**32.** (1) Despite anything to the contrary contained in this Act, a private company may conduct a practice as an architect or a quantity surveyor or as an architectural or a quantity surveying professional, and perform work of an architectural nature or quantity surveying nature, as the case may be, if -

- (a) such company is incorporated and registered as a private company under the Companies Act, 1973 (Act No. 61 of 1973), with share capital;
- (b) only natural persons who are registered architects or quantity surveyors or architectural or quantity surveying professionals, are members or shareholders of the company or persons having an interest in the shares of the company; and

(c) the name of the company consists solely of the name or names of any of the present or past members of the company or of persons who conducted, either on their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the company, but the words “and associates” or “and company” may be included in the name of the company.

(2) Every shareholder of the company must be a director of the company, and no person who is not a shareholder of the company may be a director of the company.

(3) If a shareholder of the company or a person having an interest in the shares of the company, dies or ceases to conform to the requirements of subsection (1) (b), he or she or his or her estate, as the case may be, may as from the date on which he or she dies or ceases to so conform, continue to hold the relevant shares or interest in the shares in the company for a period of six months or for such longer period as the Council may approve.

(4) No voting rights attach to any share held in terms of subsection (3), and the holder of any such share may not act as a director of the company or receive, directly or indirectly, any director’s fees or remuneration or participate in the income of or profits earned by the company in its practice.

(5) If the articles of association of the company so provide, the company may, without confirmation by a court, upon such conditions as it may deem expedient, purchase any shares held in it, and the authorised share capital of the company must not be reduced thereby.

(6) Shares purchased in terms of subsection (5) must be available for allotment in terms of the articles of association of the company.

(7) Despite anything to the contrary contained in any other law, the articles of association of the company may restrict a member of the company to appoint only another member of the company to attend, speak or vote in his or her stead at any meeting of the company.

(8) Subject to subsection (9), if the company ceases to conform to any of the requirements of subsection (1), it must forthwith cease to practise, and is, as from the date on which it ceases to so conform, not recognised in law as an architect or quantity surveyor, or architectural or quantity surveying professional, as the case may be.

(9) The provisions of subsection (8) do not, during the period contemplated in subsection (3), apply to a company by reason only that a shareholder of the company or a person having an interest in the shares of the company ceased to be an architect or quantity surveyor or architectural or quantity surveying professional, as the case may be.

(10) Any reference in this Act or in any other law to an architect or quantity surveyor or architectural or quantity surveying professional or to a partner or partnership in relation to architects or quantity surveyors or architectural or quantity surveying professional, as the case may be, must be construed as including a reference to a professional private company or to a member of such company, as the case may be, unless the context otherwise indicates.



(11) Despite the provisions of this section regarding membership or shareholding of a company practicing any of the architectural or quantity surveying professions the Council may, on application made to it in the prescribed manner or in the manner determined by the Council, permit a company which does not comply with the provisions of this section regarding membership or shareholding to practice any of architectural or quantity surveying professions.

### **Close corporation may conduct a practice**

**33.** (1) Despite anything to the contrary contained in this Act, a close corporation may conduct a practice as an architect or a quantity surveyor or as an architectural or a quantity surveying professional and perform work of an architectural nature or quantity surveying nature, as the case may be, if -

- (a) it is a close corporation referred to in section 2(1) of the Close Corporations Act, 1988 (Act No. 26 of 1988) and has been registered under Part III of that Act;
- (b) only natural persons who are architects or quantity surveyors or architectural or quantity surveying professionals are members of the close corporation; and
- (c) the name of the close corporation consists solely of the name or names of any of the present or past members of the close corporation or of persons who conducted, either on their own account or in partnership, any practice which may reasonably be regarded as a predecessor of the practice of the close corporation company, but the words “and associates” or “and cc” may be included in the name of the close corporation.

(2) If a member of a close corporation dies or ceases to conform to the requirements of subsection (1)(b), he or she or his or her estate, as the case may be, may as from the date on which he or she dies or ceases to so conform, continue to be a member of the close corporation and to hold a member’s interest in the corporation for a period of six months or for such longer period as the Council may approve.

(3) No voting rights attach to any interest held in terms of subsection (2), and the holder of any such interest may not act as a member of the close corporation or receive, directly or indirectly, any member’s fees or remuneration or participate in the income of or profits earned by the close corporation in its practice.

