

# THE COUNCIL FOR THE BUILT ENVIRONMENT BILL

## BILL

To provide for the establishment of a council for the built environment; and the constitution, functions, assets, rights, members and financing of such council; and to provide for matters connected therewith.

### Definitions

1. In this Act, unless the context otherwise indicates -
  - (i) “accreditation” means the process by means of which education providers and educational programmes within the specific professional fields are evaluated by the councils for the professions to ensure that such providers and programmes comply with the quality standards required for the registration of registered persons and that those providers and programmes are accredited;
  - (ii) “built environment” means the functional area within which the registered persons practise, and includes all structures that are planned or erected above or under ground, as well as the land utilised for this purpose and the supporting infrastructure;
  - (iii) “built environment professions” means the professions regulated by the Architectural Profession Act, 1999 (Act No. ... of 1999), Construction Management Profession Act, 1999 (Act No. ... of 1999), Engineering Profession Act, 1999 (Act No. ... of 1999), Landscape Architectural Profession Act, 1999 (Act No. ... of 1999), Property Valuation Profession Act, 1999 (Act No. ... of 1999) and Quantity Surveying Profession Act, 1999 (Act No. ... of 1999);
  - (iv) “council” means the Council for the Built Environment established by section 2;
  - (v) “councils for the professions” means the South African Council for the Architectural Profession established by the Architectural Profession Act, 1999, the South African

Council for the Construction Management Profession, established by the Construction Management Profession Act, 1999, the South African Council for the Engineering Profession established by the Engineering Profession Act, 1999; the South African Council for the Landscape Architectural Profession established by the Landscape Architectural Profession Act, 1999, the South African Council for the Property Valuation Profession established by the Property Valuation Profession Act, 1999 and the South African Council for the Quantity Surveying Profession established by the Quantity Surveying Profession Act, 1999;

- (vi) "department" means the national department responsible for public works;
- (vii) "Minister" means the Minister responsible public works;
- (viii) "prescribed" means prescribed by regulation;
- (ix) "professional" means a person who is registered as such in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999;
- (x) "registered person" means a person registered in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999;
- (xi) "registration" means the process of assessment of the competency of applicants for the various categories provided for in the built environment professions, and of entering the names of suitably qualified registered persons into a register kept by the councils for the professions;
- (xii) "reservation of functions" means those functions, which are reserved for registered persons in the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act,

1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999;

- (xiii) “this Act” includes the regulations; and
- (xiv) “voluntary association for the built environment professions” means any voluntary association recognised as such by the councils for the professions in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999.

### **Establishment of council**

2. (1) The Minister shall, by notice in the *Gazette* and with effect from a date specified in such notice, establish the Council for the Built Environment.
- (2) The council is a juristic person and is charged with the functions determined in this Act.

### **Objects of council**

3. The objects of the council are to -
  - (a) promote and protect the interest of the public;
  - (b) promote and maintain a sustainable built environment and natural environment;
  - (c) promote ongoing human resource development;
  - (d) facilitate participation by the professions in integrated development in the context of national goals;
  - (e) promote appropriate standards of health, safety and environmental protection within the built environment;
  - (f) promote sound governance of the professions;
  - (g) promote liaison in the field of training, both in the Republic and elsewhere, and to promote the standards of such training in the Republic;
  - (h) provide a forum where the professions can discuss the required qualifications, standards of education, training and competence, promotion of professional status and legislation impacting on the built environment; and

- (i) ensure the uniform application of norms and guidelines throughout the built environment.

#### **Powers and duties of council**

#### **4. The council shall -**

- (a) advise government on any matter falling within the scope of the built environment, including resource utilisation, socio-economic development, public health and safety and the environment, and it may for this purpose carry out such investigations as it or the relevant minister deems necessary;
- (b) communicate to the Minister information on matters of public importance acquired by the council in the course of the performance of its functions under this Act;
- (c) make recommendations to the Minister on the constitution, functions, assets, rights, employees or financing of the council;
- (d) advise the Minister with regard to the amendment of this Act in order to support the norms and values of the built environment professions;
- (e) facilitate interministerial co-operation concerning issues relating to the built environment;
- (f) provide advice and consultation on national policy that could impact on the built environment, human resource development in relation to the built environment professions, and the recognition of new professions;
- (g) comment on all proposed legislation impacting on health and safety in the built environment;
- (h) direct communication from the Minister or the relevant minister to the councils for the professions;
- (i) advise the councils for the professions on matters of national importance where the needs of state, as communicated to the council through the relevant minister, require joint and coordinated action by the professions;
- (j) coordinate the establishment of mechanisms for professionals to gain recognition in foreign countries;
- (k) ensure the consistent application of policy by the councils for the professions with regard to -
  - (i) accreditation;
  - (ii) the registration of different classes of registered persons;

