

REPUBLIC OF SOUTH AFRICA

**PROJECT AND CONSTRUCTION
MANAGEMENT PROFESSIONS
BILL**

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 20994 of 24 March 2000)
(The English text is the official text of the Bill)*

(MINISTER OF PUBLIC WORKS)

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BILL

To provide for the establishment of a juristic person to be known as the South African Council for the Project and Construction Management Professions; to provide for the registration of professionals, candidates and specified categories in the project and construction management professions; to provide for the regulation of the relationship between the South African Council for the Project and Construction Management Professions and the Council for the Built Environment; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “accredit” means the process of evaluation and recognition by the council of educational programmes offered by educational institutions relating to the project and construction management professions, and “accreditation” has a corresponding meaning; 5
 - (ii) “actively practise” means to practise on an ongoing basis in one of the categories contemplated in section 18, and includes a person qualified in the project and construction management professions who is employed by any sphere of government or an educational institution; 10
 - (iii) “candidate” means a person who is registered in terms of section 19(2)(b);
 - (iv) “CBE” means the Council for the Built Environment established in terms of section 2 of the Council for the Built Environment Act, 2000; 15
 - (v) “committee” means a committee established in terms of section 17;
 - (vi) “council” means the South African Council for the Project and Construction Management Professions established by section 2;
 - (vii) “department” means the national department responsible for public works;
 - (viii) “disciplinary tribunal” means a tribunal appointed in terms of section 30; 20
 - (ix) “Minister” means the Minister responsible for public works;
 - (x) “prescribe” means prescribed by a rule made by the council under section 36, and “prescribed” has a corresponding meaning;
 - (xi) “professional” means a person who is registered in terms of section 19(2)(a);
 - (xii) “registered person” means a person registered under one of the categories referred to in section 18; 25
 - (xiii) “registrar” means the person appointed as registrar under section 8(1)(a);
 - (xiv) “registration” means the process—
 - (a) of assessment of competency of applicants for the purpose of registration under this Act; and 30
 - (b) of entering the names of the applicants who qualify into the register referred to in section 11(c);

- (xv) “rule” means a rule made and in force under this Act;
- (xvi) “this Act” includes any notice, order or rule issued or made under this Act;
and
- (xvii) “voluntary association” means any voluntary association recognised by the
council in terms of section 25. 5

Establishment of South African Council for the Project and Construction Management Professions

2. There is hereby established a juristic person to be known as the South African Council for the Project and Construction Management Professions.

Composition of council 10

3. The council consists of the following members, appointed by the Minister, taking into account, among other things, appropriate representation of race, gender and disability—

- (a) six registered persons, excluding candidates, of whom at least four must actively practise in the project and construction management professions— 15
 - (i) who must be nominated by the voluntary associations and any registered person; and
 - (ii) who must represent the categories of registered persons contemplated in section 18, in the prescribed manner;
- (b) two professionals in the service of the State, nominated by any sphere of government, of whom at least one must be nominated by the department; and 20
- (c) two members of the public nominated through an open process of public participation. 20

Nomination procedure

4. (1) When any nomination in terms of section 3(1)(a) or (b) becomes necessary, the council must invite registered persons, the voluntary associations and the State, respectively, in the prescribed manner, to nominate within a period of at least 60 days from the date of the invitation, persons who qualify for nomination in terms of section 3(1)(a) or (b), respectively. 25

(2) When any nomination in terms of section 3(1)(c) becomes necessary, the council must invite the public, by notice in the *Gazette* and in any newspaper the council considers necessary, but in at least a leading newspaper in each province, to nominate persons within a period of at least 60 days from the date of the notice. 30

(3) On receipt of any nomination, the council must, within 30 days from the expiry date specified in the invitation or the notice, make and submit its recommendations to the Minister. 35

(4) The Minister must, within 60 days from the date of the receipt of the nominations from the outgoing council, appoint new members of the council.

(5) If the council receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may, after consultation with the council, appoint the required number of persons who qualify to be appointed in terms of this Act. 40

(6) The Minister must, as soon as practicable after the appointment of the members of the council, by notice in the *Gazette*, publish—

- (a) the name of every person appointed as a member;
- (b) the date from which the appointment takes effect; and 45
- (c) the period for which the appointment is made.

(7) The Minister must, within 30 days from the date of the appointment of the council, determine the time and place of its first meeting, and, thereafter, the council must determine the time and place of any future meeting.

Term of office of members of council

5. (1) The term of office for members of the council is four years, but members continue in office until the succeeding council is properly constituted.
- (2) Subject to section 42(5), a member of the council may not serve for more than two consecutive terms of office. 5
- (3) Despite subsection (1), the Minister may, by notice in the *Gazette*, after consultation with the council, extend the period of office of all the members of the council for a period of six months, but he or she may only extend the period of office twice.
- (4) Despite subsection (1), the Minister may, by notice in the *Gazette*, after 10 consultation with the council, terminate the period of office of a member or all members of the council.
- (5) The Minister may only act in terms of subsection (4) if a new member or a new council has been appointed, on nominations invited by the Minister in the manner provided for in section 4, to take over the functions of the member or the council 15 concerned.