(4) Subject to subsection (5), if the close corporation ceases to conform to any of the requirements of subsection (1) it must forthwith cease to practise, and is, as from the date on which it ceases to so conform, not recognised in law as an architect or a quantity surveyor or as an architectural or a quantity surveying professional, as the case may be.

(5) The provisions of subsection (4) do not, during the period contemplated in subsection (2), apply to a close corporation by reason only that a member of the close corporation having an interest in the corporation ceased to be an architect or a quantity surveyor or as an architectural or a quantity surveying professional, as the case may be.

(6) Any reference in this Act or in any other law to an architect or a quantity surveyor or an architectural or a quantity surveying professional or to a partner

or partnership in relation to architects or quantity surveyors or architectural or quantity surveying professionals, as the case may be, must be construed as including a reference to a close corporation or to a member of such corporation, as the case may be, unless the context indicates otherwise.

(7) Despite the provisions of this section regarding membership of a close corporation practicing any of the architectural or quantity surveying professions the Council may on application made to it in the prescribed manner or in the manner determined by the Council, permit a close corporation which does not comply with the provisions of this section regarding membership to practice any of architectural or quantity surveying professions.

#### **PART 4 DISCIPLINARY MATTERS**

##### **Professional conduct**

**34.** (1) The Council may from time to time issue rules specifying the acts or omissions by registered persons which constitute unprofessional conduct and in respect of which the Council may conduct inquiries and disciplinary proceedings in terms of the provisions of this Part.

(2) Without prejudice to any rule made under subsection (1), an architect or a quantity surveyor or an architectural or a quantity surveying professional commits an act of unprofessional conduct if he or she -

- (a) performs any kind of reserved work during any period in respect of which his or her registration has been suspended under this Act;
- (b) contravenes or fails to comply with any rule made under subsection (1);
- (c) commits an offence in practising his or her profession; or
- (d) in his or her capacity as a member, shareholder, employee or director of a juristic person which, performs work of an architectural or quantity surveying nature, does any act which would under any provision of this Act have constituted unprofessional conduct if it had been performed or committed by the architect or quantity surveyor or architectural or quantity surveying professional, in the practising of his or her profession as a natural person in private practice.

(3) The powers of the Council to inquire into and deal with any complaint, charge or allegation relating to a registered person are not limited to the acts or omissions specified in subsection (2).

(4) No rules issued in terms of subsection (1) or any amendment thereto or withdrawal thereof is of force and effect until approved by the Minister in writing and published by the Council in the *Gazette*.

(5) Any registered person who refuses to comply, or who complies insufficiently, with a lawful instruction of the Council commits an act of unprofessional conduct, and on being found guilty in a professional conduct inquiry is liable to any of the penalties provided for section 38.

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### **Disciplinary powers of Council**

**35.** (1) The Council has the power to inquire into cases of unprofessional conduct of which a registered architect or a quantity surveyor or an architect in training or a quantity surveyor in training or architectural or quantity surveying professional is alleged to have committed, and if such person is found guilty of such conduct, to impose in respect thereof any penalty provided for in section 38 but if the said conduct forms, or which the Council has reason to believe is likely to form, the subject of criminal or civil proceedings in a court of law, the Council may postpone the inquiry until such proceedings have been concluded.

(2) If any penalty imposed under subsection (1) consists of or includes a fine or if an order as to the recovery of costs has been made under section 3(1)(k), and the person concerned fails to pay such fine or costs within 30 days of the date on which the penalty is imposed or the order is made, the Council may after having afforded such person an opportunity to be heard, suspend such person's registration in terms of this Act until such time as such fine or costs are paid.

(3) The amount of the fine or costs, if ordered in favour of the Council, contemplated in subsection (2) must be paid into the funds of the Council.

### **Procedure at inquiry by Council**

**36.** (1) For the purpose of any inquiry under section 29 or 35, the Council may -

- (a) summon any person who in its opinion may be able to give material information concerning the subject of the inquiry or who is believed to have in his or her possession or custody or under his or her control any book, document or thing which has any bearing on the subject of the inquiry to appear before it at a time and place specified in the summons, to be questioned or to produce that book, document or thing and the Council may retain for examination any book, document or thing so produced;
- (b) call, and by its president or other person presiding at the inquiry, administer an oath to, or accept an affirmation from, any person present at the inquiry who was or could have been summoned under paragraph (a) and question him or her and require him or her to produce any book, document or thing in his or her possession or custody or under his or her control;
- (c) appoint any person to advise the Council at such inquiry on matters pertaining to law, procedure or evidence, or to adduce evidence and to cross-examine witnesses.

