

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**NAMIBIAN PLANNING AND  
CONSTRUCTION COUNCIL BILL**

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*(As read a First Time)*

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

## **BILL**

**To provide for the establishment of the Namibian Planning and Construction Council and for its powers and functions; to provide for the registration of persons engaged in the construction industry and to provide for incidental matters.**

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

PART I

PRELIMINARY

**Definitions**

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

“Council” means the Namibian Planning and Construction Council, established by section 2;

“committee” in relation to the Council means any Committee of the Council established under section 2;

“financial institution” has the same meaning ascribed thereto in section 2 of the Banking Institutions Act;

“foreign firm” means a firm operating in Namibia which belongs to a foreigner and having fifty-one percent or more of its capital originating from outside Namibia;

“local firm” means a firm operating in Namibia having fifty-one percent or more of its capital originating outside Namibia;

“Minister” means the Minister responsible for works;

“member” in relation to the Council means a member thereof appointed or elected under section 3;

“Namibian firm” means a firm operating in Namibia and having fifty-one percent or more of its capital belonging to a Namibian national.

## PART II

### NAMIBIAN PLANNING AND CONSTRUCTION COUNCIL

#### **Establishment of Council**

**2** (1) There is hereby established a Council which is a juristic person to be known as the Namibian Planning and Construction Council, which is a corporate body having perpetual secession and a common seal and performs all functions as corporate bodies.

(2) The object of the Council shall be purchasing, or acquiring, holding, alienating movable and immovable property and, subject to the provisions of this Act, the Council performs all those functions as a cooperate bodies.

#### **Composition of Council**

**3** (1) The Council consists of –

- (a) one member nominated by the Construction Industries Federation of Namibia;
- (b) one member nominated by the SMME-Contractors- Association of Namibia;
- (c) one member representing contractors or sub-contractors;
- (d) one member nominated by the Board of Architects and Quantity Surveyors;
- (e) one member nominated by the Board of Quantity Surveyors;
- (f) one member nominated by the Engineering Council of Namibia;
- (g) one member representing material manufacturers and suppliers to the construction industry;
- (h) one member from financial institutions;
- (i) one member from the Ministry of Works and Transport;
- (j) one member nominated by Academic Institutions in Namibia;
- (k) one member representing Civil Society in Namibia;
- (l) one member representing Local Authorities in Namibia; and
- (m) one member representing Tender Board of Namibia.

(2) The Council consists of 13 members, appointed by the Minister, each such member should be a Namibian citizen or a permanent resident holder.

(3) Members of the Council hold office for a period of three years from the date of appointment.

(4) The names of the persons appointed as members and the names of persons appointed as alternative members of the Council, and their date of appointment, must be notified in the *Gazette*.

#### **Disqualification for appointment as member or alternative member of Council**

**4.** A person does not qualify for appointment as a member or alternative member of the Council, if he or she –

- (a) is an unrehabilitated insolvent;
- (b) is not a Namibian citizen or a holder of a permanent residence permit;
- (c) is, under any law in force in Namibia, adjudged or otherwise declared to be of unsound mind;
- (d) has within the past seven years been convicted of an offence whether in Namibia or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under any law on corruption or any other offence involving dishonesty, and has been sentenced to imprisonment without option of fine.

#### **Vacation of members from office**

**5.** (1) The Office of a member of the Council becomes vacant if such member-

- (a) has become insolvent or made other arrangement with his or her creditors;
- (b) has been absent from three consecutive meetings of the Council without apology;
- (c) is unable or unfit to discharge the functions of a member of the Council;
- (d) has been convicted within or outside Namibia of a criminal offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
- (e) is mentally or physically incapable of efficiently performing his duties as a member of the Council ;or
- (f) he or she had a penalty imposed under this Act by the Council with the approval of the Minister.

(2) The Minister may –

- (a) ask a member of the Council to temporarily resign if criminal proceedings have been instituted against the member for an offence of imprisonment for a term of six months or more; or

- (b) suspend a member from the Council against whom the Council has instituted an inquiry into his professional conduct and that member may not carry out any duties of the Council.