Disqualification from membership of council and vacation of office

6. (1) A person may not be appointed as a member of the council if that person—
- (a) is not a South African citizen and ordinarily resident in the Republic;
 - (b) is an unrehabilitated insolvent; 20
 - (c) has been convicted of an offence, whether in the Republic or elsewhere, and sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both;
 - (d) has, as a result of improper conduct, been removed from an office of trust; or
 - (e) has in terms of this Act been found guilty by the disciplinary tribunal or the 25 council of improper conduct.
- (2) A member of the council must vacate his or her office if he or she—
- (a) becomes disqualified in terms of subsection (1) from being appointed as a member of the council;
 - (b) resigns by written notice addressed to the registrar; 30
 - (c) is declared by the High Court to be of unsound mind or mentally disordered or is detained under the Mental Health Act, 1973 (Act No. 18 of 1973);
 - (d) has, without leave of the council, been absent from more than two consecutive meetings of the council;
 - (e) was appointed in terms of section 3(1)(a) and after that appointment a change 35 in his or her circumstances arises that affects the ratio of the membership referred to in section 3(1);
 - (f) was appointed in terms of section 3(1)(b) and ceases to be employed by the State; or
 - (g) ceases to be permanently resident in the Republic. 40
- (3) (a) If a member of the council dies or vacates his or her office before the expiration of his or her term of office, the Minister may, after consultation with the council, and subject to section 5(1), appoint a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (b) If the Minister appoints a person to fill the vacant seat, the appointment must be 45 made within 60 days from the date on which the vacancy occurred.

Election of president and vice-president of council

7. (1) (a) The members of the council must, at the first meeting of every newly constituted council elect a president and vice-president who must be registered persons and at least one must actively practise in the project or construction management 50 professions.
- (b) The president and vice-president hold office for the period of four years from the date of their appointment.

(2) The vice-president must, if the president is for any reason unable to act as president, perform all the functions and may exercise all the powers of the president.

(3) (a) If both the president and the vice-president are for any reason unable to preside at a council meeting, the members present must elect a person to preside at that meeting.

(b) The person elected may, during that meeting and until the president or vice-president resumes his or her functions, perform all the functions and exercise all the powers of the president. 5

Appointment of registrar and staff members of council

8. (1) The council—

(a) must appoint a registrar; and 10

(b) may employ such staff as it may deem necessary for the carrying out of its functions,

on such conditions, including the payment of remuneration and allowances, as it may determine, and may dismiss any person so appointed.

(2) The registrar must perform, in addition to such functions as may otherwise be assigned to him or her by or under this Act, such functions as may from time to time be assigned to him or her by the council. 15

Decisions of council

9. (1) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council. 20

(2) In the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(3) A decision taken by the council or an act performed under the authority of the council is not invalid by reason only of a vacancy on the council, or that a person who is 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. 25

Administrative powers of council

10. The council may— 30

(a) determine the remuneration and allowances payable to its members or the members of any committee of the council;

(b) arrange for the payment of pension and other benefits to any staff of the council or the registrar and to his or her dependants on the termination of the service of that staff member or the registrar; 35

(c) determine where its head office must be situated;

(d) determine the manner in which meetings of the council or any committee of the council must be convened, the procedure and quorum at such meetings and the manner in which the minutes of such meetings must be kept; and

(e) print, circulate, sell and administer the publication of, and generally take any steps necessary to publish, any publication relating to the project and construction management professions and related matters. 40

Powers of council with regard to registration

11. The council may, subject to this Act—

(a) consider and decide on any application for registration; 45

(b) prescribe the period of validity of the registration of a registered person;

(c) keep a register of registered persons and decide on—

- (i) the form of certificates and the register to be kept;
- (ii) the maintenance of the register or issuing of certificates; and
- (iii) the reviewing of the register and certificates and the manner in which alterations thereto may be effected.

Powers of council with regard to fees and charges 5

12. (1) The council may, with regard to fees and charges, which are payable to the council, determine—

- (a) application fees;
- (b) registration fees;
- (c) annual fees, or portion thereof, in respect of a part of a year; 10
- (d) the date on which any fee or charge is payable;
- (e) the fees, or portion thereof, payable in respect of any examination referred to in section 19, conducted by or on behalf of the council;
- (f) any charge payable for the purposes of the education fund referred to in section 15(5); 15
- (g) fees payable for a service referred to in section 14(c); or
- (h) any other fee or charge it considers necessary.

(2) The council may grant exemption from payment of application fees, registration fees, annual fees, charges, or a portion thereof referred to in subsection (1).