(2) A summons for the attendance before the Council of any person or for the production of any book, document or thing must be -

- (a) in the form determined by the Council;
- (b) signed by the president of the Council or a person authorised thereto by him or her; and

- (c) served in such manner as the Council may determine.
- (3) If any person who has been duly summoned under this section -
  - (a) fails, without sufficient cause, to attend at the time and place specified in the summons;
  - (b) fails, without sufficient cause, to remain in attendance until excused from further attendance by the president of the Council;
  - (c) refuses to be sworn in or to affirm as a witness;
  - (d) fails or refuses without sufficient cause to answer fully and satisfactorily to the best of his or her knowledge and belief all questions lawfully put to him or her concerning the subject of the inquiry; or
  - (e) fails or refuses without sufficient cause to produce any book, document or thing in his or her possession or custody or under his or her control which he or she has been required to produce,

he or she commits an offence, except that in connection with the questioning of any such person or the production of any such book, document or thing, the law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce any book, document or thing before a court of law, applies.

(4) Any person who intentionally hinders the president or any member or official of the Council in the exercise of any power conferred upon him or her by or under this section commits an offence.

(5) Any person convicted of an offence under subsection (3) or (4) is liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(6) The person whose conduct is being inquired into by the Council must be informed of the nature of the complaint made against him or her and be entitled to appear by himself or herself or to be represented by some other person duly authorised in writing on his or her behalf to produce evidence, call and examine witnesses on his or her behalf and cross-examine other witnesses.

### **Effect of inquiry on civil or criminal liability**

- 37.** (1) The institution of-
- (a) a professional conduct inquiry against a registered person does not prejudice the right of any person, body or institution to institute civil proceedings, or the Prosecutor-General to institute criminal proceedings, or an employer to take disciplinary action against that registered person; or
  - (b) civil or criminal proceedings against a registered person, or the fact that an employer has taken disciplinary action against a registered person, does not prejudice the right of the Council to institute a professional

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conduct inquiry against that registered person, or from imposing penalties on that person for unprofessional conduct, arising from or based on the same facts.

(2) Any incriminating reply or information obtained, or incriminating evidence directly or indirectly derived from questioning in a professional conduct inquiry is not admissible as evidence against the person concerned in criminal or civil proceedings in a court of law.

(3) Notwithstanding subsection (2), incriminating evidence referred to in that subsection is admissible in criminal proceedings where the person stands trial on a charge of the contravention of any of the provisions of section 36(3) or (4).

(4) The acquittal or the conviction of a registered person by a court of law upon a criminal charge does not bar the Council from bringing proceedings against him or her under this Act on a charge of unprofessional conduct, even if the facts set forth in the charge of unprofessional conduct would, if proved, constitute the offence set forth in the criminal charge on which he or she was so acquitted or convicted or any other offence of which he or she might have been convicted at his or her trial on the said criminal charge.

(5) If the unprofessional conduct with which any registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of such registered person as the person referred to in the record, sufficient proof of the commission by him or her of such offence, unless the conviction has been set aside by a superior court.

### **Penalties for unprofessional conduct**

**38.** (1) Every registered person who, after an inquiry conducted by the Council in terms of this Part, is found guilty of unprofessional conduct or conduct which is unprofessional when regard is had to that registered person's profession, or who admits that he or she is guilty of the charge concerned, is liable to any one or more of the penalties consisting of -

- (a) a reprimand or a caution;
- (b) suspension for a specified period of time from practising or performing acts especially pertaining to the profession in respect of which that person is registered;
- (c) cancellation of the name of that registered person from the register;
- (d) payment of a fine not exceeding the prescribed amount; or
- (e) an order for payment of costs as contemplated in section 3(1)(k).

(2) The Council may recover any fine imposed in terms of subsection (1)(d) or costs ordered in terms of subsection (1)(e) by means of proceedings in a competent court for the benefit of the funds of the Council.

- (3) The Council must -
- (a) set out fully in writing its findings and the penalties, if any, imposed in terms of this section; and
  - (b) make such findings and the penalties known to any prescribed body or person in writing.