(3) Where a member against whom criminal proceedings have been instituted is acquitted by a court of law, the Minister may reappoint such a member to hold office in the Council.

(4) A member of the Council may resign his office by giving one month notice in writing to the Chairperson of the Council.

### **Filling of vacancies of Council**

6. When a member of the Council cease to hold office the Minister may, with due regard to section 3 (2) appoint an alternate member to act in the place of such a member for the unexpired portion of his or her term of office.

### **Invited persons**

7. (1) The Council may invite any person to attend any particular meetings of the Council for the purpose of assisting or advising the Council in respect of any matter under consideration by the Council.

(2) Any person invited pursuant to subsection (1) may take part in the deliberation of the Council at any meeting he or she attends but is not entitled to vote.

### **Chairperson and Vice-Chairperson**

8. (1) The Council must from amongst its members, elect two members to be chairperson and vice- chairperson.

(2) The office of the Chairperson and the Vice-Chairperson becomes vacant-

- (a) if the holder of the office resigns by giving one month notice in writing to the Council;
- (b) if the holder of the office cease to be a member of the Council, and
- (c) if the Minister on the recommendation of the Council so directs.

## **PART III**

### **MEETING OF COUNCIL**

#### **Meeting of Council**

9. (1) Subject to this Act, the Council must hold ordinary meetings for the dispatch of business at least four times in a year.

(2) An extraordinary meeting must be convened by the Chairperson at any time, or within 21 days of receiving a letter signed by more than five members of the Council and specify the purpose for which the meeting is to be convened.

(3) The Council may make rules for its proceedings and business and may suspend or revoke any such rules which are inconsistent with the provisions of this Act.

(4) The records of any meeting of the Council must be made available to any person engaged in the construction industry and registered under this Act, the records are kept at the offices of the Council.

(5) No person has access to records of disciplinary committee or any other committee of the Council unless so authorized by the Council.

(6) If a member of the Council has an interest, direct or indirect, in any matter under consideration before the Council, he or she must as soon as practicable, disclose the fact and may not take part in that discussion or vote on any matter deliberated in the Council.

### **Functions of Council**

**10.** (1) The Council must regulate the industry and has the following further functions -

- (a) to promote, and develop the construction industry in Namibia;
- (b) to protect the local industry against unfair competition;
- (c) to facilitate industry to have access to recourses for the development;
- (d) to liaise with other bodies, in issues relating to the construction industry;
- (e) to promote research, development and use of local materials;
- (f) to promote and facilitate, where possible, the construction of affordable low-cost and medium-density housing;
- (g) to promote compliance to technical standards, safety standards and relevant statutory laws in the construction industry;
- (h) to prescribe, implement and vary the categories for the registration of the contractors engaged in the construction industry;
- (i) to recommend to the Minister conditions under which a foreign firm may engage in construction industry in Namibia;
- (j) to promote, co-ordinate and facilitate capacity building in the construction industry;
- (k) to keep, monitor and maintain a service data base for the construction industry;
- (l) to monitor and evaluate, from time to time, the capacity and progress of contractors engaged in the construction industry;

- (m) to regulate the activities of the construction industry in Namibia in consultation with the concerned Boards and Associations;
- (n) to standardize the procurement procedures according to international recognized practice;
- (o) to review and recommend to the Minister the cost and benefits of bilateral agreements which have bearing on infrastructural development;
- (p) to harmonize construction industry with the regional construction standards;
- (q) to promote and facilitate technology transfer and innovations in the construction industry;
- (r) to promote health and safety conditions and sound labor relations as well as the protection of the environment;
- (s) to promote best practice, standards and guidelines; and
- (t) to generally perform such other functions as the Council considers necessary or expedient to achieve the objects of this Act.