Powers of council with regard to education in project and construction management 20

13. The council may—

- (a) subject to sections 5 and 7 of the Higher Education Act, 1997 (Act No. 101 of 1997), conduct accreditation visits to any educational institution which has a department, school or faculty which offers project and construction management educational programmes, but must conduct at least one such visit every five years. If the council does not conduct an accreditation visit within the five-year period, it must notify the Minister accordingly and provide him or her with reasons for the failure to do so; 25
- (b) either conditionally or unconditionally grant, refuse or withdraw accreditation to all educational institutions and their educational programmes with regard to project and construction management; 30
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997, regarding matters relevant to education in project and construction management; 35
- (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration; 40
- (e) establish mechanisms for registered persons to gain recognition of their qualifications and professional status in other countries; 40
- (f) liaise with the relevant National Standards Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations; 45
- (g) recognise or withdraw the recognition of any examination contemplated in section 19; 45
- (h) enter into an agreement with any person or body of persons, within or outside the Republic, with regard to the recognition of any examination or qualification for the purposes of this Act; 50
- (i) give advice or render assistance to any educational institution, voluntary association or examining body with regard to educational facilities for and the training and education of registered persons and prospective registered persons;

- (j) conduct any examination for the purposes of section 19; and
- (k) determine, after consultation with the voluntary associations and registered persons, conditions relating to and the nature and extent of continuing education and training.

General powers of council 5

- 14.** The council may, in addition to other powers in this Act—
- (a) acquire, hire, maintain, let, sell or otherwise dispose of movable or immovable property for the effective performance and exercise of its functions, duties or powers;
 - (b) decide upon the manner in which contracts must be entered into on behalf of the council;
 - (c) perform any service within its competence if it is requested by any person or body of persons, including the State;
 - (d) determine, subject to section 25, the requirements with which a voluntary association must comply to qualify for recognition by the council;
 - (e) advise the Minister, any other Minister or the CBE on any matter relating to the project and construction management professions;
 - (f) encourage and itself undertake research into matters relating to the project and construction management professions;
 - (g) take any steps it considers necessary for the protection of the public in their dealings with registered persons for the maintenance of the integrity and the enhancement of the status of the project and construction management professions;
 - (h) take any steps it considers necessary for the improvement of the standards of services rendered by registered persons;
 - (i) create an awareness amongst registered persons of the importance to protect the environment against unsound project and construction management practices;
 - (j) take any steps which it considers necessary, where, as a result of project and construction management related undertakings, public health and safety is prejudiced; and
 - (k) take any measures it considers necessary for the proper performance and exercise of its functions, duties or powers or to achieve the objectives of this Act.

Funds of council and keeping and auditing of accounts 35

- 15.** (1) The funds of the council consist of any money received in terms of this Act and all other monies which may accrue to the council from any other legal source, including fines and penalties imposed by the council.
- (2) The council may—
- (a) collect and invest funds of the council;
 - (b) raise money by way of loan for the purpose of effectively performing its functions;
 - (c) with a view to the promotion of any matter relating to the project and construction management professions, lend money against such security as the council considers adequate; and
 - (d) mortgage any of its immovable property as security for a loan referred to in paragraph (b).
- (3) The council may remunerate its members and committee members from its funds.
- (4) The council may finance any publication referred to in section 10(e).
- (5) The council may establish and administer an education fund for the purpose of education, training and continuing education and training of registered persons and students in the project and construction management professions.

- (6) The council must keep full and correct account of all monies received and expended by it.
- (7) (a) The council must annually prepare a statement of income and expenditure and a balance sheet showing its financial position as at the close of the financial year to which it relates. 5
- (b) The council must have the statement and balance sheet audited by an auditor registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991).
- (c) A copy of the audited statement and balance sheet must be open for inspection at the offices of the council. 10
- (8) The council must, within six months from the close of each financial year, submit the audited statement and balance sheet to the Minister and must provide a copy to the CBE.
- (9) The Minister may, with the concurrence of the Minister of Finance—
- (a) advance or grant to the council, out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the council to carry out its functions; and 15
- (b) determine the conditions to and repayment of the advance.
- (10) The council must determine its financial year.
- (11) The council must apply due care and diligence when investing any money or incurring any expenditure from the funds of the council. 20

Reports to CBE

16. (1) The council must, within six months from the close of each financial year, provide the CBE with a report regarding its activities during that financial year, for the purpose of section 4 of the Council for the Built Environment Act, 2000. 25
- (2) A copy of the report and the register referred to in section 11(c) must be open for inspection at the offices of the council.
- (3) The council must, on request by the CBE, provide the CBE with any information regarding a registered person.

Committees of council

17. (1) (a) The council may establish any committee, including an investigating committee, to assist it in the performance of its functions and may appoint any person as a member of that committee.
- (b) If the council does not designate a chairperson for a committee, the committee may, at its first meeting, elect a chairperson from among its members. 35
- (c) The council may at any time dissolve or reconstitute a committee.
- (2) Section 9 may, with the necessary changes, apply in respect of a committee of the council.