- (iii) key elements of competence testing of registered persons for registration;
- (iv) codes of conduct to be prescribed by the councils for the professions;
- (v) disciplinary procedures to be followed by the councils for the professions;
- (vi) the principles upon which the councils for the professions shall base the determination of fees which registered persons are entitled to charge in terms of the Architectural Profession Act, 1999, Construction Management Profession Act, 1999, Engineering Profession Act, 1999, Landscape Architectural Profession Act, 1999, Property Valuation Profession Act, 1999 and Quantity Surveying Profession Act, 1999, and in accordance with any legislation relating to the promotion of competition;
- (vii) standards of health, safety and environmental protection within the built environment,
  - taking due cognisance of the characteristics of each built environment profession;
- (l) investigate or initiate investigations into matters pertaining to its functions and policy with regard to the built environment, and recommend legislation in this regard;
- (m) act as an appeal body with regard to disciplinary hearings conducted by the councils for the professions;
- (n) obtain recognition for the councils for the professions, in consultation with them, as the bodies responsible for the establishment of education and training standards in terms of the South African Qualification Authority Act, 1995 (Act No. 58 of 1995);
- (o) ensure the consistent application of policy throughout the built environment by the coordination between the councils for the professions;
- (p) promote coordination between the Council on Higher Education and the councils for the profession in relation to the accreditation of education institutions;
- (q) liaise with the Competition Board, established in terms of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), on behalf of councils for the professions regarding the reservation of functions for the built environment professions;
- (r) review fees published by the councils for the professions to ensure the consistent application of the principles regarding such fees;
- (s) levy membership fees in the prescribed manner from the councils for the professions, calculated *pro rata* on their membership base, and be entitled to

institute legal proceedings to recover all membership fees payable under this Act, if those fees are in arrears;

- (t) consider proposals from the councils for the professions with regard to the determination of policy contemplated in paragraph (k);
- (u) receive and assimilate the annual reports of the councils for the professions and submit a summary to the Minister;
- (v) purchase, hire or otherwise acquire or dispose of property, borrow money on the security of the assets of the council or accept and administer any trust or donation;
- (w) subject to the provisions of this Act, approve standing orders for the regulation of its proceedings and of all other matters relating to the management, powers and duties of the council;
- (x) perform such functions as may be prescribed; and
- (y) generally, do all such things as the council deems necessary or expedient to achieve the objectives of this Act.

### **Constitution of council**

- 5.** (1) The council shall consist of the following members appointed by the Minister:
- (a) One representative from the department;
  - (b) not more than four persons nominated by departments within whose functional areas the professions are also practised, taking due cognisance of provincial participation;
  - (c) two representatives of each council for the professions;
  - (d) not more than six representatives nominated by voluntary associations for the built environment professions, equitably representing such voluntary associations for the built environment professions; and
  - (e) not more than five persons nominated by the public through an open process of public participation.
- (2) If a council for the professions or a voluntary association for the built environment professions, other than a council for the professions or voluntary association for the built environment professions defined in section (1), is constituted and that council for the professions or voluntary association for the built environment professions request

representation on the council, the Minister may appoint representatives to the council in accordance with the provisions of this section.

(3) The councils for the professions and voluntary associations for the built environment professions shall, within 30 days from the publication of the notice of establishment of the council in the *Gazette*, inform the Director-General in writing of the names of the persons nominated by them for the purposes of subsection (1)(c).

(4) For the purposes of subsection (1)(d), the Minister shall, at least 14 days before the publication of the notice of establishment of the council in the *Gazette*, request nominations for representatives from the general public.

(5) The request referred to in subsection (4), must be published in the *Gazette* and in any other newspaper generally circulated throughout the Republic.

(6) (a) If no nomination is submitted as contemplated in subsection (3) or (4), or if a council for the professions or voluntary association referred to in subsection (3) fails to inform the Director-General under subsection (3) of the names of the persons so nominated, the Minister must appoint qualified persons up to the number required, as members of the council.

(b) The Director-General must, in the case of failure contemplated in paragraph (a), immediately inform the Minister of such failure in writing.

(7) The Minister shall as soon as possible after the appointment of the members of the council inform the Director-General of the names of the persons appointed by him or her.

(8) The names of the members of the council and the date of commencement of their period of office must be published by the Director-General in the *Gazette* as soon as possible after the constitution of the council.

