

Governance of the architectural professions as a whole and the legislative framework determining *inter alia* architects' scope of practice and registration requirements

1. In terms of the Council for the Built Environment Act, 43 of 2000 (hereinafter referred to as "*the Built Environment Act*"), a "*registered person*" means a person registered in terms of any of the professions' Acts. These professions' Acts are defined as the following:
 - 1.1 The Architectural Profession Act, 2000.
 - 1.2 The Project and Construction Management Professions Act, 2000.
 - 1.3 The Engineering Profession Act, 2000.
 - 1.4 The Landscape Architectural Profession Act, 2000.
 - 1.5 The Property Valuers Profession Act, 2000.
 - 1.6 The Quantity Surveying Profession Act, 2000.
2. The Council for the Built Environment thus to a certain extent oversees the architectural, engineering, landscape architectural, project & construction management, property valuers and quantity surveying professions. Each of these professions also have their own professional council and legislation governing them.

3. In terms of section 20(1) of the Built Environment Act:

"The council must, after receipt of the recommendations of the councils for the professions submitted to it in terms of the professions' Acts, and before liaising with the Competition Commission in terms of section 4(q) –

- (a) Determine policy with regard to the identification of work for the different categories of registered persons;*
- (b) Consult with any person, body or industry that may be affected by the identification of work in terms of this section."*

4. In terms of section 20(2) of the Built Environment Act, *"the council must, after consultation with the Competition Commission, and in consultation with the councils for the professions, identify the scope of work for every category of registered persons"*.

5. The Council for the Built Environment is thus responsible for determining scope / identification of work for each of the professions overseen by it. This will, however, be done based on *inter alia* the submissions of each of the professional councils in respect of what work persons registered with them may do.

6. The Architectural Profession Act, No 44 of 2000 (hereinafter referred to as "*the Architects Act*") provides in section 18(1) that the categories in which a person may register in the architectural profession are as follows:
 - 6.1 Professional architect;
 - 6.2 Professional Senior Architectural Technologist;
 - 6.3 Professional Architectural Technologist; or
 - 6.4 Professional Architectural Draughtsperson.
7. The section also provides for candidates that may be registered in each of the mentioned categories, who must perform work in the architectural profession only under the supervision and control of a professional registered in a specific category.
8. In terms of section 18(2) "*a person may not [our emphasis added] practise in any of the categories contemplated in subsection (1), unless he or she is registered in that category*".
9. It is an offence for a person to perform architectural work if he or she is not registered in the appropriate category.

10. In terms of section 26(1):

"The council must consult with –

- (a) All voluntary associations;*
- (b) Any person;*
- (c) Any body; or*
- (d) Any industry*

That may be affected by any laws regulating the built environment professions regarding the identification of the type of architectural work which may be performed by persons registered in any of the categories referred to in section 18, including work which may fall within the scope of any other profession regulated by the professions' Acts referred to in the Council for the Built Environment Act, 2000."

11. In terms of section 26(2), *"after the process of consultation the council must submit recommendations to the CBE regarding the work identified in terms of subsection (1), for its consideration and identification in terms of section 20 of the Council for the Built Environment Act, 2000".*

12. In terms of section 26(3)(a), *"a person who is not registered in terms of this Act, may not perform any kind of work identified for any category of registered persons".*

13. In terms of section 26(4), *"subsection 3(a) may not be construed as prohibiting any person from performing work identified in terms of this section, if such work is performed in the service of or by order of and under the direction, control, supervision of or in association with a registered person entitled to perform the work identified and who must assume responsibility for any work so performed"*.
14. A person may thus perform work falling within the identification of work of a specific professional under the direction, control and supervision of that registered professional but only if that registered professional assumes the ultimate liability and responsibility for any work so performed.
15. In terms of section 41(1), *"a person contravening section **18(2)** [our emphasis added], 23, 25(8) or 31(8)(a), (b), (e) or (f) is guilty of an offence"*.
16. In terms of section 41(3), *"a person convicted of an offence in terms of section 18(2), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of section 18(2) or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991"*.
17. In terms of the definitions contained in the Code of Conduct published under the Architectural Act, members of closely allied professions are once again defined as persons registered in terms of the following:

- 17.1 The Architectural Act;
 - 17.2 The Engineering Profession Act No 46 of 2000;
 - 17.3 The Landscape Architectural Profession Act No 45 of 2000;
 - 17.4 The Project and Construction Management Professions Act No 48 of 2000;
 - 17.5 The Quantity Surveying Profession Act No 49 of 2000;
 - 17.6 The Planning Professions Act No 36 of 2002;
 - 17.7 The Property Valuers Profession Act No 47 of 2000.
18. In terms Rule 2.1 of the Code of Conduct published under the Architectural Act, *"a registered person shall only undertake architectural work which is identified for the category of registration in which he/she is registered in terms of section 18 of the Act and in accordance with the registration categories in force"*.
19. Practising outside a registration category is thus not only an offence in terms of the Architectural Act but may also form the subject of disciplinary action by the Council.

20. Each of the Acts listed in paragraphs 17.2 – 17.7 contain substantively similar provisions to those of the Architectural Act as discussed above i.e.:

20.1 There are specific categories of registration.

20.2 A person may not practise in any of these categories unless he / she is registered and it is an offence to practice without being properly registered.