Categories of registration

18. (1) The categories in which a person may register in the project and construction management professions are— 40
- (a) professional, which is divided into—
- (i) Professional Construction Manager; or
- (ii) Professional Construction Project Manager; or
- (b) candidate, which is divided into— 45
- (i) Candidate Construction Manager; or
- (ii) Candidate Construction Project Manager; or
- (c) specified categories prescribed by the council.
- (2) A person may not practise in any of the categories contemplated in subsection (1), unless he or she is registered in that category. 50

(3) A person who is registered in the category of candidate must only perform work in the project and construction management professions under the supervision and control of a professional of a category as prescribed.

Registration

19. (1) (a) A person must apply, in the prescribed application form, to the council for registration in a category referred to in section 18(1). 5

(b) The application form referred to in paragraph (a) must be accompanied by the prescribed fee.

(2) The council must register the applicant in the relevant category and issue a registration certificate to the successful applicant in the prescribed form if, after 10 consideration of an application, the council is satisfied that the applicant—

(a) in the case of a person applying for registration as a professional—

(i) has demonstrated his or her competence against standards determined by the council for the relevant category of registration; and

(ii) has passed any additional examinations that may be determined by the 15 council;

(b) in the case of a person applying for registration as a candidate or as a candidate in a specified category, has satisfied the relevant educational outcomes determined by the council for this purpose, by—

(i) having passed accredited or recognised examinations at any educational 20 institution offering educational programmes in project and construction management; and

(ii) having passed any other examination that may be determined by the council; or

(iii) presenting evidence of prior learning in project and construction 25 management.

(3) (a) Despite subsection (2), the council may refuse to register an applicant—

(i) if the applicant has been removed from an office of trust on account of improper conduct;

(ii) if the applicant has been convicted of an offence, whether in the Republic or 30 elsewhere, and sentenced to imprisonment without an option of a fine, or in the case of fraud, to a fine or imprisonment or both;

(iii) if the applicant is declared by the High Court to be of unsound mind or mentally disordered, or is detained under the Mental Health Act, 1973;

(iv) for as long as the applicant is disqualified from registration as a result of any 35 punishment imposed on him or her under this Act;

(v) if the applicant is an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence in performing work falling within the scope of the category in respect of which he or she is applying for 40 registration.

(b) The council must provide the applicant with a notice of a refusal referred to in paragraph (a).

Cancellation of registration

20. (1) (a) The council may cancel the registration of a registered person if he or she—

(i) becomes disqualified from registration as contemplated in section 19(3); 45

(ii) has erroneously been registered, or has been registered on information subsequently proved to be false; or

(iii) fails to pay the prescribed annual fee or portion thereof, within 60 days from it becoming due or within such further period as the council may allow, either 50 before or after the expiry of the 60 days.

(b) The council must provide the registered person with a notice of a cancellation referred to in paragraph (a).

(2) If a person who is registered as a candidate qualifies to be registered as a professional in terms of section 19(2)(a), the council must cancel his or her registration as a candidate. 55

(3) The council must at the written request of any registered person cancel his or her registration, but where an investigation into alleged improper conduct by that person is in progress or is to be held, the registration may not be cancelled until the investigation has been concluded.

(4) Despite the cancellation of the registration of a registered person in terms of this section, that person remains liable for any fee, arrears or penalty imposed by the council for the period that he or she was registered. 5

Authorised titles

21. (1) A person who is registered in any of the categories referred to in section 18(1) may describe himself or herself as and use the title— 10

- (a) Professional Construction Manager;
- (b) Professional Construction Project Manager;
- (c) Candidate Construction Manager; or
- (d) Candidate Construction Project Manager.

(2) A registered person may use a title prescribed by the council for the specified category. 15

(3) The council may determine abbreviations or acronyms for the titles referred to in subsection (1).

Renewal of registration

22. (1) A registered person must, at least three months prior to the prescribed expiry date of his or her registration, apply in the prescribed manner to the council for the renewal of his or her registration. 20

(2) The council may determine conditions for the renewal of registration.

(3) Subject to section 19, the council must, on application, register a person who was previously registered and whose registration was cancelled in terms of section 20(1)(a)(iii), if he or she has paid— 25

- (a) the prescribed fee;
- (b) any arrear annual fee or portion thereof;
- (c) any expenses incurred by the council in connection with the recovery of any arrear fees; and 30
- (d) any penalties imposed on him or her by the council.