(9) Subject to the provisions of section 6, the members of the council holds office for a period of four years calculated from the date contemplated in subsection (8).

### **Vacation of office and filling of vacancies**

6. (1) A person may not be appointed as a member of the council if that person -
- (a) is not a South African citizen;
  - (b) is an unrehabilitated insolvent;
  - (c) has been convicted of an offence and sentenced to imprisonment for a period exceeding three months or a fine as alternative thereto;
  - (d) has, as a result of improper conduct, been removed from an office of trust;

- (e) has in terms of this Act been found guilty by the council of improper conduct; or
  - (f) in the case of persons referred to in section 5(1)(c) and (d) is not a registered person.
- (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;
  - (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) is appointed in terms of section 5(1)(c) and (d) and is no longer associated with the council or voluntary association that nominated him or her and if that disassociation affects the ratio of the membership referred to in section 5(1);
  - (f) is appointed in terms of section 5(1)(b) and ceases to be a person employed by the State;
  - (g) ceases to be permanently resident in South Africa; or
  - (h) the Minister, in the public interest, terminates his or her membership.
- (3) 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 must, within 60 days from the date on which the vacancy occurred, appoint the person nominated by the council, to fill the vacancy for the unexpired portion of the period for which that member was appointed.

### **Chairperson and deputy-chairperson**

7. (1) The members of the council shall at the first meeting of every newly constituted council from their number elect a chairperson and deputy-chairperson.
- (2) The chairperson and deputy-chairperson hold office for the period that the council determines at the time of their election.
- (3) The deputy-chairperson must, if the chairperson is for any reason unable to act as chairperson, perform all the functions of the chairperson and may exercise all the powers of the chairperson.
- (4) If both the chairperson and the deputy-chairperson are for any reason unable to preside at a council meeting, the members present must elect from their number a person to preside at

that meeting. The person elected may, during that meeting perform all the functions and exercise all the powers of the chairperson.

(5) If the office of the chairperson or deputy-chairperson becomes vacant, the council must, at its first meeting after the chairperson or deputy-chairperson vacates his or her office, elect one of the members as chairperson or deputy-chairperson, and the member so elected holds office for the unexpired portion of the period for which his or her predecessor was elected.

(6) A chairperson or a deputy-chairperson may vacate office as such, and the vacation does not terminate his or her membership of the council.

### **Meetings of the council**

8. (1) The Minister must, within 30 days after the appointment of the council, determine the time and place of its first meeting, and the council shall determine the time and place of any future meeting.

(2) The council shall hold at least two meetings each year but may hold such further meetings as it determines from time to time.

(3) The chairperson may at any time convene a special meeting of the council, to be held on a date and place as he or she may determine and he or she must, on written request by the Minister or a written request signed by at least six members, convene a special meeting. The special meeting must be held within 30 days after the date of receipt of the request, on a date and at a place as the chairperson may determine. The written request must state clearly the purpose for which the meeting is to be convened.

### **Quorum and decisions**

9. (1) The majority of the members of the council constitutes a quorum at any meeting of the council.

(2) A decision of the majority of the members of the council present at any meeting constitutes a decision of the council. In the event of an equality of votes the chairperson has a casting vote in addition to a deliberative vote.

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

### **Executive committee**

- 10.** (1) The council has an executive committee consisting of the chairperson of the council and not more than three other members elected by the council.
- (2) A majority of the total number of members of an executive committee constitutes a quorum.
- (3) (a) A member serves on the executive committee for a period of one year, but may be again designated and remains in office until his or her successor is elected.
- (b) Upon the expiry of the term of office of any member of the executive committee, the vacancy must be filled by the council at its next ensuing ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days after that ordinary meeting.
- (c) A casual vacancy on the executive committee occurs if a member resigns as a member of the executive committee, or if he or she ceases to be a member of the council concerned as contemplated in section 6.
- (d) If a casual vacancy occurs in the executive committee the vacancy must be filled by the council concerned at its next ensuing ordinary meeting or, failing which, at a special meeting convened for that purpose by the chairperson of the council within 21 days after that ordinary meeting, and the person elected to fill the vacancy acts in that capacity for the unexpired portion of the term of office of his or her predecessor.
- (e) If the council is convinced that the executive committee temporarily cannot function, as no quorum can be obtained, the council may elect so many members as is necessary to constitute a quorum to serve temporarily on the executive committee in the place of the absent members until such members can again attend a meeting of the executive committee.
- (4) The executive committee shall hold at least one ordinary meeting a month.
- (5) A special meeting of the executive committee -
- (a) may at any time be convened by the chairperson thereof; and
- (b) must be convened by the chairperson if he or she is requested thereto in writing by a majority of the members of the executive committee.