20.3 The council must make submissions w.r.t identification of work to the Council for the Built Environment.

20.4 A person who is not registered in terms of the specific Act may not perform any kind of work identified for any of its categories of registered persons, unless such work is performed under the direction, control and supervision of a registered person entitled to perform the work identified. It is imperative that such registered person **must** assume responsibility and liability for any work so performed.

20.5 A person who practices in a category without being registered may be liable to a fine.

21. Similarly, each of the Codes of Conduct published under the Acts listed in paragraphs 17.2 – 17.7 contain some manner of provision stating that registered persons shall undertake only work which falls within their applicable registration category and failure to comply therewith may result in disciplinary action.
22. In terms of an Interim Policy on the Identification of Work for the Architectural Profession, published by the South African Council for the Architectural Profession and dated 12 June 2013, the following:
 - 22.1 Regulation 2.1 provides that *“no person who is registered in any category referred to in Section 18 of the Act, may undertake architectural work unless such work is demarcated for the relevant category of registration in accordance with Schedules 1 and 2, provided that a person registered in any particular category may perform the work demarcated for any lower category. Where work is not specified in the schedules, SACAP should be consulted”*.
 - 22.2 Regulation 2.3 provides that *“subject to Section 26(4) of the Act, any person who undertakes identified architectural work without being registered with SACAP, is contravening the Act and is guilty of an offence”*.
 - 22.3 In terms of Regulation 3(b), *“work which falls within the scope of a profession regulated by the different Built Environment Acts and which may be performed by a person registered in terms of section 18(1)(a) of the Architectural Profession Act will be recorded in the*

applicable CBE Board Notice after it has been confirmed by the relevant council. This will include for aspects of work common to more than one Council and / or discipline, where recognised requisite skill and competence permit the professional within one Council to undertake work demarcated within the scope of work of another Council, without need for dual registrations”.

- 22.4 Schedule 1 contains a “*demarcation of architectural work matrix*”, Schedule 2 sets out “*specialised services*” and Schedule 3 sets out the “*definition of architectural work and competencies*”.
23. It is thus important for registered persons to familiarise themselves with the identification of work in order to ensure that they are performing work which falls within that of their registration category.
24. In terms of a draft Board Notice published by the Council for the Built Environment during November 2011:
- 24.1 Section 11(1) states that “*a person registered as a professional architect in terms of the Architectural Profession Act, principal consultant or principal agent may perform the scope of services or any one or combination of the services determined in Annexure B which falls within the scope of services of the project and construction management professions regulated by the Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000) if the qualification, training and experience of that person have specifically rendered him or her competent to perform those services*

and the services are performed within the framework of architectural work". Annexure B is, however, marked as "to be completed" and no work is listed there as yet.

24.2 Section 11(2) states that *"a person registered in a category of registration in terms of the Architectural Profession Act may perform the scope of services relating to costing determined in Annexure C which falls within the scope of services of the quantity surveying profession regulated by the Quantity Surveying Profession Act, 2000 (Act No. 46 of 2000), if the qualification, training and experience of that person have specifically rendered him or her competent to perform those services and the services are performed within the framework of architectural work". Annexure C is, however, marked as "to be completed" and no work is listed there as yet.*

24.3 Section 12 states that *"a person registered in a category of registration may perform the scope of work determined in Annexure D which falls within the scope of the engineering profession regulated by the Engineering Profession Act, 2000 (Act 46 of 2000), if the qualification, training and experience of that person have specifically rendered him or her competent to perform that work and the work is performed within the framework of architectural work". Annexure D does, however, not list any such work.*

25. Bearing in mind that the Board Notice mentioned in paragraph 24 *supra* is only a "draft", it is not of legal force and effect as yet. It appears that the process of identifying overlapping areas of work is still ongoing. There are, however, not such identified areas as yet and members of the

architectural profession would be best served by adhering to their identification of work.

26. There appear to be similar identifications of work and board notices published by and in respect of the councils for the various associated professions, some of which deal in more detail with inter-council overlap of work and the work that those registered persons may perform although it may be regarded as part of other registered persons' identification of work. This does, however, not apply to architectural professionals and will not be discussed in more detail here.

27. In conclusion, the following:

27.1 The Council for the Built Environment has a mandate to assess identification of work of the various registration categories of the various professions regulated by the Act set out in paragraph 17.1 – 17.7 *supra*.

27.2 There may potentially be an overlap in respect of the various professions' scope / identification of work but this has not been dealt with in so far as the architectural profession is concerned.

27.3 Architectural professionals may thus perform the work identified in their identification of work policy. Work falling within the identification of work of any other professional (such as engineers, quantity surveyors etc.) must be done by said professional, who must assume the responsibility therefor.

27.4 Architects performing work for which they are not registered (whether in the architectural profession or in one of the associated professions) may be found guilty of an offence and may be liable for fines / disciplinary action in respect thereof.

27.5 In addition, any assumption of liability / responsibility for work which falls to be performed by another professional in terms of identification of work will be contrary to legislative provisions and as such unlawful and may therefore be uninsurable.

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