Return of registration certificate

23. Any person whose registration has been cancelled in terms of this Act, must return his or her registration certificate to the registrar within 30 days from the date on which he or she is directed by the registrar in writing to do so. 35

Grievance procedure in relation to registration

24. (1) If an applicant is of the opinion that a committee, in its refusal to register him or her, or to cancel his or her registration, other than a cancellation in terms of section 20(1)(a)(iii) or 32(3)(a)(iv), did not comply with section 33 of the Constitution, that applicant may, on payment of the prescribed fees and within 30 days from the date on which the refusal or cancellation came to his or her knowledge, appeal to the council against that decision. 40

(2) The council must, at its first ensuing meeting, within 60 days from the date of the receipt of the appeal, decide on the appeal and provide the appellant with reasons for its decision. 45

(3) If an appeal lies against a refusal of a committee to renew the registration of a registered person, the registration of that person may not be cancelled until the appeal has been decided.

Recognition of voluntary associations

25. (1) The council must, within 90 days from the date of its first meeting, submit the framework for the requirements for recognition of a voluntary association to the CBE for approval.
- (2) Any voluntary association may apply to the council to be recognised as such. 5
- (3) The council may, if the voluntary association complies with the requirements determined in terms of section 14(d), recognise that association and issue it with a certificate of recognition.
- (4) A certificate of recognition is valid for a period of five years from the date of issue.
- (5) A voluntary association must display its certificate of recognition in a prominent place at its head office. 10
- (6) The recognition of a voluntary association lapses—
- (a) if that association no longer complies with the requirements contemplated in section 14(d); or
- (b) at the expiry of the five-year period referred to in subsection (4). 15
- (7) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the council for the renewal thereof.
- (8) A voluntary association whose recognition has lapsed must on written demand return its certificate of recognition to the council.

Identification of work 20

26. (1) The council must consult with—
- (a) all voluntary associations;
- (b) any person;
- (c) body; or
- (d) industry, 25
- that may be affected by any laws regulating the built environment professions regarding the identification of the type of project and construction management 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. 30
- (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 4 of the Council for the Built Environment Act, 2000.
- (3) A person who is not registered in terms of this Act, may not—
- (a) perform any kind of work identified for any category of registered persons; 35
- (b) pretend to be, or in any manner hold or allow himself or herself to be held out as a person registered in terms of this Act;
- (c) use the name of any registered person or any name or title referred to in section 18 or 21; or
- (d) perform any act indicating, or calculated to lead persons to believe, that he or she is registered in terms of this Act. 40
- (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 45 responsibility for any work so performed.

Professional conduct

27. (1) The council must, in consultation with the CBE, voluntary associations and registered persons, draw up a code of conduct for registered persons.
- (2) (a) The council is responsible for administering the code of conduct and must ensure that the code is available to all members of the public at all reasonable times. 50
- (b) The council must provide the CBE with a copy of the code of conduct.
- (3) All registered persons must comply with the code of conduct and failure to do so constitutes improper conduct.

Investigation of charge of improper conduct

- 28.** (1) The council must refer any matter brought against a registered person to an investigating committee contemplated in section 17 if—
- (a) the council has reasonable grounds to suspect that a registered person has committed an act which may render him or her guilty of improper conduct; or 5
 - (b) a complaint, charge or allegation of improper conduct has been brought against a registered person by any person.
- (2) At the request of the council, the investigating committee must—
- (a) investigate the matter; and
 - (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the council the charge or charges that may be preferred against that registered person. 10
- (3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she—
- (a) has the right to be assisted or represented by another person; and 15
 - (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person.
- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the council regarding any matter referred to it in terms of this section. 20

Charge of improper conduct

- 29.** (1) The council must, after considering a report of the investigating committee in terms of section 28(2)(b) and (4), charge a registered person with improper conduct if the council is convinced that sufficient grounds exist for a charge to be preferred against such a registered person. 25
- (2) The council must furnish a charge sheet to the registered person concerned by hand or registered mail.
- (3) A charge sheet must inform the registered person charged—
- (a) of the details and nature of the charge;
 - (b) that he or she must, in writing, admit or deny the charge; 30
 - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the improper conduct with which he or she is charged; and
 - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council. 35
- (4) (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of improper conduct as charged, after he or she has explained his or her conduct.
- (b) The council may, subject to section 32(2), impose a penalty contemplated in section 32(3)(a) or (b) on a registered person who has admitted guilt in terms of paragraph (a). 40
- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of improper conduct, even if the facts stated in the charge of improper conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge. 45

Appointment of disciplinary tribunal

- 30.** (1) The council must appoint a disciplinary tribunal to hear a charge of improper conduct if a person charged— 50
- (a) denies the charge; or
 - (b) fails to comply with section 29(3)(b).
- (2) The disciplinary tribunal must consist of at least—

- (a) a person who specialises in the area concerning the charge;
- (b) a professional who has at least 10 years' experience; and
- (c) a person qualified in law and who has at least 10 years' experience.