(4) The registrar must inform a registered person who has been found guilty of unprofessional conduct in terms of this Part, whether or not that registered person was present at the inquiry concerned -

- (a) in the case of penalties imposed in terms of subsection (1)(a), of the findings of the Council and the penalties concerned by forwarding a copy of such findings and particulars of the penalties, duly signed by the person who presided at the inquiry, by prepaid registered letter to his or her address as it appears in the register;
- (b) in the case of penalties imposed in terms of subsection (1)(b), (c), or (d), by serving a copy of the findings of the Council and particulars of the penalties, duly signed by the person who presided at the inquiry, or having such a copy served -
  - (i) upon the registered person personally; or
  - (ii) at his or her place of business on any partner, employer or employee of that person.

(5) If the registered person referred to in subsection (4)(b)(i) or the person referred to in subsection (4)(b)(ii), as the case may be

- (a) cannot be traced;
- (b) refuses to accept service of the documents concerned; or
- (c) refuses to sign an acknowledgement of receipt relating to the service of such copy of the findings and particulars of the penalties referred to in subsection (4),

the registrar may serve such copy of the findings and particulars of the penalties upon that registered person by means of a prepaid registered letter addressed to that registered person's postal address as it appears in the register.

(6) The partner, employer or employee upon whom a copy of the findings and the penalties is served in terms of subsection (4)(b)(ii), must acknowledge receipt thereof in writing and state his or her capacity.

(7) When a person has been found not guilty of unprofessional conduct, the registrar must inform that person of the findings of the Council by prepaid registered letter addressed to that person at his or her postal address as it appears in the register.

(8) A finding made, or a penalty imposed, by the Council at an inquiry conducted in terms of this Part is, unless appealed against in terms of section 55 or 56, of force and effect after the date determined by the Council.

(9) Despite subsection (8), if an appeal is lodged against a penalty for the cancellation or suspension of any registered person from practice, such penalty remains effective until the appeal has been finally determined.

#### **Penalties for false evidence**

**39.** Any person who gives false evidence on oath or after have made an affirmation at any inquiry conducted in terms of this Part, knowing such evidence to be false, commits an offence and on conviction is liable to the penalties prescribed by law for the crime of perjury.

#### **Effect of suspension or cancellation from register**

**40.** (1) Every registered person who has been suspended in terms of section 28(4), 29, 35(2) or 38(1)(b) from practising the profession in respect of which he or she is registered, or from performing certain acts, or whose registration has been cancelled in terms of section 28, is disqualified from practising such profession or performing such acts.

(2) The certificate of registration of the registered person referred to in subsection (1) is regarded as cancelled until the period of suspension has expired or his or her appeal against such penalty is upheld, or until his or her registration has been restored to such register by the Council, as the case may be.

(3) Any person who practises in contravention of subsection (1) commits an offence and on conviction is liable to the penalties specified in subsection (2)(a) of section 18, in case of a natural person or subsection (2)(b) of that section, in case of a juristic person.

### **PART 5 BOARDS OF CONTROL**

#### **Establishment of boards of control in respect of certain professions**

- 41.** (1) Any body of persons representative of-
- (a) the profession of -
    - (i) landscape architects;
    - (ii) interior decorators;
    - (iii) architectural technicians;
    - (iv) architectural technologists; or
    - (v) quantity surveying technicians; or
  - (b) any other profession in the course of which work is performed which is allied or related to any kind of reserved work,

may apply in writing to the Council for the establishment of a board of control in respect of that profession.

(2) On receipt of an application referred to in subsection (1) the Council may if it is satisfied that -

- (a) it is in the public interest that a board of control be established in respect of a profession referred to in that subsection; and
- (b) the majority of the persons practising the profession are in favour of the establishment of a board of control in respect of that profession,

recommend to the Minister that such a board of control be established.

(3) On receipt of a recommendation in terms of subsection (2), the Minister may establish a board of control in respect of the profession to which that recommendation relates and must, within 30 days of the establishment of the board, by notice in the *Gazette* make known the establishment of the board of control.

(4) Any person not registered in terms of this Act with a board of control and who by any means, whatsoever, holds himself or herself out or allows himself or herself to be held out as a person registered with such board of control or uses any name or any title, description or symbol or performs any act calculated to lead persons to infer that he or she is so registered commits an offence and on conviction, is liable to a fine not exceeding N\$6 000 or to imprisonment for a period is exceeding 18 months or to both such fine and such imprisonment.