### **Powers of executive committee**

11. The executive committee has the power to -
- (a) ensure that the resolutions of the council are carried out;
  - (b) consider any matter entrusted to the council in terms of the provisions of any law (excluding any matter determined by the council) and to advise the council in connection therewith;
  - (c) prepare estimates of revenue and expenditure of the council;
  - (d) control the expenditure of moneys voted by the council in its approved estimates and all other moneys or funds made available by the council; and
  - (e) report at every ordinary meeting of the council on the functions of the committee.

### **Committees of council**

12. (1) The council -
- (a) may establish any committee to assist it in the performance of its functions or to investigate and make recommendations on matters relating to any of its functions; and
  - (b) shall designate a chairperson for any such committee, and determine the quorum for meetings of such committee.
- (2) The provisions of section 8, adjusted as may contextually be necessary, applies in respect of a committee of the council.
- (3) Any reference in this Act to the council, or to the chairperson of the council, in relation to the exercise of any power which the council has delegated to a committee, must be construed as including a reference to that committee or to the chairperson of that committee, as the case may be.

### **Delegation of powers**

13. The council may delegate any power (except the powers regarding the appropriation of funds and the appointment of committees) duty or function conferred or imposed on it by this Act to a committee appointed under section 12, the executive committee appointed under section 10, the chairperson of the council or any officer of the council.

### **Financing of council**

- 14.** (1) The funds of the council consist of -
- (a) membership fees levied on the councils for the professions by the council;
  - (b) donations, contributions or grants received from any person, institution, government or administration; and
  - (c) interest on investments.
- (2) The council shall utilise its funds to defray expenses in connection with the performance of its functions.
- (3) The council -
- (a) may, invest any unspent portion of the funds of the council, and any surplus at the end of a financial year must be carried over to the next financial year and be utilised to defray expenses incurred by the council during that financial year;
  - (b) shall during each financial year, submit a statement of the council's estimated income and expenditure for the following financial year to the councils for professions for comment.

### **Accounting and accountability**

- 15.** (1) The chairperson of the council is the accounting officer of the council and shall -
- (a) cause proper records to be kept of all financial transactions, assets and liabilities of the council; and
  - (b) as soon as possible after the end of each financial year, cause to be prepared a statement of the income and expenditure of the council for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year.
- (2) The records, statement and balance sheet referred to in subsection (1) must be audited by an independent auditor approved by the councils for the professions.
- (3) The financial year of the council is the period from 1 April in any year to 31 March of the following year.

### **Reporting**

- 16.** (1) The council shall -

- (a) furnish the Minister with such information and particulars as he or she may from time to time require in connection with the affairs and financial position of the council; and
  - (b) annually, within six months after the end of the financial year, submit to the Minister a report with regard to the functions, affairs and financial position of the council in respect of that financial year.
- (2) Without derogating from the generality of the provisions of subsection (1)(b), the annual report referred to in that subsection must include -
- (a) an audited balance sheet and statement of income and expenditure, including any notes thereon and documents annexed thereto whereby relevant information is provided;
  - (b) particulars of any donations or contributions received under section 14(1)(b);
  - (c) the report on the audit referred to in section 15(2);
  - (d) a report regarding the execution of the functions of the council;
  - (e) a report regarding the envisaged strategies of the council; and
  - (f) such other information as the Minister may from time to time determine.
- (3) The Minister may, if he or she suspects that there are any irregularities with regard to the functions of the council, cause the council to be investigated.

### **Administration**

**17.** All administrative work as well as secretarial work, in connection with the performance of the functions of the council, executive committee or other committees established in terms of section 12, shall be carried out by members of the council or other persons appointed by the council.

### **Appeal**

**18.** (1) Any person who feels aggrieved by a decision of any one of the councils for the professions, may, on payment of the prescribed fee and in writing, appeal to the council, within 30 days after that person becomes aware of such decision, and the council must consider and decide the appeal.

(2) The appellant shall submit a copy of the appeal against a decision of a council for the profession and any documents or records supporting such appeal, to that council and furnish proof of such submission for the information of the council.

(3) The council may confirm, set aside or amend the decision of the council for the profession concerned.

(4) The decision of the council in terms of this section is final.

### **Regulations**

19. The Minister may make regulations, 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.

### **Short title**

20. This Act shall be called the Council for the Built Environment Act, 1999.