Disciplinary hearing

- 31.** (1) The disciplinary hearing must be conducted by the disciplinary tribunal. 5
- (2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.
- (3) (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person—
- (i) who in its opinion may be able to give material information concerning the subject of the hearing; or 10
 - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing,
- to appear before the disciplinary tribunal at the time and place specified in the subpoena, 15
to be questioned or to produce a book, document or object.
- (b) A subpoena issued in terms of paragraph (a), must—
- (i) be in the prescribed form;
 - (ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and 20
 - (iii) be served on the registered person concerned personally or by sending it by registered mail.
- (4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing.
- (5) The chairperson of the disciplinary tribunal may call upon and administer an oath 25
to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).
- (6) At a hearing the registered person charged—
- (a) (i) may personally be present at the hearing of the proceedings;
 - (ii) may be assisted or represented by another person in conducting the proceedings; 30
 - (iii) has the right to be heard;
 - (iv) may call witnesses;
 - (v) may cross-examine any person called as a witness in support of the charge; and 35
 - (vi) may have access to documents produced in evidence;
 - (b) (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 29(3)(b) or (c);
 - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of improper conduct as charged. 40
- (7) The investigating committee may during a hearing—
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
 - (b) question any person who was subpoenaed in terms of subsection (3); or 45
 - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the investigating committee suspects or believes to have a bearing on the subject of the hearing.
- (8) (a) A witness who has been subpoenaed may not— 50
- (i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or 55

- (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance. 5
- (c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the necessary changes, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness. 10
- (e) A witness may not, after having been sworn in or having been affirmed as a witness, give a false statement on any matter, knowing that answer or statement to be false. 15
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.
- (9) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if— 20
- (a) the record is accompanied by a certificate from the chairperson; and
- (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (10) If the improper conduct with which the 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 the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court. 25 30

Proceedings after hearing

32. (1) After the conclusion of the hearing the disciplinary tribunal must—
- (a) decide whether or not the registered person charged is guilty of improper conduct;
- (b) if the disciplinary tribunal finds that the registered person charged is guilty of improper conduct, take cognisance of any aggravating or mitigating circumstances; 35
- (c) inform the registered person charged and the council of the finding; and
- (d) inform the registered person of his or her right of appeal in terms of section 33.
- (2) A registered person found guilty of improper conduct in terms of this section 40 may—
- (a) address the disciplinary tribunal in mitigation of sentence; and
- (b) call witnesses to give evidence on his or her behalf in mitigation of the sentence.
- (3) (a) If the registered person charged is found guilty of improper conduct, or if he 45 or she admits that he or she is guilty of the charge, the disciplinary tribunal must either—
- (i) caution or reprimand the registered person;
- (ii) impose on him or her a fine not exceeding the amount calculated according to the ratio for one year imprisonment determined in terms of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); 50
- (iii) suspend the registration of the registered person concerned for a period not exceeding one year; or
- (iv) cancel the registration of the registered person concerned and remove his or her name from the register referred to in section 11(c).
- (b) The disciplinary tribunal may take decisions under more than one of the 55 subparagraphs of paragraph (a).

(4) At the conclusion of the hearing the disciplinary tribunal must notify the council of its finding.

(5) The council may publish the finding and the sanction imposed in terms of subsection (3) in any manner it considers fit.

(6) The council may endorse the decision of the disciplinary tribunal. 5

(7) The council may set aside the decision of the disciplinary tribunal if satisfied that the decision was wrong.

Appeal against decision of disciplinary tribunal

33. (1) (a) A registered person found guilty of improper conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both. 10

(b) The appeal must be lodged, within 30 days after the disciplinary tribunal has informed the registered person of its decision.

(2) The council may—

(a) dismiss the appeal against the decision of the disciplinary tribunal and confirm the finding or sentence or both; or 15

(b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.

(3) If an appeal is dismissed in terms of subsection (2)(a) the appellant may, within 30 days, from the date of the dismissal of the appeal, appeal to the CBE.

(4) If a registered person found guilty of improper conduct lodges an appeal in terms of subsection (1)— 20

(a) the decision of the disciplinary tribunal under section 32(3); or

(b) the publication by the council in terms of section 32(5),

may not be put into effect before the council or the CBE, or both, has decided the appeal.

(5) (a) The appellant whose appeal was dismissed by the CBE may appeal to the appropriate High Court. 25

(b) A person referred to in paragraph (a) must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

(6) (a) The council may appeal to the appropriate High Court against any decision of the CBE with regard to disciplinary matters. 30

(b) The council must, after giving notice to the CBE, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the CBE.

Professional fees

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34. (1) The council must, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4(k)(vi) of the Council for the Built Environment Act, 2000.

(2) The council must annually, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the *Gazette*. 40

(3) The CBE may review the guideline professional fees published by the council, and refer the fees back to the council for reconsideration.

(4) If the council, after review by the CBE of the guideline professional fees, is aggrieved about that review, it may refer the matter to the Minister for a final decision.