### **Functions, duties and powers of boards of control**

**42.** (1) In addition to any other functions or duties conferred on a board of control by this Act or by any other law or which may be assigned to it by the Minister or the Council or which may be prescribed, a board of control has the following functions and duties

- (a) to advance the interests of the relevant field of the architectural or quantity surveying profession;
- (b) to uphold the dignity of the relevant profession;
- (c) to watch over, promote and protect the interests of its members;
- (d) to afford opportunity for the interchange and recording of knowledge and experience of the profession; and
- (e) to ensure high standards of professional competence and integrity.

(2) A board of control is a body corporate capable of suing and being sued in its name and for the purposes of achieving its objectives may -

- (a) acquire by purchase, lease, exchange, or otherwise, any movable or immovable property or any interest in movable or immovable property;
- (b) sell, lease, exchange, pledge, mortgage or otherwise deal with any movable or immovable property of the board of control;



- (c) enter into contracts and decide the manner in which contracts must be entered into on behalf of the board of control;
- (d) collect or receive moneys due to the board of control;
- (e) subject to section 51(1), determine the remuneration and allowances payable from the funds of the board of control to members of that board or of a committee of the board of control, who are not in the full-time employment of the public service.

### **Constitution of board of control**

**43.** (1) A board of control consists of the following persons to be appointed in writing by the Minister -

- (a) one person selected by the Minister on the ground that, by virtue of his or her knowledge and experience of public affairs and the economic requirements of Namibia, he or she is particularly suited to judge how the public interest, in so far as it is affected by the profession in respect of which the board of control has been established, can best be safeguarded or promoted;
- (b) one person in the full-time employment of the public service selected by the Minister on the ground of his or her experience in the relevant profession;
- (c) one person elected in the prescribed manner by the Council;
- (d) four persons elected by the body of persons contemplated in section 41(1) in the manner and in accordance with the procedures prescribed by the Council.

(2) Whenever any appointment in terms of subsection (1)(c) or (d) becomes necessary the Minister must call on or cause to be called upon the Council or body concerned, by notice in writing, to elect within a period specified in the notice, being not less than 60 days from the date thereof, so many persons as may be required to be elected by it for appointment to the board of control.

(3) If after having been called upon by notice in terms of subsection (2) the Council or body concerned fails to elect, within the period specified in that notice, so many persons as were in terms of such notice required to be elected, the Minister may appoint such persons who hold the qualifications necessary for appointment, including any persons who may have been previously appointed, as the Minister may think fit, up to the number required, to be members of the board of control.

(4) The Minister must, within 30 days of appointing a person as a member of a board of control, make known in the *Gazette* the name of every person appointed as a member of the board of control together with the date from which the appointment takes effect and the period for which such appointment has been made.

(5) A person may not be appointed as a member of the board of control in terms of subsection (1) if he or she is subject to any of the disqualifications mentioned in section 6.

**Tenure of office of members of board of control**

**44.** (1) Subject to subsection (2) a member of a board of control holds office for a period of one year from the date of his or her appointment, but may be re-appointed upon the expiration of his or her term of office.

(2) A member of the board of control must vacate his or her office if he or she -

- (a) subsequent to appointment becomes subject to a disqualification mentioned in section 6;
- (b) resigns, as a member of the board of control, by written notice addressed and delivered to the Minister;
- (c) has been absent from three consecutive meetings of the board of control without its leave; or
- (d) was appointed in terms of section 43(1)(b) and ceases to be a person in the employment of the public service.

(3) If a member dies or if the office of a member becomes vacant in terms of subsection (2) the Minister must, subject to section 43, appoint another person to fill the vacancy for such unexpired period of office of that member.

**Chairperson and vice-chairperson of board of control**

**45.** (1) The members of a board of control must annually elect from among their number a chairperson and a vice-chairperson of the board of control.

(2) A member of a board of control contemplated in section 43(1)(c) may not be elected chairperson or vice-chairperson of the board of control or preside at any meeting thereof.

(3) If the chairperson or the vice-chairperson of a board of control dies or vacates his or her office before the expiration of his or her term of office, the members of the board of control must elect from among their number a chairperson or vice-chairperson, as the case may be, to act as chairperson or vice-chairperson for the unexpired period of office for which his or her predecessor was elected.

(4) If for any reason the chairperson is absent or unable to perform his or her functions, the vice-chairperson must act in his or her stead.