#### **Powers of Council**

- 11.** The Council, subject to this Act, has the power to -
- (a) consider any matter affecting the construction industry ;
  - (b) work together with other bodies in Namibia and elsewhere on matters affecting the construction industry;
  - (c) recommend the institutions in Namibia and outside for the training of persons engaged in the construction industry;
  - (d) obtain publicly available information related to the industry from any contractor engaged in the construction industry in Namibia;
  - (e) obtain and collate all publicly available information concerning existing and proposed projects and advise persons engaged in the construction industry thereon;
  - (f) employ such professional, technical and administrative officers clerks and other workers as it may deem requisite and lay down conditions of service for such employees, and
  - (g) pay any person in its employment such salary, wages or other remuneration as it may consider fit, and to grant him or her such leave as it may consider fit.



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### **Committees of Council**

**12.** (1) The Council may establish a number of committees to carry out special or general functions determined by the Council and may assign to any of the committee some of the functions of the Council as the Council may consider necessary.

(2) The chairperson of each committee is elected by the Council from amongst Members of the Council.

(3) A committee may, with the consent of the Council, invite any person to attend any particular meeting of series in respect of any matter under consideration by the committee.

(4) Any person or persons invited pursuant to paragraph (3) may take part in the deliberations of the committee at any meeting he or she attends but is not entitled to vote.

(5) The Chairperson of the committee may, convene at any time and place, a meeting of the committee of which he or she is Chairperson.

(6) The Council may, at any time, direct the Chairperson of any committee to convene a meeting of such committee and such chairperson must as soon as is practicable, comply with such directive.

(7) Every committee must keep minutes of its meeting and must inform the Council of its proceedings in such manner as the Council may direct.

## **PART IV**

### **FINANCIAL PROVISIONS**

#### **Funds, Accounts and Audit**

**13.** (1) Subject to this Act, the funds of the Council consist of –

- (a) such sums as may be appropriated by parliament for the purpose of the Council;
- (b) any fees payable under this act;
- (c) such other money as may vest in or accrue to the Council in the course of its functions;
- (d) the levy imposed under section 14;
- (e) such money as may accrue to, or vest in, the Council by way of grants, subsidies, bequest, donations, gifts, subscriptions, rents, interest or royalties, from any person.

(2) The Council must keep proper accounts and other records relating thereto in respect of its funds and must in every respect comply with the provisions of laws relating to finance and audit.

(3) The accounts of the Council must be examined and audited annually by auditors appointed by the Council and approved by the Minister.

### **Levy**

14. The Council may, from time to time, by order published in the *Gazette*, impose a levy, registration fees, on any person or class of persons engaged in the construction industry under this Act and such levy and registration fees must be appropriated for the general operations in the Council.

### **Remuneration and expenses of Council**

15. A member of the Council or of a committee must be paid from the funds of the Council such allowances in accordance with tariffs as approved by the Minister.

### **Investment of surplus sums**

16. The Council may invest any sums of money which are not immediately required.

### **Borrowing powers**

17. The Council may borrow either temporarily by way of overdraft or otherwise, such sums as it may require, for meeting its obligations or discharging its functions under this Act.

### **Financial year of Council**

18. The financial year of the Council is the period commencing on the date of commencement of this Act and ending on the following 31<sup>st</sup> March, and thereafter it is a period of twelve months ending 31<sup>st</sup> March every year.

## **PART V**

### **REGISTRATION**

#### **Prohibition of carrying on business**

19. (1) No person (contractor) may carry on business in the construction industry in Namibia unless he or she is registered under this Act.

(2) No person (contractor) being registered under this Act may carry on business category in respect of which he or she is not registered.

#### **Council to maintain register**

20. (1) The Council must decide on the minimum threshold and categories for registration, for the purpose of this Act, keep and maintain, in the appropriate prescribed form, a register of persons (contractors) engaged in the construction industry.

(2) The register must be in the custody of such officer employed by the Council as the Council may designate and must be kept at the offices of the Council.

(3) Every person (contractor) registered under this Act, after 31st March each year must pay to the Council such annual fees as may be prescribed.

(4) No person (contractor) registered under this Act may carry out any work before payment of the annual subscription fees.

### **Application for registration**

**21.** An application for registration must be made to the Council in such form as may be prescribed and must be accompanied by the prescribed fee.