(5) Any person who is aggrieved by the guideline professional fees published in terms of subsection (2), may bring the matter to the attention of the CBE within 60 days from the date of such publication. 45

Appeal against certain decisions of council

35. (1) Any member of the public whose interests and rights are affected by a decision made by the council may— 50

- (a) within 30 days from that person becoming aware of the decision request the council in writing to furnish him or her in writing with its reasons for that decision;
- (b) within 90 days from the date on which the council furnished him or her with its reasons for that decision and after giving notice to the council, appeal to the CBE against that decision in terms of section 21 of the Council for the Built Environment Act, 2000. 5

(2) A person referred to in subsection (1) may, after giving notice to the council or the CBE, as the case may be, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of the council or the CBE. 10

Rules

36. (1) The council may, by notice in the *Gazette*, make rules, not inconsistent with this Act, with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or duty imposed by this Act. 15

(2) (a) Before the council makes any rule under this section, it must publish a draft of the proposed rule in the *Gazette* together with a notice calling on interested persons to comment in writing within a period stated in the notice, but the period may not be less than 30 days from the date of publication of the notice.

(b) If the council alters the draft rules as a result of any comment it need not publish those alterations before making the rule. 20

(3) The council may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2), provided that the CBE, any of the councils for the professions or any person who is aggrieved by the said rule may— 25

- (a) comment after such publication; or
- (b) appeal to the CBE or the appropriate High Court, as the case may be, against such a rule.

Procedure and evidence

37. (1) The register referred to in section 11(c) serves as evidence of all matters which, in terms of this Act, are required or permitted to be noted therein. 30

(2) A certificate purporting to be signed by the registrar to the effect that an entry has or has not been made in the register or that any other thing authorised by this Act to be done, has or has not been done, is evidence of the matters specified in that certificate.

(3) A copy of an 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, purporting to be certified by the registrar, may be admitted as evidence in all courts without further proof or production of the original. 35

Rectification of errors and exemptions

38. (1) When anything which according to this Act is required to be done or performed on or before a specified day or at a specified time or during a specified period, has not been done or performed, the Minister may, if satisfied that the failure was due to error or oversight, authorise it to be done or performed on or before another day, time, or during another period and anything done or performed in this regard is of full force and is deemed to have been lawfully done or performed in accordance with this Act. 45

(2) The Minister must, after consultation with the council, voluntary associations and any other person he or she considers necessary, make rules regarding exemptions from the provisions of this Act.

(3) (a) The Minister may, after consultation with the council, voluntary associations and any other person he or she considers necessary, exempt any person, council, voluntary association or industry from any provision of this Act for a period not exceeding two years. 50

(b) The exemption referred to in paragraph (a) must comply with the rules contemplated in subsection (2).

Liability

39. (1) The council, the registrar, or any member, committee or staff member of the council, is not liable for any act performed in good faith. 5

(2) A registered person who, in the public interest—

(a) refuses to perform an act;

(b) omits to perform an act; or

(c) informs the council or other appropriate authority of an act or omission performed by any other person, 10

which act or omission endangers or is likely to endanger the safety or health of the public or fellow employees, is not liable for that refusal, omission or information.

(3) Any person who was registered in terms of this Act and whose registration was cancelled, is liable for any action taken by him or her while he or she was registered.

Delegation of powers 15

40. (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint the members of the council, to the Director-General or any other official of the department.

(2) The council may delegate any of its powers in terms of this Act to a committee, staff member or a member of the council or any other person or body of persons, 20 excluding the power to hear an appeal in terms of sections 24(1) and 33(1)(a).

(3) The registrar may delegate any of his or her powers in terms of this Act to a member of the staff of the council.

(4) Any delegation under subsection (1), (2) or (3) does not prohibit the exercise of the power or the performance of the duty or function in question by the Minister, council or 25 the registrar.

Offences and penalties

41. (1) A person contravening section 18(2), 23, 25(8) or 31(8)(a), (b), (e) or (f) is guilty of an offence.

(2) A person convicted of an offence in terms of section 18(2), may be liable to a fine 30 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.

(3) A person who is convicted of an offence in terms of section 23 or 25(8), may be liable to a fine calculated according to the ratio determined for a period of one month 35 imprisonment in terms of the Adjustment of Fines Act, 1991.

(4) A person who is convicted of an offence in terms of section 31(8)(a), (b), (e) or (f), may be liable 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.

Transitional provisions 40

42. (1) Any person practising in any of the categories contemplated in section 18, may continue to practise as such and is deemed to be a registered person until a date determined by the Minister by notice in the *Gazette*.

(2) For the purpose of the nominations referred to in section 4 and for the first term of office of the council, the existing voluntary associations within the project and 45 construction management professions are deemed to be recognised in terms of section 25.

(3) Any person nominated in terms of section 4, is deemed to be registered for the purpose of that section and section 5.

(4) The Minister must, within 30 days from the commencement of this Act, invite nominations as contemplated in section 4.

(5) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.

Act binding on the State

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43. This Act binds the State.