(5) If both the chairperson and the vice-chairperson are absent or unable to preside at any meeting of the board of control, the members present must elect one from among their number to preside at that meeting and the person so elected to preside must during that meeting and until the chairperson or vice-chairperson resumes duty, perform all the functions of the chairperson.

**Meetings of board of control**

**46.** (1) Subject to this section, a board of control may determine and regulate its own procedure at meetings.

(2) The first meeting of the board of control must be held at such time and place as the Minister may determine, and subsequent meetings must be held at such times and places as the board of control may determine.

(3) The chairperson of the board of control may at any time, and must at the request of not less than two-thirds of the members, convene a special meeting of the board of control, after giving not less than 14 days' notice of such meeting to all members.

(4) The majority of the members of the board of control constitute a quorum.

(5) The decision of a majority of the members of the board of control present at a meeting constitutes a decision of the board of control and, in the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the board of control or act performed under the authority of the board of control is invalid by reason only of a vacancy on the board of control or of the fact that a person who was not entitled to sit as a member of the board of control sat as a member at the time when the decision was taken or the act was authorised if the decision was taken or the act was authorised by the requisite majority of the members of the board of control who were present at the time and entitled to sit as members.

(7) If a member of the board of control or his or her spouse, including a spouse in a customary union or his or her child or any other member of his or her household, or his or her partner, agent or business associate, has a direct or indirect financial interest in any matter to be considered at any meeting of the board of control that member must as soon as possible, disclose the nature and extent of the financial interest at a meeting of the board of control and thereafter the board of control must determine whether or not the member can participate in discussions relating to that matter.

(8) A member who fails to comply with subsection (7) commits an offence and is liable on conviction to a fine not exceeding N\$2000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

### **Committees of board of control**

**47.** (1) A board of control may establish a committee or committees to assist it in the performance of its functions and may -

- (a) appoint, for such period as the board of control may determine, as members of that committee such members of the board of control and such other persons as it may think fit;
- (b) designate a member of that committee as chairperson thereof and do any other act which is necessary to enable the committee to perform its functions.

(2) The board of control may delegate to a committee so established under subsection (1) such of its powers as it may think fit, but may not be divested of any power

which it may have delegated to a committee, and may amend or withdraw any decision of any such committee.

(3) The board of control may issue directives with regard to the manner of convening, and the procedures to be followed at, meetings of a committee established under subsection (1), including the quorum for meetings, the number of votes required for a decision of any such committee and the procedure to be followed in the event of an equality of votes.

#### **Funds of board of control**

**48.** (1) The funds of a board of control consist of -

- (a) the fees and fines contemplated in section 54;
- (b) any moneys received by the board of control by virtue of donations;
- (c) any interest or dividends derived from investments made by the board of control; and
- (d) any other moneys, including advances referred to in subsection (3), accruing to the funds of the board of control from any other source.

(2) A board of control must utilize its funds for defraying expenses in connection with the performance of its functions, but moneys received by virtue of a donation must be utilized in accordance with the conditions, if any, determined by the donor concerned.

(3) The Minister may, in consultation with the Minister responsible for finance, advance to a board of control out of monies appropriated by Parliament for that purpose such amounts as he or she may think necessary in order to enable such board of control to carry out its functions and duties.

(4) Any advance in terms of subsection (3) must be made on such conditions and is repayable at such times as the Minister may, in consultation with the Minister responsible for finance, determine.

#### **Banking account**

**49.** A board of control must cause the money in its fund to be paid into an account at a financial institution and may invest, within Namibia, any portion of thereof which is not immediately required for the purposes mentioned in this Part.

#### **Bookkeeping and auditing**

**50.** (1) A board of control must, in accordance with generally accepted accounting principles, cause full accounts to be kept of all moneys received or expended by it.

(2) The accounting and related records of the board of control must be audited annually by a person registered in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) as an accountant and auditor, and appointed by the board of control for such purpose.

(3) The person appointed under subsection (2) must, at least once in every year and not later than a date to be determined by the board of control, draw up a balance sheet and profit and loss account and as soon as possible submit certified copies thereof and of his or her report thereon to the board of control.

(4) A board of control must cause a copy of the audited balance sheet and report referred to in subsection (3) to be open for inspection by any person registered with the board of control.

### **Remuneration**

**51.** (1) Members-

(a) of a board of control, and

(b) of any committee who are not members of a board of control,

who are not in full time employment of the public service may be paid such remuneration or allowances, as well as such other benefits, as a board of control, with the concurrence of the Minister, may determine.