### **Qualifications for registration**

**22.** (1) The Council must, before registering a person (contractor) pursuant to an application made under section 21 take into consideration the following -

- (a) his or her capital and other financial resources;
- (b) his or her managerial, professional, technical and other personnel;
- (c) in the case of individuals, his or her qualifications and skill;
- (d) whether he or she has vehicles, plant, implements, tools, entrustments, and other goods and suppliers with unlimited categories;
- (e) any other requirements which the Council may determine for each category necessary to enable him or her to discharge in a satisfactory manner, the obligations which may reasonably be expected of or undertaken by a person belonging to the category in respect of which registration is sought; and
- (f) the Council must decide on the minimum threshold and categories for registration.

(2) The Council may require the attendance of any party, to, or any person interested in or affected by any matter before the Council and may demand the production of any document or evidence to support the matter.

### **Certificate of registration**

**23.** (1) The Council must issue a certificate to every person (contractor) registered under this Act.

(2) The certificate issued under section (1) is valid for two years from 1<sup>st</sup> April to 31<sup>st</sup> March.

### **Council to decide application for registration**

**24.** After considering an application the Council must decide whether the application should be approved or refused.

**Appeal against refusal to register or removal from register**

- 25.** (1) A person (contractor) aggrieved by-
- (a) the refusal by the Council to register him or her under this Act for any reason; or
  - (b) the removal by the Council of his name from the register, may, after the date on which notice is given to him or her by the council of the refusal or removal as the case may be, appeal to the Minister in such a manner as may be prescribed.
- (2) On hearing an appeal under subsection (1), the Minister may -
- (a) dismiss the appeal;
  - (b) if he or she is of the opinion that the Council has not acted in accordance with this Act, make an order that the name of the appellant be entered in or retained on the register; or
  - (c) refer the matter back to the Council for further consideration, and may make such other order as he or she may consider fit.
- (3) Any person aggrieved by the decision of the Minister may appeal to the High Court for review of such decision.

**Striking off from register**

- 26.** (1) When a person (contractor) registered under this Act has -
- (a) failed to renew his or her annual license;
  - (b) ceased to carry on business in the construction industry in Namibia;
  - (c) failed or ceased to have any of the things specified in section 22 (1) (a) to (g) inclusive;
  - (d) undertaken work in a category other than that in respect of which he or she is registered;
  - (e) been declared bankrupt;
  - (f) become a person of unsound mind;
  - (g) been found guilty of professional misconduct; or
  - (h) been found guilty of an offence involving dishonesty,

the Council may call upon such person to show cause why he or she should not be struck off the register.

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(2) Where a person (contractor) who has been found guilty of the offences stipulated in subsection (1), does not show cause to the satisfaction of the Council why he or she should not be struck off the register, must be struck off the register.

## PART VI

### GENERAL PROVISIONS

#### **Offence**

**27.** Any person who contravenes the provisions of this Act commits an offence and be liable to fine of N\$20 000 and to imprisonment for a term of two years, and in case of a continuing offence to a further fine of N\$2 000 for each day during which the offence continues.

#### **Regulations**

**28.** (1) The Minister may, on the recommendation of the Council, make regulations for carrying out or giving effect to the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may

- (a) prescribe the fees payable -
  - (i) upon application for registration or renewal of registration;
  - (ii) for restoration to a register; or
  - (iii) for any other matter under this Act.
- (b) prescribe the forms required to be prescribed under this Act.
- (c) Prescribe allowances in accordance with approved tariffs to be paid to members of the Council and committees thereof in respect of honorarium, traveling and subsistence allowance;
- (d) make provisions for the registration, control and regulation of foreign firms carrying on business in the construction industry in Namibia, and
- (e) make provision for the disciplinary measures of persons engaged in the construction industry in Namibia.

(2) A regulation made under subsection (1) may provide for an offence for contravention or failure to comply with any provision and may impose a penalty of a fine not exceeding N\$2 000 or imprisonment for a period not exceeding six months, or both such fine or such imprisonment.

#### **Short title and commencement**

**29.** This Act is called Namibian Planning and Construction Council Act, 2010 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

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