Short title and commencement

44. This Act is called the Project and Construction Management Professions Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PROJECT AND CONSTRUCTION MANAGEMENT PROFESSIONS BILL, 2000

1. The Bill seeks to ensure that there is equal application of policy throughout the built environment. It also aims to establish mechanisms for quality control by means of mandatory registration of all persons in the built environment professions and by identifying work to be performed by the various categories of registered persons. To achieve the aforementioned objectives, the Bill establishes a juristic person to be known as the South African Council for the Project and Construction Management Professions, whose functions correlate with that of the main council, the Council for the Built Environment, which is to be established in terms of the Council for the Built Environment Act, 2000.

2. Clause 1 makes provision for definitions.

3. Clause 2 establishes the South African Council for the Project and Construction Management Professions as a juristic person (hereinafter referred to as the "council").

4. Clause 3 seeks to determine the composition of the council and the bodies and persons who are to nominate the members of such a council.

5. Clause 4 aims to provide for the process of nomination of the members of the council.

6. Clause 5 is aimed at providing for the term of office of members of council. It aims, among other things, to provide that the period of office of members is four years. The Minister of Public Works may, by notice in the *Gazette* and after consultation with the council, extend or shorten the period of office of the members of the council.

7. Clause 6 seeks to provide for the disqualification of persons from membership of the council and vacation of office.

8. Clause 7 is aimed at providing for the election of a president and vice-president of the council. The clause further provides for procedures to be followed in the absence of such a president and vice-president.

9. Clause 8 provides for the appointment of a registrar and other staff members of the council.

10. Clause 9 provides for the manner in which decisions are to be taken by the council and determines that a decision of the majority of the members of the council present at a meeting constitutes the decision of the council.

11. Clause 10 is aimed at providing for the administrative powers of the council.

12. Clause 11 seeks to provide for the powers of council with regard to registration of persons in the project and construction management professions.

13. Clause 12 seeks to give the council powers with regard to fees and charges payable to it by registered persons.

14. Clause 13 provides for the powers of the council with regard to education in the project and construction management professions.

15. Clause 14 seeks to provide for the general powers of the council.

16. Clause 15 provides for the funds of the council and the keeping and auditing of accounts.

17. Clause 16 provides for reporting to the Council for the Built Environment on the financial status and activities of the council.

18. Clause 17 provides for the establishment of committees to assist the council in the performance of its functions or to investigate matters relating to any of its functions.

19. Clause 18 makes provision for the categories in which a person can register in the project and construction management professions.

20. Clause 19 provides for matters in respect of registration after the council has considered an application for registration. It also prescribes the necessary qualifications for each category of registered persons.

21. Clause 20 aims to provide for the cancellation of registration.

22. Clause 21 seeks to provide for the authorised titles that may be used in the project and construction management professions.

23. Clause 22 provides for the renewal of registration.

24. Clause 23 is aimed at providing for the return of a registration certificate in the event of cancellation of registration.

25. Clause 24 seeks to provide for the grievance procedure in relation to registration.

26. Clause 25 provides for the recognition by the council of any voluntary association that complies with the guidelines proposed by the council and set by the Council for the Built Environment.

27. Clause 26 provides for a procedure, including extensive consultation, to recommend work to be identified for the different categories of registered persons to the Council for the Built Environment.

28. Clause 27 provides for the drawing up of a code of conduct for the project and construction management professions.

29. Clauses 28 to 33 provide for the investigation of a charge of improper conduct against a registered person, the procedure for charging a registered person, the appointment of disciplinary tribunal, the disciplinary hearing, proceedings after hearing and the appeal against the decision of the disciplinary tribunal.

30. Clause 34 is aimed at regulating the determination and payment of professional fees.

31. Clause 35 provides for appeal to the Council for the Built Environment by any member of the public who is aggrieved by any decision of the council.

32. Clause 36 empowers the council to make rules and determines the consultation procedure to be complied with before the publication of such rules.

33. Clause 37 provides for the legal procedure and evidence in respect of project and construction management matters.

34. Clause 38 seeks to provide for rectification of errors and exemptions.

35. Clause 39 provides for the liability of the council, the registrar, or any member, committee or a staff member of the council and registered persons.

36. Clause 40 provides for the delegation of powers.

37. Clause 41 provides for offences and penalties.

38. Clause 42 provides for transitional provisions.

39. Clause 43 determines the Act will also bind the State.

DEPARTMENTS/BODIES/PERSONS CONSULTED

There was extensive consultation with stakeholders and interested persons. The Bill was discussed at a forum established by the Department and at bilateral meetings between the Department and the current council. Comments were received from the following:

The Department of Education.

The Chamber of Mines.

The Competition Commission.

Councils for the Professions.

Voluntary Associations.

Individual members of the professions.

IMPLICATIONS FOR PROVINCES

None.

FINANCIAL IMPLICATIONS FOR THE STATE

None.

PARLIAMENTARY PROCEDURE

The Department of Public Works and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with section 75 of the Constitution, as it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.