(2) Any remuneration, allowance or benefit contemplated in subsection (1) may differ from member to member according to the office held, and duties and functions performed by, the member concerned.

### **Reports to Minister**

**52.** (1) A board of control must in each year, not later than six months after the end of its financial year submit to the Minister a report on its activities during that financial year together with a copy of the audited balance sheet and report referred to in section 48(3) in respect of that financial year.

(2) The chairperson of the board of control may from time to time submit to the Minister reports on the activities of that board of control which in the opinion of the board of control should be brought to the Minister's notice.

(3) A board of control must at the request of the Minister or Permanent Secretary furnish him or her with advice on any matter related to the profession in respect of which the board of control was established, and must communicate to the Minister information acquired by it in the course of its duties, on matters regarded by it as being of public importance.

### **Administrative work of board of control**

**53.** All administrative work relating to the functions of the board of control must be performed by the registrar and his or her staff, and for this service the board of control must from its funds reimburse the Council on such basis as may be agreed upon between the board of control and the Council.

### **Power of Council to make rules for board of control**

**54.** (1) The Council may, after consultation with a board of control, make rules -

- (a) relating to -
  - (i) the requirements with which a person must comply in order to qualify for registration by the board of control and to remain so registered;
  - (ii) the manner and form in which a person must apply to the board of control for registration;
  - (iii) the manner in which and the conditions subject to which a person may be registered by the board of control;
  - (iv) the fees payable to the board of control in respect of such registration and the annual fees payable to the board of control by persons so registered, including the amount of such fees and the manner in which it shall be payable;
  - (v) the keeping of a register by the board of control of persons so registered;
  - (vi) the cancellation or suspension by the board of control of such registration subject to the right of appeal to the Minister, and the form of the appeal and the procedures relating thereto;
- (b) prescribing such forms of conduct on the part of a person registered by the board of control which constitute unprofessional conduct;
- (c) prescribing the method of inquiry by the board of control into allegations of unprofessional conduct and the penalty which may be imposed in respect thereof, including fines, removal from the register, disqualification from registration, suspension from practising and as to the mitigation by the board of control of any such penalty so imposed by it; and
- (d) as to, generally, all matters which the Council may consider necessary or expedient to prescribe in order that the purposes of this section may be achieved.

(2) No rules issued in terms of subsection (1) or any amendment thereto or withdrawal thereof is of force and effect until approved by the Minister in writing and published by the Council in the *Gazette*.

## **PART 6 GENERAL**

### **Right of appeal to Minister**

**55.** (1) Any person aggrieved by a finding or decision made, a penalty imposed or the refusal or failure to make a finding or a decision by -

- (a) the Council in relation to the registration of a person as an architect or a quantity surveyor or an architect in training or a quantity surveyor in training or architectural or quantity surveying professional or the

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suspension or cancellation of such registration or to any matter provided for in this Act; or

- (b) a board of control in relation to any matter provided for in this Act or prescribed by rules made under section 54,

may, within the prescribed period and in the prescribed manner, appeal to the Minister by -

- (a) lodging with the Minister a written notice of appeal stating the grounds of appeal; and
- (b) serving upon the Council or the board of control a copy of that notice of appeal.

(2) On receipt of the copy of the notice of appeal in terms of subsection (1), the Council or the board of control must as soon as possible furnish the Minister with its reasons for the finding or decision which is the subject of the appeal.

(3) The Minister may give such decision as he or she considers appropriate in an appeal in terms of subsection (1).

#### **Appeals to the High Court**

**56.** (1) Any person, including the Council or a board of control, aggrieved by any decision of the Minister in terms of section 55 may appeal to the High Court against such decision.

(2) A notice of appeal relating to an appeal in terms of subsection (1) must be lodged, in the prescribed form and manner, with the registrar of the High Court within a period of 30 days after the date upon which the decision appealed against was made.

(3) The High Court may allow, on good cause shown, an appeal to be lodged after the expiry of the period of 30 days specified in subsection (2).

(4) The Minister may prescribe the procedures relating to the conducting of an appeal to the High Court in terms of this section, including the form of the notice of appeal concerned and the manner in which such notice must be lodged.

- (5) The High Court may -
  - (a) request the Minister in writing to furnish the High Court with such documents or particulars as it may require;
  - (b) refer the matter to the Minister for further consideration;
  - (c) allow or dismiss an appeal lodged in terms of this section;
  - (d) make an order reversing or amending the decision of the Minister appealed against, if it is of the opinion the Minister has not acted in accordance with this Act;

- (e) make an order relating to the payment of costs; or
- (f) make such other order as it may consider appropriate.

### **Rules of Council**

- 57.** (1) The Council may make rules -
- (a) in relation to any matter which is required to be prescribed by the Council in terms of this Act;
  - (b) as to the requirements with which an architect or quantity surveyor or architect in training or quantity surveyor in training, or architectural or quantity surveying professional, as the case may be, must comply in practising his or her profession, including rules with which a juristic person which practises any of the architectural or quantity surveying professions must comply in the performance of its activities in practising that profession;
  - (c) prescribing the method of inquiry into allegations of unprofessional conduct and any matter relating to the penalties provided for in section 38, including maximum fines, and conferring on the Council the power of mitigation of any penalty so imposed and prescribing the manner in which such mitigation must take place;
  - (d) as to generally, all matters which it considers necessary or expedient to prescribe in order that the objectives of this Act may be achieved.

(2) No rules issued in terms of subsection (1) or any amendment thereto or withdrawal thereof is of force and effect until approved by the Minister in writing and published by the Council in the *Gazette*.

### **Regulations**

**58.** (1) The Minister may, on the recommendation of the Council, make regulations not inconsistent with the provisions of this Act, in respect of any matter which is in terms of this Act required or permitted to be prescribed, and generally relating to any matter which he or she deems necessary or expedient to prescribe in order that the objectives of this Act may be achieved.

(2) Any regulation made in terms of subsection (1) may provide penalties for the contravention thereof except that no such penalty may exceed a fine of N\$4 000 or imprisonment for a period of 12 months.

### **Rectification of errors**

**59.** Whenever anything which is required to be done or performed in terms of this Act on or before a specified day or at a specified time or during a specified period has not been so done or performed the Minister may, if he or she is satisfied that such failure was due to error or oversight and that it is in the interest of the architectural and quantity surveying professions to do so, authorise such thing to be done or performed on or before such other day or at such other time or during such other period, as he or she may direct, and anything so done or performed is of full force and deemed to have been lawfully done or performed in accordance with this Act.



**Restriction of liability**

**60.** A member of the Council or the board of control, or of any committee established in terms of this Act, any officer or employee of the Council, or the registrar, is not liable in respect of anything done or omitted to be done in good faith in the exercise of a power or the performance of a duty or function in terms of this Act, or anything that may result from anything so done or omitted.

**Transitional provisions in relation to Namibia Institute of Architects and Institute of Namibian Quantity Surveyors**

**61.** (1) The Namibia Institute of Architects and the Institute of Namibian Quantity Surveyors despite the repeal of the Architects' and Quantity Surveyors' Act, 1979 (Act No. 13 of 1979), by section 46 of this Act, continue to exist as separate corporate bodies under the names of the Namibia Institute of Architects and the Institute of Namibian Quantity Surveyors, respectively, capable of suing and being sued in their corporate names, and of performing all such acts as are necessary for or incidental to the carrying out of their objects and the performance of their functions and duties in terms of their constitutions.

(2) Any institute that continues to exist by virtue of subsection (1) may, in view of the promulgation of this Act and despite anything to the contrary contained in the constitution of that institute or in any law, adopt such new constitution as it may think fit.

**Repeal of laws and savings**

**62.** (1) Subject to the provisions of subsections (2) and (3), the Architects' and Quantity Surveyors' Act, 1979 (Act No. 13 of 1979), and the Architects' and Quantity Surveyors' Amendment Act, 1992 (Act No. 11 of 1992), are repealed.

(2) Subject to the provisions of this Act, anything done under a provision of a law repealed by subsection (1) and which could have been done under a corresponding provision of this Act, is deemed to have been done under such corresponding provision of this Act and remains valid after the commencement of this Act.

(3) For the purposes of subsection (2) any rule or regulation made under any law repealed by subsection (1) is deemed to be a rule made by the Council under section 57 or a regulation made under 58 and remains in force until repealed in terms of this Act or any other law.

**Short title and commencement**

**63.** (1) This Act is called the Architectural and Quantity Surveying Professions Act, 2010 and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of the different provisions of this Act.

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